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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

SOCORRO OCHOA, ANA GAYTAN GARCIA,
TERESA GONZALEZ VEGA, LILIANA J.
MOISEN, ANDREA GARCIA CERVANTES,
and CECILIA CERVANTES, individually, and
on behalf of all others similarly situated; ANA
GAYTAN GARCIA and TERESA GONZALEZ
VEGA, on behalf of the State of California and
other aggrieved persons,

Plaintiffs,

v.

LA TAVOLA, LLC, a California limited liability
company; BBJ RENTALS INC., a corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CV000862

CLASS & REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Scott R.L.
Young, Dept. B]*

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with: Declaration of
Justin F. Marquez; and [Proposed] Order]*

PRELIMINARY APPROVAL HEARING

Date: August 27, 2024
Time: 8:30 a.m.
Dept: B

Complaint filed: July 29, 2022
FAC filed: April 9, 2024
Trial date: Not set

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 27, 2024 at 8:30 a.m., in Department B of the Napa County Superior Court, located at 825 Brown Street, Napa, California 94559, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J. Moisen, Andrea Garcia Cervantes, and Cecilia Cervantes (collectively, “Plaintiffs”) will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiffs and Defendants La Tavola, LLC and BBJ Rentals Inc. (collectively, “Defendants”). Plaintiffs further move the Court for an Order:

1. Granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement;
2. Certifying a Class for settlement purposes;
3. Approving the Notice and the plan for distribution of the Notice;
4. Appointing Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J. Moisen, Andrew Garcia Cervantes, and Cecilia Cervantes as Class Representatives for settlement purposes;
5. Appointing Plaintiffs’ Counsel, Justin F. Marquez, Benjamin H. Haber, and Arrash T. Fattahi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
6. Appointing ILYM Group, Inc. as the Settlement Administrator; and

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1 7. Scheduling a final approval hearing.

2 The motion will be based upon this notice, the attached memorandum of points and
3 authorities, the Declaration of Justin F. Marquez, filed concurrently herewith, the records and files
4 in this action, and any other further evidence or argument that the Court may properly receive at
5 or before the hearing.

6
7 Dated: August 1, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

8
9 By: _____

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

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11 Attorneys for Plaintiffs
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10	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.).....	7, 11, 19
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12	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study,</i>	
13	(2006) 53 UCLA L.Rev. 1303	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J. Moisen,
4 Andrea Garcia Cervantes, and Cecilia Cervantes (collectively, “Plaintiffs”) seek preliminary
5 approval of a proposed \$1,000,000.00 non-reversionary, wage and hour class action settlement with
6 Defendants La Tavola, LLC and BBJ Rentals Inc. (collectively, “Defendants,” and together with
7 Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to
8 approximately 498 class members. And, as set forth more fully below, the proposed Settlement
9 satisfies all the criteria for settlement approval under California law. The Settlement was reached
10 after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and
11 were facilitated by an experienced class action mediator, Jill R. Sperber, Esq., over the course of a
12 full day of mediation that was conducted via Zoom. After extensive negotiations and discussions
13 regarding the strengths and weaknesses of Plaintiffs’ claims and Defendants’ defenses, the Parties
14 reached a settlement on October 17, 2023. Accordingly, Plaintiffs request that the Court
15 preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the
16 proposed notice, and set a final approval hearing.

17 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

18 **A. Plaintiffs’ Claims**

19 This is a wage and hour class action and representative action. Plaintiffs and putative
20 class members worked in California as hourly-paid or non-exempt employees for Defendants
21 during the class period. Defendants operate the “largest linen tastemaker in the nation” and
22 have a presence in every state in the country. (Declaration of Justin F. Marquez in Support of
23 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶
24 2.)

25 Plaintiffs allege that Defendants’ payroll, timekeeping, and wage and hour practices
26 resulted in Labor Code violations. Plaintiffs allege that Defendants failed to pay for all hours
27 worked. Plaintiffs further allege that Defendants failed to provide employees with legally
28 compliant meal and rest periods and Defendants failed to reimburse business expenses. Based

1 on these allegations, Plaintiffs assert related claims for failure to pay all final wages at
2 termination, failure to provide accurate wage statements, unfair business practices, and civil
3 penalties under the Private Attorneys General Act (“PAGA”). (*Id.* at ¶ 3.)

4 On July 29, 2022, Plaintiff Ochoa filed a putative wage and hour class action complaint
5 against Defendant La Tavola, LLC for: (1) failure to pay minimum and straight time wages; (2)
6 failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and
7 permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide
8 accurate itemized wage statements; (7) failure to indemnify employees for expenditures; and
9 (8) unfair business practices (Business and Professions Code 17200, *et seq.*). On June 1, 2022,
10 Plaintiff Gaytan Garcia sent a notice to Defendants and the California Labor & Workforce
11 Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the
12 PAGA. On March 17, 2023, Plaintiff Vega also sent a notice to Defendants and the LWDA
13 alleging similar wage and hour violations pursuant to the PAGA. On April 9, 2024, Plaintiff
14 Ochoa filed a First Amended Class & Representative Complaint, adding Defendant BBJ Rentals
15 Inc. as a named defendant, adding a cause of action for civil penalties under the PAGA, and
16 adding additional class representatives. (Marquez Decl., ¶ 4.)

17 **B. Discovery and Investigation**

18 Following the filing of the initial Complaint, the Parties exchanged documents and
19 information before mediating this action. Defendants produced a sample of time and pay
20 records for the class members. Defendants also provided documents of its wage and hour
21 policies and practices during the class period and information regarding the total number of
22 current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

23 After reviewing documents regarding Defendants’ wage and hour policies and practices,
24 analyzing Defendants’ timekeeping and payroll records, and interviewing Class Members, Class
25 Counsel was able to evaluate the probability of class certification, success on the merits, and
26 Defendants’ maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also
27 investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*)
28 Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

1 **C. Settlement Negotiations**

2 On October 17, 2023, the Parties participated in private mediation with experienced class
3 action mediator, Jill R. Sperber, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The
4 settlement negotiations were at arm’s length and, although conducted in a professional manner,
5 were adversarial. The Parties went into the mediation willing to explore the potential for a
6 settlement of the dispute, but each side was also prepared to litigate their position through trial
7 and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
8 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendants’
9 defenses, the Parties reached a settlement, the material terms of which are encompassed within
10 the Settlement. (*Id.* at ¶ 8, Ex. 1 [Joint Stipulation of Class Action and PAGA Settlement].)

11 Class Counsel has conducted a thorough investigation into the facts of this case. Based
12 on the foregoing discovery and their own independent investigation and evaluation, Class
13 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
14 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
15 of significant delay, the defenses that could be asserted by Defendants both to certification and
16 on the merits, trial risk, and appellate risk. (*Id.* at ¶ 15.)

17 Indeed, the \$1,000,000.00 Settlement represents approximately **73%** of the **realistic**
18 **maximum recovery** of \$1,376,870.53. (*Id.* at ¶ 25.) Although Class Counsel estimated that
19 Defendants’ maximum potential liability for all claims was approximately \$6.8 million, when
20 the risk of prevailing at certification and trial are factored into the equation, Class Counsel
21 believes that Defendants’ realistic exposure was \$1,376,870.53, meaning the Settlement
22 achieves a significant recovery. (*Id.* at ¶¶ 16-29.) Considering the risk and uncertainty of
23 prevailing at class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 25.)
24 Indeed, because of the proposed Settlement, class members will receive timely, guaranteed
25 relief and will avoid the risk of an unfavorable judgment.

26 **D. Key Terms of the Proposed Settlement**

27 The Settlement’s key terms include:

- 28 1. Class Definition: For settlement purposes only, the Parties agree to the certification

1 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all of Defendants’
2 current and former non-exempt employees in the state of California during the Class Period.”
3 (Settlement, § I(2).)

4 2. Class Period: “shall refer to the time period from February 1, 2018 through January
5 17, 2024 or the date of the Court’s entry of Preliminary Approval of the Class Action Settlement,
6 whichever is earlier.” (Settlement, § I(11).)

7 3. Eligible Class Member: “means a Class Member who is not an Opt-Out.”
8 (Settlement, § I(16).)

9 4. Gross Settlement Amount: “means the amount Defendants shall pay as a
10 consequence of this Settlement, which is One Million Dollars and Zero Cents (\$1,000,000.00).”
11 (Settlement, § I(22).)

12 5. Uncashed Checks: Any settlement checks remaining uncashed after one hundred
13 and eighty (180) days shall be transmitted to the cy pres recipient, Legal Aid at Work, thereby
14 leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure
15 Section 384, subd. (b). (Settlement, § II(12)(d).)

16 6. Released Claims: “shall mean any and all claims, demands, liabilities, damages,
17 attorneys’ fees, costs, and penalties against Released Parties, relating to any and all facts and claims
18 asserted in the Action or any other claims that could have been asserted in the Action based on the
19 facts alleged, including but not limited to claims arising from alleged unpaid wages; minimum
20 wages; regular wages; overtime and double time wages; meal and rest period violations; unpaid
21 reimbursements and expenses; untimely payment of wages; wage statement violations; separation
22 pay violations; failure to maintain accurate records; and PAGA penalties during the Class Period.
23 Regardless of whether Class Members opt-out of the Class Settlement, this Settlement shall release
24 all PAGA claims as alleged on behalf of all Class Members, as detailed herein.” (Settlement, §
25 I(37).)

26 7. No Reversion: “The unclaimed funds shall not revert back to Defendants.”
27 (Settlement, § I(17).)

28 ///

1 8. PAGA Allocation: The settlement includes \$50,000.00 allocated to Plaintiffs’
2 claims under PAGA, with 75% of which (\$37,500.00) being paid to the LWDA and 25%
3 (\$12,500.00) being paid to the aggrieved employees. (Settlement, § I(25).) Class Counsel
4 submitted the proposed settlement to the LWDA before filing this Motion for Preliminary
5 Approval. (Marquez Decl., ¶ 9.)

6 9. Net Settlement Amount: “shall mean the Gross Settlement Amount minus (a)
7 Settlement Administration Costs, (b) Class Counsel Fees and Costs, (c) the LWDA Fund, (d) the
8 Named Plaintiffs Enhancement, and (e) To-Be Plaintiffs Enhancement.” (Settlement, § I(29).)

9 10. Eligible Class Member Share(s): means “the portion of the Net Settlement Amount
10 that will be allocated to each Eligible Class Member, according to the following method: first,
11 dividing the Net Settlement Amount by the total number of Eligible Class Member Work Weeks
12 to arrive at the Eligible Class Member Work Week Rate, and then second, by multiplying the
13 resulting Eligible Class Member Work Week Rate by the total number of Eligible Class Member
14 Work Weeks for each respective Eligible Class Member.” (Settlement, § I(17).)

15 11. Tax Allocation: Any settlement money paid to Settlement Class Members will be
16 allocated as 10% wages, 45% to Form 1099 report, and 45% to penalties. (Settlement, § II(12)(a).)

17 12. Named Plaintiffs Enhancement: “shall mean the amount approved by the Court to
18 be paid to Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, and Teresa Gonzalez Vega in addition to
19 their individual Eligible Class Member Shares, in consideration for their effort in coming forth as
20 a class and/or PAGA representative, and in consideration for their General Release, as defined
21 herein. The Parties agree that such amounts shall be Seven Thousand and Five Hundred Dollars
22 and Zero Cents.” (Settlement, I(28).) As to the To-Be Plaintiffs Enhancements: “shall mean the
23 amount approved by the Court to be paid to To-Be Plaintiffs Liliana J. Moisen, Andrea Garcia
24 Cervantes, and Cecilia Cervantes in addition to their individual Eligible Class Members Shares, in
25 consideration for their effort in coming forth as a class representative, and in consideration for their
26 General Release, as defined herein. The Parties agree that such amounts shall be Five Thousand
27 Dollars and Zero Cents.” (Settlement, §I(45).)

28 ///

1 13. Class Counsel Fees and Costs: “shall mean an amount of thirty three and one third
2 percent (33 1/3%) of the Gross Settlement Amount (\$333,333.33) in Class Counsel’s Fees subject
3 to Court approval, in addition to actual costs and expense incurred by Class Counsel related to the
4 Action as supported by declaration, with those costs and expenses not to exceed \$30,000.00,”
5 (Settlement, § I(5).)

6 14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
7 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’
8 fees, costs, and service awards being sought, and an explanation of how the settlement allocations
9 are calculated. (Marquez Decl., ¶ 8, Ex. 2 [Class Notice].) Class Members will be notified by
10 first-class mail of the settlement. (Settlement, § II(6).) ILYM Group, Inc., the proposed Settlement
11 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
12 addresses of class members, including conducting a national change of address search and re-
13 mailing the notice to updated addresses. (*Id.*; Marquez Decl., ¶ 10, Ex. 3 [Settlement Administrator
14 Bid].)

15 **III. DISCUSSION**

16 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
17 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
18 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
19 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
20 through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
22 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

23 In considering whether a settlement is reasonable, the trial court should consider relevant
24 factors, which may include the strength of plaintiff’s case, the risk, expense, complexity and likely
25 duration of further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
27 experience and views of counsel, the presence of a governmental participant, and the reaction of
28 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168

1 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself
2 that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record
3 need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-*
4 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not
5 require “an explicit statement of the maximum amount the plaintiff class could recover if it
6 prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy
7 and the realistic range of outcomes of the litigation.”].)

8 As discussed below, Class Counsel has provided information exceeding the threshold
9 required to provide this Court with materials and information necessary to determine that the
10 proposed settlement is fair, adequate, and reasonable.

11 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
12 **Investigation, Litigation, and Negotiation**

13 **1. The Settlement Is the Product of Discovery, Investigation, and Informed**
14 **and Non-Collusive Arm’s-Length Negotiations**

15 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
16 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
17 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
18 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
19 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
20 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
21 to approve the settlement.”].)

22 The Settlement was reached following extensive negotiations following one day of
23 mediation with experienced employment mediator, Jill R. Sperber, Esq. (Marquez Decl., ¶ 7.) The
24 settlement negotiations were at arm’s length and, although conducted in a professional manner,
25 were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
26 settlement of the dispute, but each side was also prepared to litigate their or its position through
27 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
28 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendants’ defenses,

1 the Parties reached an agreement. (*Id.* at ¶ 8.)

2 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
3 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
4 records, Defendants’ policies and procedures concerning the payment of wages, the provision of
5 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
6 as information regarding the number of putative class members and the mix of current versus
7 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
8 paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
9 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
10 litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in
11 negotiating the proposed Settlement. (*Id.*)

12 Class Counsel also has considerable experience and has demonstrated competence with
13 litigating wage and hour class actions. (*Id.* at ¶¶ 40-53.) Again, this supports the position that the
14 terms of the Settlement are premised on objective evidence that has been considered and weighed
15 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
16 action.

17 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 18 **Respective Legal Positions**

19 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
20 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
21 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
22 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
23 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
24 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
25 in which each side gives ground in the interest of avoiding litigation.”].)

26 This settlement avoids the risks and the accompanying expense of further litigation.
27 (Marquez Decl., ¶ 27.) While Plaintiffs are confident in the merits of their claims, a legitimate
28 controversy exists as to each cause of action. (*Id.* at ¶ 26.) Plaintiffs also recognize that proving

1 the amount of wages due to each class member would be an expensive, time-consuming, and
2 uncertain proposition. (*Id.*)

3 The proposed settlement of \$1,000,000.00 therefore represents a substantial recovery when
4 compared to Plaintiffs' reasonably forecasted recovery. (*Id.* at ¶¶ 15-29.) Because of the proposed
5 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
6 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
7 achieving class certification, the burdens of proof necessary to establish liability, the probability
8 of appeal of a favorable judgment, it is clear that the settlement amount of \$1,000,000.00 is within
9 the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
10 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
11 ***\$1,080.96.*** (*Id.* at ¶ 28.)

12 3. Class Counsel Has Extensive Experience in Class Action Litigation

13 The settlement negotiations were conducted by highly capable and experienced counsel.
14 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
15 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 40-
16 53.) Although Plaintiffs and their counsel were prepared to litigate the claims alleged in the
17 litigation, they support the proposed Settlement as being in the best interests of the class.

18 B. The Proposed Class Notice of Settlement Should Be Approved

19 The proposed Notice, attached as Exhibit 2 to Justin F. Marquez's declaration, should be
20 approved for dissemination to the class. The Notice informs the class of the terms of the settlement
21 and of their rights to be excluded from the settlement. And if there are class members who wish
22 to object to this proposed class action settlement, they will have the opportunity to file their
23 objections and be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets
24 all the requirements of Rule 3.769(f) of the California Rules of Court.

25 C. The Proposed Attorneys' Fees and Costs Are Reasonable

26 Under the Settlement, subject to the Court's approval, Defendants agree to pay Class
27 Counsel reasonable attorneys' fees in amount of \$333,333.33, which is 33 1/3% of the Gross
28 Settlement Amount, and up to \$30,000.00 in costs. These amounts are disclosed to all class

members in the proposed Notice and are reasonable.

**1. Class Counsel Request an Award of Fees Based on the “Common Fund”
Method**

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in creating a common fund. The California Supreme Court held that “when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

Class Counsel seeks an award of attorneys’ fees on the “percentage of recovery/ common fund” theory. The purpose of this approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.”

(*Id.* [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases

According to a leading treatise on class actions, “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

Here, Plaintiffs request attorneys’ fees equal to 33 1/3% of the Settlement Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Accordingly, Plaintiffs respectfully request that the Court approve the attorneys’ fees as negotiated by the Parties and requested herein.

3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code

Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this section, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were larger than the total class recovery at the conclusion of this case. This settlement is beneficial in that it limits the risk of continued expenses and consumption of time, energy, and resources facing Defendants while at the same time rewarding Class Counsel for their decision to assume risk by taking on this matter. In fact, prosecution of this action involved significant financial risk for Class Counsel. (Marquez Decl., ¶¶ 38-39.) Class Counsel undertook this matter solely on a contingent

1 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
2 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
3 ahead of all other concerns.

4 **4. The Experience, Reputation and Ability of Class Counsel Support the**
5 **Requested Fee Award**

6 As demonstrated by their past experience in pursuing class actions on behalf of consumers
7 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
8 Decl., ¶¶ 40-53.) Class Counsel has been involved as lead counsel or co-counsel in several class
9 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
10 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
11 award is supported here.

12 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
13 strengths and weaknesses of the case against Defendants and the reasonableness of the settlement.
14 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
15 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
16 action litigation. Based on these and other factors, Class Counsel has frequently received fee
17 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
18 is reasonable and fair.

19 **D. The PAGA Allocation is Reasonable**

20 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
21 indication that this amount was the result of self-interest at the expense of other” class members,
22 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
23 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
24 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
25 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
26 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
27 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
28 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,

1 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
2 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
3 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
4 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
5 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
6 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
7 0.27%].) Here, the Parties negotiated a good faith amount of \$50,000.00, 75% percent of which
8 (\$37,500.00) will be paid to the LWDA and 25% (\$12,500.00) to be distributed to the aggrieved
9 employees. (Settlement at § I(25).) The \$50,000.00 settlement amount equates to 5% of the Gross
10 Settlement Amount, which far exceeds amounts that are routinely approved. The Parties negotiated
11 to allocate 5% of the Settlement to PAGA penalties in good faith and this amount is reasonable
12 considering that the maximum PAGA penalties were estimated at \$565,000.00 (which assumed
13 \$100 per pay period). (Marquez Decl., ¶ 24.)

14 **E. The Service Awards to Named Plaintiffs Are Reasonable**

15 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
16 compensate them for the expense or risk they have incurred in conferring a benefit on other
17 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
18 of class action settlement agreements containing enhancements for the class representatives, which
19 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
20 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
21 2009) 563 F.3d 948, 958-59.)

22 Service awards are particularly important to plaintiffs in wage and hour cases because they
23 promote the important public policies underlying the wage and hour laws. This strong policy is
24 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
25 enforce minimum labor standards in order to ensure employees are not required or permitted to
26 work under substandard unlawful conditions”). Nonetheless, the California Supreme Court
27 has noted that “retaliation against employees for asserting statutory rights under the Labor Code is
28 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*

(2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the settlement agreement, subject to the Court’s approval, Defendants agreed to pay Service Awards in the amount of \$7,500.00 each to Plaintiffs Ochoa, Gaytan Garcia, and Vega, and \$5,000.00 each to Plaintiffs Moisen, Garcia Cervantes, and Cervantes. These amounts are also in exchange for Plaintiffs’ general release of all claims against Defendants. Courts routinely approve a \$10,000 enhancement award for plaintiffs represented by Class Counsel.¹ (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and were frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 30-34.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000 class representative incentive award for each named plaintiff. (Marquez Decl., ¶ 34.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the “average award per class representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev. 1303, 1308.) That same study found that named plaintiffs in employment discrimination class

¹ Notably, the amounts requested here are less than \$10,000.

actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

IV. **CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

A. **Legal Standard**

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond,*

1 *supra*, 29 Cal.3d at pp. 473-75.)

2 **B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for**
3 **Settlement Purposes.**

4 **1. The Classes Are Ascertainable and Numerous**

5 The proposed class that Plaintiffs seeks to represent is easily ascertainable and includes
6 approximately 498 employees of Defendants.

7 Plaintiffs maintain that there is an easily ascertainable class, defined by objective and
8 precise criteria. Because class members are identified using specific criteria in the regular business
9 records of Defendants, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
10 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
11 subject of the lawsuit is sufficient to make the class ascertainable].)

12 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
13 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
14 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
15 may be maintained as a class action even where the parties are numerous and it is in fact practicable
16 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
17 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
18 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44
19 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.])
20 Therefore, Plaintiffs contend that numerosity is plainly satisfied.

21 **2. There are Many Common Issues of Law and Fact Which Predominate**

22 The Court should grant conditional class certification for settlement purposes here on the
23 grounds that questions of law and fact common to all class and subclass predominate over any
24 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
25 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
26 Cal.App.3d 605.)

27 Here, the employment practices at issue are: whether Defendants had legally compliant
28 policies and practices for all hours worked, including overtime wages; whether Defendants

factored in non-discretionary remuneration into the employees' regular rate of pay; whether Defendants had legally compliant policies and practices to provide employees with meal periods; whether Defendants had legally compliant policies and practices authorizing and permitting its employees to take rest periods; whether Defendants reimbursed employees for business expenses; whether final payment of wages was untimely and excluded unpaid wages, including meal and rest period premium wages; and whether the wage statements were consequently non-compliant. Plaintiffs contend that the factual and legal issues are the same for all of the identified class members, including Plaintiffs. Further, all class members suffered from, and seek redress for, the same alleged injuries.

3. Plaintiffs' Claims Are Typical of the Claims of the Class

The typicality requirement does not focus on the individual characteristics or circumstances of the representative plaintiff compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.]) A representative plaintiff's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendants; as such, they allege that they were subject to the same policies and practices as other similarly situated employees.

4. Plaintiffs and Their Counsel Meet the Adequacy Requirement

The adequacy of representation requirements is met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All of these requirements are met here for settlement purposes. Plaintiffs retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Marquez Decl., ¶¶ 40-53.) Class Counsel unquestionably is "qualified,

1 experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148
2 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel,
3 litigated this case and diligently reviewed the settlement terms, showing their dedication.
4 Plaintiffs’ willingness to serve as a representative demonstrates their serious commitment to
5 bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

6 **5. A Class Action is Superior to a Multiplicity of Litigation**

7 Finally, in making its class certification decision, the Court must determine that a class
8 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
9 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
10 class action device enables it to manage this litigation in a manner that serves the economics of
11 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
12 situated employees with small but nevertheless meritorious claims for damages would, as a
13 practical matter, have no means of redress because of the time, effort and expense required to
14 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 57-62; *Leyva v. Medline Ind.* (9th
15 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns
16 are essentially non-existent.

17 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

18 **A. The Proposed Notice Plan Satisfies Due Process**

19 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
20 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
21 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
22 statutory or due process requirement that all class members receive actual notice, but in this matter,
23 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
24 notice given should have a reasonable chance of reaching a substantial percentage of the Class
25 Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided
26 by direct mailing, the best possible form of notice.

27 ///

28 ///

1 **B. The Notice is Accurate and Informative**

2 The proposed Notice should be approved. It will be disseminated through direct U.S. first
3 class mail to the last known address for each Class Member. It informs the Class Members of the
4 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
5 Members who wish to object to this proposed class action settlement, they will have the
6 opportunity to file their objections and be heard at the Final Approval Hearing.

7 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
8 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
9 terms and conditions of the settlement agreement, in an informative and coherent manner. It
10 makes clear that the settlement agreement does not constitute an admission of liability by the
11 Defendants, who denies all liability, and it recognizes that this Court has not ruled on the merits
12 of the action. It also states that the final settlement approval decision has yet to be made. The
13 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
14 combined settlement-certification class notice.

15 **VI. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary
17 approval of the proposed settlement and set a Final Approval Hearing in December 2024.

18
19
20 Dated: August 1, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

21 By: _____

22 Justin J. Marquez
23 Benjamin H. Haber
24 Arrah T. Fattahi

25 Attorneys for Plaintiffs
26
27
28

PROOF OF SERVICE

Ochoa v. La Tavola, LLC, et al.
22CV000862

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ashley.narinyans@wilshirelawfirm.com.

On **August 1, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Annie Lau (SBN 302438)
alau@fisherphillips.com
Kiki Y. Okpala (SBN 341774)
kokpala@fisherphillips.com
Yorleny Hernandez
yhernandez@fisherphillips.com
Beth Gonshorowski
bgonshorowski@fisherphillips.com
FISHER & PHILLIPS LLP
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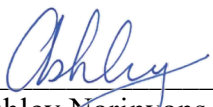
Attorneys for Defendants

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **August 1, 2024**, at Los Angeles, California.



Ashley Narinyans