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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

SUSANNE SCHERMAN, individually, on
behalf of those similarly situated, and as a
Private Attorney General,

Plaintiff,

v.

BIRD ROCK COFFEE ROASTERS, INC.,
and DOES 1-20, inclusive,

Defendants.

Case No. 37-2023-00034195-CU-OE-CTL

CLASS ACTION

**REPRESENTATIVE ACTION [AS TO
THE THIRD CAUSE OF ACTION]**

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

Hearing Date: August 7, 2026
Hearing Time: 10:30 a.m.
Dept: C-68
Judge: Hon. Terri E. Roberts

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1 **I. INTRODUCTION**

2 Plaintiff Susanne Scherman (“Plaintiff”) submits this memorandum in support of her
3 Unopposed Motion for Preliminary Approval of Class Action Settlement. The proposed
4 Settlement¹ arose after significant investigation and discovery into the alleged claims and potential
5 defenses, and resolves all claims in the Action against Defendant Bird Rock Coffee Roasters, Inc.
6 (“Defendant”). Through hard fought, extensive arms’-length negotiations with the assistance of
7 highly experienced wage and hour class action mediator Kevin Barnes, Plaintiff achieved an
8 excellent result for the Class Members.

9 Subject to Court approval, Plaintiff, on behalf of herself and Class Members, agreed to settle
10 the Released Class Claims and Released PAGA Claims against the Released Parties in exchange
11 for a non-reversionary all cash payment of Three Hundred Thousand Dollars and Zero Cents
12 (\$300,000.00), which is inclusive of California Labor Code (“Labor Code”) civil penalties,
13 settlement administration costs, attorneys’ fees and costs, and the Class Representative Service
14 Payment. The Settlement fully resolves Plaintiff’s and Class Members’ Released Class Claims and
15 Released PAGA Claims against the Released Parties. There are approximately 425 Class
16 Members. The Settlement reaps significant monetary benefits to these Class Members and the
17 State of California in the form of a non-reversionary \$300,000.00 all-cash settlement. Class
18 Members do not need to submit claims to receive their share of the Settlement.

19 In exchange for their Individual Class Payments, Participating Class Members will release
20 narrowly tailored claims at issue in the Action during the Class Period. Should any Class Member
21 wish to exclude themselves or object to the Settlement, Plaintiff has ensured that they have ample
22 time to do so through the negotiated sixty calendar day window from the time the Class Notice is
23 mailed by the Administrator.

24 As detailed below and in the accompanying declarations, the Settlement is fair, adequate,
25 and reasonable, particularly given the substantial financial benefits to Class Members, the narrow

26 ¹ Here, as throughout, all capitalized terms that are not otherwise defined shall have the same definitions as set forth in
27 the Class Action and PAGA Settlement Agreement (“Agreement”) attached as Exhibit 1 to the Declaration of London
28 D. Meservy in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement
29 (“Meservy Decl.”) filed concurrently herewith. The Agreement sets forth the terms and conditions for resolution of the
30 Action (the “Settlement”).

1 scope of the claims released, and the inherent risks involved with further litigation. The Settlement
2 satisfies all of the criteria for preliminary approval and deserves approval. Accordingly, Plaintiff
3 requests that the Court grant preliminary approval of the Settlement, conditionally certify the Class
4 for settlement purposes only, approve the parties' proposed Class Notice, substantially in the form
5 attached as Exhibit A to the Agreement, and schedule a final approval hearing in this matter.

6 **II. SUMMARY OF THE LITIGATION**

7 On July 17, 2023, Plaintiff initiated this putative class action against Defendant in the
8 San Diego Superior Court alleging claims for: (1) conversion; (2) unfair competition; and
9 (3) claims for penalties on a representative basis under the California Private Attorneys General
10 Act of 2004 (Labor Code § 2698, et seq.) ("PAGA") for violation of California Labor Code
11 §§ 213, 351, 353, and 2810.5. Plaintiff sought to represent a class of all persons who are or were
12 employed as baristas and other customer service employees for Defendant in the State of
13 California since May 16, 2022, who had any portion of their tips collected by Defendant and
14 distributed to Defendant's Store Managers, Assistant Store Managers, and/or District Managers.

15 Counsel for the Parties engaged in extensive discussions about the respective strengths and
16 weaknesses of Plaintiff's claims and Defendant's defenses and eventually decided to attempt to
17 resolve the Action through private mediation. On September 11, 2024, the Parties participated in
18 private mediation with mediator Kevin Barnes, Esq. The matter did not settle at mediation. But the
19 Parties continued serious, intense and protracted negotiations at mediation for over one year
20 thereafter. Ultimately, the Parties reached a settlement that was memorialized in the Settlement
21 now before this Court for preliminary approval.

22 On March 3, 2026, Plaintiff provided the LWDA with notice of the Settlement and provided
23 it with a copy of the Settlement through the LWDA's web portal as required by the PAGA.
24 Meservy Decl., ¶18 and Exhibit 2 thereto.

25 **III. SUMMARY OF SETTLEMENT**

26 **A. Terms of Settlement Including the Benefits to the Class**

27 Under the Settlement, the Class is comprised of all persons who worked as baristas and
28 other customer service employees for Defendant in the State of California at any time between

1 May 16, 2022, and January 1, 2025, who had any portion of their tips collected by Defendant and
2 distributed to Defendant's Store Managers, Assistant Store Managers, and/or District Managers.
3 Agreement at 1.5. There are approximately 425 Class Members. *Id.* at 1.9.

4 The Settlement provides that Defendant will pay Three Hundred Thousand Dollars and Zero
5 Cents (\$300,00.00) (the "Gross Settlement Amount") to settle Plaintiff's and the Class Members'
6 Released Class Claims and Released PAGA Claims. *Id.* at 1.22. The Gross Settlement Amount is a
7 non-reversionary, common-fund, all-cash fund. *Id.* at 3.1. All proceeds will be paid out under the
8 Settlement, and no funds will revert to Defendants. *Id.* Class Members do not need to submit a
9 claim to receive their share of the Settlement once Final Approval is granted. In addition to
10 distributions to the Class Members, the Settlement provides for distributions from the Gross
11 Settlement Amount as follows:

- 12 1. PAGA Penalties in the amount of \$20,000 to be allocated as follows: the
13 LWDA PAGA Payment of \$15,000 (75%) to be paid to the California
14 Labor Workforce and Development Agency ("LWDA"), with the
remainder to be paid pro-rata as Individual PAGA Payments to PAGA
Members (*Id.* at 3.2.5.);
- 15 2. The Settlement Administration Expenses Payment not to exceed \$8,950.00
16 (*Id.* at 3.2.3.);
- 17 3. The Class Counsel Fees Payment in an amount up to \$90,000.00 (i.e., 30%
18 of the Gross Settlement Amount), and Class Counsel Litigation Expenses
19 Payment for actual costs and expenses up to \$10,000 (*Id.* at 3.2.2.); and
- 20 4. The Class Representative Service Payment to Plaintiff in the amount up to
21 \$5,000.00 (*Id.* at 3.21.).

22 The Gross Settlement Amount less the Individual PAGA Payments, the LWDA PAGA
23 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, and the Administration Expenses Payment will result in the Net
25 Settlement Amount to be paid to Participating Class Members. Agreement at 1.27.

26 Each Participating Class Member will receive an Individual Class Payment from the Net
27 Settlement Amount which is determined based on each Participating Class Member's pro rata
28 share of the total number of Class Period Workweeks worked by all Participating Class Members
during the Class Period (and including any Individual PAGA Payment the Participating Class
Member may be entitled to from the PAGA Penalties). *Id.* at 1.23, 1.24, 3.2.4, 3.2.5. The Parties

1 propose that Phoenix Class Action Administration Solutions be appointed as Administrator. *Id.* at
2 1.2, 7.1.

3 B. Proposed Form of Class Notice to Class

4 The proposed Class Notice to be sent to all Class Members via First Class U.S. Mail as
5 ordered by the Court, is attached as Exhibit A to the Agreement. The Class Notice complies with
6 Rule 3.766(d) of the California Rules of Court (“Rule”) and explains: (1) the meaning and nature
7 of the proposed Class; (2) the terms and provisions of the Settlement; (3) the relief the Settlement
8 will provide members of the Class, including each Class Members’ individual Class Period
9 Workweek s and/or PAGA Pay Periods and their estimated Individual Class Payment and
10 Individual PAGA Payment; (4) the amount requested as the Class Representative Service Payment
11 to Plaintiff; (5) the amount requested by Class Counsel for attorneys’ fees and reimbursement of
12 litigation costs; (6) the procedure and deadlines for requests to be excluded from the Settlement
13 and/or to object to the Settlement; and (7) the date, time, and place of the final approval hearing.
14 *Id.*, Exhibit A.

15 This notice process complies with Rule 3.766(e). The Settlement requires Defendants to
16 provide the Administrator with data for each Class Member which will contain the Class
17 Members’ addresses and relevant information to calculate each Class Members’ Individual Class
18 Payment and Individual PAGA Payment within fourteen business days after preliminary approval
19 of the Settlement. *Id.* at 4.1. After receipt of such data, the Administrator will confirm the accuracy
20 of the address information by checking the U.S. Postal Service’s National Change of Address List
21 for updated information. *Id.* at 7.4.2. No later than fourteen business days after receipt of the class
22 information, the Settlement Administrator will mail the Class Notice to each of the Class Members
23 via First Class U.S. Mail, using the most current, known mailing address identified by Defendants
24 or through the National Change of Address Database. *Id.* With respect to those Class Members
25 whose Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement
26 Administrator shall promptly conduct a Class Member Address Search to attempt to obtain a valid
27 mailing address by performing a skip trace or mass search on LexisNexis or comparable databases
28 and, if another address is identified, shall mail the Class Notice to the newly identified address. *Id.*

1 at 7.4.3. The Settlement Administrator will re-mail all returned, undelivered Class Notices within
2 three (3) days of receiving notice that a Class Notice was undeliverable. *Id.* The deadlines for
3 Class Members' written objections, challenges to workweeks, and Requests for Exclusion will be
4 extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all
5 Class Members whose notice is re-mailed. *Id.* at 7.4.4.

6 Class Members are not required to submit a claim form or perform any other task to receive
7 their share of the Settlement. If a Class Member disputes the information listed in his or her Class
8 Notice, the Class Member may produce evidence to the Administrator substantiating factual
9 information different from that appearing in the Class Notice. *Id.* at 7.6 and Exhibit A. The
10 Settlement provides a sixty (60) day period within which Class Members may object to or request
11 exclusion from the Settlement. *Id.* at 7.5, 7.7. The Class Notice provides simple and clear
12 instructions for any Class Member who may wish to object or opt-out of the Settlement. *Id.*,
13 Exhibit A. The sixty-day period is reasonable as it is not too short of a timeframe to permit proper
14 analysis of options; conversely, it is not too long of a duration that may result in individuals
15 putting aside the Class Notice (because they have time) and letting the time expire.

16 C. Narrowly Tailored Release

17 In exchange for the benefits of the Settlement, including Individual Class Payments, Class
18 Members who do not timely and properly Opt-Out release the Released Parties from the Released
19 Class Claims. All PAGA Members release the Released Parties from the Released PAGA Claims.
20 Class Counsel negotiated that the Released Class Claims and Released PAGA Claims be narrowly
21 tailored to the claims alleged in the Operative Complaint filed in the Action, and do not encompass
22 claims arising outside of the Class Period. *Id.* at 5.2 and 5.3. Participating Class Members do not
23 release any other claims, including, but not limited to, claims for unpaid wages (minimum,
24 overtime, or otherwise), failure to provide meal or rest periods, vested benefits, wrongful
25 termination, violation of the FEHA, unemployment insurance, disability, social security, workers'
26 compensation, failure to provide recovery periods, or claims based on facts occurring outside the
27 Class Period. *Id.* at 5.2. PAGA Members and the LWDA do not release any other claims for civil
28 penalties under the PAGA, including, but not limited to, civil penalties for unpaid wages

(minimum, overtime, or otherwise), failure to provide meal or rest periods, vested benefits, failure to provide recovery periods, or claims based on facts occurring outside the PAGA Period. *Id.* at 5.3. Under the terms of the Settlement, there is *no* Civil Code §1542 waiver by Participating Class Members or PAGA Group Members.

D. Requested Class Representative Service Payment and Attorneys' Fees and Costs

All the substantive terms of the proposed Settlement were reached via arms-length negotiation of all material terms, including the payment of reasonable attorneys' fees and service awards. Through this process, the Parties agreed that Plaintiff may seek Court approval of the following payments from the Gross Settlement Amount. Plaintiff will seek a Class Representative Service Payment in the amount of \$5,000, as consideration for her services to the Class in this Action. *Id.* at 3.2.1. Class Counsel will seek an award of attorneys' fees in the amount of \$90,000 (30% of the Gross Settlement Amount), and reimbursement of actual costs incurred up to \$10,000. *Id.* at 3.2.2.

IV. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE

A class action may not be dismissed, compromised, or settled without the approval of the Court. Cal. Civ. Code §1781(f); C.R.C. 3.769. Judicial proceedings have led to a defined procedure and specific criteria for settlement approval in class action settlements, as described in the Manual for Complex Litigation (Fourth) ("Manual") §21.63 (2006). The Manual's settlement approval procedure describes the following steps:

1. Preliminary approval of the proposed settlement at an informal hearing;
2. Dissemination of mailed and/or published notice of the settlement to all affected class members; and

A "formal fairness hearing," or final settlement approval hearing, at which class members may be heard regarding the settlement, and evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented.

This procedure, commonly used by California courts and endorsed by the leading class action commentator, Professor Newberg, safeguards class members' procedural due process rights

///

1 and enables the court to fulfill its role as the guardian of class interests. *See* H. Newberg & A.
2 Conte, 4 Newberg on Class Actions §11.2 (4th ed. 2002).

3 The decision to approve or reject a proposed settlement is committed to the court's sound
4 discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) ("In general,
5 questions whether a settlement was fair and reasonable ... whether certification of the class was
6 proper, and whether the attorney fee award was proper are matters addressed to the trial court's
7 broad discretion.").

8 With this motion, Plaintiff requests that the Court take the first step in the settlement
9 approval process and grant preliminary approval of the Settlement. The purpose of the Court's
10 preliminary evaluation of the Settlement is to determine whether it is within the "range of
11 reasonableness," and whether the Class Notice setting forth the terms and conditions of the
12 Settlement, and the scheduling of a formal fairness hearing, are worthwhile. *See* 4 Newberg on
13 Class Actions §11.25.

14 Plaintiff further requests that the Court provisionally certify the proposed Class, for
15 purposes of settlement only. Provisional class certification is appropriate at the preliminary
16 approval stage where, as here, the proposed Class has not previously been certified by the Court,
17 and the requirements for certification are met. *See* 4 Newberg on Class Actions §11.22.

18 **V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

19 **A. The Governing Principles**

20 The law favors settlement, particularly in class actions and other complex cases where
21 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
22 *See* 4 Newberg on Class Actions §11.41, at 87-88 (and cases cited therein); *Class Plaintiffs v.*
23 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950
24 (9th Cir. 1976); *Potter v. Pac. Coast Lumber Co. of Cal.*, 37 Cal.2d 592, 602 (1951). These
25 concerns apply with particular force in a case such as this, where an allegedly improper practices
26 arguably affected over 400 employees.

27 To grant preliminary approval of the Settlement, the Court need find only that the
28 Settlement falls within the range of possible final approval, also described as "the range of

1 reasonableness.” *See, e.g., In re Traffic Exec. Ass’n-E. Railroads*, 627 F.2d 631, 633-34 (2d Cir.
2 1980); 4 Newberg on Class Actions §11.25. To make this determination, courts must consider
3 several relevant factors, including “the strength of plaintiffs’ case, the risk, expense, complexity
4 and likely duration of further litigation, the risk of maintaining class action status through trial, the
5 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
6 [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801
7 (1996). “The list of factors is not exclusive and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th
9 at 245.

10 Furthermore, courts must give “proper deference to the private consensual decision of the
11 parties,” since:

12 [T]he court’s intrusion upon what is otherwise a private consensual agreement
13 negotiated between the parties to a lawsuit must be limited to the extent necessary
14 to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the
settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

15 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (citation omitted).
16 Indeed, as a “[s]ettlement is the offspring of compromise,” the question upon preliminary approval
17 “is not whether the final product could be prettier, smarter or snazzier, but whether it is fair,
18 adequate and free from collusion.” *Id.* Accordingly, a court should not second-guess the parties or
19 substitute its judgment for that of the proponents of the settlement, particularly when experienced
20 counsel familiar with the litigation have reached settlement. *See Hammon v. Barry*, 752 F. Supp.
21 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979).

22 The Manual characterizes the preliminary approval stage as an “initial assessment” of the
23 fairness of the proposed settlement made by the court based on written submissions and an
24 informal presentation from the settling parties. The Manual summarizes the preliminary approval
25 criteria as follows:

26
27 If the preliminary evaluation of the proposed settlement does not disclose grounds
28 to doubt its fairness or other obvious deficiencies, such as unduly preferential
treatment of class representatives or of segments of the class, or excessive
compensation for attorneys, and appears to fall within the range of possible

1 approval, the court should direct that notice under Rule 23(e) be given to the class
2 members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

3 See Manual for Complex Litigation §30.41 (3d ed. 1995), *as quoted in* 4 Newberg on Class
4 Actions §11.25.

5 Here, as shown below, the Settlement falls well within the range of reasonableness.

6 B. The Terms of the Settlement Disclose No Grounds to Doubt its Fairness

7 A preliminary review of the Settlement's terms raises no doubts as to its fairness. Indeed,
8 this Court should begin its analysis with a presumption that the Settlement is fair:

9 [A] presumption of fairness exists where: (1) the settlement is reached through
10 arm's-length bargaining; (2) investigation and discovery are sufficient to allow
11 counsel and the court to act intelligently; (3) counsel is experienced in similar
litigation; and (4) the percentage of objectors is small.

12 *Dunk*, 48 Cal.App.4th at 1802; *Wershba*, 91 Cal.App.4th at 245.

13 Here, the Parties negotiated the Settlement in good faith and at arms' length, following an
14 intensive investigation of the claims at issue. The Parties shared extensive information with one
15 another before arriving at a settlement and fully apprised each other of their respective factual
16 contentions, legal theories, claims, and defenses. Meservy Decl., ¶¶6-11.

17 Class Counsel are experienced in class action wage-and-hour litigation. Meservy Decl.,
18 ¶¶3-5; Declaration of Justin A. Morello in Support of Plaintiffs' Unopposed Motion for
19 Preliminary Approval of Class Action Settlement ("Morello Decl."), ¶¶3-9. Defendant's counsel
20 also are experienced in defending class actions of this type.

21 C. Liability Is Vigorously Contested, and the Settlement Provides Reasonable
22 Compensation for the Class Members' Alleged Injuries

23 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
24 Defendant asserts legal and factual grounds for defending the Action. Defendant denies each of
25 Plaintiff's allegations as they apply to Plaintiff and each Class Member. Notwithstanding
26 Defendant's arguments, the Settlement commits Defendant to pay \$300,000.00 to compensate
27 Plaintiff, Class Members, PAGA Members, and the LWDA for the Released Class Claims and
28

1 Released PAGA Claims. The Settlement will result in a range of payments for each Participating
2 Class Member, depending on each Participating Class Member's Class Period Workweeks.

3 The Settlement provides a significant recovery to the Class and falls well within the range of
4 reasonableness. *See* Meservy Decl., ¶¶28-31 (setting forth an analysis of the amount in controversy
5 and a realistic range of outcomes of this matter as required by *Dunk v. Foot Locker Retail, Inc.*
6 (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
7 128 (2008)). It provides substantial and immediate benefits to Class Members, which is a notable
8 achievement given that continued litigation could result in zero benefit to the Class. The
9 Settlement is presented as the product of extensive arms'-length negotiations by experienced
10 counsel on both sides after thorough investigation of the claims and recognition of the strengths
11 and weaknesses of each other's positions. In calculating the appropriate settlement amount, the
12 Parties had sufficient information and had conducted an adequate investigation to allow them to
13 make an educated and informed analysis. Moreover, the claims released by Class Members are
14 only those that arose during the Class Period and PAGA Period—both of which end on January 1,
15 2025. Agreement at 1.12 and 1.34. This is because on or before January 1, 2025, as a direct result
16 of this Action, Defendant made significant modifications to its employment policies and
17 procedures resulting in increased legal compliance, including ceasing its practice of sharing tips
18 collected in its cafes with its Store Managers, Assistant Store Managers, and/or District Managers.
19 These policy and procedure changes provide significant future benefit to Class Members who
20 continue to be employed by Defendant and the public at large. Meservy Decl., ¶30(d).

21 The Settlement is fair, reasonable, and adequate given the inherent risks of litigation, the
22 risk that class certification may be denied, and the costs of pursuing the litigation through trial and
23 subsequent appeals. The Settlement will finally resolve the Class Members' Released Class
24 Claims, PAGA Members' Released PAGA Claims, costs, and attorneys' fees.²

25 ² Plaintiff will request, and Defendant will not oppose, a Class Representative Service Payment of
26 \$5,000.00, to recognize each Plaintiff's time and efforts on behalf of the Class. "Courts routinely approve
27 incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred
28 during the course of the class action litigation." *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga.
2001) (quoting *In re S. Ohio Corr. Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)). In addition, at final
approval Class Counsel will request an award of attorneys' fees equal to 30% of the Gross Settlement
Amount and reimbursement of out-of-pocket costs up to \$10,000. Defendant will not oppose these requests.

1 Despite the asserted fairness of the Settlement’s terms, should any Class Member, upon
2 reviewing the Class Notice, be unsatisfied with the terms, each has the right to request to be
3 excluded from (i.e., to opt out of) the Settlement, in which case the Class Member would retain
4 any Released Class Claims he or she may have against Defendant. Agreement at 7.5. Moreover,
5 Class Members who do not opt out may attend the final fairness hearing for the purpose of
6 objecting to one or more of the Settlement’s terms. *Id.* at 7.7.

7 Accordingly, preliminary approval of the Settlement is appropriate.

8 **VI. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

9 It is well established that trial courts should use a lower standard for determining the
10 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
11 App. 4th at 1807 n.19. The reason for this is that no trial is anticipated in a settlement class, so the
12 case management issues inherent in determining if the class should be certified need not be
13 confronted. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

14 Under California law, a class action is appropriate when the class is ascertainable and there
15 is “a well defined community of interest in the questions of law and fact involved affecting the
16 parties to be represented.” *Dunk*, 48 Cal.App.4th at 1806; Cal. Civ. Proc. §382. State-law
17 requirements under California Code of Civil Procedure §382 for class certification mirror those of
18 federal law under Rule 23 of the Federal Rules of Civil Procedure: numerosity, typicality of the
19 class representative’s claims, adequacy of representation, predominance of common issues, and
20 superiority. *See* Fed. R. Civ. P. 23(a); *see also Hanlon*, 150 F. 3d at 1019. For settlement purposes,
21 each of these requirements is met here.

22 The Class is comprised of all persons who worked as baristas and other customer service
23 employees (other than work performed as a Store Manager, Assistant Store Member, and/or
24 District Manager) for Defendant in the State of California at any time between May 16, 2022, and
25 January 1, 2025, who had any portion of their tips collected by Defendant and distributed to

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27 Class Counsel will show that the requested fee falls well within the historical range of attorneys’ fee
28 awards, and that their requested fee is fair compensation for undertaking a complex, risky, and time-
consuming case on a contingent basis. For purposes of preliminary approval, the requested fees, costs, and
Class Representative Service Payment fall well within the range of reasonableness.

1 Defendant's Store Managers, Assistant Store Managers, and/or District Managers. *Id.* at 1.5. The
2 members of the Class are ascertainable because they all can be identified through Defendant's
3 personnel and payroll files.

4 The numerosity requirement is met if the class is so large that joinder of all members would
5 be impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union, Local No. 30*, 489 F.Supp. 282
6 (N.D. Cal. 1980), *aff'd*, 694 F.2d 531 (9th Cir. 1982). Here, Defendant's records show that there
7 are approximately 425 Class Members. *Id.* at 1.9. This is so numerous that joinder is
8 impracticable.

9 For settlement purposes, the members of the proposed Class (including Plaintiff) were all
10 subject to Defendant's policies and practices and share common issues of fact and law including,
11 but not limited to: whether Defendant violated California law when it collected tips left by
12 customers and distributed a portion of those tips to its Store Managers, Assistant Store Managers,
13 and/or District Managers; and whether Defendant's common employment practices in regard to
14 Class Members violated California conversion and unfair competition laws. Under these
15 circumstances, the commonality requirement is satisfied for purposes of certifying the Class for
16 Settlement.

17 For settlement purposes, Plaintiff's claims are typical of those of the Class she represents.
18 Plaintiff is a member of the Class. Plaintiff worked as a barista for Defendant in California during
19 the Class Period and was subject to Defendant's employment policies and practices that are the
20 subject matter of the Action. Plaintiff's claims are typical of the other Class Members' claims.
21 Nothing about the Claims alleged are unique to Plaintiff, nor preclude class certification. The
22 typicality requirement is easily satisfied here. Plaintiff has demonstrated that she will aggressively
23 and competently assert the interests of the members Class. Plaintiff retained competent counsel,
24 experienced in litigating class action claims in the employment context. Meservy Decl., ¶¶3-5 and
25 Morello Decl., ¶¶3-9. Plaintiff has met the adequacy requirement.

26 Finally, class certification is authorized where common questions of law and fact
27 predominate over individual questions, and where class-wide treatment of a dispute is superior to
28 individual litigation. *See Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981). Here, for

1 settlement purposes, common questions regarding Class Members' entitlement to damages for tips
2 left by customers that Defendant collected then distributed to its Store Managers, Assistant Store
3 Managers, and/or District Managers and entitlement to civil penalties predominate over individual
4 questions; and Class Members' potential legal remedies are identical. Furthermore, it is preferable
5 to resolve all of the Released Class Claims for Class Members by means of the Settlement rather
6 than to require each member them to litigate his or her individual claims.

7 For these reasons, the proposed Class should be certified for settlement purposes.

8 **VII. THE CLASS NOTICE IS APPROPRIATE**

9 A. The Class Notice Satisfies Due Process Requirements

10 Due process and judicial interpretation of the notice provisions under California and federal
11 law require notice be provided to members of the Class by the best reasonable method available.
12 *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974); *Cartt v. Super. Ct.*, 50 Cal.App.3d
13 960, 973-74 (1975). The notice plan here entails mailing the Class Notice to the last known
14 addresses of all Class Members based on Defendant's payroll records and diligent administrative
15 efforts. The Class Notice is consistent with class certification notices approved by numerous state
16 and federal courts, and is, under the circumstances of this case, the best notice practicable. *See*
17 *Agreement*, Exhibit A. Defendant will provide the Administrator with a database of all Class
18 Members and PAGA Group Members, including the number of Class Members' Class Period
19 Workweeks worked during the Class Period, and PAGA Pay Periods, if applicable. *Agreement* at
20 1.8. The Administrator will thereafter finalize the Class Notice and mail it to the Class Members.
21 *Id.* at 7.4. The Administrator will endeavor to determine current addresses for Class Members
22 whose Notices are returned undelivered, and will re-send Class Notices to them as appropriate. *Id.*
23 The proposed Class Notice and objection/exclusion process satisfies all due process requirements.
24 *See Eisen*, 417 U.S. at 156; *Cartt*, 50 Cal. App. 3d at 960.

25 B. The Class Notice Is Accurate and Informative

26 The Class Notice provides: (1) information on the meaning and nature of the proposed
27 Class; (2) the terms and provisions of the Settlement; (3) the relief the Settlement will provide
28 members of the Class, including each Class Members' individual Class Period Workweeks, PAGA

1 Periods and their estimated Individual Class Payment and Individual PAGA Payment; (4) the
2 amount requested as a Class Representative Service Payment to Plaintiff; (5) the amount requested
3 by Class Counsel for attorneys' fees and reimbursement of litigation costs; (6) the procedure and
4 deadlines for requests to be excluded from the Settlement and/or to object to the Settlement; and
5 (7) the date, time, and place of the final approval hearing. Agreement, Exhibit A.

6 The Class Notice also fulfills the requirement of neutrality in class notices. *See* 3 Newberg
7 on Class Actions §8.39. It summarizes the proceedings to date, and the terms and conditions of the
8 Settlement, in an informative and coherent manner, in compliance with the Manual's statement
9 that the notice should state essential terms "concisely and clearly ... in plain, easily understood
10 language." *See* Manual for Complex Litigation, §21.31. The Class Notice clearly states that the
11 Settlement does not constitute an admission of liability by Defendant and recognizes that the Court
12 has not ruled on the merits of the Action. It also states that the Court's final settlement approval
13 decision has yet to be made. Accordingly, the Class Notice complies with the standards of clarity,
14 fairness, completeness, and objectivity required of a settlement class notice disseminated under
15 authority of the Court. *See* Fed. R. Civ. P. 23(c)(2); 23(e); 3 Newberg on Class Actions §§8.21,
16 8.39; Manual for Complex Litigation, §§21.311, 21.312.

17 **VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

18 The last step in the settlement approval process is the final approval hearing, at which the
19 Court may hear all evidence and argument necessary to evaluate the proposed Settlement. At that
20 hearing, proponents of the Settlement may explain and describe its terms and conditions and offer
21 argument in support of Settlement approval, and members of the Class, or their counsel, may be
22 heard in support of or in opposition to the Settlement. Plaintiff proposes that the final approval
23 hearing be held on January 8, 2027, at 10:30 a.m.

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1 **IX. CONCLUSION**

2 Plaintiff submits that the Settlement is in the best interests of Class Members and
3 respectfully request that this Court conditionally certify the Class for Settlement purposes only;
4 preliminarily approve the Settlement; approve the form, content, and distribution of the Class
5 Notice; and set a final approval and fairness hearing on January 8, 2027, at 10:30 a.m.

6
7 Dated: March 3, 2026

MESERVY LAW, P.C.
MORELLO LAW, P.C.

8
9 By: 

LONDON D. MESERVY (SB# 216654)

10 Attorneys for Plaintiff Susanne Scherman
11 individually, as a Class Representative and a
12 Private Attorney General, and for Members of
13 the Class
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