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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE

12 ROBERT ONOFRE, as an aggrieved employee
pursuant to the Private Attorneys General Act
13 (“PAGA”),

14 Plaintiffs,

15 vs.

16 ANAHEIM MAJESTIC GARDEN HOTEL, a
California corporation; PHR MANAGEMENT,
17 INC., a California corporation; KEN REAL
ESTATE LEASE LTD., a business entity of
18 unknown form; and DOES 1 through 10,
inclusive,

19 Defendants.

20
21 MIGUEL ZALDIVAR AVILA, individually
and on behalf of all others similarly situated,

22 Plaintiffs,

23 vs.

24 ANAHEIM MAJESTIC GARDEN HOTEL,
business form unknown; TSUBAKI HOTEL
25 COLLECTION, business form unknown, and
DOES 1-50, inclusive,

26 Defendants.
27
28

Case No.: 30-2016-00861544-CU-OE-CXC

**DECLARATION OF JAMES HAWKINS IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 4, 2019
Time: 02:00 p.m.
Place: Department
CX102

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DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am one of the attorneys of record for Plaintiffs (“Plaintiffs” or “Class Representatives”) and more specifically Plaintiff Miguel Zaldivar Avila, who filed this class action on behalf of the Class. I submit this Declaration in support of the Motion for Preliminary Approval (“Motion”) of the Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement Agreement”). I am a partner at James Hawkins APLC. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Based upon Class Counsel’s independent investigations and evaluations, after taking into account the sharply disputed factual and legal issues involved in this matter, Defendants’ defenses, the risks attending further prosecution, the discovery and investigation conducted to date, and the substantial benefits received under the Settlement, I respectfully believe that the proposed Settlement for the consideration and on the terms set forth therein is fair, reasonable and adequate and is in the best interests of Plaintiffs and the Class Members as detailed in the motion for preliminary approval and supporting declarations, and the Court should grant preliminary approval.

3. On October 3, 2017, Plaintiff, Avila propounded form and special interrogatories and a request for production of documents. Defendant responded to Avila’s written discovery in January 2017. Additional information was exchanged by the parties, subject to a mediation privilege, to ensure that the parties had all information needed to analyze the strengths and weaknesses of the claims and the monetary exposure of the claims, including time punch and pay records.

4. Plaintiffs were able to share with Plaintiffs’ Counsel their intimate understanding of Defendants’ policies and practices, and how these policies and practices were instituted on a daily basis. In addition to informing Plaintiffs’ Counsel’s initial evaluation of the lawsuit, the information that Plaintiffs and other employees provided also influenced Plaintiffs’ Counsel’s formal discovery efforts, including written discovery

1 5. The written discovery led to the production of considerable evidence, including
2 the policies and practices directly at issue, as well as those policies and procedures that
3 potentially affected Defendants' ability to comply with the Labor Code. I and my team
4 analyzed over 2,800 pages of documents that were produced by Defendants, including time and
5 wage records. Based on my review of discovery produced by Defendants, I and my team were
6 able to persuasively pinpoint the problematic policies and procedures that would ultimately
7 have formed the backbone of the motion for class certification. These documents also enabled
8 me and my team to determine Defendants' potential exposure for damages and penalties.

9 6. I and my team investigated the claims at issue, which included: (1) determining
10 Plaintiffs' suitability as putative representatives through interviews, background
11 investigations, and analyses of their employment files and related records; (2) evaluating all of
12 Plaintiffs' potential representative claims; (3) researching similar wage and hour class actions
13 as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing a
14 time and wage records; (5) researching settlements in similar cases; (6) evaluating Plaintiff's
15 claims and estimating Defendant's liability for purposes of settlement; (7) drafting the
16 mediation brief; and (8) participating in the mediation.

17 7. I and my firm have a great deal of experience in wage and hour class action
18 litigation. I have been certified and approved as class counsel in many other wage/hour class
19 actions, and I am currently litigating numerous others before federal and state courts. Although
20 not an all-inclusive list, over the years I have prosecuted the following class action matters as
21 lead and/or co-lead counsel, all of which implicated similar law and facts to those associated
22 with this Action:

23 a. ***Carey, et. al. v. Arthur J. Gallagher, et. al.***, USDC, SOUTHERN DISTRICT-
24 Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of
25 overtime for mis-classification of insurance claims adjusters employed by
26 Gallagher Bassett, a third party administrator (TPA) in the State of California.
27 Certification granted. Plaintiffs' counsel co-lead counsel.

28 b. ***Dao v. 3M Company, et al.*** USDC, CENTRAL DISTRICT, Case No. CV-08-

04554. Wage and Hour Class Action case seeking past wages for “off the clock”, overtime and meal and rest break violations for production workers in the State of California. Plaintiff’s Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

c. ***Ortiz v. Kmart***, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff’s counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

d. ***Morgan v. Aramark Campus, LLC***, USDC, CENTRAL DISTRICT, Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff’s Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

e. ***West v Iron Mountain Information Management, Inc, et. al.***; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Settlement for “binding arbitration.” Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiff’s counsel lead trial counsel and class counsel.

f. ***Gonzalez v. Superior Industries International, Inc., et al.***, Los Angeles County Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for overtime, meal and rest breaks violations for production employees in the State of California. Plaintiff’s counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

g. ***Acosta v. Fleetwood Travel Trailers of California, Inc., et al.***, Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production employees

1 in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case
2 settled, Final Approval granted, no objections and funds fully distributed.

- 3 h. ***Walker v. Sharkeez, et al.***, Orange County Superior Court, Case No.
4 05CC00293. Wage and Hour Class Action seeking past wages for
5 unlawful deductions, meal and rest break violations for restaurant employees in
6 the State of California. Plaintiff's counsel appointed as lead counsel. Case
7 settled, Final Approval granted and funds fully distributed.
- 8 i. ***Padron v. Universal Protection Service, et al.***, Orange County Superior Court,
9 Case No. 05CC00013. Wage and Hour Class Action seeking past wages for
10 overtime, meal and rest break violations for security officers in the State of
11 California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final
12 Approval granted, no objections and funds fully distributed.
- 13 j. ***Martinez v. Securitas Security Services USA, et al.***, Santa Clara Superior Court,
14 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
15 seeking past wages for meal and rest break violations for security officers
16 employed by defendant in the State of California. Plaintiff's counsel and co-
17 counsel. Case settled, Final Approval granted and funds fully distributed.
- 18 k. ***Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.***, Riverside Superior
19 Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages
20 for overtime, meal and rest break violations for housekeepers employed by
21 defendant in the State of California. Plaintiff's counsel appointed as lead
22 counsel. Case settled, Final Approval granted, no objections and funds fully
23 distributed.
- 24 l. ***Ruiz, et al. v. Unisource Worldwide, Inc., et al.***, USDC, CENTRAL DISTRICT,
25 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for
26 meal and rest period violations for non-exempt employees employed by
27 defendant in the state of California. Case settled. Awaiting Preliminary
28 Approval hearing. Plaintiff has petitioned the Court for Lead Counsel.
- m. ***Herrador v. Culligan International Company, et al.***, USDC, CENTRAL

DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

n. ***Defries v. Domain Restaurants, et al.***, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

o. ***Denton v. BLB Enterprises, Inc., et al.***, Orange County Superior Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break violations for security guards employed by defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

p. ***Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.***, Los Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

q. ***McMurray v. Dave and Busters, Inc., et al.***, Orange County Superior Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break violations for restaurant employees employed by defendant in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

r. ***Osuna v. DFG Restaurants, Inc., et al.***, Los Angeles Superior Court, Case No. BC 330145. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

- 1 s. ***Burns v. Gymboree Operations, Inc., et al.***, San Francisco Superior Court, Case
2 No. CGC-07-461612. Wage and Hour Class Action
3 seeking past wages for meal and rest break violations for retail employees
4 employed by defendant in the State of California.
5 Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted,
6 no objections and funds fully distributed.
- 7 t. ***Willems v. Diedrich Coffee, Inc., et al.***, Orange County Superior Court, Case
8 No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime
9 for mis-classification of managers employed by Defendant in the State of
10 California. Plaintiff's counsel appointed lead counsel. Case settled, Final
11 Approval granted, no objections and funds fully distributed.
- 12 u. ***Davila, et al. v. Beckman Coulter, Inc., et al.***, Orange County Superior Court,
13 Case No. 07CC01347. Wage and Hour Class Action seeking past wages for
14 overtime, meal and rest break violations for production workers employed by
15 defendant in the State of California. Plaintiff's counsel appointed lead counsel.
16 Cased settled, Final Approval granted, no objections and funds fully distributed.
- 17 v. ***Perez v. Naked Juice Company of Glendora, Inc.***, Los Angeles Superior Court,
18 Case No. BC387088. Wage and Hour Class Action seeking past wages for
19 overtime, meal and rest period violations for production employees employed by
20 defendant in the State of California. Plaintiff counsel appointed as lead counsel.
21 Case settled, Final Approval granted, no objections and funds fully distributed.
- 22 w. ***Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and***
23 ***Hour Cases***, Los Angeles Superior Court, Case No. JCCP 4545. Wage and Hour
24 Class Action seeking past wages for overtime, meal and rest period violations for
25 security guards employed by defendant in the State of California. Certification
26 granted. Plaintiff's counsel appointed as co-lead counsel. Writ taken. Court
27 stays action pending Appellate Court ruling. Court of Appeal issues stay.
- 28 8. Despite the complexity of the case, Class Counsel has, through the investment of
substantial effort and the resources of our law firm, been able to secure an

1 outstanding settlement on behalf of the Class Members. Plaintiffs would have faced substantial
2 legal and factual obstacles in demonstrating that class certification was appropriate, and the
3 difficulties inherent in managing and marshalling evidence for class action claims are
4 exponentially multiplied when dealing with such a large number of employees. Plaintiffs will
5 also be required to establish a significant amount of witness testimony, pattern and practice
6 evidence, statistical evidence, sampling evidence, expert testimony, and other evidence in order
7 to evaluate and present arguments at both class certification and trial. The further conduct of
8 this litigation will likely span several additional years and require the dedication of extensive
9 resources to first establish complex class certification and then to establish the merits of all class
10 claims at trial or through contested motion practice.

11 9. Based upon my experience in litigating wage and hour class actions,
12 and the discovery conducted, I am of the opinion that the proposed Settlement is fair reasonable
13 and adequate and in the best interest of the Class Members, and the Court should grant
14 preliminary approval of the Settlement.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed on
16 this 4thth day of February, 2019 at Irvine, California.

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18 JAMES HAWKINS, ESQ.
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8 Attorneys for Plaintiff Robert Onofre

9 *Additional counsel listed on next page*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE

12 ROBERT ONOFRE, as an aggrieved employee
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15 vs.

16 ANAHEIM MAJESTIC GARDEN HOTEL, a
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17 INC., a California corporation; KEN REAL
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18 unknown form; and DOES 1 through 10,
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19 Defendants.

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21 MIGUEL ZALDIVAR AVILA, individually
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22 Plaintiffs,

23 vs.

24 ANAHEIM MAJESTIC GARDEN HOTEL,
business form unknown; TSUBAKI HOTEL
25 COLLECTION, business form unknown, and
DOES 1-50, inclusive,

26 Defendants.
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Case No.: 30-2016-00861544-CU-OE-CXC

**DECLARATION OF RAUL PEREZ IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: April 4, 2019
Time: 2:00 p.m.
Place: Department CX102

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1 an attempt to negotiate a compromise of the claims alleged.

2 **THE PARTIES SETTLED AFTER A SECOND MEDIATION**

3 6. The Parties participated in two mediations with Jeffrey A. Ross, Esq., an experienced
4 mediator of wage and hour class actions. The first mediation was held on August 7, 2017. Although the
5 Parties did not settle at the first mediation, Mr. Ross helped to narrow the gap between the Parties'
6 respective positions.

7 7. The Parties participated in a second mediation on September 25, 2018. With Mr. Ross'
8 guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs' claims. The
9 terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class
10 Settlement and Release, which is attached as Exhibit 1. At all times, the Parties' negotiations were
11 adversarial and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable
12 compromise of the claims at issue.

13 **PLAINTIFFS' COUNSEL CONDUCTED A THOROUGH INVESTIGATION OF THE FACTUAL AND LEGAL**
14 **ISSUES AND WERE THUS ABLE TO OBJECTIVELY ASSESS THE SETTLEMENT'S REASONABLENESS**

15 8. Plaintiffs' Counsel's evaluation of the settlement terms was informed by several factors,
16 including their analysis of the considerable discovery that had been conducted. At the outset of the
17 litigation, Plaintiffs provided Plaintiffs' Counsel with detailed narratives of their experiences working for
18 Defendants, and the circumstances that gave rise to the alleged Labor Code violations. Plaintiffs were
19 able to share with Plaintiffs' Counsel their intimate understanding of Defendants' policies and practices,
20 and how these policies and practices were instituted on a daily basis. In addition to informing Plaintiffs'
21 Counsel's initial evaluation of the lawsuit, the information that Plaintiffs provided also influenced
22 Plaintiffs' Counsel's formal discovery efforts, including written discovery.

23 9. Plaintiffs' written discovery requests¹ led to the production of considerable evidence,
24 including the policies and practices directly at issue, as well as those policies and procedures that

25
26 ¹ On December 23, 2016, Plaintiff Onofre propounded three sets for form interrogatories, special
27 interrogatories, and a request for production of documents. On September 13, 2017, Plaintiff Onofre
28 served additional form interrogatories and second request for production of documents and on October
25, 2017, Plaintiff Onofre issued a third request for production of documents. Defendant responded to
the first set of discovery and the second set of special interrogatories.

1 potentially affected Defendants' ability to comply with the Labor Code. Plaintiffs' Counsel analyzed
2 over 2,800 pages of documents that were produced by Defendants, including time and wage records.
3 Based on their review of discovery produced by Defendants, Plaintiffs' Counsel were able to
4 persuasively pinpoint the problematic policies and procedures that would ultimately have formed the
5 backbone of the motion for class certification. These documents also enabled Plaintiffs' Counsel to
6 determine Defendants' potential exposure for damages and penalties.

7 10. In summary, Plaintiffs' Counsel performed a searching investigation into the claims at
8 issue, which included: (1) determining Plaintiffs' suitability as putative representatives through
9 interviews, background investigations, and analyses of their employment files and related records; (2)
10 evaluating all of Plaintiffs' potential representative claims; (3) researching similar wage and hour class
11 actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing a
12 time and wage records; (5) researching settlements in similar cases; (6) evaluating Plaintiffs' claims and
13 estimating Defendants' liability for purposes of settlement; (7) drafting the mediation brief; and (8)
14 participating in the mediation.

15 11. By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,
16 Plaintiffs' Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
17 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in
18 light of all known facts and circumstances, including the risk of significant delay and uncertainty
19 associated with litigation, various defenses asserted by Defendants.

20 **THE AMOUNT OFFERED IN THE SETTLEMENT IS REASONABLE GIVEN THE STRENGTHS OF**
21 **PLAINTIFFS' CLAIMS AND THE RISKS AND EXPENSE OF CONTINUED LITIGATION**

22 12. In seeking approval, a settling party must provide sufficient information to "enable the
23 court to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot*
24 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash
25 settlement amounting to only a fraction of the potential recovery will not per se render the settlement
26 inadequate or unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*,
27 688 F.2d 615, 628 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or
28 speculative measure of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a

1 fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating
2 the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-*
3 *- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In
4 other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should
5 discount the value of the settled claims for risks such as changes in the law, the probability of success,
6 and other factors.²

7 13. Settling parties are not, however, required to partake in a hypothetical accounting
8 exercise: “**Kullar does not... require any such explicit statement of [maximum] value**; it requires a
9 record which allows ‘an understanding of the amount that is in controversy and the realistic range of
10 outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10
11 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Likewise, the Orange County
12 Superior Court’s class settlement approval guidelines require only “a **reasonable** estimate of the nature
13 and amount of recovery that could be obtained on behalf of the class if plaintiffs’ claims prevailed.”
14 *Guidelines for Motions for Preliminary and Final Approval of Class Action Settlement* (emphasis
15 added). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable”
16 is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the
17 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

18 14. During Plaintiffs’ Counsel’s investigation, Defendants produced Class Member data
19 which formed the basis of Plaintiffs’ Counsel’s valuation of Defendants’ maximum theoretical exposure

21 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in
22 determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any
23 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
24 completion.” *Id.* at 188, quoting *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.). See *In re Omnivision*
25 *Tech., Inc.*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008); see also *Nat’l Rural Telecomm. Coop. v. Directv,*
26 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be
27 acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing*
28 *Sec. and ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (“settlement amount’s ratio to the
maximum potential recovery need not be the sole, or even dominant, consideration when assessing
settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000)
 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic
estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in
light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.*, 688 F. 2d 615, 628 (C.A. Cal.
1982) (it is “the complete package, taken as a whole rather than the individual component parts, that
must be examined for overall fairness”).

for the claims at issue. Plaintiffs' Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical exposure by: (i) the strength of Defendants' affirmative defenses; (ii) the risk of certification being denied; (iii) the risk of the Court finding that a PAGA trial would be unmanageable;³ (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, and/or motions for summary judgment) which may have eliminated all or some of Plaintiffs' claims, or barred evidence necessary to prove such claims; (iv) the risk of losing at trial or prevailing on only some of the claims; (vi) the chances of the Court exercising its discretion to reduce PAGA penalties (see Lab. Code section 2699(e)); (vi) the chances of a favorable verdict being reversed on appeal; and (viii) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

15. Minimum Wage Claim / Business Expense Reimbursement Claim. Defendants required prospective employees to undergo an offsite drug test. Plaintiffs allege that Defendants should have compensated employees for this time as they were under Defendants' "discretion and control."⁴ Plaintiffs also allege that Defendants violated Labor Code section 2800 and 2802 by failing to reimburse

³ Although Plaintiffs maintain that such a trial would be manageable, they are aware of the risks, as illustrated by the following cases: See, e.g., *Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL, 2014 WL 1117614, at *4 (N.D. Cal. Mar. 19, 2014) ("[T]he Court finds that the PAGA claim in this case is unmanageable. In reaching this decision, the Court does not conclude that PAGA claims are unmanageable in general, but only that the circumstances of this case make the PAGA claim here unmanageable because a multitude of individualized assessments would be necessary"), *Brown v. Am. Airlines, Inc.*, No. CV 10-8431-AG (PJWx), 2015 WL 6735217, at *1 (C.D. Cal. Oct. 5, 2015) ("The Court finds manageability issues exist regarding PAGA overtime claims here. There appears to be too many individualized assessments to determine PAGA violations concerning overtime pay."), *Bowers v. First Student, Inc.*, No. 2:14-CV-8866-ODW (Ex), 2015 WL 1862914, at *4 (C.D. Cal. April 23, 2015) ("A PAGA claim can be considered unmanageable when a multitude of individualized assessments would be necessary"); *Litty v. Merrill Lynch & Co., Inc.*, No. CV 14-0425 PA (PJWx), 2014 WL 5904904, at *3 (C.D. Cal. Nov. 10, 2014) ("The circumstances of this case make the PAGA claim unmanageable because a multitude of individualized assessments would be necessary").

⁴ Wage Order No. 9 defines "hours worked" as "time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." 8 Cal. Code Regs. § 11090(2)(H). The California Supreme Court has made clear that the factors of "time during which an employee is subject to the control of an employer" and "time the employee is suffered and permitted to work" are independent factors, each of which defines whether certain time spent is compensable as "hours worked." *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal. 4th 833, 839 (2015) (citing *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 582 (2000)). Thus, "an employee who is subject to an employer's control does not have to be working during that time to be compensated." *Id.* (citations omitted).

1 employees for mileage to the drug-testing facilities.⁵ Plaintiffs calculated Defendants’ maximum
2 potential exposure for minimum wages relating to the drug-test theory of liability by taking the product
3 of the total number of Class Members (350), the approximate average duration of the drug test (including
4 travel time) (1.5 hours), and the average hourly rate of pay (\$13): $350 \times 1.5 \text{ hours} \times \$13 = \$6,825.00$.
5 Plaintiffs calculated Defendants’ maximum potential exposure for business expense reimbursement
6 relating to the drug-test theory of liability by taking the product of the total number of Class Members
7 (350), the approximate average number of miles driven by Class Members (6.5 miles), and the IRS rate
8 for mileage reimbursement (\$0.55): $350 \times 6.5 \text{ miles} \times \$0.55 = \$1,251.25$.

9 16. Plaintiffs determined an appropriate range of recovery for the minimum wage claim for
10 settlement purposes by offsetting Defendants’ maximum theoretical exposure by the Discount Factors.
11 With respect to defenses, Defendants would likely have maintained that activities undertaken by job
12 applicants at the time of hiring—such as employer-mandated drug tests and physical examinations—are
13 not “work” performed by an “employee,” and are therefore not compensable time. *See Gunawan v.*
14 *Howroyd-Wright Employment Agency*, 997 F. Supp. 2d 1058, 1062 (C.D. Cal. 2014). In *Gunawan*,
15 following a job interview, a prospective employee was sent to a second interview with one of the
16 prospective employer’s clients. After an employment relationship was later established, the plaintiff
17 sought compensation for the time spent on the second interview. The court held that a prospective
18 employee is not “entitled to payment of the minimum wage for time spent interviewing for prospective
19 employment” and granted summary judgment because, while performing these pre-employment tasks,
20 Gunawan “was not an employee of KForce performing compensable work.” *Id.* (finding that section
21 1194 “[q]uite clearly . . . contemplates that only an employee, and not a prospective employee or
22 applicant for employment, can recover”).

23 17. Defendants would also have argued that under *Morillion*, an employer does not exercise
24 “control” over employees by simply requiring them to appear at some specific destination. *Id.* at 583
25 (rejecting argument that commuting and grooming would be paid under the “control” rule because the
26 “level of the employer’s control over its employees, *rather than the mere fact that the employer requires*

27 ⁵ Sections 2800 and 2802 of the Labor Code require that an employer indemnify an employee
28 for all reasonable business-related expenses incurred as a direct discharge of his or her duties.

activity, is determinative”) (emphasis added). *See also Gunawan*, 997 F. Supp. 2d at 1063 (finding time spent on second interview was not under “control” of prospective employer because, although company sent applicant to second interview and controlled communications with second interviewer, there was “no evidence that KForce had control over the questions asked . . . or more importantly, over the answers she provided . . . over the length . . . or that KForce required Ms. Gunawan to act in a certain manner while she was there”). If accepted, these arguments would be complete defenses to Plaintiffs’ minimum wage and reimbursement claims.

18. Meal and Rest Period Claims. Based on their analysis of employee time records, Plaintiffs determined that Class Members worked a combined total of approximately 95,650 shifts that qualified for meal and rest periods. Based on the allegation that Class Members were technically “on-duty” during their breaks because they had to monitor calls on their radios, Plaintiffs calculated Defendants’ maximum potential exposure for meal and rest period premiums as follows: 95,650 x 2 break violations x \$13 average hourly rate = \$2,486,900.

19. Plaintiffs determined an appropriate range of recovery for the meal and rest period claims for settlement purposes by offsetting Defendants’ maximum theoretical exposure by the Discount Factors. With respect to defenses, Defendants would have argued that while Class Members were generally asked to monitor and respond to radio calls and new assignments at all times, they were relieved of this “duty” whenever they took their meal and rest periods.

20. Waiting-Time Penalties. Based on the foregoing violations, Plaintiffs allege that Defendants failed to pay all wages owed to employees upon termination of their employment. Where an employer “willfully fails” to timely pay wages upon termination of employment, “the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced,” for up to thirty days. *See* Cal. Labor Code § 203.

21. Plaintiff estimated Defendants’ maximum potential exposure for 203 penalties at \$396,240, which was calculated by taking the product of the following: [127 former employees during the 3-year SOL] x [8-hour average shift] x [\$13 average hourly wage] x [30 days of penalties] = \$396,240. Plaintiffs had to discount Defendants’ maximum exposure for waiting-time penalties to account for the strength of its affirmative defenses and Discount Factors. For example, Defendants

1 would have argued that such penalties are applicable only when the failure to pay wages at termination is
2 “willful.” See Lab. Code § 203; Cal. Code Regs., tit. 8, § 13520; *Amaral v. Cintas Corp. No. 2*, 163
3 App. 4th 1157, 1201 (2008) (“the fact that a defense is ultimately unsuccessful will not preclude a
4 finding that a good faith dispute did exist”). If the Court accepted this standard, Plaintiffs would have
5 encountered significant difficulty in proving that the failure to pay all wages was wilful rather than
6 inadvertent.

7 22. Wage Statements. Plaintiffs allege that Defendants issued wage statements that violated
8 Labor Code section 226(a)(8). For a significant portion of Class Period, the wage statements listed the
9 employer name as “Sheraton Anaheim” or “Anaheim Majestic Garden Hotel”. Neither is correct, and
10 neither constitutes the “name . . . of the legal entity that is the employer.” The name of the legal entity is
11 “PHR Management, Inc.” Defendant’s wage statements are not consistent with the clear, plain language
12 of the statute.

13 23. For purposes of alleging wage statement violations under Labor Code section 226(a), an
14 employee “is deemed to suffer injury . . . if the employer fails to provide accurate and complete
15 information as required by . . . subdivision (a) and the employee cannot promptly and easily determine
16 from the wage statement alone” the information required to be provided pursuant to section 226(a). *Id.* §
17 226(e)(2)(B). Promptly and easily “means a reasonable person would be able to readily ascertain the
18 information without reference to other documents or information.” *Id.* § 226(e)(2)(C).

19 24. Penalties for wage statement violations are calculated according to the formula provided
20 by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional
21 failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual
22 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
23 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
24 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
25 fees.

26 25. Here, Plaintiffs allege that Class Members could not “readily ascertain” Defendants’
27 registered name, “without reference to other documents or information,” and were therefore injured by
28 Defendants’ failure “to provide accurate and complete information as required by . . . subdivision (a).” It

1 could be argued, however, that once Class Members referred to “other documents or information” to
2 ascertain Defendants’ correct registered name, they would no longer have been injured by Defendants’
3 failure to comply with section 226(a)(8), and as such, would be entitled to only a \$50 penalty. If the
4 Court accepted such an argument, Defendants’ maximum potential exposure would therefore be the
5 product of the total number of wage statements issued during the applicable one-year statute of
6 limitations (6,568) and \$50: $6,568 \times \$50 = \$328,400$.

7 26. Plaintiffs subsequently determined an appropriate range of recovery for settlement
8 purposes by offsetting Defendants’ maximum theoretical exposure by the strengths of its affirmative
9 defenses and the Discount Factors. For example, with respect to the failure to print its full name on
10 employee wage statements, Defendant argued that Labor Code section 226(a)(8) does not specifically
11 require employers to list their complete, registered name on wage statements.

12 27. Moreover, to award statutory penalties under section 226(e), Defendant maintained that
13 Plaintiff would have had to prove that Defendant’s violation of 226(a) was “knowing and intentional.”
14 Defendant contended that Plaintiffs had not proffered any evidence that the violation was “knowing and
15 intentional,” and cited the Court’s comment that for the purposes of the motion for summary
16 adjudication, there was no specific evidence showing that the violation was “knowing and intentional.”

17 28. Defendants would also have argued that Labor Code section 226(e)(2)(B)(iii) provides
18 for penalties only if wage statements do not include—*conjunctively*—the “name and address of the
19 employer.” Defendants also argued that it would be unjust to penalize it for mere technical violations of
20 the statute as its wage statements substantially complied with section 226’s statutory requirements. *See*
21 *Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), *aff’d*,
22 554 F. App’x 661 (9th Cir. 2014) (granting summary judgment for defendant; “to the extent that
23 Defendant’s wage statements arguably are not in technical compliance with section 226(a) ... the Court
24 concludes they are in ‘substantial compliance’”).

25 29. PAGA Penalties. Based on the forgoing allegations, Plaintiffs alleges that Defendants
26 are liable for civil penalties under PAGA. While the method of calculating PAGA penalties is
27 straightforward, the analysis becomes more difficult for settlement purposes as PAGA penalty claims are
28 only as strong as the underlying predicate claims.

1 30. Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the
2 time of the alleged violation, the person employs one or more employees, the civil penalty is one
3 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

5 31. However, some courts have interpreted Labor Code section 2699(f)(2) to impose the
6 enhanced “subsequent violation penalty” or “heightened penalty” only after an employer has been
7 notified that its conduct violates the Labor Code. *See Trang v. Turbine Engine Components*
8 *Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)
9 (“courts have held that employers are not subject to heightened penalties for subsequent violations unless
10 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”);
11 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–
12 IEG–CAB, 2009 WL 2448430 (S.D. Cal. 2009) (finding that California law imposes the “subsequent
13 violation penalty” only after an employer has been notified its conduct violates the Labor Code). While
14 Plaintiffs regards this interpretation as flawed, they nonetheless recognize that this interpretation has
15 gained traction with some courts, and elected therefore to conservatively estimate Defendants’ maximum
16 potential exposure for PAGA penalties by assessing a \$100 penalty for all pay periods during the PAGA
17 Period (approximately 25,000), resulting in a potential exposure of \$2,500,000.

18 32. It should also be noted that the PAGA gives the Court wide latitude to reduce the
19 amount of civil penalties “based on the facts and circumstances of a particular case” when “to do
20 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.
21 Code § 2699(h). In reducing PAGA penalties, courts have considered issues including whether the
22 employees suffered actual injury from the violations, whether the defendant was aware of the violations,
23 and the employer’s willingness to fix the violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D.
24 Cal. 2016); *Fleming v. Covidien*, 2011 WL 7563047, at *4 (C.D. Cal. 2011). For instance, in the *Lyft*
25 case, the Court found that a \$1 million PAGA settlement was fair and reasonable in light of the unsettled
26 nature of the law, resulting in a \$2.52 per pay period award to the aggrieved employees (there were
27 397,110 pay periods in a \$1 million PAGA settlement, resulting in a 97.5% reduction from the
28 maximum). In *Fleming v. Covidien*, the Court reduced the potential penalties by over 82%, awarding

1 \$500,000 for 28,742 pay periods at issue.⁶

2 33. Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as
3 a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
4 approved by California courts. See *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC (E.D. Cal.
5 June 29, 2016), 2016 WL 3549473 at *3 (preliminarily approving \$1.95 million settlement containing
6 \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-
7 0324 AWI SKO (E.D. Cal. Oct. 31, 2012), 2012 WL 5364575 at *7 (approving \$3.9 million settlement
8 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No.
9 C 05-4526 MHP (N.D. Cal Feb. 16, 2011), 2011 WL 672645 at *1 (approving \$6.9 million settlement
10 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons*
11 *Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni)
12 (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of
13 PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20,
14 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or
15 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No.
16 BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund
17 of \$3,095,000, of which approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA
18 penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10,
19 2014; Judge William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%)
20 was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No.
21 BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of

22 ⁶ See also, e.g., *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012)
23 (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it
24 took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7
25 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations
26 had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil
27 penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17
28 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code § 226 as
redundant with recovery on a class basis pursuant to California Labor Code § 226, directly); *Fleming v.*
Covidien Inc., No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)
(reducing PAGA penalties from \$2.8 million to \$500,000.00); *Aguirre v. Genesis Logistics*, No. SACV
12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
PAGA violations from \$1.8 million to \$500,000.00, after rejecting numerous other PAGA claims).

1 \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

2 34. Where PAGA penalties are negotiated in good faith and “there is no indication that [the]
3 amount was the result of self-interest at the expense of other Class Members,” such amounts are
4 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist.
5 LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
6 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
7 any damages to the PAGA claims.”).

8 35. Defendants’ Maximum Potential Exposure for the Claims at Issue. Based on the above
9 analysis, Plaintiffs estimated Defendants’ maximum potential exposure for the claims is summarized
10 below.

11

Summary of Defendants’ Maximum Potential Exposure	
Minimum Wage Claim	\$6,825.00
Business Expense Reimbursement Claim	\$1,251.25
Meal & Rest Period Claims	\$2,486,900.00
Waiting-Time Penalties	\$396,240.00
Wage Statement Penalties	\$328,400.00
PAGA Penalties	\$2,500,000.00
Total	\$5,719,616.25

16

17 36. Taking into account the Discount Factors, and the risks of continued litigation, Plaintiffs
18 determined that a settlement of approximately one-third of Defendant’s maximum potential exposure for
19 class and PAGA claims was fair and reasonable. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212
20 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14%
21 of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga.
22 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four*
23 *Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v.*
24 *Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that
25 settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial
26 approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re*
27 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to
28 8% of estimated damages).

QUALIFICATIONS AND EXPERIENCE

37. I received both my undergraduate degree and my law degree from Harvard University and was admitted to the California Bar in December 1994. I have more than 20 years of litigation experience representing clients in complex litigation in state and federal courts, and since 2011, I have focused exclusively on wage and hour and consumer class actions.

38. Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty seasoned attorneys, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

39. Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining tens of millions of dollars in recovery for employees and consumers. The firm's accomplishments include:

- a. In February 2015, Ryan H. Wu and I were honored with the prestigious California Lawyer of the Year (CLAY) award in labor and employment for our work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- b. Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 2017 WL 2980258, Capstone attorneys achieved a landmark decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- c. In April 2017, Capstone obtained another important decision, *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017). In *McGill*, the California Supreme Court held that

1 the right to seek public injunctive relief under the state's consumer protection
2 laws cannot be waived by agreement and that consumers need not satisfy class
3 certification requirements to enjoin unfair business practices on behalf of the
4 public.

- 5 d. Capstone and co-counsel negotiated one of the largest PAGA settlements on
6 record. *See Vorise v. 24 Hour Fitness USA, Inc.*, Case No. CIV-MS15-02051
7 (Contra Costa County Superior Court) (\$11 million PAGA settlement).
- 8 e. Capstone serves as class counsel in a number of significant wage and hour
9 settlements, including \$12 million on behalf of a nationwide class of nonexempt
10 tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No.
11 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers
12 in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super.
13 Ct.); and \$9 million on behalf of non-exempt hourly workers in *Dittmar v.*
14 *Costco Wholesale Corp.*, No. 3:14-cv-01156-LAB-JLB (S.D. Cal.).
- 15 f. Capstone is class counsel in a number of significant consumer actions, including
16 *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.), *Asghari v.*
17 *Volkswagen Group of America*, No. 13-02529 (C.D. Cal.), *Klee v. Nissan North*
18 *America*, Case No. 12-08238 (C.D. Cal.), *MacDonald v. Ford Motor Co.*, 142
19 F. Supp. 3d 884 (N.D. Cal. 2015) (finding action was catalyst for nationwide
20 recall), *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.), *Fernandez v. Home*
21 *Depot U.S.A.*, No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-
22 677 (S.D. Cal.), that have conferred benefits to class members valued in the tens
23 of millions. These benefits include cash payments for statutory violations,
24 complementary automotive repairs, costs reimbursement, parts replacement and
25 extension of express warranties.

26 40. Attached as Exhibit 2 is a true and correct copy of Capstone's firm resume.
27
28

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed this 8th day of March, 2019, at Los Angeles,
3 California.

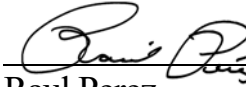
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5 Raul Perez

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ROBERT ONOFRE, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"),

Plaintiffs,

vs.

ANAHEIM MAJESTIC GARDEN HOTEL, a
California corporation; PHR MANAGEMENT,
INC., a California corporation; KEN REAL
ESTATE LEASE LTD., a business entity of
unknown form; and DOES 1 through 10,
inclusive,

Defendants.

MIGUEL ZALDIVAR AVILA, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

ANAHEIM MAJESTIC GARDEN HOTEL,
business form unknown; TSUBAKI HOTEL
COLLECTION, business form unknown, and
DOES 1-50, inclusive,

Defendants.

Case No.: 30-2016-00861544-CU-OE-CXC

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

1 **JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action Settlement and Release (“Settlement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiffs Robert Onofre and Miguel Zaldivar
4 Avila (“Plaintiffs” or “Class Representatives”), as individuals and on behalf of all others similarly
5 situated, and Defendants Anaheim Majestic Garden Hotel, PHR Management, Inc., and Ken Real Estate
6 Lease Ltd. (“Defendants”) (collectively with Plaintiffs, the “Parties”).

7 **DEFINITIONS**

8 The following definitions are applicable to this Settlement Agreement. Definitions contained
9 elsewhere in this Settlement Agreement will also be effective:

- 10 1. “Actions” means *Onofre v. Anaheim Majestic Garden Hotel*, No. 30-2016-00861544-
11 CU-OE-CXC (Orange County Superior Court) and *Avila v. Anaheim Majestic Garden Hotel*, No. 30-
12 2016-00871797-CU-OE-CXC (Orange County Superior Court).
- 13 2. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
14 approved by the Court for Class Counsel’s litigation and resolution of the Actions, and all costs incurred
15 and to be incurred by Class Counsel in the Actions, including but not limited to, costs associated with
16 documenting the Settlement, providing any notices required as part of the Settlement or Court order,
17 securing the Court’s approval of the Settlement, administering the Settlement, obtaining entry of a
18 Judgment terminating the Actions, and expenses for any experts. Class Counsel will request attorneys’
19 fees not in excess of one-third (1/3) of the Class Settlement Amount, or Six Hundred Sixteen Thousand
20 Six Hundred Sixty Seven Dollars (\$616,667). The Attorneys’ Fees and Costs will also mean and include
21 the additional reimbursement of any costs and expenses associated with Class Counsel’s litigation and
22 settlement of the Actions, up to Fifty Thousand Dollars (\$50,000), subject to the Court’s approval.
23 Defendants have agreed not to oppose Class Counsel’s request for fees and reimbursement of costs as set
24 forth above.
- 25 3. “Class Counsel” means Capstone Law APC and James W. Hawkins, APLC.
- 26 4. “Class List” means a complete list of all Class Members that Defendants will diligently
27 and in good faith compile from their records and provide to the Settlement Administrator and to Class
28 Counsel within twenty (20) calendar days after Preliminary Approval of this Settlement. The Class List

1 will be formatted in Microsoft Office Excel and will include each Class Member's full name; most
2 recent mailing address and telephone number; Social Security number; dates of employment; the
3 respective number of Workweeks that each Class Member worked during the Class Period; and any
4 other relevant information needed to calculate settlement payments.

5 5. "Class Member(s)" or "Settlement Class" means all persons who were employed by
6 Defendants in non-exempt positions in the State of California at any time during the period from August
7 26, 2012 through October 15, 2018.

8 6. "Class Period" means the period from August 26, 2012 through October 15, 2018.

9 7. "Class Representative Enhancement Payments" means the amounts to be paid to
10 Plaintiffs in recognition of their effort and work in prosecuting the Actions on behalf of Class Members,
11 and for their general release of claims. Subject to the Court granting final approval of this Settlement
12 Agreement and subject to the exhaustion of any and all appeals, Plaintiffs will request Court approval of
13 Class Representative Enhancement Payments of Seven Thousand Five Hundred Dollars (\$7,500), each.

14 8. "Class Settlement Amount" means the Class Settlement Amount of One Million Eight
15 Hundred Fifty Thousand Dollars (\$1,850,000), to be paid by Defendants in full satisfaction of all
16 Released Claims arising from the Actions, which includes all Individual Settlement Payments to
17 Participating Class Members, Attorneys' Fees and Costs to Class Counsel, the Class Representative
18 Enhancement Payments to Plaintiffs, the LWDA Payment, and Settlement Administration Costs to the
19 Settlement Administrator. This Class Settlement Amount has been agreed to by Plaintiffs and
20 Defendants based on the aggregation of the agreed-upon settlement value of individual claims. In no
21 event will Defendants be liable for more than the Class Settlement Amount except as otherwise
22 explicitly set forth herein. There will be no reversion of the Class Settlement Amount to Defendants.
23 Defendants will be separately responsible for any employer payroll taxes required by law, including the
24 employer FICA, FUTA, and SDI contributions, which shall not be paid from the Class Settlement
25 Amount.

26 9. "Court" means the Orange County Superior Court.

27 10. "Defendants" means Defendants Anaheim Majestic Garden Hotel, PHR Management,
28 Inc., and Ken Real Estate Lease Ltd.

1 11. “Effective Date” means the latter of: (i) if no timely objections are filed by Class
2 Members or the LWDA, or are withdrawn prior to final approval, the date upon which the Court enters
3 an order granting final approval of the Joint Stipulation of Class Action Settlement and Release; or (ii) if
4 timely objections are filed and not withdrawn, then either the final resolution of any appeals timely filed,
5 or the expiration date of the time for filing or noticing any such appeals.

6 12. “Individual Settlement Payment” means each Participating Class Member’s respective
7 share of the Net Settlement Amount.

8 13. “Labor and Workforce Development Agency Payment” or “LWDA Payment” means
9 the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency
10 (“LWDA”) in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code
11 §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that Fifty Thousand Dollars (\$50,000) of the Class
12 Settlement Amount will be allocated to the resolution of Class Members’ claims arising under PAGA.
13 Pursuant to PAGA, Seventy-Five Percent (75%), or Thirty Seven Thousand Five Hundred Dollars
14 (\$37,500), of the PAGA Settlement Amount will be paid to the California Labor and Workforce
15 Development Agency, and Twenty-Five Percent (25%), or Twelve Thousand Five Hundred Dollars
16 (\$12,500), of the PAGA Settlement Amount will be included in the Net Settlement Amount.

17 14. “Net Settlement Amount” means the portion of the Class Settlement Amount remaining
18 after deducting the Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, the
19 LWDA Payment, and Settlement Administration Costs. The Net Settlement Amount will be distributed
20 to Participating Class Members. There will be no reversion of the Net Settlement Amount to
21 Defendants.

22 15. “Notice of Objection” means a Class Member’s valid and timely written objection to the
23 Settlement Agreement. For the Notice of Objection to be valid, it must include: (i) the objector’s full
24 name, signature, address, and telephone number, (ii) a written statement of all grounds for the objection
25 accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other
26 documents upon which the objection is based; and (iv) a statement whether the objector intends to appear
27 at the Fairness Hearing. Any Class Member who does not submit a timely written objection to the
28 Settlement, or who fails to otherwise comply with the specific and technical requirements of this section,

1 will be foreclosed from objecting to the Settlement and seeking any adjudication or review of the
2 Settlement, by appeal or otherwise. Class Members who submit Notices of Objection must make
3 themselves available for deposition.

4 16. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form
5 attached as Exhibit A.

6 17. "Parties" means Plaintiffs and Defendants collectively.

7 18. "Participating Class Members" means all Class Members who do not submit timely and
8 valid Requests for Exclusion.

9 19. "Plaintiffs" means Plaintiffs Robert Onofre and Miguel Zaldivar Avila.

10 20. "Preliminary Approval" means the Court order granting preliminary approval of the
11 Settlement Agreement.

12 21. "Released Claims" means: (1) for all Class Members, all claims, rights, demands,
13 liabilities, and causes of action, whether known or unknown, arising from, or related to, the same set of
14 operative facts as those set forth in the operative complaints in the Actions that accrued during the Class
15 Period, including (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii)
16 all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon
17 termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for the
18 failure to reimburse for necessary business expenses; and (vii) all claims asserted through California
19 Business & Professions Code §§ 17200, *et seq.*, and California Labor Code §§ 2698, *et seq.* based on the
20 preceding claims ("Released Class Claims"); and (2) for all Wage Statement Class Members, all claims,
21 rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to,
22 the allegation that Defendant issued non-compliant wage statements during the Wage Statement Class
23 Period, including all claims asserted through California Business & Professions Code §§ 17200, *et seq.*,
24 and California Labor Code §§ 2698, *et seq.* based on the allegation that Defendant issued non-compliant
25 wage statements ("Released Wage Statement Claims").

26 22. "Released Parties" means Defendants; their past or present officers, directors,
27 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
28 insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries,

1 affiliates, parents and attorneys, if any.

2 23. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a
3 request to be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
4 address, telephone number and last four digits of the Social Security Number of the Class Member
5 requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement
6 Administrator; (iv) clearly state that the Class Member does not wish to be included in the Settlement;
7 and (v) be faxed or postmarked on or before the Response Deadline.

8 24. "Response Deadline" means the deadline by which Class Members must postmark or
9 fax to the Settlement Administrator Requests for Exclusion, or postmark Notices of Objection to the
10 Settlement Administrator. The Response Deadline will be thirty (30) calendar days from the initial
11 mailing of the Notice Packet by the Settlement Administrator, unless the thirtieth (30th) calendar day
12 falls on a Sunday or State holiday, in which case the Response Deadline will be extended to the next day
13 on which the U.S. Postal Service is open.

14 25. "Settlement Administration Costs" means the costs payable from the Class Settlement
15 Amount to the Settlement Administrator for administering this Settlement, including, but not limited to,
16 printing, distributing, and tracking documents for this Settlement, tax reporting, distributing the Class
17 Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The
18 Settlement Administration Costs will be paid from the Class Settlement Amount, including, if necessary,
19 any such costs in excess of the amount represented by the Settlement Administrator as being the
20 maximum costs necessary to administer the Settlement. Based on an estimated Settlement Class of
21 approximately Three Hundred and Fifty (350) Class Members, the Settlement Administration Costs are
22 currently estimated to be Fifteen Thousand Dollars (\$15,000).

23 26. "Settlement Administrator" means __, or any other third-party class action settlement
24 administrator agreed to by the Parties and approved by the Court for the purposes of administering this
25 Settlement. The Parties each represent that they do not have any financial interest in the Settlement
26 Administrator or otherwise have a relationship with the Settlement Administrator that could create a
27 conflict of interest.

28 27. "Wage Statement Class Members" means all persons who were employed by

1 Defendants in non-exempt positions in the State of California at any time during the period from June
2 30, 2015 to September 30, 2016.

3 28. "Wage Statement Class Period" means the period from June 30, 2015 to September 30,
4 2016.

5 29. "Workweeks" means the number of days of employment for each Class Member during
6 the Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to
7 the nearest whole number. All Class Members will be credited with at least one Workweek.

8 **TERMS OF AGREEMENT**

9 The Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants agree as
10 follows:

11 30. Funding of the Class Settlement Amount. Defendants will make a one-time deposit of
12 the Class Settlement Amount of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000) into a
13 Qualified Settlement Account to be established by the Settlement Administrator. Defendants will pay
14 the employer's share of payroll taxes separately. After the Effective Date, the Class Settlement Amount
15 will be used for: (i) Individual Settlement Payments; (ii) the LWDA Payment; (iii) the Class
16 Representative Enhancement Payments; (iv) Attorneys' Fees and Costs; and (v) Settlement
17 Administration Costs. Defendants will deposit the Class Settlement Amount and the employer's share of
18 payroll taxes within ten (10) calendar days of the Effective Date.

19 31. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application
20 or motion by Class Counsel for Attorneys' Fees and Costs of not more than Six Hundred Sixteen
21 Thousand Six Hundred Sixty Seven Dollars (\$616,667), plus the reimbursement of costs and expenses
22 associated with Class Counsel's litigation and settlement of the Actions, not to exceed Fifty Thousand
23 Dollars (\$50,000), both of which will be paid from the Class Settlement Amount. Class Counsel will
24 divide any fee award as follows: Sixty-Five Percent (65%) to Capstone Law APC and Thirty-Five
25 Percent (35%) to James W. Hawkins, APLC.

26 32. Class Representative Enhancement Payments. In exchange for a general release, and in
27 recognition of their effort and work in prosecuting the Actions on behalf of Class Members, Defendants
28 agree not to oppose or impede any application or motion for Class Representative Enhancement

1 Payments of Seven Thousand Five Hundred Dollars (\$7,500), each, to Plaintiffs. The Class
2 Representative Enhancement Payments will be paid from the Class Settlement Amount and will be in
3 addition to Plaintiffs' Individual Settlement Payment paid pursuant to the Settlement. Plaintiffs will be
4 solely and legally responsible to pay any and all applicable taxes on the Class Representative
5 Enhancement Payment.

6 33. Settlement Administration Costs. The Settlement Administrator will be paid for the
7 reasonable costs of administration of the Settlement and distribution of payments from the Class
8 Settlement Amount, which is currently estimated to be Fifteen Thousand Dollars (\$15,000). These costs,
9 which will be paid from the Class Settlement Amount, will include, *inter alia*, the required tax reporting
10 on the Individual Settlement Payments, the issuing of 1099 and W-2 IRS Forms, distributing Notice
11 Packets, calculating and distributing the Class Settlement Amount, and providing necessary reports and
12 declarations.

13 34. LWDA Payment. Subject to Court approval, the Parties agree that the amount of Fifty
14 Thousand Dollars (\$50,000) from the Class Settlement Amount will be designated for satisfaction of
15 Plaintiffs' and Class Members' PAGA claims. Pursuant to PAGA, Seventy-Five Percent (75%), or
16 Thirty Seven Thousand Five Hundred Dollars (\$37,500), of this sum will be paid to the LWDA and
17 Twenty-Five Percent (25%), or Twelve Thousand Five Hundred Dollars (\$12,500), will become part of
18 the Net Settlement Amount.

19 35. Net Settlement Amount. The entire Net Settlement Amount will be distributed to
20 Participating Class Members. No portion of the Net Settlement Amount will revert or be retained by
21 Defendants.

22 36. Individual Settlement Payment Calculations. Individual Settlement Payments will be
23 calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class
24 Member worked during the Class Period. Eighty Percent (80%) of the Net Settlement Amount will be
25 allocated to all Class Members (the "Class Member Fund"), and (2) Twenty Percent (20%) of the Net
26 Settlement Amount will be allocated to all Wage Statement Class Members (the "Wage Statement
27 Fund"). Each Class Member's respective shares of the Class Member Fund and Wage Statement Fund
28 will be allocated on a pro-rata basis according to the number of Workweeks worked by each Class

1 Member.

2 36(a) Class Member Fund: The Settlement Administrator will calculate the total
3 number of Workweeks worked by all Class Members during the Class Period. To
4 determine each Class Member's share of the Class Member Fund, the Settlement
5 Administrator will use the following formula: $\text{Share of Class Member Fund} = \frac{\text{Weeks Worked by Class Member}}{\text{Weeks Worked by All Class Members}} \times \text{Class Member}$
6 Fund. The entire Class Member Fund will be disbursed to all Class Members who do
7 not submit timely and valid Requests for Exclusion. If there are any valid and timely
8 Requests for Exclusion, the Settlement Administrator shall proportionately increase each
9 Participating Class Member's share of the Class Members Fund to ensure that the entire
10 Class Member Fund is distributing to Participating Class Members.

11 36(b) Wage Statement Fund: The Settlement Administrator will calculate the
12 total number of Workweeks worked by all Wage Statement Class Members during the
13 Wage Statement Class Period. To determine each Wage Statement Class Member's
14 share of the Wage Statement Fund, the Settlement Administrator will use the following
15 formula: $\text{Share of Wage Statement Fund} = \frac{\text{Weeks Worked by Wage Statement Class}}{\text{Weeks Worked by All Wage Statement Class Members}} \times \text{Wage Statement}$
16 Fund. If there are any valid and timely Requests for Exclusion, the Settlement
17 Administrator shall proportionately increase each Participating Wage Statement Class
18 Member's share of the Wage Statement Fund to ensure that the entire Wage Statement
19 Fund is distributing to Participating Wage Statement Class Members.

20 37. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
21 Participating Class Members under this Settlement, as well as any other payments made pursuant to this
22 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any
23 Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k)
24 plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
25 Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions,
26 or amounts to which any Class Members may be entitled under any benefit plans.
27
28

1 38. Administration Process. The Parties agree to cooperate in the administration of the
2 settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in
3 administration of the Settlement.

4 39. Delivery of the Class List. Within twenty (20) calendar days of Preliminary Approval,
5 Defendants will provide the Class List to the Settlement Administrator and to Class Counsel.

6 40. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the Class
7 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class Members via
8 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class
9 List.

10 41. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
11 Administrator will perform a search based on the National Change of Address Database for information
12 to update and correct for any known or identifiable address changes. Any Notice Packets returned to the
13 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent promptly
14 via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
15 Administrator will indicate the date of such re-mailing on the Notice Packet. If no forwarding address is
16 provided, the Settlement Administrator will promptly attempt to determine the correct address using a
17 skip-trace, or other search using the name, address and/or Social Security number of the Class Member
18 involved, and will then perform a single re-mailing.

19 42. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet
20 will provide: (i) information regarding the nature of the Actions; (ii) a summary of the Settlement's
21 principal terms; (iii) the Settlement Class definition; (iv) the total number of Workweeks each respective
22 Class Member worked for Defendants during the Class Period; (v) each Class Member's estimated
23 Individual Settlement Payment and the formula for calculating Individual Settlement Payments; (vi) the
24 dates which comprise the Class Period; (vii) instructions on how to submit Requests for Exclusion or
25 Notices of Objection; (viii) the deadlines by which the Class Member must postmark or fax Request for
26 Exclusions, or postmark Notices of Objection to the Settlement; and (ix) the claims to be released.

27 43. Disputed Information on Notice Packets. Class Members will have an opportunity to
28 dispute the information provided in their Notice Packets. To the extent Class Members dispute their

1 employment dates or the number of Workweeks on record, Class Members may produce evidence to the
2 Settlement Administrator showing that such information is inaccurate. The Settlement Administrator
3 will decide the dispute. Defendants' records will be presumed correct, but the Settlement Administrator
4 will evaluate the evidence submitted by the Class Member and will make the final decision as to the
5 merits of the dispute. All disputes will be decided within ten (10) business days of the Response
6 Deadline.

7 44. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
8 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The
9 Settlement Administrator will mail the Class Member a cure letter within three (3) business days of
10 receiving the defective submission to advise the Class Member that his or her submission is defective
11 and that the defect must be cured to render the Request for Exclusion valid. The Class Member will
12 have until the later of (i) Response Deadline or (ii) fifteen (15) calendar days from the date of the cure
13 letter, whichever date is later, to postmark or fax a revised Request for Exclusion. If the revised Request
14 for Exclusion is not postmarked or received by fax within that period, it will be deemed untimely.

15 45. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
16 Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement
17 Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the
18 Settlement Administrator, the postmark date will be the exclusive means to determine whether a Request
19 for Exclusion has been timely submitted.

20 46. Settlement Class Size. The Class Settlement Amount was calculated with, and is
21 premised on, the understanding that there are approximately Three Hundred and Fifty (350) Class
22 Members eligible to participate in the Settlement. If the number of Class Members stated in this
23 paragraph increases by more than ten percent (10%), then the Net Settlement Amount will be increased
24 by the same proportion.

25 47. Released Claims as of the Effective Date. On the Effective Date, all Participating Class
26 Members will release the Released Class Claims that accrued during the Class Period, and all
27 Participating Wage Statement Class Members will release the Released Wage Statement Claims that
28 accrued during the Wage Statement Class Period.

1 48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
2 who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid
3 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
4 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
5 Settlement.

6 49. Objection Procedures. To object to the Settlement Agreement, a Class Member must
7 postmark a valid Notice of Objection to the Settlement Administrator on or before the Response
8 Deadline. The Notice of Objection must be signed by the Class Member and contain all information
9 required by this Settlement Agreement. The postmark will be deemed the exclusive means for
10 determining that the Notice of Objection is timely. Class Members who fail to object in the manner
11 specified above will be deemed to have waived all objections to the Settlement and will be foreclosed
12 from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Class
13 Members who postmark timely Notices of Objection will have a right to appear at the Final Approval
14 Hearing in order to have their objections heard by the Court. At no time will any of the Parties or their
15 counsel seek to solicit or otherwise encourage Class Members to submit written objections to the
16 Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not represent any
17 Class Members with respect to any such objections to this Settlement.

18 50. Certification Reports Regarding Individual Settlement Payment Calculations. The
19 Settlement Administrator will provide Defendants' counsel and Class Counsel a weekly report that
20 certifies the number of Class Members who have submitted valid Requests for Exclusion, objections to
21 the Settlement, and whether any Class Member has submitted a challenge to any information contained
22 in their Notice Packet. Additionally, the Settlement Administrator will provide to counsel for both
23 Parties any updated reports regarding the administration of the Settlement Agreement as needed or
24 requested.

25 51. Distribution Timing of Individual Settlement Payments. Within twenty (20) calendar
26 days of the Effective Date, the Settlement Administrator will issue payments to: (i) Participating Class
27 Members; (ii) the Labor and Workforce Development Agency; (iii) Plaintiffs; and (iv) Class Counsel.
28 The Settlement Administrator will also issue a payment to itself for Court-approved services performed

1 in connection with the Settlement.

2 52. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment
3 checks returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for
4 more than one hundred and twenty (120) calendar days after issuance will be tendered to the California
5 Department of Industrial Relations Unpaid Wage Fund (*see* Cal. Lab. Code § 96.6).

6 53. Certification of Completion. Upon completion of administration of the Settlement, the
7 Settlement Administrator will provide a written declaration under oath to certify such completion to the
8 Court and counsel for all Parties.

9 54. Treatment of Individual Settlement Payments. All Individual Settlement Payments will
10 be allocated as follows: (i) Twenty-Five Percent (25%) of each Individual Settlement Payment will be
11 allocated as wages for which IRS Forms W-2 will be issued; and (ii) Seventy-Five (75%) will be
12 allocated as non-wages for which IRS Forms 1099-MISC will be issued.

13 55. Administration of Taxes by the Settlement Administrator. The Settlement
14 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members, and Class
15 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to
16 this Settlement. The Settlement Administrator will also be responsible for forwarding all payroll taxes
17 and penalties to the appropriate government authorities.

18 56. Tax Liability. Defendants make no representation as to the tax treatment or legal effect
19 of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on
20 any statement, representation, or calculation by Defendants or by the Settlement Administrator in this
21 regard.

22 57. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
23 OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS
24 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY")
25 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND
26 NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES
27 OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR
28 WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED

1 OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
2 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
3 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS
4 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
5 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
6 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
7 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY
8 UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO
9 ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
10 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
11 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF
12 ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER
13 SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
14 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
15 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
16 AGREEMENT.

17 58. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
18 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
19 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
20 action or right herein released and discharged.

21 59. Nullification of Settlement Agreement. In the event that: (i) the Court does not finally
22 approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other
23 reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null
24 and void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement will
25 likewise be treated as void from the beginning.

26 60. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the Court to
27 request the Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval
28 Order for: (i) conditional certification of the Settlement Class for settlement purposes only, (ii)

1 preliminary approval of the proposed Settlement Agreement, (iii) setting a date for a Final
2 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for the Notice
3 Packet to be sent to all Class Members as specified herein. In conjunction with the Preliminary
4 Approval hearing, Plaintiffs will submit this Settlement Agreement, which sets forth the terms of this
5 Settlement, and will include the proposed Notice Packet, which will include both the proposed Notice of
6 Class Action Settlement document, attached as Exhibit A. Class Counsel will be responsible for drafting
7 all documents necessary to obtain preliminary approval.

8 61. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
9 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and with the
10 Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the
11 Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Attorneys'
12 Fees and Costs; (ii) the Class Representative Enhancement Payment; (iii) Individual Settlement
13 Payments; (iv) the LWDA Payment; (v) all Settlement Administration Costs. The Final
14 Approval/Settlement Fairness Hearing will not be held earlier than thirty (30) calendar days after the
15 Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain
16 final approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs
17 application to be heard at the final approval hearing.

18 62. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by the
19 Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the Judgment to
20 the Court for its approval. After entry of the Judgment, the Court will have continuing jurisdiction solely
21 for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii)
22 Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under
23 court rules or as set forth in this Settlement Agreement.

24 63. Release by Plaintiffs. Upon the Effective Date, in addition to the claims being released
25 by all Participating Class Members, Plaintiffs will release and forever discharge the Released Parties, to
26 the fullest extent permitted by law, of and from any and all claims, known and unknown, asserted and
27 not asserted, which Plaintiffs have or may have against the Released Parties as of the date of execution of
28 this Settlement Agreement. To the extent the foregoing release is a release to which Section 1542 of the

1 California Civil Code or similar provisions of other applicable law may apply, Plaintiffs expressly waive
2 any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California
3 Civil Code or similar provisions of applicable law which are as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
7 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
8 SETTLEMENT WITH THE DEBTOR.

9 64. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include
10 the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set
11 forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

12 65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
13 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
14 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code Section
15 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written agreement is
16 to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and
17 the Parties agree that no such extrinsic oral or written representations or terms will modify, vary or
18 contradict the terms of this Settlement Agreement.

19 66. Amendment or Modification. No amendment, change, or modification to this
20 Settlement Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

21 67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
23 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
24 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
25 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with
26 each other and use their best efforts to effect the implementation of the Settlement. If the Parties are
27 unable to reach agreement on the form or content of any document needed to implement the Settlement,
28 or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement,

1 the Parties may seek the assistance of the Court to resolve such disagreement.

2 68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
3 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

4 69. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto
5 will be governed by and interpreted according to the laws of the State of California.

6 70. Execution and Counterparts. This Settlement Agreement is subject only to the execution
7 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
8 executed counterparts and each of them, including facsimile and scanned copies of the signature page,
9 will be deemed to be one and the same instrument provided that counsel for the Parties will exchange
10 among themselves original signed counterparts.

11 71. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
12 Settlement Agreement is a fair, adequate and reasonable settlement of the Actions and have arrived at
13 this Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into
14 account all relevant factors, present and potential. The Parties further acknowledge that they are each
15 represented by competent counsel and that they have had an opportunity to consult with their counsel
16 regarding the fairness and reasonableness of this Settlement.

17 72. Invalidity of Any Provision. Before declaring any provision of this Settlement
18 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
19 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
20 valid and enforceable.

21 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
22 certification for purposes of this Settlement only; except, however, that Plaintiffs or Class Counsel may
23 appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court,
24 and either party may appeal any court order that materially alters the Settlement Agreement's terms.

25 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate
26 to class action certification for purposes of the Settlement only. If, for any reason, the Settlement is not
27 approved, the stipulation to certification will be void. The Parties further agree that certification for
28 purposes of the Settlement is not an admission that class action certification is proper under the standards

1 applied to contested certification motions and that this Settlement Agreement will not be admissible in
2 this or any other proceeding as evidence that either (i) a class action should be certified or (ii) Defendants
3 are liable to Plaintiffs or any Class Member, other than according to the Settlement's terms.

4 75. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute
5 that has arisen between them and to avoid the burden, expense and risk of continued litigation. In
6 entering into this Settlement, Defendants do not admit, and specifically deny, that it violated any federal,
7 state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other
8 applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty;
9 engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to
10 their employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
11 negotiations connected with it, will be construed as an admission or concession by Defendants of any
12 such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
13 enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
14 offered or received as evidence in any action or proceeding to establish any liability or admission on the
15 part of Defendants or to establish the existence of any condition constituting a violation of, or a non-
16 compliance with, federal, state, local or other applicable law.

17 76. No Public Comment: The Parties and their counsel agree that they will not issue any
18 press releases, initiate any contact with the press, respond to any press inquiry, or have any
19 communication with the press about the fact, amount or terms of the Settlement.

20 77. Waiver. No waiver of any condition or covenant contained in this Settlement
21 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
22 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
23 remedy.

24 78. Enforcement Actions. In the event that one or more of the Parties institutes any legal
25 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
26 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
27 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
28 expert witness fees incurred in connection with any enforcement actions.

79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

80. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

81. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

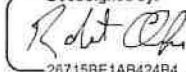
83. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

READ CAREFULLY BEFORE SIGNING

Dated: 1/7/2019

PLAINTIFF

DocuSigned by:



26715BE1AB424B4

Robert Onofre

PLAINTIFF

Dated: _____

Miguel Zaldivar Avila

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF'

Dated: _____

Robert Onofre

PLAINTIFF

Dated: 12-31-18

Miguel Angel Z.
Miguel Zaldivar Avila

DEFENDANTS ANAHEIM MAJESTIC
GARDEN HOTEL, PHR MANAGEMENT,
INC., AND KEN REAL ESTATE LEASE LTD.

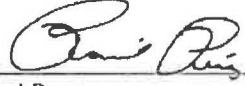
Dated: 1/4/2019


Please Print Name of Authorized Signatory
KEN YANAGISAWA

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: January 23, 2019

By: 
Raul Perez
Attorneys for Plaintiff Robert Onofre

JAMES W. HAWKINS, APLC

Dated: January 02, 2019

By: 
James W. Hawkins
Attorneys for Plaintiff Miguel Zaldivar Avila

ZUBER LAWLER & DEL DUCA LLP

Dated: 1/9/19

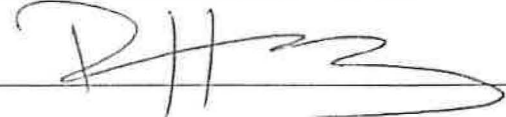
By: 
Attorneys for Defendants Anaheim Majestic Garden
Hotel, PHR Management, Inc., and Ken Real Estate
Lease Ltd.

Exhibit A

Onofre v. Anaheim Majestic Garden Hotel, No. 30-2016-00861544-CU-OE-CXC (Orange County Superior Court)
Avila v. Anaheim Majestic Garden Hotel, No. 30-2016-00871797-CU-OE-CXC (Orange County Superior Court)
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who were employed by Defendants Anaheim Majestic Garden Hotel, PHR Management, Inc., and Ken Real Estate Lease Ltd. (“Defendants”) in non-exempt positions in the State of California at any time during the period from August 26, 2012 to October 15, 2018 (“Class Members”), and

All persons who were employed by Defendants in non-exempt positions in the State of California at any time during the period from June 30, 2015 to September 30, 2016 (“Wage Statement Class Members”)

On _____, the Honorable Peter Wilson of the Orange County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants’ records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 __.m. on _____, 2019 in Department CX102 of the Orange County Superior Court located at 751 W Santa Ana Blvd, Santa Ana, CA 92701. You are not required to attend the Hearing, but you are welcome to do so.

Summary of the Litigation

Plaintiffs Robert Onofre and Miguel Zaldivar, on their behalf and on behalf of other current and former non-exempt employees, allege that Defendants violated California state labor laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse for necessary business expenses; and (5) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The parties participated in a mediation with Jeffrey A. Ross, an experienced and well-respected class action mediator. With Jeffrey A. Ross’s guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Capstone Law APC and James W. Hawkins APLC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the law applicable. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$1,850,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class

Representative Enhancement Payments of \$7,500, each, to Robert Onofre and Miguel Zaldivar for their services on behalf of the class and general releases of all claims arising out of their employment with Defendants; (3) \$616,667 in attorneys' fees and up to \$50,000 in litigation costs and expenses; (4) a \$37,500 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$15,000. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$1,115,833 will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Individual Settlement Payment Calculations. Each Class Member's settlement payment will be based on the number of Workweeks each Class Member/Wage Statement Class Member worked in a non-exempt position during the applicable Class Period (August 26, 2012 through October 15, 2018) and Wage Statement Class Period (June 30, 2015 to September 30, 2016). Eighty Percent (80%) of the Net Settlement Amount will be allocated to all Class Members (the "Class Member Fund"), and (2) Twenty Percent (20%) of the Net Settlement Amount will be allocated to all Wage Statement Class Members (the "Wage Statement Fund"). Each Class Member's respective shares of the Class Member Fund and Wage Statement Fund will be allocated on a pro-rata basis according to the number of Workweeks worked by each Class Member.

Class Member Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's share of the Class Member Fund, the Settlement Administrator will use the following formula: $\text{Share of Class Member Fund} = \text{Weeks Worked by Class Member} \div \text{Weeks Worked by All Class Members} \times \text{Class Member Fund}$. The entire Class Member Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Class Members Fund to ensure that the entire Class Member Fund is distributing to Participating Class Members.

Wage Statement Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Wage Statement Class Members during the Wage Statement Class Period. To determine each Wage Statement Class Member's share of the Wage Statement Fund, the Settlement Administrator will use the following formula: $\text{Share of Wage Statement Fund} = \text{Weeks Worked by Wage Statement Class Member} \div \text{Weeks Worked by All Wage Statement Class Members} \times \text{Wage Statement Fund}$. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Wage Statement Class Member's share of the Wage Statement Fund to ensure that the entire Wage Statement Fund is distributing to Participating Wage Statement Class Members.

According to Defendants' records, you worked during a total of _____ Workweeks during the Class Period and _____ during the Wage Statement Class Period. Accordingly, your estimated payment is approximately \$_____ from the Class Fund and \$_____ from the Wage Statement Fund. If you believe the information provided above is incorrect, please contact the Settlement Administrator at _____. If you dispute the information stated above, Defendants's records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 80% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 20% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”):

For all Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the same set of operative facts as those set forth in the operative complaints in the Actions that accrued during the Class Period, including (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for the failure to reimburse for necessary business expenses; and (vii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims (“Released Class Claims”); and

For all Wage Statement Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the allegation that Defendant issued non-compliant wage statements during the Wage Statement Class Period, including all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the allegation that Defendant issued non-compliant wage statements (“Released Wage Statement Claims”).

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked or faxed not later than _____, 2019. If you submit a request for exclusion which is not postmarked or faxed by _____, 2019, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement. Your objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator’s address].

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

All objections must be received by the administrator by not later than _____ 2019. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Orange and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: (888) 295-8042

James W. Hawkins
James Hawkins APLC
9880 Research Dr. Ste 200
Irvine, CA 92618
Phone: Number

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Exhibit 2

FIRM PROFILE

Capstone Law APC is one of California's largest plaintiff-only labor and consumer law firms. With over twenty seasoned attorneys, many formerly with prominent class action or defense firms, Capstone has the experience, resources, and expertise to successfully prosecute complex employment and consumer actions.

Since its founding in 2012, Capstone has emerged as a major force in aggregate litigation, making law on cutting-edge issues and obtaining over a hundred million dollars in recovery for employees and consumers. The firm's accomplishments include:

- In February, 2015, Capstone attorneys Raul Perez and Ryan H. Wu were honored with the prestigious *California Lawyer* Attorney of the Year (CLAY) award in labor and employment for their work in the landmark case *Iskanian v. CLS Transportation Los Angeles*, 59 Cal.4th 348 (2014), which preserved the right of California workers to bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") notwithstanding a representative action waiver in an arbitration agreement.
- Recognized as a leading firm in the prosecution of PAGA enforcement actions, Capstone is responsible for some of the most important decisions in this area. In *Williams v. Superior Court (Marshalls of Calif.)*, 3 Cal.5th 531 (2017), Capstone attorneys achieved a watershed decision before the California Supreme Court as to the broad scope of discovery in PAGA actions. In *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), a case of first impression, Capstone attorneys successfully argued that PAGA actions are state enforcement actions not covered by the Class Action Fairness Act.
- In April 2017, Capstone achieved a major victory for consumers in *McGill v. Citibank N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court held that: (1) the right to seek public injunctive relief under the state's consumer protection laws cannot be waived; and (2) that consumers need not satisfy class certification requirements to enjoin unfair business practices on behalf of the public.
- Capstone served as class counsel in a number of significant wage and hour settlements, including \$12 million on behalf of a nationwide class of nonexempt tellers and personal bankers in *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.), over \$10 million on behalf of non-exempt hourly workers in *Zamora v. Balboa Life & Casualty LLC*, Case No. BC360026 (L.A. Super. Ct.); and \$9 million on behalf of non-exempt pharmacists in *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.).
- Capstone serves class counsel in a number of significant consumer actions, including *Falco v. Nissan N. Am. Inc.*, No. 13-00686 (C.D. Cal.) (certifying a class of owners/lessees of Nissan vehicles) and obtained final approval in *Vargas v. Ford Motor Co.*, No. 12-08388 (C.D. Cal.); *Chan v. Porsche Cars N.A., Inc.*, No. 15-2106 (D.N.J.); *Batista v. Nissan N.Am., Inc.*, No. 14-24728-RNS (S.D. Fla.); *Klee v. Nissan North America*, Case No. 12-08238 (C.D. Cal.); *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.); *Asghari v. Volkswagen Group of America*, No. 13-02529 (C.D. Cal.); *Aarons v. BMW of North America*, Case No. 11-7667 (C.D. Cal.); *Fernandez v. Home Depot U.S.A.*, No. 13-648 (C.D. Cal.), and *Ford v. CEC Entertainment*, No. 14-677 (S.D. Cal.), that have conferred benefits to class members valued in the hundreds of millions.

SUMMARY OF SIGNIFICANT SETTLEMENTS

In the past four years, Capstone has settled over 100 high-stakes class and representative actions totaling well over \$200 million dollars. Capstone's settlements have directly compensated hundreds of thousands of California workers and consumers. Capstone's actions have also forced employers to modify their policies for the benefit of employees, including changing the compensation structure for commissioned employees and changing practices to ensure that workers will be able to take timely rest and meal breaks. A leader in prosecuting PAGA enforcement actions, Capstone has secured millions of dollars in civil penalties for the State of California.

The following is a representative sample of Capstone's settlements:

- *Hightower et al v. Washington Mutual Bank*, No. 2:11-cv-01802-PSG-PLA (N.D. Cal.): gross settlement of \$12 million on behalf of approximately 150,000 personal bankers, tellers, sales associates, and assistant branch manager trainees for wage and hour violations;
- *Vargas v. Ford Motor Co.*, 12-08388-AB (C.D. Cal.): providing cash payments and unique buyback program for nearly 2 million consumers valued at well over \$30 million;
- *Moore v. PetSmart, Inc.*, No. 5:12-cv-03577-EJD (N.D. Cal.): gross settlement of \$10 million on behalf of over 19,000 non-exempt PetSmart employees for wage and hour violations;
- *Dittmar v. Costco Wholesale Corp.*, No. 14-1156 (S.D. Cal.): gross settlement of \$9 million on behalf of approximately 1,200 pharmacists for wage and hour violations;
- *Perrin v. Nabors Well Services Co.*, No. 56-2007-00288718 (Ventura Super. Ct.): gross settlement of over \$6.5 million on behalf of oil rig workers for sleep time and other wage violations;
- *Cook v. United Insurance Co.*, No. C 10-00425 (Contra Costa Super. Ct.): gross settlement of \$5.7 million on behalf of approximately 650 sales representatives;
- *Alvarez v. MAC Cosmetics, Inc.*, No. CIVDS1513177 (San Bernardino Super. Ct.): gross settlement of \$5.5 million for approximately 5,500 non-exempt employees.
- *Aceves v. AutoZone, Inc.*, No. 14-2032 (C.D. Cal.): gross settlement of \$5.4 million in a case alleging FCRA violations;
- *Berry v. Urban Outfitters Wholesale, Inc.*, No. 13-02628 (N.D. Cal.): gross settlement of \$5 million on behalf of over 12,000 nonexempt employees;
- *The Children's Place Retail Stores Wage & Hour Cases*, No. JCCP 4790: gross settlement of \$5 million on behalf of 15,000 nonexempt employees;
- *York v. Starbucks Corp.*, Case No. 08-07919 (C.D. Cal.): gross settlement of nearly \$5 million on behalf of over 100,000 non-exempt workers for meal break and wage statement claims;
- *Rodriguez v. Swissport USA*, No. BC 441173 (Los Angeles Super. Ct.): gross settlement of nearly \$5 million on behalf of 2,700 non-exempt employees following contested certification;
- *Asghari v. Volkswagen Group of North America*, Case No. 13-02529 (C.D. Cal.): Settlement providing complementary repairs of oil consumption defect, reimbursement for repairs, and extended warranty coverage of certain Audi vehicles valued at over \$20 million;
- *Klee v. Nissan of North America*, Case No. 12-08238 (C.D. Cal.): Settlement providing complimentary electric vehicle charging cards and extending warranty coverage for the electric battery on the Nissan Leaf valued at over \$10 million.

PROFESSIONAL BIOGRAPHIES

Partners

Rebecca Labat. Rebecca Labat is co-managing partner of Capstone Law APC, supervising the litigation for all of the firm's cases. She also manages the firm's co-counsel relationships and assists the firm's other partners and senior counsel with case management and litigation strategy. Under Ms. Labat's leadership, Capstone has successfully settled over 100 cases, delivering hundreds millions of dollars to California employees and consumers while earning statewide recognition for its cutting-edge work in developing new law.

Ms. Labat's career accomplishments representing consumers and employees in class actions include the certification of a class of approximately 3,200 current and former automobile technicians and shop employees for the miscalculation of the regular rate for purposes of paying premiums for missed meal and rest breaks.

Before her work representing plaintiffs in class and representative actions, Ms. Labat was an attorney with Wilson Elser and represented life, health, and disability insurers in litigation throughout California in both state and federal courts. She graduated from the University of California, Hastings College of the Law in 2002, where she was a member of the Hastings Civil Justice Clinic, served as a mediator in Small Claims Court for the City and County of San Francisco, and received the CALI Award for Excellence in Alternative Dispute Resolution. She received her undergraduate degree from the University of California, Los Angeles. Ms. Labat is a member of the National Employment Lawyers Association (NELA), the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills Bar Association.

Raul Perez. Raul Perez is co-managing partner at Capstone, and has focused exclusively on wage and hour and consumer class litigation since 2011. Mr. Perez is the lead negotiator on numerous large settlements that have resulted in hundreds of millions to low-wage workers across California, including many of the most valuable settlements reached by Capstone.

During his career, Mr. Perez has successfully certified by way of contested motion and/or been appointed Lead Counsel or Interim Lead Counsel in several cases, including: *Lopes v. Kohl's Department Stores, Inc.*, Case No. RG08380189 (Alameda Super. Ct.); *Hightower v. JPMorgan Chase Bank*, Case No. 11-01802 (C.D. Cal.); *Tameifuna v. Sunrise Senior Living Managements, Inc.*, Case No. 13-02171 (C.D. Cal.) (certified class of over 10,000 hourly-paid employees); and *Berry v. Urban Outfitters Wholesale, Inc.*, Case No. 13-02628 (N.D. Cal.) (appointed lead counsel in a class action involving over 10,000 non-exempt employees). As the lead trial attorney in *Iskanian v. CLS Transportation Los Angeles*, 59 Cal. 4th 348 (2014), Mr. Perez, along with Mr. Wu, received the 2015 CLAY Award in labor and employment.

Mr. Perez received both his undergraduate degree and his law degree from Harvard University and was admitted to the California Bar in December 1994. Earlier in his career, Mr. Perez handled a variety of complex litigation matters, including wrongful termination and other employment related actions, for corporate clients while employed by some of the more established law firms in the State of California, including Morgan, Lewis & Bockius; Manatt Phelps & Phillips; and Akin Gump Strauss Hauer & Feld. Before Capstone, Mr. Perez was a partner at another large plaintiff's firm, helping to deliver millions of dollars in relief to California workers.

Melissa Grant. Melissa Grant is a partner at Capstone. Ms. Grant is responsible for litigating many of the firm's most contentious and high-stakes class actions. The author of numerous successful motions for class certification, Ms. Grant is the lead or co-lead attorney on multiplied certified class actions currently on track for trial, representing over 140,000 California employees in pursuing their wage and hour claims. She is also at the forefront in developing the law on PAGA, including administrative exhaustion, standing, the nature of PAGA violations, the scope of discovery, and trials.

Prior to joining Capstone, Ms. Grant worked at the Securities and Exchange Commission as a staff attorney in the Enforcement Division, investigating ongoing violations of federal securities regulations and statutes and for Quinn Emanuel Urquhart & Sullivan, LLP, where she was an associate on the trial team that prosecuted the *Mattel v. Bratz* case. Ms. Grant began her legal career as a law clerk to the Honorable Harry Pregerson, Justice of the Ninth Circuit Court of Appeals before joining Sidley & Austin as an associate. She graduated from Southwestern Law School in 1999, where she served as editor-in-chief of the Law Review, and graduated *summa cum laude* and first in her class. Ms. Grant earned her undergraduate degree from Cornell University, where she received the JFK Public Service Award and the Outstanding Senior Award. Her published articles include: *Battling for ERISA Benefits in the Ninth Circuit: Overcoming Abuse of Discretion Review*, 28 Sw. U. L. Rev. 93 (1998), and CLE Class Actions Conference (SF) CAFA: *Early Decisions on Commencement and Removal of Actions* (2006).

Ryan H. Wu. Ryan H. Wu is a partner at Capstone and is primarily responsible for complex motion work and supervising court approval of class action settlements. Mr. Wu handles many of the most challenging legal issues facing Capstone's clients, including the scope and operation of PAGA, contested attorneys' fees motions, responding to objectors, and high-impact appeals. Mr. Wu is responsible for the merits briefing in *McGill v. Citibank, N.A.*, 2 Cal. 5th 945 (2017), where the California Supreme Court unanimously held that consumers' right to pursue public injunctive relief cannot be impeded by a contractual waiver or class certification requirements. He briefed the closely-watched *Williams v. Superior Court (Marshall's of CA LLC)*, 3 Cal.5th 531 (2017), an important pro-employee ruling that broadened the scope of discovery in PAGA actions and resolved a longstanding conflict regarding third-party constitutional privacy rights. He also authored the briefs in *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir. 2014), where, on an issue of first impression, the Ninth Circuit sided with Plaintiffs in holding that PAGA actions are state enforcement actions not covered by the CAFA. In February 2015, Mr. Wu, along with Mr. Perez, received the prestigious CLAY award for his successful appellate work, including briefing to the California Supreme Court, in *Iskanian*.

Mr. Wu graduated from the University of Michigan Law School in 2001, where he was an associate editor of the *Michigan Journal of Law Reform* and contributor to the law school newspaper. He received his undergraduate degree in political science with honors from the University of California, Berkeley. He began his career litigating international commercial disputes and commercial actions governed by the Uniform Commercial Code. Mr. Wu is co-author of "*Williams v. Superior Court: Employees' Perspective*" and "*Iskanian v. CLS Transportation: Employees' Perspective*," both published in the *California Labor & Employment Law Review*.

Senior Counsel

Arnab Banerjee. Arnab Banerjee is a senior counsel with Capstone Law, where he leads one of the firm's litigation teams prosecuting employment and consumer class actions. Mr. Banerjee has spent the past eight

years focused on complex employment law cases, assisting in obtaining millions of dollars in recovery for employees. He focuses primarily on wage-and-hour class action litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations. Arnab has successfully certified several classes for claims meal and rest breaks, and off-the-clock work.

Arnab began his career at Latham & Watkins LLP where he handled a wide variety of business litigation matters ranging from white collar defense to environmental litigation. Arnab has also had experience representing employers and litigating on behalf of individual plaintiffs, focusing primarily on discrimination, wrongful termination, and sexual harassment cases. Arnab graduated from the University of Southern California Gould School of Law, where he served as an editor on the Interdisciplinary Law Journal. During law school, he also interned for the Department of Homeland Security. He received his undergraduate degrees from the University of California, Irvine, where he graduated cum laude and Phi Beta Kappa. Arnab is admitted to practice in California, before the United States District Court for the Northern, Eastern, and Central Districts of California, and before the United States Court of Appeals for the Ninth Circuit. He has been selected as one of Southern California's "Super Lawyers – Rising Star" since 2016.

Theresa Carroll. Theresa Carroll is a senior counsel at Capstone Law. Her practice is devoted to the Appeals & Complex Motions team, working on various settlement and approval projects.

Prior to joining Capstone, Theresa was an associate with Parker Stanbury, LLP, advising small business owners on various employment matters and worked as an associate attorney for O'Donnell & Mandell litigating employment discrimination and sexual harassment cases. In 1995, she graduated from Southwestern University School of Law where she was on the trial advocacy team and was awarded the prestigious Trial Advocate of the Year award sponsored by the American Board of Trial Advocates (ABOTA) for Southwestern University School of Law. Theresa received her Bachelor of Science degree in speech with an emphasis in theatre from Iowa State University.

Liana Carter. Liana Carter is senior counsel with Capstone Law APC, specializing in complex motions, writs, and appeals. Her work on recent appeals has included reversing a denial of class certification decision in *Brown v. Cinemark USA, Inc.*, No. 16-15377, 2017 WL 6047613 (9th Cir. Dec. 7, 2017), affirming a denial of a motion to compel arbitration in *Jacoby v. Islands Rests., L.P.*, 2014 Cal. App. Unpub. LEXIS 4366 (2014) and reversal of a dismissal of class claims in *Rivers v. Cedars-Sinai Med. Care Found.*, 2015 Cal. App. Unpub. LEXIS 287 (Jan. 13, 2015). Ms. Carter was responsible for drafting the successful petition for review in *McGill v. Citibank N.A.*, as well as the petition for review and briefing on the merits in *Williams v. Superior Court*, 2017 WL 2980258. Ms. Carter also has extensive prior experience in overseeing settlement negotiations and obtaining court approval of class action settlements.

Ms. Carter was admitted to the California bar in 1999 after graduating from the University of Southern California Gould School of Law, where she was an Articles Editor on the board of the *Southern California Law Review*. She received her undergraduate degree with honors from the University of California, Irvine.

Molley Desario. Molly DeSario is a senior counsel with Capstone Law, specializing in employment class action litigation. Molly's practice focuses primarily on wage-and-hour class action and Private Attorneys General Act litigation on behalf of employees for failure to pay overtime and minimum wages, provide meal and rest breaks, and provide compensation for off-the-clock work. Molly has experience briefing and arguing a multitude of dispositive motions in state and federal court and has successfully certified and settled

numerous classes for claims such as exempt misclassifications, unpaid wages, missed meal and rest breaks, and unreimbursed business expenses.

Molly began her career as a general practice litigation associate with Sandler & Mercer in Rockville, Maryland, handling a wide range of civil and criminal matters. Since 2005, Molly has primarily litigated class action cases and, for the last seven years, has focused on representing employees and consumers in class and collective actions across California and the nation, helping them recover millions of dollars in unpaid wages, restitution, and penalties. Molly graduated from Northeastern University School of Law in 2002. During law school, she interned for the U.S. Attorney's Office in Boston, Massachusetts, and the Honorable Paul L. Friedman at the U.S. District Court for the District of Columbia. She received her undergraduate degree in Marketing and International Business from the University of Cincinnati, where she graduated *summa cum laude*.

Robert Drexler. Robert Drexler is senior counsel with Capstone Law where he leads one of the firm's litigation teams prosecuting wage-and-hour class actions. He has more than 25 years of experience representing clients in wage-and-hour and consumer rights class actions and other complex litigation in state and federal courts. Over the course of his career, Mr. Drexler has successfully certified dozens of employee classes for claims such as misclassification, meal and rest breaks, and off-the-clock work, ultimately resulting in multi-million dollar settlements. He has also arbitrated and tried wage-and-hour and complex insurance cases. Mr. Drexler has been selected as one of Southern California's "Super Lawyers" every year from 2009 through 2015.

Before joining Capstone, Mr. Drexler was head of the Class Action Work Group at Khorrami Boucher, LLP and led the class action team at The Quisenberry Law Firm. Mr. Drexler graduated from Case Western Reserve University School of Law, where he served as Managing Editor of the Case Western Reserve Law Review and authored *Defective Prosthetic Devices: Strict Tort Liability for the Hospital?* 32 CASE W. RES. L. REV. 929 (1982). He received his undergraduate degree in Finance at Ohio State University where he graduated *cum laude*. Mr. Drexler is a member of Consumer Attorneys of California (CAOC) and Consumer Attorneys of Los Angeles (CAALA). He has been a featured speaker at class action and employment litigation seminars, and has published articles in CAOC's Forum Magazine and The Daily Journal. Mr. Drexler was named a "Super Lawyer" in 2017.

Robert Friedl. Robert Friedl is senior counsel at Capstone, where he devotes most of his time to the briefing and litigation strategy of consumer protection cases. Mr. Friedl has over 20 years of experience representing plaintiffs and defendants in consumer class actions, insurance coverage and defense, employment law, and personal injury. His lengthy service as an appellate attorney has yielded several published cases, including successful outcomes in *Goldstein v. Ralphs*, 122 Cal. App. 4th 229 (2004), *Morgan v. AT&T*, 177 Cal. App. 4th 1235 (2009), and *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450 (2012). At Capstone, Mr. Friedl was responsible for the appellate win in *Grant v. Unifund CCR, LLC*, 577 Fed. Appx. 693 (9th Cir. 2014).

Prior to joining Capstone, Mr. Friedl was a partner at civil litigation boutique, where he handled the firm's most complex briefing. He is a graduate of the University of Connecticut, and received his law degree from Southwestern School of Law, where he earned an American Jurisprudence Book Award.

Jamie Greene. Jamie Greene is senior counsel at Capstone where she evaluates potential new cases, develops new claims, and manages client relations. Well-versed in wage and hour law and federal and state consumer protection statutes, Ms. Greene supervises the pre-litigation phase for all cases, including

investigation, analysis, and client consultation. Ms. Greene began her legal career at Makarem & Associates representing clients in a wide array of cases ranging from wrongful death, insurance bad faith, employment, personal injury, construction defect, consumer protection, and privacy law. She is a graduate of the University of Southern California Gould School of Law and earned her bachelor's degree from Scripps College in Claremont, California. She is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), and the Beverly Hills, Los Angeles County, and Santa Monica Bar Associations.

Mark A. Ozzello. Mark A. Ozzello is a senior counsel with Capstone Law, where he leads the firm's consumer team. He is a nationally recognized and respected consumer and employment attorney who has litigated those issues throughout the country. Mark has always been at the forefront of consumer rights, sitting on the Board of Governors for the Consumer Attorneys of California and regularly appearing as a featured speaker on consumer rights issues nationwide.

Mark is a former partner of Arias Ozzello & Gignac and, most recently, was Of Counsel to Markun Zusman Freniere & Compton, LLP. In his capacity as a litigator, he has obtained results for his clients in excess of \$200 million dollars. Mark has also achieved consistent success in the California Courts of Appeal, and several judicial opinions regularly cite to his matters as authority for class certification issues. He has also argued appellate issues in several Circuit Courts of Appeals with great success. Mark attended Pepperdine University School of Law where he was an Editor to the Law Review, publishing several articles during his tenure in that capacity. He received his undergraduate degree from Georgetown University.

Mark has always strived to be an integral part of local communities. He has established educational scholarship programs at several charitable organizations, including El Centro De Amistad in Los Angeles and St. Bonaventure Indian Mission and School in Thoreau, New Mexico, and presides over a legal clinic in Los Angeles which provides pro bono legal assistance to non-English speaking individuals. Mark is admitted to practice in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California and the United States Court of Appeals for the Eighth and Ninth Circuits.

Bevin Allen Pike. Bevin Allen Pike is a senior counsel with Capstone Law where she focuses primarily on wage-and-hour class actions. Ms. Pike has spent her entire legal career representing employees and consumers in wage-and-hour and consumer rights class actions. Over the course of her career, Ms. Pike has successfully certified dozens of employee and consumer classes for claims such as meal and rest breaks, unpaid overtime, off-the-clock work, and false advertising.

Before joining Capstone, Ms. Pike's experience included class and representative action work on behalf of employees and consumers at some of the leading plaintiffs' firms in California. Ms. Pike graduated from Loyola Law School, Los Angeles, where she was an Editor for the International and Comparative Law Review. She received her undergraduate degree from the University of Southern California. Ms. Pike has been selected as one of Southern California's "Super Lawyers – Rising Stars" every year from 2012 through 2015.

Eduardo Santos. Eduardo Santos is a senior counsel at Capstone Law, concentrating his practice on managing and obtaining court approval of many of Capstone's wage-and-hour, consumer, and PAGA settlements, from the initial contract drafting phase to motion practice, including contested motion practice on attorneys' fees. Over the course of his career, Mr. Santos has helped to secure court approval of over one hundred high-stakes class and representative action settlements totaling over \$100 million.

Before joining Capstone, Mr. Santos began his career at a prominent plaintiff's firm in Los Angeles specializing in mass torts litigation, with a focus on complex pharmaceutical cases. Most notably, he was involved in the national Vioxx settlement, which secured a total of \$4.85 billion for thousands of individuals with claims of injuries caused by taking Vioxx. Mr. Santos graduated from Loyola Law School, Los Angeles, where he was a recipient of a full-tuition scholarship awarded in recognition of academic excellence. While in law school, Mr. Santos served as an extern for the Honorable Thomas L. Willhite, Jr. of the California Court of Appeal. He graduated magna cum laude from UCLA and was a recipient of the Ralph J. Bunche Scholarship for academic achievement. He is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California.

John Stobart. John Stobart is a senior counsel with Capstone Law. He focuses on appellate issues in state and federal courts and contributes to the firm's amicus curiae efforts to protect and expand the legal rights of California employees and consumers. John has significant appellate experience having drafted over two dozen writs, appeals and petitions, and having argued before the Second, Fourth, and Fifth Districts of the California Court of Appeal.

Prior to joining Capstone, John was a law and motion attorney who defended against civil liability in catastrophic injury and wrongful death cases brought against his clients, which included the railroad, public schools, small businesses, and commercial and residential landowners. He has drafted and argued scores of dispositive motions at the trial court level and had success in upholding judgments and verdicts on appeal. He graduated cum laude from Thomas Jefferson School of Law where he was on the mock trial competition team and earned his undergraduate degree from the Ohio State University.

Orlando Villalba. Orlando Villalba is a senior counsel at Capstone Law. His practice primarily involves wage-and-hour class actions and PAGA litigation on behalf of employees for the failure to pay overtime and minimum wages, failure to provide meal and rest breaks, claims under the Fair Labor Standards Act, and other California Labor Code violations.

Prior to joining Capstone, Orlando began his career at Kirkland & Ellis where he handled a wide range of business litigation matters, including transnational contract disputes, insurance-related tort claims, developer litigation, and civil rights actions. He also has extensive plaintiff-side experience representing government agencies and note-holders in the pursuit of mortgage and other fraud losses. Orlando graduated from Stanford Law School, where he served as an articles editor on the Stanford Journal of Law, Business & Finance. After law school, he clerked for the Honorable Warren Matthews of the Alaska Supreme Court. Orlando received his bachelor's degree in International Business from the University of Southern California.

Orlando is admitted to practice in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California and the United States Court of Appeals for the Ninth Circuit.

Tarek Zohdy. An associate with Capstone, Tarek Zohdy litigates automotive defect class actions, along with other consumer class actions for breach of warranty and consumer fraud. At Capstone, he has worked on several large-scale automotive class action settlements that have provided significant relief to thousands of defrauded car owners. Before joining Capstone, Mr. Zohdy spent several years representing individual consumers in their actions against automobile manufacturers and dealerships for breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act and the Magnuson-Moss Warranty Act, commonly referred to together as "Lemon Law." He also handled fraudulent misrepresentation and

omission cases pursuant to the Consumers Legal Remedies Act. Mr. Zohdy graduated from Louisiana State University *magna cum laude* in 2003, and Boston University School of Law in 2006, where he was a member of the criminal clinic representing underprivileged criminal defendants.

Associates

Ari Bassar. Ari Bassar is an associate with Capstone Law, where his practice focuses on litigating complex wage-and-hour class actions and PAGA representative actions. Prior to joining Capstone, Mr. Bassar litigated consumer fraud, antitrust, product defect, securities, and employment class actions at several prominent plaintiffs' firms. Mr. Bassar earned his Juris Doctor from Santa Clara University School of Law, where he spent his summers as a Bar Certified Law Clerk in the Economic Crimes Unit of the Santa Clara County Office of the District Attorney. He received dual-degrees in Economics and Psychology from the University of California, San Diego. He is admitted to practice law in California and before the United States District Court for the Northern, Eastern, Central, and Southern Districts of California and is a contributing author to the Competition Law Journal, the official publication of the Antitrust, UCL, and Privacy Section of the State Bar of California. His publications have examined trends in employment and antitrust litigation and the regulatory authority of the Federal Trade Commission.

Jordan Carlson. Jordan Carlson is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Mr. Carlson began his career as an associate at a civil litigation firm where he handled a wide variety of matters including environmental contamination defense, bad faith insurance litigation, wrongful death, employment, real estate, and business litigation. He graduated from Whittier Law School in 2013. While attending law school, he served as a Summer Associate for the California Department of Justice. Mr. Carlson earned his bachelor's degree from Boston University where he graduated cum laude and is admitted to practice law in California and before the United States District Court for the Central District of California.

Anthony Castillo. Anthony Castillo is an associate with Capstone Law. His practice focuses on analyzing pre-litigation wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work violations. Prior to joining Capstone, he was an associate at a California bankruptcy practice, where he represented individual and business debtors in liquidations and re-organizations as well as various debt and foreclosure defense-related issues. Mr. Castillo graduated from Loyola Law School, Los Angeles in 2009, where he volunteered with the Disability Rights Legal Center. He attended Stanford University for his undergraduate degree, majoring in Political Science and minoring in History. Anthony is admitted to practice law in California and Washington and before the United States District Court for the Central and Southern Districts of California.

Joseph Hakakian. Joseph Hakakian is an associate with Capstone Law. His practice focuses on prosecuting wage-and-hour class and representative actions in state and federal court. Prior to joining Capstone Law, Joseph served as a summer clerk for Mark Ozzello at Markun Zusman Freniere & Compton, LLP, working on various actions including wage-and-hour claims, unpaid overtime, false advertising, and unfair competition. Joseph graduated from UCLA School of Law, with a business law specialization, where he served as a staff editor for the Journal of Environmental Law and Policy and worked as a law clerk with the Consumer Protection Division of the Los Angeles District Attorney's Office. Prior to attending law school, Joseph received his undergraduate degree from University of California, Los Angeles, in 2013, where he graduated summa cum laude, Dean's Honor List, and College Honors, and received scholastic achievement

awards from Golden Key Honor Society and Phi Alpha Theta Honor Society. Joseph is an active member of the Consumer Attorneys Association of Los Angeles (CAALA), Consumer Attorneys of California (CAOC), and Beverly Hills, Los Angeles County, and Santa Monica Bar Associations. He is admitted to practice law in California and before the United States District Court for the Northern, Eastern, and Central Districts of California and the United States Court of Appeals for the Ninth Circuit.

Robin Hall. Robin Hall is an associate with Capstone Law, where she heads the firm's research department. Ms. Hall assists in pre-litigation investigation of employment and consumer statutory claims, and handles complex research projects. A founding editor of the Impact Litigation Journal (ILJ), Ms. Hall has authored numerous articles on emerging legal issues published on ILJ. Ms. Hall began her career and received her training as an associate at Baker & Hostetler LLP, where she represented Fortune 500 companies in labor and employment litigation, including class actions. She attended Indiana University's Maurer School of Law, where she graduated *cum laude* in 2007. During law school, Ms. Hall served as Editor-in-Chief of the Indiana Journal of Global Legal Studies and Director of the Inmate Legal Assistance Clinic. She received her undergraduate degree from the University of Missouri and is admitted to practice law in California.

Ariel Harman-Holmes. Ariel Harman-Holmes is an associate at Capstone Law. Her practice is focused on wage-and-hour class and PAGA representative actions. She began her career in New Orleans as a public defender, and then founded her own firm handling appeals and plaintiff-side insurance matters. After relocating to California, until just prior to joining Capstone, Ariel worked for The Rudd Law Firm where her practice involved intellectual property, commercial disputes, and torts. Ariel is a graduate of New York University and Cornell Law School, where she obtained her Juris Doctor in 2007.

Jonathan Lee. An associate with Capstone, Jonathan Lee primarily litigates employment class actions. At Capstone, Mr. Lee has worked on several major successful class certification motions, and his work has contributed to multi-million dollar class settlements against various employers, including restaurant chains, retail stores, airport staffing companies, and hospitals. Prior to joining Capstone, Mr. Lee defended employers and insurance companies in workers' compensation actions throughout California. Mr. Lee graduated in 2009 from Pepperdine University School of Law, where he served as an editor for the Journal of Business, Entrepreneurship and the Law; he received his undergraduate degree from UCLA.

Trisha Monesi. Trisha Monesi is an associate with Capstone. Her practice focuses on prosecuting consumer class actions in state and federal court. Trisha graduated from Loyola Law School, Los Angeles in 2014, where she served as an editor of the Loyola of Los Angeles Entertainment Law Review and was a certified law clerk at the Center for Juvenile Law and Policy. She earned her undergraduate degree from Boston University in 2011, where she majored in Political Science and International Relations. She is an active member of the Women Lawyers Association of Los Angeles, and the Los Angeles County and Beverly Hills Bar Associations. Trisha is admitted to practice law in California and before the United States District Court for the Northern, Eastern, and Central Districts of California.

Cody Padgett. An associate with Capstone, Cody Padgett's practice focuses on prosecuting automotive defect and other consumer class action cases in state and federal court. He handles consumer cases at all stages of litigation, and has contributed to major settlements of automobile defect actions valued in the tens of millions. Prior to joining Capstone Law, Mr. Padgett was a certified legal intern with the San Diego County Public Defender's Office. During law school, Mr. Padgett served as a judicial extern to the Honorable C. Leroy Hansen, United States District Court for the District of New Mexico. He graduated from California

Western School of Law in the top 10% of his class and received his undergraduate degree from the University of Southern California, where he graduated *cum laude*.

Mao Shiokura. Mao Shiokura is an associate with Capstone. Her practice focuses on identifying, analyzing, and developing new wage-and-hour and consumer claims, including violations of the Fair Credit Reporting Act, Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law. Prior to joining Capstone, Ms. Shiokura was an associate at a California lemon law firm, where she represented consumers in Song-Beverly, Magnuson-Moss, and fraud actions against automobile manufacturers and dealerships. Ms. Shiokura graduated from Loyola Law School, Los Angeles in 2009, where she served as a staff member of Loyola of Los Angeles Law Review. She earned her undergraduate degree from the University of Southern California, where she was a Presidential Scholar and majored in Business Administration, with an emphasis in Cinema-Television and Finance.

Brooke Waldrop. Brooke Waldrop is an associate with Capstone Law. Her practice focuses on the pre-litigation analysis of wage-and-hour and consumer claims, including claims for overtime wages, meal and rest periods, and off-the-clock work. Brooke graduated from University of Utah S.J. Quinney College of Law in 2008, where she was a member of Extra Muros, an international law journal and think tank. During law school, she volunteered and clerked for the Disability Law Center, International Rights Advocates in Washington, D.C., the Utah Crime Victims Legal Center, and the Utah Council for Victims of Crime. After law school, Brooke obtained an MFA at USC's School of Cinematic Arts Writing for Screen and Television program where she was also awarded the prestigious Annenberg Fellowship. Before joining Capstone as an associate, she worked at Capstone as a contract attorney and settled a copyright infringement suit for a commercially-successful property. She earned her undergraduate degree from Westminster College of Salt Lake, majoring in Political Studies with an emphasis in Philosophy, and minoring in Theater, where she graduated summa cum laude.

OUTREACH AND EDUCATION

To increase public awareness about the issues affecting class action and other representative litigation in the consumer and employment areas, Capstone publishes the Impact Litigation Journal (www.impactlitigation.com). Readers have access to news bulletins, op-ed pieces, and legal resources. By taking advantage of social media, Capstone hopes to spread the word about consumer protection and employee rights to a larger audience than has typically been reached by traditional print sources, and to thereby contribute to the enforcement of California's consumer and workplace protection laws.

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8 Attorneys for Plaintiff Robert Onofre

9 *Additional counsel listed on next page*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE

12 ROBERT ONOFRE, as an aggrieved employee
pursuant to the Private Attorneys General Act
13 (“PAGA”),

14 Plaintiffs,

15 vs.

16 ANAHEIM MAJESTIC GARDEN HOTEL, a
California corporation; PHR MANAGEMENT,
17 INC., a California corporation; KEN REAL
ESTATE LEASE LTD., a business entity of
18 unknown form; and DOES 1 through 10,
inclusive,

19 Defendants.

20
21 MIGUEL ZALDIVAR AVILA, individually
and on behalf of all others similarly situated,

22 Plaintiffs,

23 vs.

24 ANAHEIM MAJESTIC GARDEN HOTEL,
business form unknown; TSUBAKI HOTEL
25 COLLECTION, business form unknown, and
DOES 1-50, inclusive,

26 Defendants.
27
28

Case No.: 30-2016-00861544-CU-OE-CXC

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Date: April 4, 2019
Time: 2:00 p.m.
Place: Department CX102

1 James Hawkins (SBN 192925)
James@jameshawkinsaplc.com
2 Gregory Mauro (SBN 222239)
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3 James Hawkins, APLC
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1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

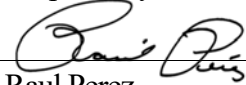
2 **PLEASE TAKE NOTICE** that on April 4, 2019 at 2:00 p.m., or as soon thereafter as counsel
3 may be heard, in Department CX102 of the above-captioned court, located at 751 W Santa Ana Blvd,
4 Santa Ana, California 92701, the Honorable Peter Wilson presiding, Plaintiffs Robert Onofre and
5 Miguel Zaldivar will, and hereby do, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Settlement
7 and Release, attached as Exhibit 1 to the Declaration of Raul Perez;
- 8 2. Approve distribution of the proposed Notice of Class Action Settlement to the
9 Settlement Class;
- 10 3. Set a hearing date for final approval of the settlement.

11 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
12 Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement; (3)
13 the Declaration of Raul Perez; (4) the Declaration of James Hawkins; (5) the Joint Stipulation of Class
14 Settlement and Release; (6) the Notice of Class Action Settlement; (7) the [Proposed] Order Granting
15 Preliminary Approval of Class Action Settlement; (8) the records, pleadings, and papers filed in this
16 action; and (9) upon such other documentary and oral evidence or argument as may be presented to the
17 Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully
18 request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

19
20 Dated: March 8, 2019

Respectfully submitted,

21 By: 

22 Raul Perez
23 Robert Drexler
24 Molly DeSario
25 Jonathan Lee
26 **CAPSTONE LAW APC**

27 James W. Hawkins
28 **JAMES W. HAWKINS, APLC**

Attorneys for Plaintiffs Robert Onofre and Miguel
Zaldivar

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10	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016	
11	WL 1359725 (E.D. Pa. Apr. 6, 2016)	32
12	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 U.S. Dist.	
13	LEXIS 108195 (N.D. Cal. Nov. 5, 2008)	17
14	<i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	27
15	<i>In Re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972)	27
16	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004)	18
17	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	18
18	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa.	
19	Feb. 28, 2014)	32
20	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002)	26
21	<i>Nat’l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	18
22	<i>Newman v. Stein</i> , 464 F. 2d 6893 (2d Cir.)	18
23	<i>Officers for Justice v. Civil Serv. Comm.</i> , 688 F. 2d 615 (C.A. Cal. 1982)	18
24	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	28
25	<i>See In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	18
26		
27	STATE STATUTES	
28	8 Cal. Code of Regs. § 13520	22

1	Cal. Civ. Proc. Code § 382	31
2	Cal. Lab. Code § 203.....	22
3	Cal. Lab. Code §§ 2698 <i>et seq.</i> (Priv. Atty's. Gen. Act (PAGA)).....	19, 24, 26, 28
4	Cal. Labor Code § 203	22
5	Cal. R. Ct. 3.769.....	14, 15
6	Cal. R. Ct. 3.769(b).....	15
7	Cal. R. Ct. 3.769(c).....	15
8	Cal. R. Ct. 3.769(d).....	15
9	Cal. R. Ct. 3.769(e).....	15
10	Cal. R. Ct. 3.769(f)	15
11	Cal. R. Ct. 3.769(g).....	15

12

13 **SECONDARY AUTHORITIES**

14	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	15, 17
15	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> (2d ed. 1986).....	27

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Robert Onofre and Miguel Zaldivar (collectively, “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately 350 current and former employees of Defendants Anaheim Majestic Garden Hotel, PHR Management, Inc., and Ken Real Estate Lease Ltd. (“Defendants”) (collectively with Plaintiffs, the “Parties”). The basic terms of the Settlement provide for the following:

(1) A Settlement Class defined as: (1) all persons who were employed by Defendants in non-exempt positions in the State of California at any time during the period from August 26, 2012 to October 15, 2018 (“Class Members”), and (2) all persons who were employed by Defendants in non-exempt positions in the State of California at any time during the period from June 30, 2015 to September 30, 2016 (“Wage Statement Class Members”).

(2) A **non-reversionary** Class Settlement Amount of \$1,850,000. The Class Settlement Amount includes:

(a) A Net Settlement Amount of \$1,115,833 (the Class Settlement Amount minus the requested Attorneys’ Fees And Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the Class Representative Enhancement Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the applicable (“Class Period”). **The Entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**

(b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$616,667), and litigation costs and expenses not to exceed \$50,000, to Capstone Law APC and James Hawkins APLC (collectively, “Plaintiffs’ Counsel”).

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

1 (c) Settlement administration costs of up to \$15,000.

2 (d) A \$37,500 payment to the LWDA pursuant to the Labor Code Private Attorneys
3 General Act of 2004 (“PAGA”).

4 (e) Class Representative Enhancement Payments of \$7,500 each, to Robert Onofre
5 and Miguel Zaldivar for their services on behalf of the Settlement Class, the risks they took in
6 bringing the class on behalf of the class and for general releases of all of their own claims arising
7 out of their employment with Defendants.

8 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
9 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
10 length with helpful guidance from Jeffrey A. Ross, Esq., an experienced and well-respected class action
11 mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging
12 approximately \$3,190 per Class Member—is particularly impressive when viewed against the
13 difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather
14 than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they
15 have to bear the risk of class certification being denied or of Defendants prevailing at trial.

16 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
17 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs
18 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

19 **II. FACTS AND PROCEDURE**

20 **A. Brief Overview of the Litigation**

21 On June 30, 2016, Plaintiff Robert Onofre filed suit in the Superior Court of California for the
22 County of Orange against Defendants Anaheim Majestic Garden Hotel, PHR Management, Inc., and
23 Ken Real Estate Lease Ltd., alleging a representative PAGA action on behalf of non-exempt employees
24 of the hotel (“Onofre Action”). Mr. Onofre is represented by Capstone Law APC. (Declaration of Raul
25 Perez [“Perez Decl.”] ¶ 2.)

26 On August 26, 2016, Plaintiff Miguel Zaldivar Avila filed suit in the Superior Court of
27 California for the County of Orange against Defendants Anaheim Majestic Garden Hotel and Tsubaki
28 Hotel Collection, alleging a proposed class action on behalf of non-exempt employees of the hotel

1 (“Avila Action”). Mr. Avila is represented by James Hawkins APLC. (Declaration of James Hawkins
2 [“Hawkins Decl.”] ¶ 1.)

3 On November 29, 2017, Defendants filed their motion to compel arbitration in the Avila Action,
4 and motions to stay civil court proceedings in the Avila Action and Onofre Action pending arbitration.
5 On January 23, 2018, the Court denied Defendants’ motions, finding that: (1) Defendants waived the
6 right to compel arbitration by proceeding with litigation; (2) the arbitration agreement was procedurally
7 unconscionable as a “take it or leave it” agreement; (3) the arbitration agreement was substantively
8 unconscionable because of unfair attorney fee provisions and because it did not include any provisions to
9 compel the employer to arbitration; and (4) the arbitration clause excepted “any wage and hour matter
10 within the jurisdiction of the California Labor Commissioner” which arguably includes all wage and
11 hour claims. (Perez Decl. ¶ 4.)

12 On March 19, 2018, Defendants filed their notice of appeal of the order denying the motion to
13 compel arbitration. Both the Avila Action and Onofre Action were stayed pending the outcome of the
14 appeal. While the actions were stayed, the Parties agreed to participate in a mediation in an attempt to
15 negotiate a compromise of the claims alleged. (Perez Decl. ¶ 5.)

16 **B. The Parties Settled After A Second Mediation**

17 The Parties participated in two mediations with Jeffrey A. Ross, Esq., an experienced mediator
18 of wage and hour class actions. The first mediation was held on August 7, 2017. Although the Parties did
19 not settle at the first mediation, Mr. Ross helped to narrow the gap between the Parties’ respective
20 positions. (Perez Decl. ¶ 6.)

21 The Parties participated in a second mediation on September 25, 2018. With Mr. Ross’
22 guidance, the Parties were eventually able to negotiate a complete settlement of Plaintiffs’ claims. The
23 terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class
24 Settlement and Release. (Perez Decl. ¶ 7, Ex. 1.) At all times, the Parties’ negotiations were adversarial
25 and non-collusive. The Settlement therefore constitutes a fair, adequate, and reasonable compromise of
26 the claims at issue. (*Id.*)

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1 **C. The Proposed Settlement Fully Resolves Plaintiffs’ Claims**

2 **1. Composition of the Settlement Class**

3 The proposed Settlement Class consists of all: (1) all persons who were employed by Defendants
4 in non-exempt positions in the State of California at any time during the period from August 26, 2012 to
5 October 15, 2018; and (2) all persons who were employed by Defendants in non-exempt positions in the
6 State of California at any time during the period from June 30, 2015 to September 30, 2016. (Settlement
7 Agreement ¶ 5.) There are approximately 350 Class Members.

8 **2. Settlement Consideration**

9 Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for the
10 Class Settlement Amount of \$1,850,000. The Class Settlement Amount includes: (1) automatic
11 payments to all Participating Class Members—meaning, all Class Members except those who submit
12 timely and valid Requests for Exclusion—from the Net Settlement Amount; (2) \$616,667 in attorneys’
13 fees (i.e., one-third of the common fund) and up to \$50,000 in litigation costs to Plaintiffs’ Counsel; (3)
14 Settlement Administration Costs of approximately \$15,000; (4) a \$37,500 payment to the LWDA; and
15 (5) Class Representative Enhancement Payments of \$7,500 each, for Plaintiffs’ services on behalf of the
16 Settlement Class, the risks they took in bringing their class claims and for general releases of all claims
17 arising out of their own employment with Defendants. (Settlement Agreement ¶¶ 12-13.)

18 Subject to the Court approving attorneys’ fees and costs, settlement administration costs, the
19 payment to the LWDA, and the Class Representative Enhancement Payments, the Net Settlement
20 Amount will be distributed to Participating Class Members in full. (Settlement Agreement ¶ 13(f).)

21 **3. Formula for Calculating Payments from the Net Settlement Amount**

22 Each Class Member’s settlement payment will be based on the number of Workweeks each
23 Class Member/Wage Statement Class Member worked in a non-exempt position during the applicable
24 Class Period (August 26, 2012 through October 15, 2018) and Wage Statement Class Period (June 30,
25 2015 to September 30, 2016). Eighty percent of the Net Settlement Amount will be allocated to all Class
26 Members (the “Class Member Fund”), and (2) twenty percent of the Net Settlement Amount will be
27 allocated to all Wage Statement Class Members (the “Wage Statement Fund”). Each Class Member’s
28 respective shares of the Class Member Fund and Wage Statement Fund will be allocated on a pro-rata

basis according to the number of Workweeks worked by each Class Member.

Class Member Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's share of the Class Member Fund, the Settlement Administrator will use the following formula: $\text{Share of Class Member Fund} = \text{Weeks Worked by Class Member} \div \text{Weeks Worked by All Class Members} \times \text{Class Member Fund}$. The entire Class Member Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Class Members Fund to ensure that the entire Class Member Fund is distributing to Participating Class Members.

Wage Statement Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Wage Statement Class Members during the Wage Statement Class Period. To determine each Wage Statement Class Member's share of the Wage Statement Fund, the Settlement Administrator will use the following formula: $\text{Share of Wage Statement Fund} = \text{Weeks Worked by Wage Statement Class Member} \div \text{Weeks Worked by All Wage Statement Class Members} \times \text{Wage Statement Fund}$. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Wage Statement Class Member's share of the Wage Statement Fund to ensure that the entire Wage Statement Fund is distributing to Participating Wage Statement Class Members.

Given that there are approximately 350 Class Members, the average net recovery will be approximately \$3,190. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average

net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

4. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Claims during the applicable Class Period:

For all Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the same set of operative facts as those set forth in the operative complaints in the Actions that accrued during the Class Period, including (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for the failure to reimburse for necessary business expenses; and (vii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims ("Released Class Claims"); and

For all Wage Statement Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the allegation that Defendant issued non-compliant wage statements during the Wage Statement Class Period, including all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 226 and 2698, et seq. based on the allegation that Defendant issued non-compliant wage statements ("Released Wage Statement Claims").

(Settlement Agreement ¶ 23.)

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members

1 for their comments and objections. Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.
2 App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a
3 final approval hearing to inquire into the fairness of the proposed settlement”). The motion for
4 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the
5 class, and (3) the proposed order. Rule 3.769(c). The motion must also identify any agreement
6 concerning the payment of attorneys’ fees. Rule 3.769(b).

7 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
8 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide
9 notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also
10 approve a procedure for class members to file objections to the settlement. Rule 3.769(f). At the final
11 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. Rule
12 3.769(g).

13 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
14 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” See
15 *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
16 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

17 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
18 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court
19 to act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors
20 “is small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
21 (1996).²

22
23 ² The presumption of fairness is consistent with California’s public policy goal of favoring
24 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
25 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
26 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
27 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
28 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”);
Skulnick v. Roberts Express, Inc., 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages
litigation and encourages settlement [because settlements] can produce peace and goodwill in the
community while reducing the expense and persistency of litigation”). Additionally, in reviewing the
fairness of a class action settlement, due regard should be given to what is “otherwise a private
consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at

1 **2. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and**
2 **Legal Issues and Were Thus Able to Objectively Assess the Settlement’s**
3 **Reasonableness**

4 Plaintiffs’ Counsel’s evaluation of the settlement terms was informed by several factors,
5 including their analysis of the considerable discovery that had been conducted. At the outset of the
6 litigation, Plaintiffs provided Plaintiffs’ Counsel with detailed narratives of their experiences working for
7 Defendants, and the circumstances that gave rise to the alleged Labor Code violations. Plaintiffs were
8 able to share with Plaintiffs’ Counsel their intimate understanding of Defendants’ policies and practices,
9 and how these policies and practices were instituted on a daily basis. In addition to informing Plaintiffs’
10 Counsel’s initial evaluation of the lawsuit, the information that Plaintiffs provided also influenced
11 Plaintiffs’ Counsel’s formal discovery efforts, including written discovery. (Perez Decl. ¶ 8; Hawkins
12 Decl. ¶ 2.)

13 Plaintiffs’ written discovery requests led to the production of considerable evidence, including
14 the policies and practices directly at issue, as well as those policies and procedures that potentially
15 affected Defendants’ ability to comply with the Labor Code. Plaintiffs’ Counsel analyzed over 2,800
16 pages of documents that were produced by Defendants, including time and wage records. Based on their
17 review of discovery produced by Defendants, Plaintiffs’ Counsel were able to persuasively pinpoint the
18 problematic policies and procedures that would ultimately have formed the backbone of the motion for
19 class certification. These documents also enabled Plaintiffs’ Counsel to determine Defendants’ potential
20 exposure for damages and penalties. (Perez Decl. ¶ 9; Hawkins Decl. ¶ 5.)

21 In summary, Plaintiffs’ Counsel performed a searching investigation into the claims at issue,
22 which included: (1) determining Plaintiffs’ suitability as putative representatives through interviews,
23 background investigations, and analyses of their employment files and related records; (2) evaluating all
24 of Plaintiffs’ potential representative claims; (3) researching similar wage and hour class actions as to the
25 claims brought, the nature of the positions, and the type of employer; (4) analyzing a time and wage
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1389. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

1 records; (5) researching settlements in similar cases; (6) evaluating Plaintiffs' claims and estimating
2 Defendants' liability for purposes of settlement; (7) drafting the mediation brief; and (8) participating in
3 the mediation. (Perez Decl. ¶ 10; Hawkins Decl. ¶ 6.)

4 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs'
5 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
6 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
7 known facts and circumstances, including the risk of significant delay and uncertainty associated with
8 litigation, various defenses asserted by Defendants. (Perez Decl. ¶ 11; Hawkins Decl. ¶ 6.)

9 **3. The Settlement Was Reached Through Arm's-Length Bargaining in which**
10 **All Parties Were Represented by Experienced Counsel**

11 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
12 settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the
13 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
14 thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

15 As explained above, the Parties participated in a mediation with Jeffrey A. Ross, Esq., an
16 experienced mediator of wage and hour class actions, who helped manage the Parties' expectations and
17 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Apple Computer, Inc.*
18 *Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
19 (mediator's participation weighs considerably against any inference of a collusive settlement), *D'Amato*
20 *v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification
21 settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."").
22 At all times, the Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶¶ 6-7.)

23 The Parties were represented by experienced class action counsel throughout the negotiations
24 resulting in this Settlement. Plaintiffs are represented by Capstone Law APC and James Hawkins
25 APLC. Plaintiffs' Counsel employ seasoned class action attorneys who regularly litigate wage and hour
26 claims through certification and on the merits, and have considerable experience settling wage and hour
27 class actions. (Perez Decl. ¶ 37-40, Ex. 2; Hawkins Decl. ¶¶ 7-8.)

28 Defendants are represented by Zuber Lawler & Del Duca LLP, a respected defense firm.

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1 guidelines require only “a **reasonable** estimate of the nature and amount of recovery that could be obtained
2 on behalf of the class if plaintiffs’ claims prevailed.” *Guidelines for Motions for Preliminary and Final*
3 *Approval of Class Action Settlement* (emphasis added). Overall, “the most important factor” in determining
4 “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced
5 against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

6 During Plaintiffs’ Counsel’s investigation, Defendants produced Class Member data which formed
7 the basis of Plaintiffs’ Counsel’s valuation of Defendants’ maximum theoretical exposure for the claims at
8 issue. Plaintiffs’ Counsel determined an appropriate range of recovery for settlement purposes by offsetting
9 Defendants’ maximum theoretical exposure by: (i) the strength of Defendants’ affirmative defenses; (ii) the
10 risk of certification being denied; (iii) the risk of the Court finding that a PAGA trial would be
11 unmanageable;⁴ (iii) the risk of losing on any of a number of dispositive motions that could have been
12 brought between certification and trial (e.g., motions to decertify the class, and/or motions for summary
13 judgment) which may have eliminated all or some of Plaintiffs’ claims, or barred evidence necessary to
14 prove such claims; (iv) the risk of losing at trial or prevailing on only some of the claims; (vi) the chances of
15 the Court exercising its discretion to reduce PAGA penalties (see Lab. Code section 2699(e)); (vi) the
16 chances of a favorable verdict being reversed on appeal; and (viii) the difficulties attendant to collecting on a
17 judgment (collectively, the “Discount Factors”). (Perez Decl. ¶ 14.)

18 Minimum Wage Claim / Business Expense Reimbursement Claim. Defendants required
19 prospective employees to undergo an offsite drug test. Plaintiffs allege that Defendants should have
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21 ⁴ Although Plaintiffs maintain that such a trial would be manageable, they are aware of the risks,
22 as illustrated by the following cases: *See, e.g., Ortiz v. CVS Caremark Corp.*, No. C-12-05859 EDL,
23 2014 WL 1117614, at *4 (N.D. Cal. Mar. 19, 2014) (“[T]he Court finds that the PAGA claim in this
24 case is unmanageable. In reaching this decision, the Court does not conclude that PAGA claims are
25 unmanageable in general, but only that the circumstances of this case make the PAGA claim here
26 unmanageable because a multitude of individualized assessments would be necessary”), *Brown v. Am.*
27 *Airlines, Inc.*, No. CV 10-8431-AG (PJWx), 2015 WL 6735217, at *1 (C.D. Cal. Oct. 5, 2015) (“The
28 Court finds manageability issues exist regarding PAGA overtime claims here. There appears to be too
many individualized assessments to determine PAGA violations concerning overtime pay.”), *Bowers v.*
First Student, Inc., No. 2:14-CV-8866-ODW (Ex), 2015 WL 1862914, at *4 (C.D. Cal. April 23, 2015)
 (“A PAGA claim can be considered unmanageable when a multitude of individualized assessments
would be necessary”); *Litty v. Merrill Lynch & Co., Inc.*, No. CV 14-0425 PA (PJWx), 2014 WL
5904904, at *3 (C.D. Cal. Nov. 10, 2014) (“The circumstances of this case make the PAGA claim
unmanageable because a multitude of individualized assessments would be necessary”).

1 compensated employees for this time as they were under Defendants’ “discretion and control.”⁵
2 Plaintiffs also allege that Defendants violated Labor Code section 2800 and 2802 by failing to reimburse
3 employees for mileage to the drug-testing facilities.⁶ Plaintiffs calculated Defendants’ maximum
4 potential exposure for minimum wages relating to the drug-test theory of liability by taking the product
5 of the total number of Class Members (350), the approximate average duration of the drug test (including
6 travel time) (1.5 hours), and the average hourly rate of pay (\$13): $350 \times 1.5 \text{ hours} \times \$13 = \$6,825.00$.
7 Plaintiffs calculated Defendants’ maximum potential exposure for business expense reimbursement
8 relating to the drug-test theory of liability by taking the product of the total number of Class Members
9 (350), the approximate average number of miles driven by Class Members (6.5 miles), and the IRS rate
10 for mileage reimbursement (\$0.55): $350 \times 6.5 \text{ miles} \times \$0.55 = \$1,251.25$. (Perez Decl. ¶ 15.)

11 Plaintiffs determined an appropriate range of recovery for the minimum wage claim for settlement
12 purposes by offsetting Defendants’ maximum theoretical exposure by the Discount Factors. With respect to
13 defenses, Defendants would likely have maintained that activities undertaken by job applicants at the time
14 of hiring—such as employer-mandated drug tests and physical examinations—are not “work”
15 performed by an “employee,” and are therefore not compensable time. See *Gunawan v. Howroyd-*
16 *Wright Employment Agency*, 997 F. Supp. 2d 1058, 1062 (C.D. Cal. 2014). In *Gunawan*, following a
17 job interview, a prospective employee was sent to a second interview with one of the prospective
18 employer’s clients. After an employment relationship was later established, the plaintiff sought
19 compensation for the time spent on the second interview. The court held that a prospective employee is
20 not “entitled to payment of the minimum wage for time spent interviewing for prospective employment”
21 and granted summary judgment because, while performing these pre-employment tasks, Gunawan “was

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23
24 ⁵ Wage Order No. 9 defines “hours worked” as “time during which an employee is subject to the
25 control of the employer, and includes all the time the employee is suffered or permitted to work, whether
26 or not required to do so.” 8 Cal. Code Regs. § 11090(2)(H). The California Supreme Court has made
27 clear that the factors of “time during which an employee is subject to the control of an employer” and
28 “time the employee is suffered and permitted to work” are independent factors, each of which defines
whether certain time spent is compensable as “hours worked.” *Mendiola v. CPS Sec. Solutions, Inc.*, 60
Cal. 4th 833, 839 (2015) (citing *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 582 (2000)). Thus, “an
employee who is subject to an employer’s control does not have to be working during that time to be
compensated.” *Id.* (citations omitted).

⁶ Sections 2800 and 2802 of the Labor Code require that an employer indemnify an employee
for all reasonable business-related expenses incurred as a direct discharge of his or her duties.

1 not an employee of KForce performing compensable work.” *Id.* (finding that section 1194 “[q]uite
2 clearly . . . contemplates that only an employee, and not a prospective employee or applicant for
3 employment, can recover”). (Perez Decl. ¶ 16.)

4 Defendants would also have argued that under *Morillion*, an employer does not exercise
5 “control” over employees by simply requiring them to appear at some specific destination. *Id.* at 583
6 (rejecting argument that commuting and grooming would be paid under the “control” rule because the
7 “level of the employer’s control over its employees, *rather than the mere fact that the employer requires*
8 *activity, is determinative*”) (emphasis added). *See also Gunawan*, 997 F. Supp. 2d at 1063 (finding time
9 spent on second interview was not under “control” of prospective employer because, although company
10 sent applicant to second interview and controlled communications with second interviewer, there was
11 “no evidence that KForce had control over the questions asked . . . or more importantly, over the answers
12 she provided . . . over the length . . . or that KForce required Ms. Gunawan to act in a certain manner
13 while she was there”). If accepted, these arguments would be complete defenses to Plaintiffs’ minimum
14 wage and reimbursement claims. (Perez Decl. ¶ 17.)

15 Meal and Rest Period Claims. Based on their analysis of employee time records, Plaintiffs
16 determined that Class Members worked a combined total of approximately 95,650 shifts that qualified
17 for meal and rest periods. Based on the allegation that Class Members were technically “on-duty” during
18 their breaks because they had to monitor calls on their radios, Plaintiffs calculated Defendants’
19 maximum potential exposure for meal and rest period premiums as follows: 95,650 x 2 break violations
20 x \$13 average hourly rate = \$2,486,900. (Perez Decl. ¶ 18.)

21 Plaintiffs determined an appropriate range of recovery for the meal and rest period claims for
22 settlement purposes by offsetting Defendants’ maximum theoretical exposure by the Discount Factors. With
23 respect to defenses, Defendants would have argued that while Class Members were generally asked to
24 monitor and respond to radio calls and new assignments at all times, they were relieved of this “duty”
25 whenever they took their meal and rest periods. (Perez Decl. ¶ 19.)

26 Waiting-Time Penalties. Based on the foregoing violations, Plaintiffs allege that Defendants
27 failed to pay all wages owed to employees upon termination of their employment. Where an employer
28 “willfully fails” to timely pay wages upon termination of employment, “the wages of the employee shall

continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced,” for up to thirty days. See Cal. Labor Code § 203. (Perez Decl. ¶ 20.)

Plaintiff estimated Defendants’ maximum potential exposure for 203 penalties at \$396,240, which was calculated by taking the product of the following: [127 former employees during the 3-year SOL] x [8-hour average shift] x [\$13 average hourly wage] x [30 days of penalties] = \$396,240. Plaintiffs had to discount Defendants’ maximum exposure for waiting-time penalties to account for the strength of its affirmative defenses and Discount Factors. For example, Defendants would have argued that such penalties are applicable only when the failure to pay wages at termination is “willful.” See Lab. Code § 203; Cal. Code Regs., tit. 8, § 13520; *Amaral v. Cintas Corp. No. 2*, 163 App. 4th 1157, 1201 (2008) (“the fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist”). If the Court accepted this standard, Plaintiffs would have encountered significant difficulty in proving that the failure to pay all wages was wilful rather than inadvertent. (Perez Decl. ¶ 21.)

Wage Statements. Plaintiffs allege that Defendants issued wage statements that violated Labor Code section 226(a)(8). For a significant portion of Class Period, the wage statements listed the employer name as “Sheraton Anaheim” or “Anaheim Majestic Garden Hotel”. Neither is correct, and neither constitutes the “name . . . of the legal entity that is the employer.” The name of the legal entity is “PHR Management, Inc.” Defendant’s wage statements are not consistent with the clear, plain language of the statute. (Perez Decl. ¶ 22.)

For purposes of alleging wage statement violations under Labor Code section 226(a), an employee “is deemed to suffer injury . . . if the employer fails to provide accurate and complete information as required by . . . subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone” the information required to be provided pursuant to section 226(a). *Id.* § 226(e)(2)(B). Promptly and easily “means a reasonable person would be able to readily ascertain the information without reference to other documents or information.” *Id.* § 226(e)(2)(C). (Perez Decl. ¶ 23.)

Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional

1 failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual
2 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
3 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate
4 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
5 fees. (Perez Decl. ¶ 24.)

6 Here, Plaintiffs allege that Class Members could not “readily ascertain” Defendants’ registered
7 name, “without reference to other documents or information,” and were therefore injured by Defendants’
8 failure “to provide accurate and complete information as required by . . . subdivision (a).” It could be
9 argued, however, that once Class Members referred to “other documents or information” to ascertain
10 Defendants’ correct registered name, they would no longer have been injured by Defendants’ failure to
11 comply with section 226(a)(8), and as such, would be entitled to only a \$50 penalty. If the Court
12 accepted such an argument, Defendants’ maximum potential exposure would therefore be the product of
13 the total number of wage statements issued during the applicable one-year statute of limitations (6,568)
14 and \$50: $6,568 \times \$50 = \$328,400$. (Perez Decl. ¶ 25.)

15 Plaintiffs subsequently determined an appropriate range of recovery for settlement purposes by
16 offsetting Defendants’ maximum theoretical exposure by the strengths of its affirmative defenses and the
17 Discount Factors. For example, with respect to the failure to print its full name on employee wage
18 statements, Defendant argued that Labor Code section 226(a)(8) does not specifically require employers
19 to list their complete, registered name on wage statements. (Perez Decl. ¶ 26.)

20 Moreover, to award statutory penalties under section 226(e), Defendant maintained that Plaintiff
21 would have had to prove that Defendant’s violation of 226(a) was “knowing and intentional.” Defendant
22 contended that Plaintiffs had not proffered any evidence that the violation was “knowing and
23 intentional,” and cited the Court’s comment that for the purposes of the motion for summary
24 adjudication, there was no specific evidence showing that the violation was “knowing and intentional.”
25 (Perez Decl. ¶ 27.)

26 Defendants would also have argued that Labor Code section 226(e)(2)(B)(iii) provides for
27 penalties only if wage statements do not include—*conjunctively*—the “name and address of the
28 employer.” Defendants also argued that it would be unjust to penalize it for mere technical violations of

1 the statute as its wage statements substantially complied with section 226's statutory requirements. *See*
2 *Hernandez v. BCI Coca-Cola Bottling Co.*, 2012 WL 12272348, at *8 (C.D. Cal. Apr. 12, 2012), *aff'd*,
3 554 F. App'x 661 (9th Cir. 2014) (granting summary judgment for defendant; "to the extent that
4 Defendant's wage statements arguably are not in technical compliance with section 226(a) ... the Court
5 concludes they are in 'substantial compliance'"). (Perez Decl. ¶ 28.)

6 PAGA Penalties. Based on the forgoing allegations, Plaintiffs alleges that Defendants are liable for
7 civil penalties under PAGA. While the method of calculating PAGA penalties is straightforward, the
8 analysis becomes more difficult for settlement purposes as PAGA penalty claims are only as strong as the
9 underlying predicate claims. (Perez Decl. ¶ 29.)

10 Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the
11 alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars
12 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
13 (\$200) for each aggrieved employee per pay period for each subsequent violation. (Perez Decl. ¶ 30.)

14 However, some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced
15 "subsequent violation penalty" or "heightened penalty" only after an employer has been notified that its
16 conduct violates the Labor Code. *See Trang v. Turbine Engine Components Technologies Corp.*, No.
17 CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that
18 employers are not subject to heightened penalties for subsequent violations unless and until a court or
19 commissioner notifies the employer that it is in violation of the Labor Code"); *Amalgamated Transit*
20 *Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199-IEG-CAB, 2009 WL
21 2448430 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation penalty" only
22 after an employer has been notified its conduct violates the Labor Code). While Plaintiffs regards this
23 interpretation as flawed, they nonetheless recognize that this interpretation has gained traction with some
24 courts, and elected therefore to conservatively estimate Defendants' maximum potential exposure for
25 PAGA penalties by assessing a \$100 penalty for all pay periods during the PAGA Period (approximately
26 25,000), resulting in a potential exposure of \$2,500,000. (Perez Decl. ¶ 31.)

27 It should also be noted that the PAGA gives the Court wide latitude to reduce the amount of civil
28 penalties "based on the facts and circumstances of a particular case" when "to do otherwise would result

1 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
2 reducing PAGA penalties, courts have considered issues including whether the employees suffered
3 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
4 willingness to fix the violation. *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016); *Fleming*
5 *v. Covidien*, 2011 WL 7563047, at *4 (C.D. Cal. 2011). For instance, in the *Lyft* case, the Court found
6 that a \$1 million PAGA settlement was fair and reasonable in light of the unsettled nature of the law,
7 resulting in a \$2.52 per pay period award to the aggrieved employees (there were 397,110 pay periods in
8 a \$1 million PAGA settlement, resulting in a 97.5% reduction from the maximum). In *Fleming v.*
9 *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000 for 28,742 pay
10 periods at issue.⁷

11 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
12 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
13 approved by California courts. See *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC (E.D. Cal.
14 June 29, 2016), 2016 WL 3549473 at *3 (preliminarily approving \$1.95 million settlement containing
15 \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-
16 0324 AWI SKO (E.D. Cal. Oct. 31, 2012), 2012 WL 5364575 at *7 (approving \$3.9 million settlement
17 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No.
18 C 05-4526 MHP (N.D. Cal Feb. 16, 2011), 2011 WL 672645 at *1 (approving \$6.9 million settlement
19 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons*
20 *Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni)
21 (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of
22

23 ⁷ See also, e.g., *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012)
24 (affirming 30% reduction under specified PAGA claim where the employer produced evidence that it
25 took its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7
26 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where violations
27 had been proven, remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil
28 penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17
(N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of California Labor Code § 226 as
redundant with recovery on a class basis pursuant to California Labor Code § 226, directly); *Fleming v.*
Covidien Inc., No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011)
(reducing PAGA penalties from \$2.8 million to \$500,000.00); *Aguirre v. Genesis Logistics*, No. SACV
12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
PAGA violations from \$1.8 million to \$500,000.00, after rejecting numerous other PAGA claims).

PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

Defendants’ Maximum Potential Exposure for the Claims at Issue. Based on the above analysis, Plaintiffs estimated Defendants’ maximum potential exposure for the claims is summarized below.

Summary of Defendants’ Maximum Potential Exposure	
Minimum Wage Claim	\$6,825.00
Business Expense Reimbursement Claim	\$1,251.25
Meal & Rest Period Claims	\$2,486,900.00
Waiting-Time Penalties	\$396,240.00
Wage Statement Penalties	\$328,400.00
PAGA Penalties	\$2,500,000.00
Total	\$5,719,616.25

Taking into account the Discount Factors, and the risks of continued litigation, Plaintiffs determined that a settlement of approximately one-third of Defendant’s maximum potential exposure for class and PAGA claims was fair and reasonable. (Perez Decl. ¶ 36.) *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can

be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

B. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁸

The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to submit Requests for Exclusions or objects to

⁸ Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
2 and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.) The Class Notice
3 also appraises Class Members of other putative class actions alleging similar or overlapping claims
4 against Defendant. *See Trotsky*, 48 Cal. App. 3d at 151-52.

5 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
6 attempt to locate a current address using, among other resources, a skip-trace search. (*Id.*)

7 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
8 satisfy due process and the requirements of California law. *See C.R.C. 3.776(e)-(f); State of Cal. v. Levi*
9 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the terms
10 of the proposed compromise and of the options open to dissenting class members.”)

11 **C. The Court Should Preliminarily Approve the Proposed PAGA Settlement**

12 Pursuant to the Settlement Agreement, \$50,000 from the Class Settlement Amount shall be
13 allocated to the resolution of the PAGA claim, of which 75% (\$37,500) will be paid directly to the
14 LWDA, and the remaining 25% (\$12,500) will be paid to Participating Class Members. (Settlement
15 Agreement ¶ 13(c).) This result was reached after good-faith negotiation between the parties with input
16 from the mediator.

17 Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount
18 was the result of self-interest at the expense of other Class Members,” such amounts are generally
19 considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
20 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579
21 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
22 damages to the PAGA claims.”).

23 **D. The Court Should Preliminarily Approve the Negotiated Enhancement Payments**

24 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
25 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
26 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
27 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
28 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives

1 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
2 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
3 *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named
4 plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a
5 benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th
6 785 (2009).

7 Approximately 350 Class Members will share a \$1,850,000 settlement fund due entirely to the
8 effort and commitment of Robert Onofre and Miguel Zaldivar. Subject to Court approval, therefore, the
9 Settlement provides for Class Representative Enhancement Payments of \$7,500, each.⁹ The

10
11 ⁹ Such amounts are reasonable by reference to the amounts that California courts (both federal
12 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter*
13 *v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000
14 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146
15 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named
16 plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento
17 County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff);
18 *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016)
19 (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*,
20 No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the
21 named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
22 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United*
23 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016)
24 (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*,
25 No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the
26 named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS
27 (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named
28 plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16,
2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int’l, LLC*,
No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to
three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A.
County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
Stores, Inc., No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health*
Services, Inc., No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement
payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct.
Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v.*
American Residential Services, LLC, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding
\$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967
(L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named
plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010)

Enhancement Payments are fair and reasonable compensation for Plaintiffs' efforts in pursuing the action, serving as private attorneys general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

Plaintiffs will file a formal motion for the negotiated Enhancement Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Enhancement Payment.

E. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method

(awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, L.P.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding \$10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Mortuary Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty, LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-03241 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxazria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 is used, fee awards in class actions average around one-third of the recovery.”). At final approval,
2 Plaintiffs will seek Court-approval of attorneys’ fees and costs of \$616,667 (one-third of the Class
3 Settlement Amount) and \$50,000, respectively.

4 **F. California Law Authorizes Provisional Certification for Settlement Purposes**

5 **1. The California Standard for Class Certification**

6 Class actions are statutorily authorized “when the question is one of common or general interest,
7 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
8 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
9 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
10 among class members.” *Sav-On*, 34 Cal. 4th at 326. Class treatment is appropriate even if class members
11 at some point may be required to make an individual showing as to eligibility for recovery. *Bufile v.*
12 *Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

13 **2. The Proposed Settlement Class is Ascertainable and There Is a Well-**
14 **Defined Community of Interest Among Class Members**

15 Whether a class is “ascertainable” within the meaning of Section 382 is “determined by
16 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying
17 class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be
18 readily identified without unreasonable expense or time by reference to official records. *Id.*

19 The community of interest requirement embodies three factors: (1) predominant common
20 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
21 class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

22 In April of 2012, the California Supreme Court expounded on the element of predominance:

23 The “ultimate question” the element of predominance presents is whether “the
24 issues which may be jointly tried, when compared with those requiring separate
25 adjudication, are so numerous or substantial that the maintenance of a class action
would be advantageous to the judicial process and to the litigants.”

26 *Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).

27 The proposed Settlement Class consists of all: (1) all persons who were employed by Defendants
28 in non-exempt positions in the State of California at any time during the period from August 26, 2012 to

1 October 15, 2018; and (2) all persons who were employed by Defendants in non-exempt positions in the
2 State of California at any time during the period from June 30, 2015 to September 30, 2016 (“Wage
3 Statement Class Members”). Because all Class Members are either current or former employees of
4 Defendants, the class is readily ascertainable from Defendants’ regular business records.

5 Conditional certification of the proposed Settlement Class is particularly warranted here given
6 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
7 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification
8 in settlement cases).¹⁰ In *Dunk*, the California Court of Appeal specifically rejected the argument that
9 the standard for certifying a class for purposes of settlement is identical to the standard for certifying the
10 same class for purposes of litigation:

11 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
12 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
13 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*
14 *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
15 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
16 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
17 purposes for the Rule 23 certification requirements, as they relate to questions of a
18 nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
19 interests of the non-representative class members. The first purpose is inapposite in the
20 settlement context, and the second, as it relates to commonality of issues, only makes a
21 difference if the non-representative class members would do much better by litigating on
22 their own or in their own jurisdiction. The second category concerns are protected by the
23 trial court's fairness review of the settlement.

24 *Id.* at n19.

25 Here, the California statutes relating to each of Plaintiffs’ claims apply with equal force and
26 effect to all Class Members. Factually, Plaintiffs’ contend that Defendant’s policies and practices apply
27 class-wide and Defendant’s liability can be determined by facts common to all members of the class. The
28

23 ¹⁰ See also Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
24 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification
25 analysis at the preliminary approval stage.”) (*citing, e.g., Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-
26 KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions
27 in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*
28 *Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class
can be preliminarily certified based on a less rigorous analysis than that necessary for final
certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2
(E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the
proposed class should be conditionally certified, and leave the final certification decision for the Fairness
Hearing.”).

1 wage and hour issues are both numerous and substantial, and a class action is the most advantageous
2 method of dealing with the claims of the Settlement Class Members.

3 Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise
4 from the same factual basis and are based on the same legal theories applicable to the other Class
5 Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs
6 allege that they were injured by the same company-wide practices to which the proposed Settlement
7 Class was subject and seek the same relief. Plaintiffs have already demonstrated their ability to advocate
8 for the interests of the Class by initiating this litigation, undertaking representative discovery, and
9 evaluating the proposed settlement to assure that it is fair.

10 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
11 litigating wage and hour class action cases. (Perez Decl. ¶ 37-40, Ex. 2; Hawkins Decl. ¶¶ 7-8.)
12 Plaintiffs' Counsel have successfully briefed, argued, certified, and gained state and federal court
13 settlement approval of the same class-wide causes of action that are at issue in this case. Plaintiffs'
14 Counsel's wage and hour class action expertise establishes that they are well qualified to represent the
15 interests of this Class.

16 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
17 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims
18 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate
19 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-
20 case adjudication.

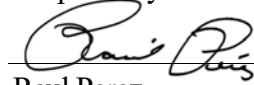
21 **IV. CONCLUSION**

22 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
23 presented the materials and information necessary for preliminary approval, the Parties request that the
24 Court preliminarily approve the settlement.

1 Dated: March 8, 2019

Respectfully submitted,

2 By:



Raul Perez

Robert Drexler

Molly DeSario

Jonathan Lee

CAPSTONE LAW APC

James W. Hawkins

JAMES W. HAWKINS, APLC

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Zaldivar

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5 Los Angeles, California 90067
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6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiff Robert Onofre

8 *[Additional counsel listed on following page]*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ORANGE

12 ROBERT ONOFRE, as an aggrieved employee
pursuant to the Private Attorneys General Act
13 (“PAGA”),

14 Plaintiffs,

15 vs.

16 ANAHEIM MAJESTIC GARDEN HOTEL, a
California corporation; PHR MANAGEMENT,
17 INC., a California corporation; KEN REAL
ESTATE LEASE LTD., a business entity of
18 unknown form; and DOES 1 through 10,
inclusive,

19 Defendants.

20
21 MIGUEL ZALDIVAR AVILA, individually
and on behalf of all others similarly situated,

22 Plaintiffs,

23 vs.

24 ANAHEIM MAJESTIC GARDEN HOTEL,
business form unknown; TSUBAKI HOTEL
25 COLLECTION, business form unknown, and
DOES 1-50, inclusive,

26 Defendants.
27
28

Case No.: 30-2016-00861544-CU-OE-CXC

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: April 4, 2019
Time: 2:00 p.m.
Place: Department CX102

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Attorneys for Plaintiff Miguel Zaldivar Avila

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4. The Court also finds that settlement now will avoid additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to continue to litigate the Action.

1 5. The Court preliminarily approves the Settlement Agreement, including all the terms and
2 conditions set forth therein and the Class Settlement Amount and allocation of payments.

3 6. The rights of any potential dissenters to the proposed Settlement are adequately
4 protected in that they may exclude themselves from the Settlement and proceed with any alleged claims
5 they may have against Defendant, or they may object to the Settlement and appear before this Court.
6 However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of
7 Class Action Settlement. Failure to follow the procedures outlined in the Settlement Agreement and
8 Notice of Class Action Settlement for making objections shall result in waiver and the objector shall be
9 forever foreclosed from challenging any of the terms of the Settlement.

10 7. The Court approves, as to form and content, the proposed amended Notice of Class
11 Action Settlement (“Notice Packet”), attached as Exhibit A.

12 8. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class
13 Members in accordance with the schedule set forth below and the other procedures described in the
14 Settlement Agreement. The Court finds that the method selected for communicating the preliminary
15 approval of the Settlement Agreement to Class Members is the best notice practicable under the
16 circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies
17 due process.

18 9. Plaintiffs Robert Onofre and Miguel Zaldivar are suitable class representatives and are
19 appointed the Class Representatives for the Settlement Class conditionally certified by this Order.

20 10. The Court appoints Capstone Law APC and James W. Hawkins APLC as Class
21 Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling
22 class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

23 11. The Court approves and appoints _ as the Settlement Administrator.

24 12. The following dates shall govern for purposes of this Settlement:

Date	Event
April 24, 2019 (or not later than 20 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class List to the Settlement Administrator.
May 6, 2019 (or not later than 10 calendar days after Defendant produced the Class List, if later)	Last day for the Settlement Administrator to mail Class Notices to all Class Members.

Date	Event
June 15, 2019 (or not later than 30 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
June 21, 2019	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.
July 16, 2019 at 2:00 p.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Enhancement Payments.

13. The Court expressly reserves the right to continue or adjourn the final approval hearing from time to time without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Peter Wilson
Orange County Superior Court

Exhibit A

Onofre v. Anaheim Majestic Garden Hotel, No. 30-2016-00861544-CU-OE-CXC (Orange County Superior Court)
Avila v. Anaheim Majestic Garden Hotel, No. 30-2016-00871797-CU-OE-CXC (Orange County Superior Court)
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully

To: All persons who were employed by Defendants Anaheim Majestic Garden Hotel, PHR Management, Inc., and Ken Real Estate Lease Ltd. (“Defendants”) in non-exempt positions in the State of California at any time during the period from August 26, 2012 to October 15, 2018 (“Class Members”), and

All persons who were employed by Defendants in non-exempt positions in the State of California at any time during the period from June 30, 2015 to September 30, 2016 (“Wage Statement Class Members”)

On _____, the Honorable Peter Wilson of the Orange County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendants’ records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.**

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 __.m. on _____, 2019 in Department CX102 of the Orange County Superior Court located at 751 W Santa Ana Blvd, Santa Ana, CA 92701. You are not required to attend the Hearing, but you are welcome to do so.

Summary of the Litigation

Plaintiffs Robert Onofre and Miguel Zaldivar, on their behalf and on behalf of other current and former non-exempt employees, allege that Defendants violated California state labor laws as a result of their alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) provide employees with meal and rest breaks; (3) timely pay all wages owed to employees during each pay period and upon termination of their employment; (4) reimburse for necessary business expenses; and (5) provide employees with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. The parties participated in a mediation with Jeffrey A. Ross, an experienced and well-respected class action mediator. With Jeffrey A. Ross’s guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Capstone Law APC and James W. Hawkins APLC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the law applicable. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$1,850,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class

Representative Enhancement Payments of \$7,500, each, to Robert Onofre and Miguel Zaldivar for their services on behalf of the class and general releases of all claims arising out of their employment with Defendants; (3) \$616,667 in attorneys' fees and up to \$50,000 in litigation costs and expenses; (4) a \$37,500 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$15,000. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$1,115,833 will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Individual Settlement Payment Calculations. Each Class Member's settlement payment will be based on the number of Workweeks each Class Member/Wage Statement Class Member worked in a non-exempt position during the applicable Class Period (August 26, 2012 through October 15, 2018) and Wage Statement Class Period (June 30, 2015 to September 30, 2016). Eighty Percent (80%) of the Net Settlement Amount will be allocated to all Class Members (the "Class Member Fund"), and (2) Twenty Percent (20%) of the Net Settlement Amount will be allocated to all Wage Statement Class Members (the "Wage Statement Fund"). Each Class Member's respective shares of the Class Member Fund and Wage Statement Fund will be allocated on a pro-rata basis according to the number of Workweeks worked by each Class Member.

Class Member Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Class Members during the Class Period. To determine each Class Member's share of the Class Member Fund, the Settlement Administrator will use the following formula: $\text{Share of Class Member Fund} = \text{Weeks Worked by Class Member} \div \text{Weeks Worked by All Class Members} \times \text{Class Member Fund}$. The entire Class Member Fund will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Class Members Fund to ensure that the entire Class Member Fund is distributing to Participating Class Members.

Wage Statement Fund: The Settlement Administrator will calculate the total number of Workweeks worked by all Wage Statement Class Members during the Wage Statement Class Period. To determine each Wage Statement Class Member's share of the Wage Statement Fund, the Settlement Administrator will use the following formula: $\text{Share of Wage Statement Fund} = \text{Weeks Worked by Wage Statement Class Member} \div \text{Weeks Worked by All Wage Statement Class Members} \times \text{Wage Statement Fund}$. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Wage Statement Class Member's share of the Wage Statement Fund to ensure that the entire Wage Statement Fund is distributing to Participating Wage Statement Class Members.

According to Defendants' records, you worked during a total of _____ Workweeks during the Class Period and _____ during the Wage Statement Class Period. Accordingly, your estimated payment is approximately \$_____ from the Class Fund and \$_____ from the Wage Statement Fund. If you believe the information provided above is incorrect, please contact the Settlement Administrator at _____. If you dispute the information stated above, Defendants's records will control unless you are able to provide documentation that establishes otherwise.

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 80% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 20% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”):

For all Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the same set of operative facts as those set forth in the operative complaints in the Actions that accrued during the Class Period, including (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages during employment; (vi) all claims for the failure to reimburse for necessary business expenses; and (vii) all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the preceding claims (“Released Class Claims”); and

For all Wage Statement Class Members, all claims, rights, demands, liabilities, and causes of action, whether known or unknown, arising from, or related to, the allegation that Defendant issued non-compliant wage statements during the Wage Statement Class Period, including all claims asserted through California Business & Professions Code §§ 17200, et seq., and California Labor Code §§ 2698, et seq. based on the allegation that Defendant issued non-compliant wage statements (“Released Wage Statement Claims”).

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked or faxed not later than _____, 2019. If you submit a request for exclusion which is not postmarked or faxed by _____, 2019, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement. Your objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator’s address].

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

All objections must be received by the administrator by not later than _____ 2019. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Approval Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Orange and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Raul Perez
Capstone Law APC
1875 Century Park E., Suite 1000
Los Angeles, CA 90067
Phone: (888) 295-8042

James W. Hawkins
James Hawkins APLC
9880 Research Dr. Ste 200
Irvine, CA 92618
Phone: Number

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANTS OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******