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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN MATEO**

10
11 TANNIA AYALA, individually, and on behalf
12 of other members of the general public similarly
situated,

13 Plaintiff,

14 v.

15 RHR CALIFORNIA SERVICES, L.L.C., a
California limited liability company;
16 ROSEWOOD HOTELS AND RESORTS,
LLC, a Delaware limited liability company; and
17 DOES 1through 10, inclusive,

18 Defendants.
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Case No.: 23-CIV-02830

Assigned to the Hon. V. Raymond Swope

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

Date: August 12, 2024

Time: 3:00 p.m.

Place: Department 23

Complaint Filed: December 13, 2022

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on August 12, 2024, at 3:00 p.m., or as soon thereafter as
3 counsel may be heard, in Department 23 of the above-captioned court, located at 400 County Center,
4 Redwood City, California 94063, the Honorable V. Raymond Swope presiding, Plaintiffs Tannia Ayala,
5 Angel Gutierrez, and Jesus Martinez-Arisceta will, and hereby do, move this Court to:

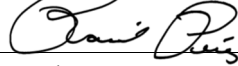
- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action and
7 PAGA Settlement and Release, attached as Exhibit 1 to the Declaration of Raul Perez;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Tannia Ayala, Angel Gutierrez, and Jesus Martinez-Arisceta as the
10 representatives for the Settlement Class;
- 11 4. Appoint Capstone Law APC and Messrelian Law Inc. as Class Counsel;
- 12 5. Approve distribution of the proposed Notice of Class Action Settlement to the
13 Settlement Class;
- 14 6. Appoint CPT Group, Inc. as the Settlement Administrator; and
- 15 7. Set a hearing date for final approval of the settlement.

16 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
17 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA
18 Settlement; (3) the Declaration of Raul Perez; (4) the Declaration of Harout Messrelian; (5) the Joint
19 Stipulation of Class Action and PAGA Settlement and Release; (6) the Notice of Class Action
20 Settlement; (7) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the
21 records, pleadings, and papers filed in this action; and (9) upon such other documentary and oral
22 evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

23 As this Motion is unopposed, the Parties respectfully request relief from the page limit
24 requirement set by California Rules of Court, Rule 3.1113(d).

1 Dated: June 17, 2024

Respectfully submitted,

2 By:  _____

3 Raul Perez

Robert J. Drexler, Jr.

Jonathan Lee

4 **CAPSTONE LAW APC**

5 Harout Messrelian

6 **MESSRELIAN LAW INC.**

7 Attorney for Plaintiffs Tannia Ayala, Angel
Gutierrez, and Jesus Martinez-Arisceta

TABLE OF CONTENTS

I.	INTRODUCTION.....	8
II.	FACTS AND PROCEDURE	9
A.	Brief Overview of the Litigation and Settlement Negotiations.....	9
B.	The Proposed Settlement Fully Resolves Plaintiffs’ Claims.....	10
1.	Composition of the Settlement Class	10
2.	Settlement Consideration.....	10
3.	Releases by Participating Class Members and PAGA Members	12
III.	ARGUMENT	12
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement	12
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable	12
2.	The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”	13
3.	The Settlement Was Reached Through Arm’s-Length Bargaining in which All Parties Were Represented by Experienced Counsel.....	13
B.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation.....	14
C.	The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation.....	17
D.	The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Payments.....	19
E.	The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs.....	19
F.	California Law Authorizes Provisional Certification for Settlement Purposes.....	20
G.	The Proposed Notice Properly Informs Class Members about the Case and the Settlement.....	22
IV.	CONCLUSION.....	23

TABLE OF AUTHORITIES

STATE CASES

<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008)	18
<i>Amaro v. Anaheim Arena Mgmt., LLC</i> , 69 Cal. App. 5th 521 (2021)	20
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	21
<i>Bufile v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008)	20
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	18
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010)	12
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	20
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	13, 20, 21
<i>Gunther v. Alaska Airlines, Inc.</i> , 72 Cal. App. 5th 334 (2021)	17
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	14, 15
<i>Laffitte v. Robert Half Internat. Inc.</i> , 1 Cal. 5th 480 (2016)	20
<i>Laffitte v. Robert Half Internat. Inc.</i> , 231 Cal. App. 4th 860 (2016)	20
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008)	20, 21
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010)	14, 15
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	19
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994)	13
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	20
<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986)	14, 23

FEDERAL CASES

<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21, 2014)	17
<i>Bernstein v. Virgin Am., Inc.</i> , 990 F.3d 1157 (9th Cir. 2021)	17
<i>Chen v. Morgan Stanley Smith Barney, LLC</i> , No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)	18

1	<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645 (N.D. Cal Feb.	
2	16, 2011)	19
3	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016).....	18
4	<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	14
5	<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal.	
6	June 29, 2016)	19, 20
7	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047	
8	(C.D. Cal. Aug. 12, 2011)	18
9	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575	
10	(E.D. Cal. Oct. 31, 2012).....	19
11	<i>Hopson v. Hanesbrands Inc.</i> , No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr.	
12	3, 2009)	19
13	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016	
14	WL 1359725 (E.D. Pa. Apr. 6, 2016).....	21
15	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 WL	
16	4820784 (N.D. Cal. Nov. 5, 2008).....	14
17	<i>In re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	17
18	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011).....	14
19	<i>In re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972)	17
20	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	17
21	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa.	
22	Feb. 28, 2014).....	21
23	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002).....	17
24	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D.	
25	Cal. 2014).....	14
26	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12–07658 DDP	
27	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	18
28		

1	<i>Vieyara-Flores v. Sika Corp.</i> , No. EDCV19606JVSKKX, 2019 WL 2436998 (C.D. Cal.	
2	June 10, 2019)	17
3	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09–00261, 2012 WL 5878390 (N.D. Cal.	
4	Nov.21, 2012).....	14
5		
6	STATE STATUTES	
7	Cal. Civ. Proc. Code § 382	20, 21
8	Cal. Lab. Code § 2699(h).....	18
9	Cal. R. Ct. 3.769.....	13
10	Cal. R. Ct. 3.769(c)	12
11	Cal. R. Ct. 3.769(d).....	12
12	Cal. R. Ct. 3.769(e)	12
13	Cal. R. Ct. 3.769(f)	12
14	Cal. R. Ct. 3.769(g).....	12
15	Cal. R. Ct. 3.776(e)	23
16	Cal. R. Ct. 3.776(f)	23
17		
18	SECONDARY AUTHORITIES	
19	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	13, 14
20	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , J. of	
21	Empirical Legal Studies, Vol. 1, Issue 1 (March 2004).....	20
22		
23		
24		
25		
26		
27		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Tannia Ayala, Angel Gutierrez, and Jesus Martinez-Arisceta (collectively “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately 930 current and former employees of Defendants RHR California Services, L.L.C. and Rosewood Hotels and Resorts, LLC (“Defendants”) (collectively with Plaintiffs, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All persons who worked for Defendant RHR California Services, LLC, as non-exempt, hourly paid employees in California at any time during the period from March 12, 2019 through March 12, 2024 (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$800,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of \$443,333 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the PAGA Settlement Amount, and the Class Representative Enhancement Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period. **The Entire Net Settlement Fund will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$266,667), and litigation costs and expenses not to exceed \$25,000, to Capstone Law APC and Messrelian Law Inc. (“Plaintiffs’ Counsel”).
 - (c) Settlement administration costs of approximately \$15,000, to be paid to the jointly selected Settlement Administrator, CPT Group, Inc.
 - (d) A \$20,000 PAGA settlement, of which 75% (\$15,000) will be paid to the Labor & Workforce Development Agency (“LWDA”), and the remaining 25% (\$5,000) (“PAGA Fund”), will be payable to PAGA Members, defined as: All persons who worked for Defendant RHR California Services, LLC, as non-exempt, hourly paid employees in California at any time during the period from November 15, 2021 through March 12, 2024. **The Entire PAGA Fund will be paid to all PAGA Members, and without the need to submit claims for payment.**
 - (e) Class Representative Enhancement Payments of \$10,000, each, to Plaintiffs for their service on behalf of the Settlement Class, and for general releases of all claims arising out of their employment with Defendants.

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

1 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
2 Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
3 length with helpful guidance from Louis Marlin, Esq., an experienced and well-respected class action
4 mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging
5 approximately \$475 per Class Member from the Net Settlement Fund—is particularly impressive when
6 viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by
7 settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for
8 relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at
9 trial, or of Plaintiffs prevailing at trial but losing on appeal.

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

13 **II. FACTS AND PROCEDURE**

14 **A. Brief Overview of the Litigation and Settlement Negotiations**

15 Defendants manage and operate luxury hotels and resorts throughout the United States.
16 Defendants employed Plaintiffs in non-exempt positions during the Class Period at their Rosewood Sand
17 Hill hotel in Menlo Park, California.

18 Plaintiff Ayala filed this wage and hour action against Defendants on December 13, 2022
19 (“Ayala Action”). (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.) Her operative First Amended
20 Complaint alleges that Defendants violated the following sections of the California Labor Code² and
21 Business and Professions Code: (1) Sections 510 and 1198 (unpaid overtime); (2) Sections 1182.12,
22 1194, 1197, 1197.1, and 1198 (unpaid minimum wages); (3) Sections 226.7, 512(a), 516, and 1198
23 (failure to provide meal periods); (4) Sections 226.7, 516, and 1198 (failure to authorize and permit rest
24 periods); (5) Sections 226(a), 1174(d), and 1198 (non-compliant wage statements and failure to maintain
25 payroll records); (6) Sections 201 and 202 (wages not timely paid upon termination); (7) Section 204
26 (failure to timely pay wages during employment); (8) Section 2802 (unreimbursed business expenses);
27

28 ² Unless indicated otherwise, further statutory references are to the California Labor Code.

(9) Sections 2698, *et seq.* (PAGA); (10) California Business & Professions Code sections 17200, *et seq.* (unlawful business practices); and (11) California Business & Professions Code sections 17200, *et seq.* (unfair business practices). (*Id.*) On February 17, 2023, Plaintiff Ayala submitted a letter to the LWDA and Defendants of her intention to file a PAGA claim based on the alleged Labor Code violations that form the basis for her complaint.

On December 1, 2022, Plaintiffs Gutierrez and Martinez-Arisceta submitted a letter to the LWDA and Defendants of their intention to file a PAGA claim based on the alleged Labor Code violations that form the basis for their complaint. On March 9, 2023, they filed a related wage and hour action against Defendants in this Court, 23-CIV-01088 (“Gutierrez Action”).

Following the exchange of informal discovery, including the production of Defendants’ California labor policies and procedures manuals, and Class Members’ time and wage records through August 5, 2023, the Parties participated in a global mediation with Louis Marlin, Esq., on December 13, 2023. (Perez Decl. ¶ 4.) Mr. Marlin, an experienced and highly regarded mediator of wage and hour class actions, helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*) With Mr. Marlin’s guidance, the Parties were eventually able to negotiate a complete settlement of the claims alleged in the Ayala Action and Gutierrez Action. (*Id.*)

The terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class Action and PAGA Settlement and Release. (*Id.*, Ex. 1.) At all times, the Parties’ negotiations were adversarial and non-collusive. (*Id.* at ¶ 5.) The Settlement therefore constitutes a fair, adequate, and reasonable compromise of the claims at issue. (*Id.* at ¶ 6.)

B. The Proposed Settlement Fully Resolves Plaintiffs’ Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all persons who worked for Defendant RHR California Services, LLC, as non-exempt, hourly paid employees in California at any time during the period from March 12, 2019 through March 12, 2024. (Settlement Agreement ¶ 5.) There are approximately 930 Class Members. (*Id.*)

2. Settlement Consideration

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for the

Gross Settlement Amount of \$800,000. The Gross Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Fund; (2) \$266,667 in attorneys’ fees (i.e., one-third of the common fund) and up to \$25,000 in litigation costs to Plaintiffs’ Counsel; (3) Settlement Administration Costs of approximately \$15,000; (4) a \$15,000 payment to the LWDA and a \$5,000 payment to PAGA Members; and (5) Class Representative Enhancement Payments of \$10,000, each, for Plaintiffs’ service on behalf of the Settlement Class, the risks they took in bringing their representative claims, and for general releases of all claims arising out of their employment with Defendants. (Settlement Agreement ¶¶ 32-36.) Subject to the Court approving Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payments, the Net Settlement Fund will be distributed to Participating Class Members in full. (*Id.* at ¶ 38.) Likewise, the entire PAGA Fund will be distributed to PAGA Members in full. (*Id.* at ¶ 39.)

Payments to Participating Class Members will be made from the Net Settlement Fund. (Settlement Agreement ¶ 40(a).) The individual allocations will be calculated on a pro-rata basis using the number of weeks worked by each Class Member during the Class Period. (*Id.*) This is a fair and equitable means of apportioning the Net Settlement Fund to Class Members. Class Members who worked for a longer duration during the Class Period will receive proportionally larger payments than those employees who worked for shorter durations. Given that there are approximately 930 Class Members, the average net recovery will be approximately \$475. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts.³

³ See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct. Dec. 7, 2010) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct. Sept. 10, 2009) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 27, 2009) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (average net recovery of approximately \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010) (average net

1 Payments to PAGA Members will be made from the PAGA Fund. (Settlement Agreement ¶
2 40(b).) The individual allocations will be calculated on a pro-rata basis using the number of weeks
3 worked by each PAGA Member during the PAGA Period. (*Id.*) This is a fair and equitable means of
4 apportioning the PAGA Fund to PAGA Members. PAGA Members who worked for a longer duration
5 during the PAGA Period will receive proportionally larger payments than those employees who worked
6 for shorter durations.

7 **3. Releases by Participating Class Members and PAGA Members**

8 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will
9 release the Released Class Claims during the Class Period. (Settlement Agreement ¶¶ 24, 52.) And in
10 exchange for the PAGA Settlement Amount, Plaintiffs, the LWDA, and PAGA Members will release
11 the Released PAGA Claims during the PAGA Period. (*Id.* at ¶ 25, 53.)

12 **III. ARGUMENT**

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

14 **1. Courts Review Class Action Settlements to Ensure that the Terms Are** 15 **Fair, Adequate, and Reasonable**

16 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
17 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
18 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for
19 their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.
20 App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a
21 final approval hearing to inquire into the fairness of the proposed settlement”). The motion for
22 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the
23 class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement
24 concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

25 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
26

27 recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW
28 (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only*
Stores, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct. 11, 2012) (average net recovery of
approximately \$80).

(1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

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

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

2. The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”

Based on their analysis of documents and class data produced by Defendants—including Defendants’ California labor policies and procedures manuals, and Class Members’ time and wage records through August 5, 2023—Plaintiffs’ Counsel were able to realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Perez Decl.¶¶ 6-10.) By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Plaintiffs’ Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants. (Perez Decl.¶ 11.)

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

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
2 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
3 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
4 11.51.

5 As explained above, the Parties participated in a mediation with Mr. Marlin, an experienced
6 mediator of wage and hour class actions. Mr. Marlin helped manage the Parties' expectations and
7 provided a useful, neutral analysis of the issues and risks to both sides.⁴ At all times, the Parties'
8 negotiations were adversarial and non-collusive. (Perez Decl. ¶ 4.) The Parties were represented by
9 experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiffs are
10 represented by Capstone Law APC and Messrelian Law Inc. Plaintiffs' Counsel employ seasoned class
11 action attorneys who regularly litigate wage and hour claims through certification and on the merits, and
12 have considerable experience settling wage and hour class actions. (Perez Decl. ¶¶ 12-20, Ex. 2;
13 Messrelian Decl. ¶ 2.) Defendants are represented by Folger Levin L.L.P., a respected defense firm.

14 **B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light**
15 **of the Amount in Controversy Discounted by the Risks of Continued Litigation**

16 In seeking approval, a settling party must provide sufficient information to "enable the court to
17 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
18 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). Settling parties are not, however, required to partake in a
19 hypothetical accounting exercise: "**Kullar does not ... require any such explicit statement of**
20 **[maximum] value**; it requires a record which allows 'an understanding of the amount that is in
21 controversy and the realistic range of outcomes of the litigation.'" *Munoz v. BCI Coca-Cola Bottling*
22 *Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)).

23
24 ⁴ See *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence
25 of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc.*
26 *Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008)
27 (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato*
28 *v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification
settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.");
Villegas v. J.P. Morgan Chase & Co., No. 09-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,
2012) (participation in mediation "tends to support the conclusion that the settlement process was not
collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D.
Cal. 2014) (accord).

Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

As explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Plaintiffs’ Calculation Of Defendants’ Exposure for the Class Claims	
Off-the-Clock Claim ⁵	\$487,215.00
Meal Period Claim ⁶	\$974,430.00
Rest Period Claim ⁷	\$974,430.00
Business Expense Reimbursement Claim ⁸	\$121,500.00
Wage Statement Claim ⁹	\$565,000.00
Final Pay Claim ¹⁰	\$312,780.00
Total	\$3,435,355.00

⁵ ≈ 48,600 weeks worked in aggregate by all Class Members during the Class Period × \$20.05 average hourly wage × at least 30 minutes of off-the-clock work per week.

⁶ ≈ 48,600 weeks worked in aggregate by all Class Members during the Class Period × \$20.05 average hourly wage × at least 1 meal period violation per week.

⁷ ≈ 48,600 weeks worked in aggregate by all Class Members during the Class Period × \$20.05 average hourly wage × at least 1 rest period violation per week.

⁸ ≈ 48,600 weeks worked in aggregate by all Class Members during the Class Period × \$2.50 average weekly cellphone expenses.

⁹ ≈ 11,300 wage statements issued during the 1-year statute of limitations period × \$50 penalties.

¹⁰ This estimate assumes = approximately 650 employee terminations during the 3-year statute of limitations period × 30 days of waiting-time penalties × 8-hour average shift length × \$20.05. However, no waiting-time penalties can be awarded unless the failure to pay wages is “willful,” an element that Plaintiffs acknowledge would have been difficult to prove. Several California cases have held that a good faith dispute as to whether wages were owed (including a good faith belief in a legal defense) precludes an award of waiting time penalties under Section 203. *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 584 (2010) (“There is no willful failure to pay wages [under Section 203] if the employer and employee have a good faith dispute as to whether and when the wages were due”); *see also Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 325 (2005) (“A good faith belief in a legal defense will preclude a finding of willfulness”). And case law interpreting “willful” holds that even unsuccessful good faith defenses will be sufficient to preclude recovery so long as an employer’s “position is not so untenable as to constitute bad faith” or is not supported by any evidence. *See Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal. App. 5th 685, 708, 729 (2022) (finding no liability under Section 203 when the company had a good faith dispute that meal period premiums were owed due to an on-duty meal period policy that restricted employee freedom during meal periods while paying regular wages, even though the policy was found to be unlawful); *see also Woods v. Vector Mktg. Corp.*, No. C-14-0264 EMC, 2015 WL 2453202, at *4 (N.D. Cal. May 22, 2015) (holding that the employer’s defense that the plaintiff was properly classified, even if ultimately unsuccessful at trial, was insufficient to amount to a “willful” violation of 203 and granting summary judgment on those claims because the plaintiff could point to no evidence that the defense was raised in bad faith or was unsupported by the evidence).

Given the inherent difficulty of proving that Defendants had no tenable good faith defenses; i.e., that Defendants deliberately violated the Labor Code, Plaintiffs believe that the value of the final pay claim should be reduced to 10% of the maximum.

1 This estimate assumes that each and every one of Plaintiffs' claims would have been certified for
2 class-wide resolution, that Plaintiffs' would have prevailed at trial, and that the jury's verdict would have
3 been affirmed on appeal. Understandably, for purposes of evaluating the settlement's reasonableness,
4 this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the
5 case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.--*
6 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

7 Ultimately, Plaintiffs' Counsel determined an appropriate range of recovery for settlement
8 purposes by offsetting Defendants' maximum theoretical liability by: (a) the strength of the defenses to
9 the merits of Plaintiffs' claims; (b) the risk of class certification being denied; (c) the risk of losing on any
10 of a number of dispositive motions that could have been brought between certification and trial (e.g.,
11 motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have
12 eliminated all or some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (d) the
13 risk of losing at trial; (e) the chances of a favorable verdict being reversed on appeal; and (f) the
14 difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

15 With respect to defenses, Defendants argued that even if Plaintiffs could establish any violations,
16 the calculations of potential damages grossly overstated the potential recovery because it is Defendants'
17 position that: (a) they have compliant labor policies, including a policy expressly prohibiting any
18 employee from working off- the-clock; (b) their policies also ensure that employees are provided with
19 the opportunity to take compliant meal periods, and, when they did not, Defendants paid over \$128,000
20 in meal period premiums during the Class Period; (c) departmental schedules show that employees were
21 scheduled for compliant breaks; and (d) they previously settled a prior class action which would bar any
22 class claims for a portion of the Class Period.

23 After taking into account the Discount Factors and Defendants' defenses, Plaintiffs' Counsel
24 determined that it would be reasonable to settle for a fraction of Defendants' maximum potential
25 exposure for the class claims (PAGA discussed in the following section), or approximately 25%. Such a
26 discount is inherently reasonable given that Plaintiffs would have had to overcome **multiple, dependent**
27 contingencies to prevail on their claims. If anything, the projected odds for each of the above
28 contingencies is generous to the class's position, since plaintiffs in employment cases rarely prevail on

all of the claims at any of these dispositive stages. Courts routinely approve settlements that provide a similar discounted range of the maximum potential recovery.¹¹

C. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation

Pursuant to the Settlement Agreement, \$20,000 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$15,000) will be paid directly to the LWDA, and the remaining 25% (\$5,000) will be paid to PAGA Members. (Settlement Agreement ¶ 19.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendants during discovery, Plaintiffs' Counsel determined that aggrieved employees worked a combined total of approximately 11,300 pay periods during the PAGA statute of limitations period ("PAGA Period"). Statutory penalties would be calculated according to Labor Code 2699(f)(2).

However, a number of courts have found that the "subsequent" penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 356 (2021) ("the increased \$200 civil penalty for 'subsequent violation[s]' does not apply unless [Plaintiff] presents evidence that the Labor Commission or a court notified [Defendant] that it was in violation of the Labor Code."); *Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner when the "subsequent" violations occurred).¹² Under this line of cases, Defendants' exposure would be

¹¹ *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

¹² *See also Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSCKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) ("employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA's

1 approximately \$1,130,000 = 11,300 violative pay periods × \$100.

2 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
3 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
4 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
5 reducing PAGA penalties, courts have considered issues including whether the employees suffered
6 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
7 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
8 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
9 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
10 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

11 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
12 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
13 **or 0.21% of the maximum**—and stated that this reduction was warranted because (a) the Court did not
14 believe it was appropriate to impose multiple penalties per pay period in which a violation occurred and
15 (b) imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s
16 “good faith attempts” to comply with meal period obligations and because the court found the violations
17 were minimal. *Carrington*, 30 Cal. App. 5th at 517-18. The Court of Appeal affirmed the lower court’s
18 reduced award of a \$150,000 penalty under PAGA. *Id.* at 529. If a similar reduction had been applied
19 here, Plaintiff would have recovered only approximately \$2,375 (\$1,130,000 × 0.0021 reduction).

20 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
21 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
22 approved by California courts.¹³ Where PAGA penalties are negotiated in good faith and “there is no

23
24 heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in
25 controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014
26 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice
27 that they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine*
28 *Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal.
Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
violations unless and until a court or commissioner notifies the employer that it is in violation of the
Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

¹³ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.

1 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009
3 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
4 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
5 any damages to the PAGA claims.”).

6 **D. The Court Should Preliminarily Approve the Negotiated Class Representative**
7 **Enhancement Payments**

8 Approximately 930 current and former employees will share a \$800,000 settlement fund due
9 entirely to the effort and commitment of Tannia Ayala, Angel Gutierrez, and Jesus Martinez-Arisceta.
10 Subject to Court approval, therefore, the Settlement provides for Class Representative Enhancement
11 Payments of \$10,000, each. The Class Representative Enhancement Payments are fair and reasonable
12 compensation for Plaintiffs’ effort in pursuing their actions, serving as private attorneys general under
13 PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the
14 status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
15 ensure that its terms are fair and provide adequate relief for the Settlement Class. Plaintiffs will file a
16 formal motion for the negotiated Class Representative Enhancement Payments once preliminary
17 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
18 for preliminary approval of the negotiated Class Representative Enhancement Payments.

19 **E. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and**
20 **Costs**

21 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took
22 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
23 “Fee awards in class actions average around one-third of the recovery regardless of whether the
24

25 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
26 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
27 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
28 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties).

percentage method or the lodestar method is used.” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal quotations omitted). Consistent with that observation, California state and federal courts routinely award attorneys’ fees equaling one-third of the common fund.¹⁴ Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480 (2016). At final approval, Plaintiffs will seek Court-approval of attorneys’ fees of \$266,667 (one-third of the Class Settlement Amount) and \$25,000 in litigation costs.

F. California Law Authorizes Provisional Certification for Settlement Purposes

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufl v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in settlement cases).¹⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the

¹⁴ *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016) (“33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates).

¹⁵ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia*,

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the
2 same class for purposes of litigation:

3 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
4 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
5 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*
6 *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
7 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
8 standard of scrutiny for settlement cases . . . We agree with the latter.

9 *Id.* at n19.

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

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

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

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

22 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

23 The proposed Settlement Class consists of all persons who worked for Defendant RHR
24 California Services, LLC, as non-exempt, hourly paid employees in California at any time during the
25 period from March 12, 2019 through March 12, 2024. Because all Class Members are either current or
26 former employees of Defendants, the class is readily ascertainable from Defendants’ regular business
27 records.

28 *Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class
can be preliminarily certified based on a less rigorous analysis than that necessary for final
certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2
(E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the
proposed class should be conditionally certified, and leave the final certification decision for the Fairness
Hearing.”).

1 Here, common issues of fact and law predominate because the California statutes relating to
2 each of Plaintiffs' claims, and Defendants' defenses thereto, apply with equal force and effect to all Class
3 Members. Factually, Plaintiffs contend that Defendants' policies and practices apply class-wide and
4 Defendants' liability can be determined by facts common to all members of the class. The wage and hour
5 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
6 with the claims of the Settlement Class Members.

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

14 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
15 litigating wage and hour class action cases. (Perez Decl. ¶¶ 12-20, Ex. 2; Messrelian Decl. ¶ 2.)
16 Plaintiffs' Counsel have successfully briefed, argued, certified, and gained state and federal court
17 settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs'
18 Counsel's wage and hour class action expertise establishes that they are well qualified to represent the
19 interests of this Class.

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

25 **G. The Proposed Notice Properly Informs Class Members about the Case and the**
26 **Settlement**

27 The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice") which
28 fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed

1 Class Notice will be mailed to all Class Members by First Class mail and will include information
2 regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class
3 definition, the procedure and time period within which to submit Requests for Exclusions or objections
4 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
5 payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit A.)

6 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
7 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
8 Agreement ¶ 45.)

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

13 **IV. CONCLUSION**

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

17 Dated: June 17, 2024

Respectfully submitted,

18 By: _____

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