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similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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| JOVAN NEWLAND, individually and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>WJD RESTAURANT GROUP, LLC, a California Limited Liability Company; and DOES 1thourgh 50, inclusive,<br><br>Defendants. | Case No.: 24STCV10446<br>*[Unlimited Jurisdiction]*<br><br>*Assigned to the Honorable Laura A. Seigle, Dept. 17*<br><br>**PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL**<br><br>Date: March 27, 2026<br>Time: 9:00 a.m.<br><br>Complaint Filed: April 25, 2024<br>Trial Date: Not set. |

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on March 27, 2026, at 9:00 a.m., or as soon thereafter as the matter may be heard, before the Honorable Laura Seigle, judge presiding, in Department 17 of the above-referenced Court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Jovan Newland ("Plaintiff") will seek an Order: (1) approving the Joint Stipulation and Settlement Agreement of Class Action Claims ("Settlement Agreement") in this matter; (2) conditionally certifying the following Class for settlement purposes only: "all persons who worked for Defendant as non-exempt employees in the State of California at any time from August 19, 2023 through June 24, 2025"; (3) appointing Plaintiff Jovan Newland as the Class Representative, and Nick Rosenthal of The Law Office of Nick Rosenthal, APC as Class Counsel; (4) preliminarily approving the Settlement Agreement and the total Gross Fund Value in the amount of seventy thousand dollars ($70,000); (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, Class Representative service payment, Class Counsel fees and costs, settlement administration fees, and allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement to be sent to Class Members; (7) appointing Phoenix Settlement Administrators as the Settlement Administrator; and (8) setting the matter for a Final Fairness Hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or object to the settlement.

This motion will be based on the attached memorandum of points and authorities, the Settlement Agreement and the proposed Notice of Class Action Settlement, the supporting Declarations of Nick Rosenthal, Jodey Lawrence, and Plaintiff Jovan Newland, on the complete records and file herein, and such argument as the Court may permits of counsel (should there be any.)

Dated: February 17, 2026 By: ______________________

Nick Rosenthal

Attorneys For Plaintiff Newland, individually, and on behalf of all others similarly situated and Aggrieved Employees

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

## I. INTRODUCTION

This class action satisfies all criteria for preliminary approval. It consists of 146 class members. (Settlement Agreement ["SA"] ¶ 4.1.) The proposed settlement amount is for $70,000. It settles only the claims pled in the First Amended Complaint, meaning only those related to Business & Professions Code § 17200 et seq. stemming from a failure to distribute gratuities and Labor Code § 351, and no others. Finally, it is the product of an arm's length negotiation by experienced counsel through a mediation with professional mediator Daniel Turner, Esq. A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the concurrently filed Declaration of Nick Rosenthal ("Rosenthal Decl.").

This Motion attempts to follow as much as possible the Checklist for Preliminary Approval of Class Action Settlement provided by the LA Superior Court Complex Civil Department. As shown below, all of the criteria for preliminary approval are met. Plaintiff respectfully requests that the Court preliminarily approve the Settlement so that notice of a final approval hearing may be disseminated.

## II. DISCUSSION

### A. Introductory Information and B. *Dunk/Kullar* Analysis

There is overlap in the first two items on the Checklist for Preliminary Approval of Class Action Settlement provided by the LA Superior Court Complex Civil Department, that being "A. Introductory Information" and "B. *Dunk/Kullar* Analysis". Therefore, Plaintiff presents these two together.

Defendant WJD Restaurant Group LLC ("Defendant") is a catering company headquartered in Los Angeles County. (First Amended Complaint ["FA"]. Plaintiff Jovan Newland has been employed by Defendant as a non-exempt, hourly employee from approximately 2021 to the present. (FA ¶ 7.)

Plaintiff commenced this Action by filing a Complaint on April 25, 2024, alleging a single cause of action against Defendant for Violation of Business & Professions Code § 17200 et seq.

(SA¶ 2.1.) The premise for this allegation was that Defendant collected gratuities from customers but did not distribute them to Defendant's employees. On June 21, 2024, Plaintiff filed a First Amended Complaint adding a second cause of action against Defendant for violation of Labor Code § 2698, et seq., the Private Attorneys General Act ("PAGA") predicated only on an underlying violation of Labor Code § 351. SA¶ 2.1. The FAC is the operative complaint in the Action (the "Operative Complaint.")

The proposed class definition is: "all current and former non-exempt employees of Defendant who worked at a private event in the state of California during which service appreciation was paid between April 26, 2020 to March 15, 2025, who did not opt-out of the Settlement."

Plaintiff contends that Defendant did not properly distribute gratuities that were intended for employees who worked catering events for Defendant. Defendant charged customers a mandatory "service charge" for all events. Plaintiff does not dispute that this money was Defendant's to distribute or not distribute to its employees as it wished. However, Defendant also allowed for customers to pay a "service appreciation." This "service appreciation" was entirely at the discretion of the customer and was calculated as a percentage of the overall bill. Therefore, Plaintiff maintains that this amount was a gratuity that had to be distributed in its entirety to Defendant's employees who were part of the "chain of service." However, up to the time of the filing of the instant lawsuit, Plaintiff had never received any payment from Defendant that was presented as being from collected "service appreciation" monies. Defendant denies characterizing discretionary "service appreciation" payments as a tip as customers had an opportunity to tip employees, which was distributed, and were made aware that "service appreciation" did not constitute as a tip.

The Parties agreed to attempt to resolve this matter at a private mediation with Dan Turner, Esq., and the mediation took place on February 28, 2025. (Rosenthal Decl. ¶ 4; SA ¶ 2.3.) Prior to and during mediation, Defendant provided Plaintiff with information relating to the amount of "service appreciation" that was collected during the class period and how these monies were distributed to employees. In total, $392,484 in "service appreciation" was collected during the class period. Defendant also provided records demonstrating that these monies were distributed to employees of the company, though some employees received far more than others. Defendant also provided a random sample (the parameters of which were determined by Plaintiff's counsel) of wage statements reflecting payments of "service appreciation" monies to employees in order to verify that the claimed payments were in fact made. (Rosenthal Decl. ¶ 5.) Additionally, Defendant represented that the PAGA group worked a total of 178 pay periods in which there was a catering event for which a "service appreciation" was paid.

Based on the records presented by Defendant, it appears that all the "service appreciation" monies were distributed to company employees, albeit unevenly. An employer is permitted to determine a structure for "tip pooling" so long as it is equitable. *Wilkes v. Benihana, Inc.*, 2017 WL 784231 at *6 (a cause of action for an "unfair or inequitable tip pool" may be asserted); *Leighton v. Old Heidelberg, Ltd.*, 219 Cal.App.3d 1062, 1070 (gratuities are to be "equitably distributed" amongst employees). A "tip pooling" methodology in which some employees are receiving tens of thousands of dollars and others are receiving little or nothing on its face does not appear to be equitable.

In other words, it appears that Defendant did distribute the "service appreciation" gratuities to their employees, but there are significant questions about the allocation of the distributions. The instant settlement is a compromise that considers the fact that the gratuities were not kept by Defendant but that there are serious questions about whether the distribution was legal.

A damages analysis in a matter like this is difficult because we are in somewhat uncharted territory. In total, $392,484 in "service appreciation" monies were collected by Defendant. There are multiple issues that could be litigated in order to determine how much of this money was distributed properly. Given the notifications provided to customers regarding what constitutes "service appreciation" and alternate tipping options, there is a risk that "service appreciation" may not be considered a tip and that the class may not be successful on its claims. Further, given that service appreciation was earned at different events and from different customers, there is a risk that class certification may not be obtained.

Other risks include after winning at trial the risk of losing on appeal, and the possibility of law changing, and the time value of money, among other things. Further is the time-value of money, and costs. Litigating Plaintiff's claims through trial could last two more years if the proposed settlement is not approved, as a motion for class certification has not yet been filed. And this is without the time it would take for any appellate resolution. Further, there would be substantial additional costs to prepare for trial, including expert witness payment.

Finally, the Checklist pertaining to the Dunk/Kullar analysis also states, "If approval of the settlement of class claims is requested together with approval of non-class claims (such as claims under the Labor Code's Private Attorney General Act (PAGA)) discuss why the amount allocated to the non-class claims is fair to those affected." The amount proposed to be allocated here to PAGA Penalties is $2,500.00, with 75% ($1,875.00) allocated to the LDWA PAGA Payment and 25% ($625.00) allocated to the Individuals PAGA Payments. (SA ¶ 3.2.5.)

First, under Labor Code § 2699(e)(2), a court may award a lesser amount than the maximum civil penalty specified under PAGA, and courts have exercised their discretion to reduce the amount of PAGA penalties awarded to as little as $5.00 per pay period. *See e.g., Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, at *4 (reducing PAGA penalties by 82%). Second, courts "repeatedly approve[] PAGA allocations of both smaller amounts and that comprised a smaller portion of the total settlement consideration in the agreements at issue." *See Davis v. Cox Commc'ns California, LLC*, No. 16cv989 BAS (BLM), 2017 WL 1496407, at *1 (S.D. Cal. Apr. 26, 2017 (preliminarily approving $4,000 PAGA allocation in $275,000 settlement); *Moore v. Fitness Int'l, LLC*, No. 12cv1551 LAB (NLS), 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (approving $2,500 PAGA allocation when attorneys' fees award alone amounted to $200,000); *Jack v. Hartford Fire Ins. Co*., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving $3,000 PAGA allocation in $1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, No. 08cv821 IEG (BLM), 2010 WL 2196104, at *2 (S.D. Cal. June 1, 2010) (approving $3,000 PAGA allocation in $1,000,000 settlement). Second, the total possible PAGA penalties that could be awarded is no more than $17,800, as the Aggrieved Employees only worked a total of 178 pay periods in which there was an event for which "service appreciation" monies were paid. The proposed PAGA allocation here is well within a fair and reasonable range.

In sum, the proposed $70,000 settlement is an excellent result considering the amount of money in dispute in the first place and the potential weaknesses in Plaintiff's case. It represents a little more than 17% of the total possible award in this case were Plaintiff to prevail on every procedural turn, and obtain 100% for the Business & Professions code violation, and also 100% of the PAGA penalties. (*See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

### C. CLASS CERTIFICATION

Next on the LASC Checklist is "Class Certification".

#### a. Numerosity

Numerosity is satisfied because there are approximately 146 Class Members. (SA, ¶ 4.1.) *See, Vasquez v. Superior Court*, 4 Cal.App.3d 800, 811 (1971); *Newberg on Class Actions*, § 3.5 (4th Ed. 2004) (40 class members is sufficient to satisfy numerosity).

#### b. Ascertainability

A test for ascertainability is whether the class definition "identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828; *Block v. Major League Baseball* (1998)

65 Cal.App.4th 538, 541-42. Here, the class definition of "all current and former non-exempt employees of Defendant who worked at a private event in the state of California during which service appreciation was paid between April 26, 2020 to March 15, 2025, who did not opt-out of the Settlement." clearly meets this standard.

**c. Community of Interest**

The community of interest requirement has three essential elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000). As shown below, these elements are met.

Commonality

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal. 4th 906, 913 (2001)). Here, the common question is clear: Were the "service appreciation" monies properly disbursed to Defendant's employees?

Plaintiff's Claims Are Typical of the Class

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." *Newberg and Rubenstein on Class Actions,* § 3:29. Plaintiff is not aware of any characteristics that do not satisfy this. Plaintiff is a member of the proposed class, and was subject to the same employment policies and practices as all other Class Members. Typicality is satisfied.

Plaintiff Adequately Represents the Class

To satisfy the requirement that a class representative and his or her counsel fairly and adequately represent absent class members, the named plaintiff must be represented by counsel experienced and qualified to conduct the pending litigation, and the named plaintiff's interests cannot be antagonistic to those of the class. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. The adequacy requirement is satisfied on both counts. Proposed Class Counsel, Nick Rosenthal of The Law Office of Nick Rosenthal, APC, has significant experience in California wage and hour class action litigation, and has been diligent in representing the putative Settlement

Class. (Declaration of Nick Rosenthal ["Rosenthal Decl."] ¶¶ 6-7) Further, counsel was able to secure a favorable proposed settlement that provides substantial benefits to absent Class Members without incurring unnecessary costs or risking the delays and uncertainty of further, protracted litigation.

Plaintiff Jovan Newland, the proposed Class Representative, has participated actively in the litigation, and his interests are not in conflict with the absent class members. (Declaration of Jovan Newland ["Newland Decl."] ¶ 4. He agreed to act as Class Representative and understands his responsibility to assist Class Counsel in prosecuting the action on behalf of the Class. (*Id*.)

<u>Superiority</u>

Certification of the Class for settlement purposes also is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because most of the claims are too small to litigate outside of the class context. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. Thus, the superiority of proceeding through the class action mechanism is demonstrable in this case because, through the class action device, Plaintiff's counsel was able to negotiate a global Settlement with Defendant that, if approved, will provide a sizeable Class with immediate monetary relief.

**D. <u>CLAIM REQUIREMENT.</u>**

Next on the LASC Checklist is the claim requirement. This is not applicable, as there is no claim requirement in this case.

**E. <u>MISCELLANEOUS</u>**

**a. <u>If Appropriate, Explain Why the Settlement Includes Terms That Are Outside the Scope of the Operative Complaint. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.) If Approval of Settlement of a PAGA Claim is Requested Provide a Copy of Plaintiff's Notice Letter to the LWDA.</u>**

The Settlement does not include terms that are outside the scope of the operative complaint. This approval request does also contain a PAGA component, and a copy of Plaintiff's Notice Letter to the LWDA is attached as Exhibit 1 to the Declaration of Nick Rosenthal.

**a. <u>If Notice Will Be Given in English Only, Explain Why this is Sufficient</u>**

Notice is appropriate only in English as the ability to speak English was required to be a server for Defendant. The job involved interacting with people attending catered events. Rosenthal Decl., ¶ 13.

**b. A Statement of Any Affirmative Obligations to Be Undertaken by the Class Member or Class Counsel and the Reason for Such Obligations**

Other than fulfilling their duties as Class representative and Class Counsel, the Settlement does not create any affirmative obligations to be undertaken by them. Although there is a Civil Code Section 1542 included in the Settlement Agreement which applies to the proposed class representative only.

**c. Provide Information Regarding Any Fee Splitting Agreement and Whether the Client Has Given Written Approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)**

The Kick Law Firm, APC and The Law Office of Nick Rosenthal, APC have agreed to share fees in this matter 60%-40%, and the client has given written approval. (Rosenthal Decl., ¶ 8.)

**d. Any Agreement That Has Injunctive Relief Against a Class Representative or Absent Class Member Generally Is Not Appropriate in a Class Action Case. Provide the Authority and Factual Reasons Why this Case is an Exception**

Not applicable, as the Settlement does not provide for any such injunctive relief.

**e. Explain Why Any Proposed Class Representative Award is Reasonable, Including What the Class Representative Did Beyond the Expected Services of Any Class Representative**

The Settlement provides a proposed service award of not more than $5,000 to Plaintiff. (SA, ¶ 3.2.1), which is intended to recognize the time, effort, and risk that Plaintiff undertook in bringing this case and helping to secure the relief obtained for the members of the Class. *See Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payment" to named plaintiff for his efforts in bringing class case); *Rodriguez v. West Publishing*, 563 F.3d 948, 959 (9th Cir. 2009) (stating that incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.") To determine the propriety of a service award, courts consider the actions protecting class interests, the benefit provided to the class based on those actions, and the amount of time and effort expended by the plaintiff. *Staton v. Boeing Co.*, 327 F.3d 938, 976-7 (9th Cir. 1993).

Here, Plaintiff should be compensated for the contributions provided to the Class, the reputational risks he undertook, the time and efforts expended on behalf of the Class, Plaintiff's entering into a broader waiver of claims outside of the scope of the Class claims released by the Class in the Settlement (SA, ¶ 6.1.1; Newland Decl. ¶¶ 4-5.) Among other things, Plaintiff reviewed case documents, provided information, and approved the settlement. *Id*. Other courts in California also regularly award service awards higher than those requested here. *See e.g. Ross v. US Bank National Association*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving **$20,000** enhancement award to Class Representative in California wage-and-hour class action settlement); *Louie v. Kaiser Found. Health Plan, Inc.*, CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "**$25,000** incentive award for each Class Representative" in wage and hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of **$20,000** or more where . . . the class representative has demonstrated a strong commitment to the class".)

Finally, at the time of the filing of the Motion for Final Approval, Plaintiff intends to file further detail for this Court's consideration regarding the time and effort he expended on behalf of the class.

## III. THE SETTLEMENT AGREEMENT

The next portion of the Checklist indicates a number of items that the Settlement Agreement itself should address. (*See* Checklist § II, pp. 4-8.) Class Counsel has gone through all items in the Checklist and confirmed that each exist in the proposed Settlement and Notice, including the Class definition (SA, ¶ 1.5), Class Period (SA, ¶ 1.5), monetary terms (SA, ¶ 3.1), release terms (SA, ¶ 6 and 6.2), release effective date (SA, ¶ 6), a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA (SA, ¶ 6.3), notice administration terms (SA, ¶ 8), and *cy pres* terms (SA, ¶ 4.4.3). Of note is that the only claim being released for class members and Aggrieved Employees are those related to Labor Code Section 226. (SA, ¶¶ 6, 6.1, and 6.2).

### 1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

As already indicated *supra*., the Settlement Agreement provides for $70,000 as the Gross Fund Value. (SA ¶ 3.1.) Regarding gross settlement for attorneys' fees and costs, the SA states not more than 35%, meaning $24,500.00, and Class Counsel Litigation Expenses Payment of not more than $15,000.00. (SA ¶ 3.2.2.) Regarding Plaintiff service award, as already discussed, not more than $5,000. (SA ¶ 3.21.)

Regarding administrative costs, not more than $7,000. (SA ¶ 3.2.3.) PAGA payment and allocation of award to LWDA and the Aggrieved Employees has been discussed as part of the *Dunc/Kullar* analysis, *supra*., but is $2,500.00 to be paid from the Gross Settlement Amount, with 75% ($1,875.00) allocated to the LDWA PAGA Payment and 25% ($625.00) allocated to the Individuals PAGA Payments. (SA ¶ 3.2.5.) The LWDA letter in this matter was issued prior to the amendments to PAGA went into effect.

The Class Settlement Fund (calculated after deduction of attorneys' fees, costs, Class Representative Service Payment, and Settlement Administration costs) shall be paid within 14 days after Defendant funds the Gross Settlement Amount, with the Administrator mailing checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. (SA ¶ 4.4.) Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (SA ¶ 4.4.)

The individual class payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Pay Periods. (SA ¶ 3.2.4) 100% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for statutory and civil penalties as no claims in this action pertain to the underpayment of wages. (SA ¶ 3.2.4.1.)

The total amount of the net Class Settlement Fund is estimated to be $21,000 if all payments sought are approved by the Court. With 146 class members,  the average payout will be approximately $143.83 per class member. However, class counsel anticipates that actual costs will be significantly lower than the $15,000 maximum provided for by the Settlement, which will result in a larger Class Settlement Fund (and thus higher average payout for the Class). Rosenthal Decl., ¶ 12. Additionally, each class member will receive a further payment from the PAGA allocation as an Aggrieved Employee.

**2. Whether Any Money Will Revert To Defendant.**

None of the settlement funds will revert to Defendant. (SA ¶ 3.1.)

**3. Notice Administration.**

The parties propose that Phoenix Class Action Administration Solutions ("Phoenix") be the administrator for this matter. It has agreed to cap its charges on this matter to $7,000, and estimates $6,500 as the total cost. In Class Counsel's opinion, the bid is reasonable (Rosenthal Decl. ¶ 9.)  Phoenix is highly experienced in administering California wage and hour class actions and PAGA matters. (Lawrence Decl. Ex. A.)

Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (SA, ¶ 4.2.)  Before mailing any checks, the Settlement Administrator will update the recipients' mailing addresses using the National Change of Address Database. (SA, ¶ 4.4.1.) Phoenix will not later than 14 days after receiving the Class Data send the Notice to all Class Members identified in the Class Data, via first-class United States Postal Service mail. (SA, ¶ 4.4.1.) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (SA, ¶ 8.4.3.) Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. (SA, ¶ 8.4.2.) The deadlines for Class Members' written objections, Challenges to Pay Periods and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. (SA, ¶ 8.4.2.)

There will be a website maintained by Phoenix. (SA, ¶ 8.8.1.) Notice of final judgment will be posted on the claims administrator's website. (Cal. Rules of Court, rule 3.771(b)) The proposed notice is attached to the Settlement Agreement, and its content complies with California Rules of Court, rule 3.766(d). (Rosenthal Decl. Ex. 1.)

**4. RESPONSE TO NOTICE.**

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). (SA, ¶ 8.5.1.) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. (SA, ¶ 8.5.2.)

Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. (SA, ¶ 8.5.6.) The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. *Id*.

Participating Class Members may send written objections to the Administrator, by fax, email, or mail. (SA, ¶ 8.7.2.) In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. *Id*. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed). *Id*.

**5. RESPONSE TO NOTICE.**

The parties in the Settlement Agreement agreed that for any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund. (SA, ¶ 4.4.3.)

**6. Attorneys' Fees and Costs**

Class counsel intend to apply for fees pursuant to the common fund based on a percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal.App.4th 224, 254 (2001). The California Supreme Court has held that the award of attorneys' fees in common fund wage and hour class action settlements can be based entirely on such an application, without a lodestar cross-check. *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Nonetheless, Class Counsel will also present their lodestar should this Court wish to perform a lodestar cross-check as well.

The Parties have agreed to a payment of 35% of the settlement ($24,500) for payment to Class Counsel as attorneys' fee, subject to Court approval, plus reimbursement of Court-approved litigation fees up to a maximum of $15,000. (SA, ¶ 3.2.2.) As part of the Motion for Final Approval, Counsel will present this in further detail.

## IV. EXHIBITS TO THE MOTION

The Settlement Agreement is attached as Exhibit 1 to the Rosenthal Declaration.

The Class Notice is attached as Exhibit 1 to the Settlement Agreement.

The proof of notice to the LWDA sent prior to the filing of this case is attached as Exhibit 2 to the Rosenthal Declaration.

The proof of submission of the proposed settlement agreement to the LWDA is attached as Exhibit 3 to the Rosenthal Declaration.

The qualifications of Phoenix Settlement Administrators are attached as Exhibit 1 to the Lawrence Declaration.

Phoenix Settlement Administrators' bid is attached as Exhibit 2 to the Lawrence Declaration.

## V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Notice of Settlement, and set a date for a final approval hearing.

Respectfully submitted,

Dated: February 17, 2026

THE LAW OFFICE OF NICK ROSENTHAL, APC

By: ______________________
Nicholas Rosenthal
Attorneys for Plaintiff
Jovan Newland and the Putative Class

## PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive, Los Angeles, California 90049. On the below executed date, I served the following document or documents:

**MOTION FOR PRELIMINARY APPROVAL;**
**PLAINTIFF'S DECLARATION IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL;**
**DECLARATION OF NICK ROSENTHAL IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL;**
**DECLARATION OF JODEY LAWRENCE; AND**
**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

x **By Electronic service (via electronic filing service provider):** I caused the documents to be electronically transmitted to Case Anywhere, an electronic filing service provider, at www.caseanywhere.com, pursuant to the Court's Electronic Case Management Order governing the matter and mandating electronic service to person(s) at the address(es) listed above. The transmission was reported as complete and without error to the addressees as stated below.

| | |
|---|---|
| Grace Y. Horoupian, Esq.<br>FISHER & PHILLIPS LLP<br>2050 Main Street, Suite 1000<br>Irvine, CA 92614<br>(949) 851-2424 (Telephone)<br>(949) 851-0152 (Facsimile)<br>ghoroupian@fisherphillips.com<br><br>Marianna Bertikian, Esq.<br>FISHER & PHILLIPS LLP<br>444 South Flower Street, Suite 1500<br>Los Angeles, CA 90071<br>(213) 330-4500 (Telephone)<br>(213) 330-4501 (Facsimile)<br>mbertikian@fisherphillips.com | Attorneys for Defendant<br>WJD RESTAURANT GROUP, LLC, a California limited liability corporation |

x **By electronic service (via email):** Pursuant to Code Civ. Proc. § 1010.6 and Cal. Rules of Court, Rule 2.25l(c), my email address is lauren@kicklawfirm.com and I caused such document(s) to be electronically served to the interested parties listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmissions were unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 17, 2026.

*/s/ Lauren Davis*
Lauren Davis