

SOLOUKI | SAVOY, LLP

Grant Joseph Savoy, Esq. [SBN 284077]

grant@soloukisavoy.com

Shoham J. Solouki, Esq. [SBN 278538]

shoham@soloukisavoy.com

316 W. 2nd Street, Suite 1200

Los Angeles, CA 90012

Telephone: (213) 814-4940

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

ZENAIDA CRUZ BARAJAS, individual and
class representative on behalf of herself and all
other similarly situated non-exempt former and
current employees,

Plaintiffs,

vs.

THE PACIFIC CLUB, a California
Corporation; KATHRYN SMITH, an
individual; and DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2022-01289912-CU-OE-CXC

Assigned for All Purposes To:

Judge: William D. Claster

Dept: CX101

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE; MEMORANDUM OF POINTS
AND AUTHORITIES**

*[Filed Concurrently with Declaration of Grant
Joseph Savoy, Esq.; Declaration of Zenaida Cruz
Barajas; Declaration of Settlement Administrator;
and [Proposed] Order]*

Reservation No.: 74376307

Date: October 4, 2024

Time: 9:00 AM

Dept.: CX101

Judge: Hon. William D. Claster

Action Filed: November 1, 2022

Trial Date: None Set

1
2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that, on October 4, 2024, at 9:00AM, or as soon thereafter as this
4 matter may be heard, in Department CX101 of the Orange County Superior Court, located at 751 W.
5 Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Zenaida Cruz Barajas (“Bajaras” or “Plaintiff”), will,
6 and hereby does, move this Court for preliminary approval of the Joint Stipulation and Settlement of
7 Class Action and PAGA Settlement and Release reached by the parties in the above-captioned litigation.

8 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
9 the accompanying Declarations of Grant Joseph Savoy, Zenaida Cruz Barajas, and Settlement
10 Administrator, the Joint Stipulation and Settlement of Class Action and PAGA Settlement and Release,
11 the Notice of Class Settlement, the complete files and records of this case, and any other evidence or oral
12 argument which may be considered by the Court at the time of the hearing.

13 **SOLOUKI | SAVOY, LLP**

14 Dated: September 5, 2024

15 /s/ Grant Joseph Savoy.
16 Grant Joseph Savoy, Esq.
17 Shoham J. Solouki, Esq.
18 *Attorneys for Plaintiff ZENaida CRUZ*
BARAJAS, And Those Similarly Situated
Current and Former Employees

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	2
III. SUMMARY OF THE SETTLEMENT	2
A. Settlement Negotiations	2
B. Definition of Settlement Class.....	3
C. Settlement Terms.....	4
1. Settlement Administrator	9
2. Notice to the Settlement Class Members	10
3. Response to Notice, Opt-Outs, and Objections	12
4. Funding of Settlement Fund	16
5. Final Fairness Hearing, Final Approval and Final Judgment	17
6. Released Parties and Settled Claims	18
IV. LEGAL ARGUMENT	20
A. The Terms Of The Proposed Settlement Are Fair	22
1. The Settlement Was Reached Through Arm's-Length Bargaining	22
2. Investigation and Discovery Were Sufficient For The Parties to Evaluate the Risks Intelligently	23
3. Counsel Is Experienced In Similar Litigation	24
B. The Settlement Falls Within The “Ballpark” of Reasonableness	25
1. Settlement Amount Is Fair, Just , and Reasonable	25
2. Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable	28
D. The Court Should Issue an Order Conditionally Certifying the Settlement Class.....	29
1. The Criteria for Conditional Certification of a Settlement Class Are Met	29
2. There Is an Ascertainable Class	29
3. The Proposed Class Shares a Well-Defined Community of Interest	30
4. Proceeding as a Class Action Is Superior to Individual Actions	32
V. CONCLUSION.....	33

///

///

///

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>United Energy Corp. Solar Power Modules Tax Shelter Investment Securities Lit.</i> (C.D. Cal. 1988) 122 F.R.D. 251	29
--	----

State Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	30
<i>Clark v. American Residential Services, LLC</i> (2009) 175 Cal.App.4th 785	20, 23
<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987) 191 Cal.App.3d 605	28
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	28, 29
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	20, 21, 28, 29
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal.4th 1069	28
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	31
<i>McGee v. Bank of America</i> (1976) 60 Cal.App.3d 422	31
<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862	28
<i>Reyes v. San Diego County Bd. of Supervisors</i> (1987) 196 Cal.App.3d 1263	29
<i>Richmond v. Dart Indus. Inc.</i> (1981) 29 Cal.3d 462	28, 29
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	28
<i>Seastrom v. Neways, Inc.</i> (2007) 149 Cal.App.4th 1496	30

State Statutes

California Code of Civil Procedure § 382 <i>et seq.</i>	2, 28
---	-------

State Rules

Cal. Rule of Court 3.769(f) 19

Other Sources

The Federal Manual for Complex Litigation (Third)19

Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).....20

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff ZENAIDA CRUZ BARAJAS (“Plaintiff” and/or “Barajas”), an
4 individual on behalf of himself and all others similarly situated, seeking approval of the Joint Stipulation
5 and Settlement of Class Action and PAGA Settlement and Release (“Settlement” and/or “Agreement”)
6 entered into by Plaintiff, individually and on behalf of the proposed Settlement Class, the State of
7 California, the Labor and Workforce Development Agency, and allegedly aggrieved employees on the one
8 hand, and Defendant The Pacific Club, seeking to settle all class claims and Private Attorney General Act
9 (“PAGA”) representative claims brought by Plaintiff on behalf of all current and former hourly employees
10 of Defendants in the above-captioned Action.

11 The instant action (*Zenaida Cruz Barajas v. The Pacific Club, et al.*), 30-2022-01289912-CU-OE-
12 CXC (the “Action”) is a wage and hour class action and Private Attorney General Act representative action
13 brought on behalf of all current and former hourly non-exempt employees of Defendants, employed by
14 Defendants in the State of California during the Class Period (November 1, 2018 through the date of
15 Preliminary Approval).

16 The Action primarily alleges that Defendants failed to provide Plaintiff and the class he seeks to
17 represent with legally required meal and rest periods, failed to compensate employees for overtime and
18 paid time off at the regular rate of pay, failed to accurately compensate employees for off-the-clock wages,
19 failed to maintain required employment records, provided inaccurate wage statements, and failed to timely
20 compensate former employees for all wages owed upon separation of employment. As mentioned above,
21 Plaintiff and Defendants (collectively, the “Parties”) have entered into a Joint Stipulation and Settlement of
22 Class Action and PAGA Settlement and Release (“Settlement” and/or “Agreement”), which provides for a
23 Gross Settlement Amount of Two Hundred and Twenty-Five Thousand Dollars with Zero Cents
24 (\$225,000.00). Pursuant to the Settlement, Plaintiff now moves for (1) preliminary approval of the
25 Settlement, and (2) conditional certification of the Settlement Class.

26 The Settlement Class is composed of approximately 104 current and former employees of
27 Defendants working as hourly non-exempt employees, in the State of California at any time from
28

November 1, 2018 through the date of preliminary approval. The proposed settlement is fair, adequate, and reasonable, and conditional certification of the Settlement Class is appropriate because the requirements of California Code of Civil Procedure § 382 are satisfied. Plaintiff respectfully requests that the Court preliminarily approve this settlement and set a hearing date to consider whether to grant final approval of the Settlement, at which time the Court will consider the request for attorney fees and costs, and the Class Representative Service Award.

II. FACTUAL AND PROCEDURAL BACKGROUND

The Action was filed on November 1, 2022, and subsequently amended on or about September 20, 2023. The First Amended Complaint allege the following Eleven (11) causes of action: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5) failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized statements; (9) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (10) all claims for unfair business practices; and (11) penalties pursuant to the Private Attorneys General Act. (“FAC,” “Complaint,” or “Operative Complaint”). (*Declaration of Grant Joseph Savoy, Esq.* (“*Savoy Decl.*”), at ¶ 3, 4.)

Plaintiff Barajas is a former employee of Defendant, The Pacific Club, (“Defendant” and/or “TPC”) who worked as a non-exempt hourly housekeeping employee. Plaintiff worked at Defendants’ business located in the County of Orange, State of CA. (*Savoy Decl.*, at ¶ 5.)

Defendant TPC owns and operates a private members only club in Newport Beach, California. At the time of mediation, there were approximately 104 current and former employees of Defendants that fall within the class definition set forth in the operative complaint and Joint Stipulation of Settlement and Release of Class and PAGA Actions (“Settlement” and/or “Agreement”) who are eligible to participate in the Settlement. (*Savoy Decl.*, at ¶ 6.)

III. SUMMARY OF THE SETTLEMENT

A. Settlement Negotiations

On March 21, 2024, the Parties attended a mediation session with Todd Smith, Esq., an

1 experienced and respected mediator of wage and hour class and PAGA actions. In anticipation of the
2 mediation, the Parties represent that they conducted significant investigation and discovery of the facts and
3 law. Defendant informally produced, among other things, hundreds of pages relevant written policies and
4 procedures, Plaintiff's personnel file (inclusive of Plaintiff's time and payroll records), and an agreed upon
5 20% sampling of class payroll and timekeeping data November 1, 2022 through November 30, 2023. It
6 must be noted that not data was provided for the time between June 30, 2021 and October 29, 2021.
7 Moreover, given the extremely small class size, small data set, and missing data, Plaintiff's expert's
8 extrapolated damages based on limited information. Nonetheless, Plaintiff's Counsel's review of the time
9 records, payroll records, and information relating to the size and scope of the Class, was sufficient data to
10 permit Plaintiff's Counsel and their retained expert to understand the number of workweeks and pay
11 periods at issue in the Class and PAGA Periods. The Parties agreed that the above-described investigation
12 and evaluation, as well as the information exchanged during the settlement negotiations, were more than
13 sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and
14 equitable basis. (*Savoy Decl.*, at ¶ 8.)

15 At this mediation, the Parties discussed Plaintiff's claims, theories for class certification and
16 Defendants' defenses thereto. The Parties also analyzed the potential exposure of Defendants on Plaintiff's
17 claims, Defendants' potential liability for penalties and interest, as well as the potential risks associated
18 with litigating this Action through a contested class certification proceeding, trial, and potential appeal(s).
19 The mediation lasted the entire day and allowed the Parties to better understand each other's respective
20 positions as to the claims, defenses, and Defendants' potential exposure to liability. The parties'
21 negotiations resulted in an agreement to resolve the Action based on the terms set forth herein for the Gross
22 Settlement Amount of Two Hundred and Twenty-Five Thousand Dollars with Zero Cents (\$225,000.00).
23 (*Savoy Decl.*, at ¶ 9.) A true and accurate copy of the Settlement Agreement is attached to the Declaration
24 of Grant Joseph Savoy, Esq. as **Exhibit "A"** thereto.

25 **B. Definition of Settlement Class**

26 "Settlement Class" shall mean all current and former hourly-paid employees who worked for
27 Defendant within the State of California at any time during the Class Period. The "Participating Settlement
28

Class” or “Participating Settlement Class Members” or “Class Members” means all Settlement Class Members who do not timely and validly opt-out of the Settlement Class in the manner set forth in the Agreement and described in the Notice Packet. The Class is estimated to consist of approximately 104 persons with an estimated 21,400 workweeks, and includes 524 “PAGA Pay Periods” defined as the period from October 17, 2021 to the date of preliminary approval of the Settlement Agreement. (*Settlement*, sections 1.25, 1.24, 1.36 7.5)

C. Settlement Terms

In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment terms of the Settlement are as follows:

1. “Gross Settlement Amount” or “GSA” means the agreed upon settlement amount totaling Two Hundred and Twenty- Five Thousand Dollars (\$225,000), to be paid by Defendant in full settlement of the Released Class Claims and Released PAGA Claims asserted in this case, which includes the Administration Expenses to the Settlement Administrator, Employee’s Taxes and Required Withholdings, Class Counsel’s Attorneys’ Fees and Expenses, the Enhancement Payment to Plaintiff, PAGA Payment to the LWDA and PAGA Members. The Gross Settlement Amount is non-reversionary, meaning no amount will revert to Defendant. In no event shall Defendant be required to pay more than the Gross Settlement Amount (excluding the employer’s share of payroll taxes on the “wages” portion of the settlement for Participating Settlement Class Members). The Parties agree that Code of Civil Procedure section 384 does not apply to this Settlement and the amount of any uncashed checks will be deposited to The Pacific Club Scholarship Fund (administered by Orange County Community Foundation) to be used for educational scholarships for nonexempt employees of Defendant and their families. (*Settlement*, sections 1.16, 5.1.) Subject to Court approval, this amount shall be allocated as follows:

2. The “Net Settlement Amount” or “NSA” shall mean the Gross Settlement Amount, minus the Court-approved amounts awarded for the Class Counsel’s Attorneys’ Fees and Expenses, Administration Expenses, Enhancement Payment to Plaintiff, and PAGA Payment (*Settlement*, section 1.18.) Subject to the Final Approval of the Settlement and the conditions specified in the Settlement Agreement, and in consideration of the mutual covenants and promises set forth therein, Defendant agrees

1 to make a payment or payments as set forth in the Settlement Agreement totaling the fixed amount of Two
2 Hundred and Twenty-Five Thousand Dollars with Zero Cents and Zero Cents (\$225,000.00). The Gross
3 Settlement Amount and other actions and forbearances taken by Defendant shall constitute adequate
4 consideration for the Settlement and will be made in full and final settlement of: (a) the Released Class
5 Claims and Released PAGA Claims, (b) Class Counsel's Attorneys' Fees and Expenses, (c) Administration
6 Expenses, (d) Enhancement Payment to Plaintiff; (e) PAGA Payment, and (f) the Individual Settlement
7 Payments to Participating Settlement Class Members, and any other obligation of Defendant under the
8 Settlement Agreement (other than the Employer's Taxes). The Parties agree, subject to Court approval,
9 that the GSA shall be apportioned as follows:

- 10 a. Attorneys' Fees. Class Counsel will apply to the Court for an award of
11 attorneys' fees of no more than one third (1/3) or thirty-three point three, three,
12 four percent (33.334%) of the GSA or Seventy-Five Thousand Dollars and Zero
13 Cents (\$75,000.00). The attorneys' fees shall come from and be deducted from
14 the GSA and paid out as set forth herein. Defendant will not oppose such
15 application. (*Settlement*, section 5.6.)
- 16 b. Attorneys' Costs. Named Plaintiff and Class Counsel shall request approval of
17 payment of up to but not to exceed Fifteen Thousand Dollars and Zero Cents
18 (\$15,000.00) in attorneys' costs, including any litigation costs, which will be
19 deducted from the GSA and paid out as set forth herein Defendant agrees not to
20 object to any such fee, cost, or expense application up to those amounts. As a
21 condition of this Settlement, Class Counsel has agreed to pursue fees only in the
22 manner reflected by this Section. Any Class Counsel Attorneys' Fee and
23 Expenses awarded by the Court shall be paid from the Gross Settlement Amount.
24 If the Class Counsel voluntarily reduces the request for Class Counsel's
25 Attorneys' Fees and Expenses or the Court's award is less than set forth above,
26 the difference shall remain with the Net Settlement Amount. The Class
27 Counsel's Attorneys' Fees and Expenses approved by the Court shall encompass:
28

(a) all work performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the Settlement Class through the date of the Settlement Agreement; (b) all work to be performed and costs to be incurred in connection with approval by the Court of the Settlement set forth in the Settlement Agreement; (c) all work to be performed and costs and expenses, if any, incurred in connection with administering the Class Settlement through the Effective Date; and (d) may be based on the Catalyst Theory and/or Common Fund Doctrine. Class Counsel's Attorneys' Fees and Expenses and Plaintiff's Enhancement Payment, as awarded by the Court shall be paid by the Settlement Administrator from the Gross Settlement Amount within thirty (30) calendar days of the Effective Date. (*Settlement*, sections 5.6, 5.7.)

c. Administration Fees and Costs. Class Counsel will also apply to the Court for approval of SA costs in the amount of \$10,000.00, which will be deducted from the GSA. Defendant will not oppose such application. Class Counsel will specify the amount sought for such costs, up to the foregoing maximum, in Named Plaintiff's motions for preliminary and Final Approval of the Settlement. (*Settlement*, section 1.2; *Declaration of Settlement Administrator* ("SA Decl."), at para. 16, Exhibit B.)

d. Named Plaintiff's Enhancement and General Release Payment. Class Counsel will apply to the Court for approval of an enhancement award in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) to be paid to Named Plaintiff, from which fifty percent (50%) shall be deemed consideration for a general release and from which fifty percent (50%) shall be for assuming the risks associated with this litigation (including for assuming the risks in the PAGA case). Defendant will not oppose such application. The enhancement award is included in, and shall be deducted from, the GSA. Should the Court approve a lesser amount, the difference shall revert to the NSA. (*Settlement*,

section 5.8.)

e. PAGA Allocation and Payments. Pursuant to California Labor Code Section 2698, *et seq.*, the Parties designate Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the GSA to resolve any PAGA claims (including penalties sought for Named Plaintiff' employment and penalties sought under the PAGA for all other PAGA Members' employment and payment to the LWDA).

i. Defendant shall pay seventy five percent (75%) of that amount, or Eighteen Thousand Seven Hundred and Fifty Dollars with Zero Cents (\$18,750.00), to the LWDA and the remainder to PAGA Members. In the event the LWDA refuses to accept the above amount in full for all civil penalties to PAGA Members in connection with the civil penalty claims alleged in this Action, or in the event the LWDA or anyone on its behalf otherwise challenges the above allocation or the Settlement, the Parties shall work in good faith to revise the allocation so that it is accepted.

ii. The remaining twenty five percent (25%) of that amount, or Six Thousand Two Hundred Fifty Dollars and Zero Cents (\$6,250.00) shall be paid to PAGA Members on a proportionate basis based on the number of Pay Periods employed during the PAGA Period.

(*Settlement*, section 1.23.)

Estimate of Workweeks Worked and Escalator Provision and Discretionary Cap. For purposes of this settlement, Defendant estimated that there were 21,400 workweeks worked by the Settlement Class Members as of the date of mediation (March 21, 2024). If, as of March 21, 2024, the Data Period Total was actually more than 15% greater than that amount (so 24,611 or greater), Defendant will have the choice of (a) increasing the Gross Settlement Amount on a pro rata basis according to the number of compensable workweeks in excess of 24,610; or (b) ending the Class Period on the last day before the one-hundred and fifteen percent (115%) threshold is exceeded. (*Settlement*, section 7.5.)

1 Payments to Participating Settlement Class Members. Each Participating Settlement Class Member
2 shall be eligible to receive an Individual Settlement Payment based on their tenure, i.e., the Workweek
3 Total during the Class Period, in relation to the number of Workweeks Worked by all Participating Class
4 Members. The Individual Settlement Payment will be subject to the Employee Taxes and Required
5 Withholdings. Plaintiff and Participating Settlement Class Members who receive an Individual Settlement
6 Payment pursuant to the Settlement Agreement shall be solely responsible for any and all other individual
7 tax obligations associated the payment

8 PAGA Payments will be calculated as follows: if a Settlement Class Member is also a PAGA
9 Member, they will also receive a proportionate share of Six Thousand and Two-Hundred and Fifty Dollars
10 (\$6,250.00) (25% of the PAGA Payment), in addition to the Individual Settlement Payment, based on the
11 following formula: Individual PAGA payment = \$6,250.00 x (Individual's Pay Period Total ÷ Aggregate
12 Pay Periods Worked by all PAGA Members During the PAGA Period). (*Settlement*, section 8.3)

13 The Net Settlement Amount shall be paid to eligible Class Members as follows:

- 14 i. Participating Class Members will receive a pro-rated share of the NSA based on
15 the total number of weeks worked as a Settlement Class Member any time during
16 the Class Period, in relation to the aggregate number of weeks worked by all
17 Participating Settlement Class Members, based on the following formula:
18 Individual Settlement Payment = NSA x (Individual's Workweek Total ÷
19 Aggregate Weeks Worked by all Participating Settlement Class Members During
20 the Class Period) The Pay Period Total (if applicable) and Workweek Total will
21 be inserted into each individual's Notice Packet.
- 22 ii. The Parties agree that under no circumstances shall Defendant be obligated to
23 pay any amount under the Agreement to any Class Member other than
24 Settlement Class Members and PAGA Members. In addition, the Parties agree
25 that in no event shall Defendant be obligated to pay more than Two Hundred,
26 Twenty-Five Thousand Dollars (\$225,000.00) with the exception of the
27 employer share of the payroll taxes and the possibility of section 7.5 in the
28

Settlement Agreement.

- iii. Defendant shall have no responsibility for deciding the accuracy of the Individual Settlement Payments or any other payments made pursuant to the Settlement Agreement. Furthermore, as the Settlement Administrator shall calculate the Employer's Taxes and Required Withholdings, and reporting such amounts to the appropriate governmental authorities, Defendant shall have no responsibility for the determination or payment of Employee's Taxes and Required Withholdings. The Notice Packet will inform Settlement Class Members that they will be solely responsible for any and all tax obligation associated with their respective Individual Settlement Payments.

(Settlement, section 8.3.)

The Parties agree that the Individual Settlement Payment shall be allocated as follows:

- (a) twenty percent (20%) to wages and reported on an IRS W-2 basis;
- (b) thirty percent (30%) to interest to be reported on an IRS form 1099; and
- (c) fifty percent (50%) to penalties to be reported on an IRS form 1099.

PAGA Members' portion of the PAGA Payment will be allocated one hundred percent (100%) penalties to be reported on an IRS form 1099. Defendant agrees to pay the Employer's Taxes on that portion of Individual Settlement Payment allocated to W-2 wages, which will be computed and paid by the Administrator, but funded separately and in addition to the Gross Settlement Amount. (Settlement, section 5.4.)

D. Settlement Administrator Notice to Class Members, Objections, Opt-Out Rights

1. Settlement Administrator

"Settlement Administrator" shall mean CPT Group, the third-party settlement administrator selected by the Parties and to be approved by the Court, which the Parties have agreed will be responsible for administration of the Settlement and related matters. The qualifications and experience of the Settlement Administrator will be provided pursuant to a declaration submitted by the Settlement

1 Administrator that will be filed concurrently with Plaintiff’s motion for preliminary approval. (*Settlement*,
2 section 1.35.)

3 Subsequent to entering into the Settlement Agreement, Class Counsel received quotes for class
4 settlement administration and determined the quote and services provided by CPT Group (“CPT”) to be the
5 most reasonable. (*Savoy Decl.* ¶ 10.) A true and accurate copy of the CPT settlement administration quote
6 and associated services is attached to the *Declaration of Grant Joseph Savoy, Esq.*, as **Exhibit “B.”**

7 The Parties will use CPT or a another mutually agreeable third-party SA to distribute the Class
8 Notice and the Settlement Payments and PAGA Payments and handle the tax reporting and field any
9 questions from Class Members and/or PAGA Members with a hotline. All costs and expenses due to the
10 Settlement Administrator in connection with its administration of the Settlement described in the
11 Agreement, including, but not limited to: (a) translating, formatting, and mailing the Notice Packet by first
12 class U.S. Mail; (b) performing a National Change of Address Database (“NCOA”) search to update
13 Settlement Class Members’ addresses prior to the initial mailing of the Notice Packets; (c) performing
14 skip-traces to locate and update Settlement Class Members’ address on the return of undelivered Notice
15 Packets; (d) establishing a toll-free number and post office box for the receipt of Class Member
16 communications; (e) processing Opt-Out requests (and sending those to counsel for Defendant), objections,
17 and disputes; (f) calculating and distributing Individual Settlement Payments to Participating Settlement
18 Class Members and the portion of the PAGA Payment to PAGA Members; (g) tax reporting; (h) providing
19 the Parties’ counsel weekly status reports and declarations as needed and requested by the Parties or by the
20 Court; and (i) performing any other tasks that are reflected within the Settlement Agreement. The
21 Settlement Administrator, upon request, will send any Opt-Out forms received to Defense Counsel. The
22 Administration Expenses shall be paid by the Settlement Administrator to the Settlement Administrator
23 from the Gross Settlement Amount within thirty (30) calendar days of the Effective Date. (*Settlement*,
24 section 6.1.)

25 2. Notice to the Settlement Class Members

26 Class Member Data. Within twenty-one (21) calendar days of Defendant receiving notice that the
27 Court granted Preliminary Approval of the Settlement, Defendant shall electronically transmit the Class
28

1 List and Data to the Settlement Administrator. This information will not be shared with and/or provided to
2 Class Counsel. This confidentiality provision is in the best interest of the Settlement Class because it will
3 reduce the likelihood of Settlement Class Members' personal information being leaked, thereby exposing
4 them to identity theft. This confidentiality provision will not impede Class Counsel's ability to discharge
5 their fiduciary duties. (*Settlement*, section 7.1.)

6 Class Notice. Within ten (10) calendar days of receipt of the Class List and Data from Defendant
7 and after the Settlement Administrator perform a National Change of Address search to update Settlement
8 Class Members' addresses, the Settlement Administrator will mail by first-class U.S. Mail the Notice
9 Packet. The exterior of the mailing envelope shall include the following words below the Administrator's
10 address:

11 **IMPORTANT LEGAL DOCUMENT:**
12 **You may get money from a Class Action**
13 **Settlement; your prompt reply to correct a**
14 **outdated address may be required.**

15 The Notice Packet will inform Settlement Class Members of the nature of the Action, the
16 allegations made, the claims being settled, and releases to be given, the employment information on which
17 their Individual Settlement Payment will be calculated, and of their right to request exclusion, to object,
18 and to dispute the information on which their payments will be paid and the deadline for doing any of these
19 acts. The Notice Packet will also inform Settlement Class Members of the date, time, and place set for the
20 Final Approval and Fairness Hearing and will advise them that they may appear at the Final Approval and
21 Fairness Hearing without first submitting a written objection. (*Settlement*, section 7.1.)

22 Settlement Administrator Duties. Prior to mailing the Class Notice, the SA will update the
23 addresses for the Class Members and PAGA Members using the National Change of Address database and
24 other available resources deemed suitable by the SA. To the extent this process yields a different address
25 from the one supplied by Defendant ("Updated Address"), that Updated Address shall replace the address
26 supplied by Defendant ("Last Known Address") and be treated as the new Last Known Address for
27 purposes of the Agreement and for subsequent mailings in particular. The Settlement Administrator shall
28 be permitted to provide notices and communicate to the Class and PAGA Members in a format and

statement to be provided to the Court, which Named Plaintiff will submit in conjunction with the motion for preliminary approval and/or motion for Final Approval. (*Settlement*, section 6.1.)

Class Notice Procedure. Within ten (10) days after receipt of the above information from Defendant, the SA shall send the Class Notice to each Class Member's and PAGA Member's Last Known Address or Updated Address (if applicable) via First-Class U.S. mail. (*Settlement*, section 7.1.)

Exclusion Period. Class Members will have forty-five (45) days from the postmark of the initial mailing of the Class Notice by the SA to submit by U.S. mail their Opt-Out Requests, with proof of date of submission to be the postmark date of the completed Opt-Out Request. Class Members will also have forty-five (45) days to object to the Settlement by submitting a written objection with the SA that sets forth the basis of the objection pursuant to Paragraph 7.6 of the Settlement Agreement, which the SA shall submit to the Parties within 10 days after the end of the Exclusion Period, and Class Counsel shall submit to the Court. Opt-Out Requests do not apply to the Settled PAGA Claims and will not exclude PAGA Members from the release of Settled PAGA Claims. (*Settlement*, sections 1.33, 7.1, 7.6.)

3. Responses to Notice, Opt-Outs, and Objections

Class Members. A Settlement Class Member who does not complete and mail a timely Opt-Out request in the manner and by the Response Deadline described in the settlement agreement will become a Participating Settlement Class Member, will receive an Individual Settlement Payment, and will be bound by all terms and conditions of the Settlement, including the Released Class Claims, if the Settlement is approved by the Court, and by the Judgment.

Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that their Individual Settlement Payment constitutes payment of all sums allegedly due to them. Class Members will be deemed to have acknowledged and agreed that Labor Code Section 206.5 is not applicable to the Individual Settlement Payment. That section provides in pertinent part as follows: "An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

1 Upon the mailing of the Gross Settlement Amount the LWDA, the State of California, Plaintiff, and
2 the PAGA Members shall be deemed to have released the Released Parties, and each of them, of and from
3 any and all PAGA Released Claims during the PAGA Period.

4 (*Settlement*, sections 7.4, 11.1, and 11.2)

5 Returned Notice Packet.

6 If a Notice Packet is returned to the Settlement Administrator with a forwarding address affixed to
7 the front, the Settlement Administrator will resend the Notice Packet to the forwarding address affixed
8 thereto. If a Notice Packet is returned because of an incorrect mailing address, without a forwarding
9 address affixed, the Settlement Administrator will promptly, and not longer than three (3) days of receipt of
10 the returned Notice Packet, search for a more current address by way of skip-trace using the Settlement
11 Class Member's Social Security Number, and remail the Notice Packet to the Settlement Class Member if
12 an updated address is located. The Settlement Administrator will be responsible for taking reasonable steps,
13 consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with the Parties to trace
14 the mailing address of any Settlement Class Member for whom a Notice Packet is returned by the U.S.
15 Postal Service as undeliverable. These reasonable steps shall include, at a minimum: (a) the tracking of all
16 undelivered mail; (b) performing address searches for all mail returned without a forwarding address; and
17 (c) promptly remailing to Settlement Class Members for whom new addresses are found. If the Notice
18 Packet is remailed, the Administrator will note for its own records and notify to Counsel for the Parties of
19 the date of each such re-mailing as part of a weekly status report provided to the Parties. Settlement Class
20 Members who receive a remailed Notice Packet fifteen (15) days or less before the Response Deadline
21 shall have fifteen (15) days from the date the Notice Packet is remailed to postmark an Opt-Out request,
22 object to the Agreement, or dispute the information on which their Individual Settlement Payment is
23 calculated. (*Settlement*, section 7.2)

24 Late Submissions. The Notice Packet will provide that Settlement Class Members who wish to
25 exclude themselves from the Settlement Class and Settlement must mail to the Settlement Administrator a
26 written request for exclusion postmarked by the Response Deadline described in the settlement agreement
27 (and pursuant to the terms of the Response Deadline). The date of mailing on the envelope shall be deemed
28

1 the exclusive means for determining if a request for exclusion was timely received. To be valid, a request
2 for exclusion must be timely and must comply with the instructions detailed in the Notice Packet, including
3 providing: (1) the name and address of the Settlement Class Member; (2) a statement expressing that the
4 Settlement Class Member elects to be excluded from the Settlement; (3) the last four (4) digits of their
5 Social Security Number (for identity verification purposes only); and (4) a signature by the Settlement
6 Class Member. If a question is raised about the authenticity of a signed request for exclusion, the
7 Settlement Administrator will have the right to demand additional proof of the Settlement Class Member's
8 identity. (*Settlement*, section 7.4.)

9 Challenges. Settlement Class Members may dispute the information on which their Individual
10 Settlement Payment are calculated by returning a written statement to the Settlement Administrator
11 postmarked by the Response Deadline in the manner described in the Notice Packet. The Settlement Class
12 Member must provide information, documents, or other evidence supporting his or her position. Upon the
13 timely receipt of a dispute, the Settlement Administrator will notify Defense Counsel in writing (email
14 constitutes a writing for this purpose) of the dispute. Defendant's records will be presumed determinative,
15 absent information, documents, or other evidence to rebut Defendant's records, but the Settlement
16 Administrator will evaluate the information submitted by the Class Member and decide as to the validity of
17 such evidence. (*Settlement*, section 7.3.)

18 Opt-Out Procedure. A Settlement Class Member who does not complete and mail a timely Opt-Out
19 request in the manner and by the Response Deadline will become a Participating Settlement Class Member,
20 will receive an Individual Settlement Payment, and will be bound by all terms and conditions of the
21 Settlement, including the Released Class Claims, if the Settlement is approved by the Court, and by the
22 Judgment. The Notice Packet will provide that Settlement Class Members who wish to exclude themselves
23 from the Settlement Class and Settlement must mail to the Settlement Administrator a written request for
24 exclusion postmarked by the Response Deadline (and pursuant to the terms of the Response Deadline). The
25 date of mailing on the envelope shall be deemed the exclusive means for determining if a request for
26 exclusion was timely received. (i) To be valid, a request for exclusion must be timely and must comply
27 with the instructions detailed in the Notice Packet, including providing: (1) the name and address of the
28

1 Settlement Class Member; (2) a statement expressing that the Settlement Class Member elects to be
2 excluded from the Settlement; (3) the last four (4) digits of their Social Security Number (for identity
3 verification purposes only); and (4) a signature by the Settlement Class Member. If a question is raised
4 about the authenticity of a signed request for exclusion, the Settlement Administrator will have the right to
5 demand additional proof of the Settlement Class Member's identity. (*Settlement*, section 7.4.)

6 Objections to Settlement. The Notice Packet will provide instructions and the manner for
7 submitting written objections to the Settlement and will indicate that only Participating Settlement Class
8 Members may object to the Settlement. If a Settlement Class Member returns both a written objection and
9 an Opt-Out request, the Opt-Out request will be invalidated, and the written objection will be accepted.
10 Written objections must be postmarked and returned to the Settlement Administrator no later than the
11 Response Deadline. The date of mailing on the envelope shall be deemed the exclusive means for
12 determining if the written objection was timely. Written objections must be signed by the Settlement Class
13 Member, state the last four (4) digits of their Social Security Number [for identity verification purposes
14 only] and should set forth: (a) the full name and address of the objecting Settlement Class Member; (b) the
15 grounds for each objection made; and (c) whether the Settlement Class Member intends to appear at the
16 Final Approval Hearing. Either or both Parties may file a response to any objection before the Final
17 Approval Hearing. Any attorney who will represent an individual objecting to this Settlement who has not
18 filed a written objection must file a notice of appearance with the Court and serve Class Counsel and
19 Defense Counsel with this notice by the Response Deadline. Any Settlement Class Member who fails to
20 submit a timely written objection or to present an objection at the Final Approval Hearing shall be deemed
21 to have waived any objections and shall be foreclosed from making any objection to the Settlement
22 whether by appeal or otherwise. Settlement Class Members are not required to submit written objections to
23 be heard at the Final Approval Hearing. (*Settlement*, section 7.6.)

24 Defendant's Right to Void Settlement: If seven and a half percent (7.5%) or more of the Settlement
25 Class Members opt out, Defendant may, at their election, rescind the Settlement and all actions taken in its
26 furtherance of it will be thereby null and void. Defendant must exercise this right of rescission, in writing,
27 to Class Counsel, within twenty-one (21) calendar days after the Administrator notifies the Parties of the
28

total number of opt-outs. If the option to rescind is exercised, Defendant shall be responsible for all costs of the administration accrued to that point. Defendant also have the right to withdraw from the Settlement if the Court: (1) does not approve the material terms set forth in the Settlement Agreement after efforts to satisfy the Court’s concerns are made by the Parties; (2) does not conditionally certify the Settlement Class; (3) does not conditionally certify a class releasing the Released Class Claims; or (4) does not grant final approval of the Settlement or enter Judgment. If this occurs, the Parties will be restored to their positions as of the date prior to the Agreement being fully executed, and they shall be equally responsible for all costs of Administration accrued to that point. (*Settlement*, section 9.2.)

4. Funding of Settlement Fund

Within fifteen calendar (15) days (or the next available business day if the 15th day occurs on a weekend) of the Effective Date, Defendant shall transmit the Gross Settlement Amount of Two Hundred, Twenty Five Thousand Dollars (\$225,000.00) and the Employer’s Taxes to the Settlement Administrator to pay: (a) the Class Counsel’s Attorneys’ Fees and Expenses, as approved by the Court; (b) the Administrative Expenses, as approved by the Court; (c) the PAGA Payment, as approved by the Court; (d) the Enhancement Payment to Plaintiff, and (e) the remaining Net Settlement Amount to be distributed entirely to Participating Class Members on a proportionate basis. To the extent Participating Settlement Class Members worked during the PAGA Period, they will receive a proportionate share of the PAGA Payment available to PAGA Members. Defendant shall not be obligated to pay more than Two Hundred, Twenty-Five Thousand Dollars (\$225,000.00) with the exception of the employer share of the payroll taxes and the possibility of section 7.5 of the Settlement Agreement. (*Settlement*, section 8.1.)

The Parties agree that the Funding Payment will qualify as a settlement fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as amended, and Section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the SA is hereby designated as the “Administrator” of the qualified Settlement funds for purposes of Section 1.468B-2(k) of the income tax regulations. As such, all employee taxes imposed on the gross income of that settlement fund and any tax-related expenses arising from any income tax returns or other reporting documents that may be required by the Internal

Revenue Service or any state or local taxing body will be paid from the Funding Payment by the SA.
(Settlement, sections 8.1, 8.4.)

Within thirty (30) calendar days of the Effective Date, the Administrator will calculate and pay to Participating Settlement Class Members their Individual Settlement Payments via first-class regular U.S. Mail. Participating Settlement Class Members and PAGA Group Members shall have one hundred eighty days (180) to cash their checks. Any funds associated with uncashed checks after one hundred eighty (180) days shall be deposited with The Pacific Club Scholarship Fund (administered by Orange County Community Foundation) to be used for educational scholarships for nonexempt employees of Defendant and their families, unless not accepted by the Court in which case the Parties will meet and confer about an acceptable *cy pres*. In such event, those Settlement Class Members and/or PAGA Members will be deemed to have waived irrevocably any right in or claim to a Settlement Payment and/or PAGA Payment subject to their rights, if any, to recover the Settlement Payments and/or PAGA Payments from the Unclaimed Property Fund if ordered or otherwise will be extinguished. Settlement Class Members and/or PAGA Members who fail to negotiate their check(s) in a timely fashion shall, like all Settlement Class Members who did not validly opt out of the Settlement, remain subject to the terms of the Settlement and the Final Judgment. (Settlement, sections 8.2, 8.5.)

5. Final Fairness Hearing, Final Approval and Final Judgment

Entry of Final Judgment and Motion

Following the close of the Response Deadline, and upon a date set by the Court as set forth in the Order Granting Preliminary Approval, Plaintiff shall move the Court for the entry of the final order certifying the Class for settlement purposes only and approving the Settlement as being fair, reasonable and adequate to the Participating Settlement Class Members within the meaning of California Rules of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and/or Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the Court's consideration in ruling on the motion. (Settlement, section 10.2.)

///

///

1 Objections

2 Before and/or at the Final Fairness Hearing, Named Plaintiff and Defendants, through their counsel
3 of record, may address any written objections from Class Members or any concerns from Class Members
4 who attend the hearing as well as any concerns of the Court.

5 Court Approval

6 The Parties agree to cooperate fully with one another to accomplish and implement the terms of the
7 Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such other
8 documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this
9 Settlement. The Parties shall use their best efforts, including all effects contemplated by the Settlement
10 Agreement and any other efforts that may become necessary by Court order or otherwise, to effectuate the
11 terms of the Settlement Agreement. As soon as practicable after execution of the Settlement Agreement,
12 Class Counsel, with the cooperation of Defendant and Defense Counsel, shall take all necessary and
13 reasonable steps to secure the Court's final approval of the Settlement Agreement.

14 If (a) the Court should for any reason fail to approve the Settlement Agreement in the form agreed
15 to by the Parties, or (b) the Court should for any reason fail to enter a judgment on this Action, or (c) the
16 approval of the Settlement and judgment is reversed, modified or declared or rendered void, then the
17 Settlement and conditional class certification shall be considered null and void, and neither the Settlement,
18 conditional class certification, nor any of the related negotiations or proceedings shall be of any force or
19 effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the
20 Settlement has been neither entered into nor filed with the Court. Notwithstanding the foregoing, the
21 Parties may attempt in good faith to cure any perceived defects in the Agreement to facilitate approval. If
22 the Court awards less than the requested amounts for Administration Expenses, Class Counsel's Attorneys'
23 Fees and Expenses, the Enhancement Payment to Plaintiff, or PAGA Payment, the difference shall become
24 part of the Net Settlement Amount. (*Settlement*, sections 9.1, 12.1.)

25 **6. Released Parties and Settled Claims**

26 Released Parties.

27 "Released Parties" shall mean Defendant and its officers, directors, managers, owners, executives,
28 partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal

1 representatives, including but not limited to Kathryn Smith and any of Defendant’s former and present
2 parents, subsidiaries, successors, and affiliates, and their officers, directors, managers, owners, executives,
3 partners, employees, shareholders, agents, attorneys, and any other successors, assigns, or legal
4 representatives. (*Settlement*, section 1.32.)

5 Released Claims.

6 “Released Class Claims” shall mean all claims, rights, demands, liabilities, damages, penalties,
7 attorneys’ fees, costs, and causes of action of every nature and description, arising from any and all claims
8 which were asserted in the Action or reasonably could have been asserted based on the facts alleged in the
9 Action, including statutory, constitutional or common law claims for wages, damages, unpaid costs,
10 liquidated damages, penalties, interest, attorneys’ fees, litigation costs, restitution, equitable relief, or other
11 relief based on the following claims: all claims for (1) failure to provide required meal periods; (2) failure
12 to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wage; (5)
13 failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting employees; (7)
14 failure to maintain required records; (8) failure to furnish accurate itemized statements; (9) failure to
15 indemnify employees for necessary expenditures incurred in discharge of duties; and (10) unfair and
unlawful business practices.

16 “Released Class Claims” includes all types of relief available for the above-referenced claims,
17 including, without limitation, any claims for damages, restitution, losses, civil and statutory penalties, fines,
18 liens, attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated
19 damages. The Final Judgment shall expressly provide that it covers and based on the doctrines of res
20 judicata and/or collateral estoppel bars as a matter of law each and every Class Member from asserting any
21 Settled Claims in the future, except for Class Members who have timely opted out of the Settlement.

22 Released PAGA Claims.

23 “Released PAGA Claims” or “PAGA Released Claims” shall mean all claims, theories, and causes
24 of action alleged or that could have been alleged or otherwise raised based on the factual allegations set
25 forth in Plaintiff’s Complaint, letter to LWDA dated October 17, 2022 and FAC. This includes theories
26 under Labor Code sections 201-204, 226, 226.2, 226.3, 226.7, 403, 404, 510, 512, 558, 1102.5, 1174,
27 1174.5, 1194, 1194.2, 1197 and 1198, including theories for (1) failure to provide required meal periods;
28 (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum

1 wage; (5) failure to timely pay wages; (6) failure to pay all wages due to discharged and quitting
2 employees; (7) failure to maintain required records; (8) failure to furnish accurate itemized statements; (9)
3 failure to indemnify employees for necessary expenditures incurred in discharge of duties. The PAGA
4 Released Claims will bind the PAGA Members even if they timely and validly opt out of the Settlement
5 Class.

6 “Released PAGA Claims” includes all types of relief available for the above-referenced claims,
7 including, without limitation, any claims for civil penalties, attorneys’ fees, costs, and declaratory relief.
8 The Final Judgment shall expressly provide that it covers and based on the doctrines of res judicata and/or
9 collateral estoppel bars Plaintiff, LWDA, the State of California, and any other representative, proxy, or
10 agent thereof, including but not limited to any and all PAGA Members from prosecuting “Settled PAGA
11 Claims” that arose during the PAGA Period.

12 Binding Effect of Agreement on Settlement Class Members and PAGA Members.

13 Upon the mailing of the Gross Settlement Amount, Plaintiff and Settlement Class Members will be
14 bound by the Judgment entered and will release the Released Parties, and each of them, of and from any
15 and all Released Class Claims for the Class Period. It is the desire of the Parties and the Settlement Class
16 Members to fully, finally, and forever settle, compromise, and discharge the Released Class Claims during
17 the Class Period. Each Settlement Class Member, except those who timely Opt-Out, will be bound to the
18 release of Released Class Claims as a result of the Class Settlement and to the terms of the final judgment
19 and the satisfaction of such judgment. If the Court does not enter an order granting final approval of the
20 Class and PAGA Settlement (as defined below) and enter judgment, or the conditions precedent are not
21 met for any reason, this Agreement is void and of no force or effect whatsoever

22 **IV. LEGAL ARGUMENT**

23 Any settlement of class litigation must be reviewed and approved by the Court. (Cal. R. Ct. 3.769;
24 Fed. R. Civ. P. 23(e).)¹ This is done in two steps: (1) an early (preliminary) review by the trial court, and

25 _____
26 ¹ The California Supreme Court has authorized California's trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See
28 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d
126, 145-146.) Where appropriate, therefore, Plaintiff cites Federal Rule 23 and
federal case law in addition to California law.

1 (2) a final review after notice has been distributed to the Class Members informing them of the terms of the
2 settlement and allowing them to exclude themselves from, participate in and/or object to the settlement.
3 The Manual for Complex Litigation (Third) § 30.41 states:

4 If the preliminary evaluation of the proposed settlement does not disclose grounds
5 to doubt its fairness or other obvious deficiencies, such as unduly preferential
6 treatment of class representatives or of segments of the class, or excessive
7 compensation for attorneys, and appears to fall within the range of possible
8 approval, the court should direct that notice ... be given to the class members of a
9 formal fairness hearing, at which arguments and evidence may be presented in
10 support of and in opposition to the settlement.

11 Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement
12 appears to be within the range of acceptable settlements. (*See Wershba v. Apple Computer* (2001) 91
13 Cal.App.4th 224, 234-35.) “The strength of the findings made by a judge at a preliminary hearing or
14 conference concerning a tentative settlement proposal may vary. The court may find that the settlement
15 proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is
16 presumptively valid subject only to any objections that may be raised at a final hearing.” (4 Alba Conte &
17 Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

18 The law favors settlement, particularly in class actions and other complex cases in which substantial
19 resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle*, 955
20 F.2d at 1276; *Potter v Pacific Coast Lumber Company* (1951) 37 Cal. 2d. 592, 602-603.; 4 *Newberg on*
21 *Class Actions* § 11.41.) To grant preliminary approval of this Class Action Settlement, the Court need find
22 only that the settlement falls within the “range of reasonableness.” (*North County Contractor’s Ass. Inc. v.*
23 *Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.)

24 In determining whether a class settlement is fair, adequate and reasonable, courts must consider the
25 following relevant factors: the strength of the plaintiff’s case; the risk, expense, complexity and likely
26 duration of further litigation; the risk of maintaining class action status through trial; the amount of offered
27 settlement; the extent of discovery completed and the range of the proceedings; and the experience and
28 views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American*
29 *Residential Services, LLC* (2009) 175 Cal. App. 4th. 785,799.) The list of factors is not exclusive and the

1 court is free to engage in a balancing and weighing of the factors depending on the circumstances of each
2 case. (*Clark*, 175 Cal. App. 4th at 799; *Wershba*, 91 Cal. App. 4th at 245.)

3 Furthermore, courts must give “proper deference to the private consensual decision of the parties,”
4 since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the
5 parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement
6 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
7 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.*
8 (9th Cir. 1998), 150 F.3d 1011, 1027.)

9 **A. The Terms Of The Proposed Settlement Are Fair**

10 A preliminary review of the terms of the Settlement provides no reason to doubt its fairness. Indeed,
11 this Court should begin its analysis with a presumption that the proposed settlement is fair. A presumption
12 of fairness exists where: “1) the settlement is reached through arms-length negotiations; 2) investigation
13 and discovery are sufficient to allow counsel and the court to act intelligently; 3) counsel is experienced in
14 similar litigation; and 4) the percentage of objectors is small.” (*Dunk v. Ford Motor Co.*, *supra*, at 1802.)
15 The first three of these factors apply at the preliminary approval stage; the percentage of objectors is
16 determinable only at the final approval stage.

17 **1. The Settlement Was Reached Through Arm’s-Length Bargaining, Not Through Fraud**
18 **or Collusion**

19 The Settlement was reached following extensive negotiations during and after a private mediation
20 with experienced and respected mediator of wage and hour class and PAGA actions, Todd Smith, Esq. The
21 settlement negotiations were at arm’s length and, although conducted in a professional manner, were
22 adversarial. The parties went into the mediation session willing to explore the potential for a settlement of
23 the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement
24 had not been reached. (*Savoy Decl.* ¶¶ 8, 9, 23, 27.)

25 During mediation, Plaintiff strongly asserted the validity of her arguments and her assessment that
26 this case could be worth a substantial amount of money. However, as the mediation progressed,
27 Defendants presented their arguments as to various issues, and it became apparent that many issues would
28

1 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
2 parties agreed to resolve this matter for a total of \$225,000.00. (*Savoy Decl.* ¶ 18.)

3 Moreover, Mr. Smith presided over the back and forth exchange of information, and helped guide
4 the parties towards what he believed, based on his experience, was a reasonable resolution given the
5 disputed issues of liability. (*Savoy Decl.* ¶ 19.)

6 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
7 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
8 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
9 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
10 proponents, particularly where, as here, settlement has been reached with the participation of experienced
11 counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
12 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*
13 (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp.
14 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

15 **2. Investigation and Discovery Were Sufficient For The Parties To Evaluate The Risks**
16 **Intelligently**

17 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
18 Plaintiff, conducted legal research, and engaged in extensive informal discovery. Prior to mediation, the
19 Parties met and conferred regarding the scope of discovery necessary for the Parties to engage in a
20 productive mediation. It was agreed that the Parties would exchange agreed upon documents and class
21 records/data prior to mediation. (*Savoy Decl.*, at ¶ 28.)

22 In anticipation of the mediation, the Parties represent that they conducted significant investigation
23 and discovery of the facts and law. Defendant informally produced, among other things, hundreds of pages
24 relevant written policies and procedures, Plaintiff's personnel file (inclusive of Plaintiff's time and payroll
25 records), and an agreed upon 20% sampling of class payroll and timekeeping data November 1, 2022
26 through November 30, 23. It must be noted that not data was provided for the time between June 30, 2021
27 and October 29, 2021. Moreover, given the extremely small class size, small data set, and missing data,
28 Plaintiff's expert's extrapolated damages based on limited information. Nonetheless, Plaintiff's Counsel's

1 review of the time records, payroll records, and information relating to the size and scope of the Class, was
2 sufficient data to permit Plaintiff's Counsel and their retained expert to understand the number of
3 workweeks and pay periods at issue in the Class and PAGA Periods. The Parties agreed that the above-
4 described investigation and evaluation, as well as the information exchanged during the settlement
5 negotiations, were more than sufficient to assess the merits of the respective Parties' positions and to
6 compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶ 8, 29.)

7 Through discovery and investigation, my office was able to identify multiple current and former
8 employees of Defendants that provided valuable information that allowed my office and our expert to
9 clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 30.)

10 For example, Defendants' records, by their face, could not provide us with information regarding
11 the alleged Off-The-Clock work or whether rest breaks were given in compliance with the applicable laws.
12 Through the interviews conducted by Plaintiff's Counsel, it appeared that on average, the employees we
13 spoke with conducted approximately 5 minutes of work while off-the-clock per week. Further, it was
14 determined that at least one rest break every day was either missed, interrupted, or cut short due to the
15 interviewed employees' work duties. This information simply could not have been known by the fact of
16 the records and standard written discovery. (*Savoy Decl.*, at ¶ 31.)

17 Plaintiff's statistical experts analyzed this information, including data for approximately 21,400
18 workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class Members.
19 Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in negotiating
20 the proposed Settlement. (*Savoy Decl.*, at ¶ 32.)

21 **3. Counsel Is Experienced In Similar Litigation**

22 Furthermore, the settlement negotiations were conducted by highly capable and experienced
23 counsel. Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
24 effective advocacy for their clients, and they are experienced in handling complex wage and hour class
25 action litigation. (*Savoy Decl.*, at ¶ 42-49.) Although Plaintiff and Class Counsel were prepared to litigate
26 the claims in this action, they support the proposed Settlement as being in the best interests of the Class
27 Members. (*Savoy Decl.*, at ¶ 27.)

1 **B. The Settlement Falls Well Within The “Ballpark” of Reasonableness**

2 The Court must make an “independent assessment of the reasonableness of the terms of the
3 settlement” prior to granting preliminary and final approval. (*Clark v. American Residential Services LLC*
4 (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 127-28,
5 130, 133.) To do so requires the Parties to submit “basic information about the nature and magnitude of the
6 claims in question and the basis for concluding that the consideration being paid for the release of those
7 claims represents a reasonable compromise.” (*Clark, supra*, 175 Cal.App.4th at 800.) However, the Court
8 should *not* “attempt to decide the merits of the case or to substitute its evaluation of the most appropriate
9 settlement for that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at 133.)

10 **1. Settlement Amount Is Fair, Just, and Reasonable**

11 Plaintiff and Plaintiff’s counsel remain confident of the merits of Plaintiff’s claims. Plaintiff and
12 Plaintiff’s counsel considered several factors in reaching the decision to settle at this point in the litigation.
13 Plaintiff’s counsel has calculated the maximum damages of the Class Members, inclusive of solely
14 derivative claims, as well as claims based on subjective factors, such as missed rest breaks and off-the-
15 clock time worked, to be approximately One Million, One Hundred Twenty-Seven Thousand, Five
16 Hundred Five Dollars with Zero Cents (\$1,220,086.00) and believes this amount would be the maximum
17 damage potential should the case proceed to trial. (*Savoy Decl.*, at ¶ 12.)

18 Given the maximum potential damages, the settlement sum of Two Hundred and Twenty-Five
19 Thousand Dollars with Zero Cents (\$225,000.00), which is approximately 18.5% of the total soaking wet
20 damages, is reasonable considering the substantial risks entailed by this case. Based on mine and my
21 partner Shoham J. Solouki, Esq.’s extensive experience litigating wage and hour class actions, Plaintiff’s
22 Counsel estimates a Sixty Percent (60%) likelihood of obtaining and maintaining certification of Plaintiff’s
23 claims, which reduces the value of these claims. Further, my office further estimates that there is a Sixty
24 Percent (60%) chance that Plaintiff will prevail at trial on his individual and class claims, further reducing
25 the value of the claims. Taking these two risk factors into account, a more realistic damages recovery
26 analysis brings values the instant action at approximately Four Hundred Thirty-Nine Thousand, Two
27 Hundred Thirty Dollars and Ninety-Six Cents (\$439,230.96). The GSA is approximately 51% of the
28

1 revised and realistic total damages exposure. The significant risk that this Court may deny class
2 certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce and
3 substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class
4 Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the possibility
5 of having all, or a portion, of the class and representative claims lost to dispositive motion, which was not
6 included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at ¶ 14.)

7 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
8 laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff's claims
9 that he and class members were not paid for all hours worked is factually incorrect. It is Defendant's
10 position that there would be no liability for unpaid wages and overtime, and therefore, the derivative claims
11 of waiting time penalties, untimely wage payments and inaccurate wage statements therefore also fail.
12 Defendant further contends that it provided meal and rest breaks as required by law and is not required to
13 ensure that employees took every meal and rest period made available to them. (*Brinker Restaurant Corp.*
14 *v. Superior Court*, 53 Cal. 4th 1004 (2012).) Even if the data were to show that meal periods were not
15 taken, time records alone cannot establish a meal break violation under California law. (*See Donohue v.*
16 *AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1088 n. 25, as modified (Dec. 28, 2018), review granted, 2019
17 WL 1388808, at *1 (Cal. Mar. 27, 2019) (finding that "an employer's time records may . . . [only] reflect a
18 section 226.7 violation" in the class certification context, and not on the merits either at trial or on
19 summary judgment); *Brown v. Federal Express Corp.*, 249 F.R.D. 580, 587 (C.D. Cal. 2008) (time records
20 could not prove break claims as they would not provide reason for missed breaks).)

21 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
22 particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell*
23 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's
24 failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting
25 kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey*
26 *v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period
27 and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest
28

breaks where there was no evidence of a uniform policy showing that the Company required the employees to forego breaks.) In such an event, there would be no recovery for Class Members at all. A discount was required at this stage of the litigation for settlement purposes based on these risk factors.

The significant risks that this Court may deny class certification or rule against Plaintiff on the merits are obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation would very likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment. (*Savoy Decl.*, at ¶ 14.)

Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each cause of action. It must be noted that the lion share of the non-derivative and non-penalty class damages are attributable to meal and rest period violations (approximately 94% of all non-derivative, non-penalty damages). Further, the Unpaid Off-The-Clock claim and Rest Break Violation claim (approximately 66% of all non-derivative non-penalty damages) are both based solely on subjective information, such as statements given by Plaintiff and Class Members, in opposition to valid written timekeeping and rest break policies, making them hard to certify, and even harder to prove to the tier of fact. This substantial factor was taken into consideration when valuing the reasonableness of the Settlement. (*Savoy Decl.*, at ¶ 15.) Plaintiff also recognizes that proving the amount of wages due to each individual Class Member, while feasible, would be an expensive, time-consuming, and extremely uncertain proposition. (*Savoy Decl.*, at ¶ 16.)

22. After deducting attorney's fees and costs, settlement administrative fees and costs, Plaintiff's enhancement award/payment, and the PAGA payment to the LWDA, the remaining Net Settlement Amount ("NSA") is Ninety Thousand Dollars and Zero Cents (\$90,000.00.) Assuming full participation of all 250 employees in the settlement, we estimate that each class member will recover on average approximately Three Hundred Sixty Dollars (\$360) ($\$90,000/250 = \360.00). The average workweek recovery from the NSA is approximately Four Dollars and Twenty-One Cents (\$4.21). At the time of submitting this declaration, Plaintiff's Counsel estimates that the maximum recovery for a class member is approximately One Thousand, Two Hundred Sixty-Three Dollars and Zero Cents (\$1,263.00)

(class member(s) who worked the maximum 300 workweeks in the Class Period). The minimum recovery for a class member is approximately Four Dollars and Twenty-One Cents (\$4.21) (class member(s) who worked 1 workweek out of the total class period). On average, this amount is far from insignificant, especially because most class members will never pursue their individual claims. (*Savoy Decl.*, at ¶ 22.)

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiff's claims, it is my professional opinion that the Gross Settlement Amount is fair, adequate, and reasonable. (*Savoy Decl.*, at ¶ 17.)

2. Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable

Plaintiff's expert statistician has calculated the number of unique PAGA pay periods to be 524, taking into account the aforementioned Release signed by 58% of current and former employees. When focusing on all applicable claims, Plaintiff's expert found Defendants' maximum PAGA penalty exposure to be approximately Two Hundred Sixteen Thousand, Five Hundred Twenty-Four Dollars (\$216,524.00). As noted, based on Plaintiff's Counsel's experience, Plaintiff estimates a sixty percent (60%) chance of beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a favorable outcome at trial. This reduces Defendant's potential PAGA penalty exposure to approximately Seventy-Seven Thousand, Nine Hundred Forty-Eight Dollars and Sixty-Four Cents (\$77,948.64). However, as explained below, this number must be greatly reduced when the facts and evidence presented during litigation and mediation are taken into account. At mediation, the Parties jointly agreed to attribute a total of Twenty-Five Thousand Dollars (\$25,000.00) to PAGA penalties, which amounts to approximately 32% of the revised PAGA penalty exposure and 11% of the GSA. For the reasons below, Plaintiff's Counsel believes that the PAGA allocation is more than fair, just, and reasonable for the Class Members. (*Savoy Decl.*, 24.)

Through investigation and informal discovery productions, as well as further evidence presented at mediation, it became clear that the majority of all Labor Code violations occurred within the first three (3) years of the alleged class period. Defendants' timekeeping, meal and rest break policies for the entire class period appear facially valid. Based on timekeeping records and interviews with Plaintiff and

aggrieved employees, Defendants’ apparent practice and enforcement of said policies appears to have changed during the class period due to the COVID-19 pandemic, which lead to stricter enforcement of Defendants’ written wage and hour policies. (*Savoy Decl.*, 25.)

More importantly, by allocating a majority of the GSA to class action claims, the Class Members will actually receive a majority of the GSA. As such, the low PAGA allocation is in the best interest of Class Members, and therefore should be deemed reasonable and fair. As such, Plaintiff believes it is proper to attribute approximately Eleven Percent (11%) of the Gross Settlement Amount to PAGA penalties. (*Savoy Decl.*, at ¶ 26.)

C. The Court Should Issue an Order Conditionally Certifying the Settlement Class

1. *The Criteria for Conditional Certification of a Settlement Class Are Met*

California Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see also*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1806; *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704.) Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. (*Richmond v. Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475.) For purposes of this Settlement only, Defendant has stipulated to conditional certification of the proposed class action. (*Settlement*, section 2.)

2. *There Is an Ascertainable Class*

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. (*See Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) In this case, Plaintiff contends that all three considerations strongly favor class certification.

a. *The Settlement Class Is Precisely Defined*

The proposed class consists of “all current and former non-exempt California employees who worked for Defendant at any time from August 12, 2017 until the date of preliminary approval.” The Class

1 is estimated to consist of 15 persons with an estimated 2,288 workweeks, and includes 11 PAGA
2 Aggrieved Employees. (*Settlement*, section 1.3.) The class definition is sufficiently specific to enable the
3 parties, potential class members, and the Court to readily determine the parameters of the class. (*See*
4 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617 (proposed class defined as all persons
5 nationwide subscribing to telephone service since January 1, 1981, who were charged for one or more
6 unanswered long distance calls, deemed “plainly” ascertainable).) Indeed, the Class Members are readily
7 ascertainable from Defendant’s records. (*Savoy Decl.*, at ¶ 33.)

8 **b. Class Members Are Numerous Enough that Individual Litigation Is Not**
9 **Preferable**

10 Class size leans in favor of class certification in this case. There are approximately a maximum of
11 One Hundred and Four (104) Class Members. (*Savoy Decl.*, ¶ 6.) It would be impractical to bring each of
12 these persons before the Court or to resolve their claims individually. There is no magic number that
13 satisfies the numerosity requirement. (*See, e.g., Rose v. City of Haywood* (1981) 126 Cal.App.3d 926, 934
14 (holding that forty-two class members are quantitatively sufficient to satisfy the numerosity requirement).)
15 Here, Plaintiff asserts that the class of 104 Class Members and allegedly aggrieved employees is sufficient
16 to satisfy the numerosity requirement.

17 **c. Members of the Class Are Easily Identifiable**

18 The question of whether class members are easily identifiable turns on whether a plaintiff can
19 establish “the existence of an ascertainable class,” not whether the plaintiff can “identify the individual
20 members of such class as prerequisite to the class suit.” (*Daar*, 67 Cal.2d at 706; *see also, Reyes v. San*
21 *Diego County Bd. of Supervisors* (1987) 196 Cal.App.3d 1263, 1275.) Here, the existence of an
22 ascertainable class can be established through Defendant’s records. (*Savoy Decl.*, ¶ 33.)

23 **3. The Proposed Class Shares a Well-Defined Community of Interest**

24 The community of interest requirement embodies three factors: (1) predominant questions of law
25 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
26 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806; *Richmond*, 29 Cal.3d at 473-75.)
27 In this case, Plaintiff’s claims satisfy all three factors.

1 **a. *Common Issues of Law and Fact Predominate Over Individual Issues***

2 The commonality criterion requires the existence of common questions of law or fact and is
3 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d at 695; *In re*
4 *United Energy Corp. Solar Power Modules Tax Shelter Investment Securities Lit.* (C.D. Cal. 1988) 122
5 F.R.D. 251, 254.) All that is required is that a common question of fact or law exists which predominates
6 over issues unique to the plaintiff. The existence of individual issues or facts is not a bar to class
7 certification as long as they do not render class litigation unmanageable or predominate over the common
8 issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1354 (“presence
9 of individual damages issues cannot bar certification”).)

10 In the Action, Plaintiff’s claims present sufficient common issues of law and fact that predominate
11 over individual issues and warrant class certification. Plaintiff alleges that Defendant failed to provide
12 timely, uninterrupted meal and rest periods to all Class Members as a regular practice. Plaintiff alleges that
13 Defendant failed to properly compensate Class Members for all hours worked, including overtime hours
14 worked and paid-time-off due to a failure to compensate said wages at the regular rate. Plaintiff further
15 asserts that Defendant failed to adequately compensate its former employees for all wages owed at the time
16 of their separation from employment. Plaintiff alleges that Defendant’s policies and practices were
17 uniform as to all Class Members, and that all class members were indeed subjected to the same workplace
18 experiences as him. Thus, class treatment is appropriate.

19 **b. *Plaintiff’s Claims Are Typical of the Claims of the Settlement Class***

20 To satisfy the typicality requirement, California law does not require that a plaintiff have claims
21 identical to the other class members. Rather, the test of typicality for a class representative is whether other
22 members have the same or similar injury, whether the action is based on conduct which is not unique to the
23 named plaintiff, and whether other class members have been injured by the same course of conduct.
24 (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) The typicality requirement for a class
25 representative refers to the nature of the claim or defense of the representative, and not to the specific facts
26 from which it arose or the relief sought. (*Id.*)

27 Here, Plaintiff alleges that her claims are similar to those of the other Class Members. All of
28

1 Plaintiff's claims arise out of the same alleged facts and course of conduct giving rise to the claims of the
2 other Class Members, as they all worked together for Defendant and were subjected to identical workplace
3 policies and practices. Finally, Plaintiff's claims are typical of the other class members because they seek
4 the exact same relief for alleged Labor Code violations. Because Plaintiff's claims are based upon the
5 same alleged conduct and business practices as those of the potential Class Members, the typicality
6 requirement has been satisfied.

7 **c. Plaintiff and Counsel Will Fairly and Adequately Represent the Class**

8 The question of adequacy of representation "depends on whether the plaintiff's attorney is qualified
9 to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests of the class."
10 *McGee v. Bank of America* (1976) 60 Cal.App.3d 422, 450. Here, these considerations are satisfied. Class
11 Counsel includes well-regarded and accomplished trial lawyers who are qualified and experienced in
12 employment-related, class action litigation. (*Savoy Decl.*, at ¶ 41-49.) Further, because Plaintiff's claims
13 are typical of other Class Members and are not based on unique circumstances that might jeopardize the
14 claims of the Class, there is no antagonism between the interest of the representative Plaintiff and those of
15 the Class.

16 Additionally, Plaintiff Barajas understands the obligations of being an adequate class
17 representative, the details of what she has done to demonstrate the adequacy of his representation, and
18 the substantial burden she will and has undertaken in order to represent the putative class. (See
19 *Declaration of Plaintiff Zenaida Cruz Barajas* ("Barajas Decl."), filed concurrently herewith.)

20 **4. Proceeding As a Class Action Is Superior to Individual Action**

21 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
22 as the Class Members and the Court will derive substantial benefits. Class certification would serve as the
23 only means to deter and redress the alleged Labor Code violations. (See *Linder v. Thrifty Oil Co.* (2000) 23
24 Cal.4th 429, 434 (relevant considerations include the probability that each class member will come forward
25 ultimately to prove his or her separate claim to a portion of the total recovery and whether the class
26 approach would actually serve to deter and redress the alleged wrongdoing).)

27 Furthermore, individual actions arising out of the same operative facts would unduly burden the
28

1 courts and could result in inconsistent results, which may be avoided by class certification.

2 **V. CONCLUSION**

3 For the reasons set forth above, Plaintiff respectfully requests that the Court: (1) certify a
4 provisional settlement class; (2) grant preliminary approval of the proposed Settlement; (3) approve the
5 Class Notice; (4) appoint Solouki | Savoy, LLP as Class Counsel; (5) appoint Plaintiff Zenaida Cruz
6 Barajas as the Class Representative; (6) approve CPT Group as the Settlement Administrator; and (7)
7 schedule a hearing on final approval of the Settlement.

8
9
10 Dated: September 5, 2024

SOLOUKI | SAVOY, LLP

11 /s/ Grant Joseph Savoy.
12 Grant Joseph Savoy, Esq.
13 Shoham J. Solouki, Esq.
14 *Attorneys for Plaintiff ZENaida CRUZ*
15 *BARAJAS And Those Similarly Situated*
16 *Current and Former Employees*