

David Lavi, Esq. (State Bar No. 277604)  
Email: [dlavi@ebralavi.com](mailto:dlavi@ebralavi.com)  
Arie Ebrahimian, Esq. (State Bar No. 274961)  
Email: [arie@ebralavi.com](mailto:arie@ebralavi.com)  
**E&L, LLP**  
8889 W. Olympic Blvd., 2nd Floor  
Beverly Hills, California 90211  
Telephone: (213) 213-0000  
Facsimile: (213) 213-0025

Attorneys for Plaintiff MOSES SANTAMARIA,  
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES—CENTRAL DISTRICT**

MOSES SANTAMARIA, on behalf of himself  
and others similarly situated,

Plaintiff,

vs.

MAYABEQUE, INC., a California corporation  
dba VERSAILLES CUBAN FOOD; and  
DOES 1 to 100, inclusive,

Defendants.

Case No.: 23STCV05330

*[Assigned for all purposes to: Hon. David  
Cunningham, III, Judge; Dept. 11]*

**PLAINTIFF MOSES SANTAMARIA'S  
NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

*[Filed concurrently with Memorandum of Points  
and Authorities; Declaration of Moses  
Santamaria; Declaration of David Lavi;  
Declaration of Jodey Lawrence; and [Proposed]  
Order]*

Hearing Information:

Date : April 6, 2026

Time : 9:30 a.m.

Dept. : 11

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

3           **NOTICE IS HEREBY GIVEN** that that pursuant to Rule 3.769 of the California Rules of  
4 Court, on April 6, 2026, at 9:30 a.m., or as soon thereafter as the matter can be heard in Department  
5 11 of the Los Angeles County Superior Court located at 312 N. Spring St., Los Angeles, California  
6 90012, Moses Santamaria (“Plaintiff”) will, and hereby do, move for an order granting preliminary  
7 approval of the proposed class action settlement on the terms and conditions set forth in the Class  
8 Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement  
9 Agreement”) between Plaintiff and Defendant Mayabeque, Inc., a California corporation d/b/a  
10 Versailles Cuban Food (“Defendant”), a copy of which is attached to the Declaration of David Lavi  
11 (“Lavi Dec.”) as **Exhibit 1**. Plaintiff will further move that the Order specifically encompass the  
12 following:

- 13                     1.       Preliminary approval of the proposed class settlement of this lawsuit;  
14                     2.       Pursuant to section 382 of the California Code of Civil Procedure, provisional  
15 certification of the following Class defined as follows:

16                               All non-exempt employees who worked for Defendant at any time during  
17                               the Class Period (“Class” or “Class Members”). The “Class Period” as  
18                               referred to herein shall be from March 9, 2019 to May 8, 2019.

19                               All non-exempt employees who worked for Defendant at any time during  
20                               the PAGA Period (“PAGA Period”). The “PAGA Period” as referred to  
21                               herein shall be from March 16, 2019 to May 8, 2019.

- 21                     3.       Preliminary appointment of Plaintiff Moses Santamaria as Class  
22 Representatives;  
23                     4.       Preliminary appointment of David Lavi, Esq. and Arie Ebrahimian, Esq. of E&L,  
24 LLP as Class Counsel;  
25                     5.       The scheduling of a hearing to consider whether the Settlement should be  
26 finally approved and to permit Class Representative Service Payment to Plaintiff, Settlement  
27 Administrator costs, civil penalties payable to the LWDA, and attorneys’ fees and costs to Class  
28 Counsel;

1           6.     Appointment of Phoenix Settlement Administrators as the third-party  
2 Settlement Administrator for mailing notices;

3           7.     Approval of the proposed Notice Packet which is attached as Exhibit A to the  
4 executed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”),  
5 which is attached to the Declaration of David Lavi as Exhibit 1 filed concurrently herewith, and an  
6 order that it be disseminated to the proposed Class as provided in the Settlement Agreement; and

7           8.     Set a Final Approval and Settlement Fairness Hearing on a date that is  
8 approximately 150 days after the Court grants preliminary approval of the Settlement.

9           This Motion is based on this Notice of Motion, the attached Memorandum of Points and  
10 Authorities, the Declarations of Moses Santamaria, David Lavi, and Jodey Lawrence of Phoenix  
11 Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in  
12 this action, and on any further oral or documentary evidence or argument presented at the time of  
13 hearing.

14           Defendant does not intend to oppose this Motion, and given the multiplicity of issues  
15 addressed in this Motion, Defendant has indicated its approval of Plaintiff’s expressed need to exceed  
16 the 20-page limit set forth in California Rule of Court 3.764(c)(2). Therefore, Plaintiff respectfully  
17 request that the Court consider Plaintiff’s memorandum of points and authorities, which is 32 pages  
18 in length.

19 Dated: September 4, 2025

Respectfully submitted,  
**E&L, LLP**

21 

22 By: \_\_\_\_\_

23           Davi Lavi, Esq.  
24           Arie Ebrahimian, Esq.  
25           Attorneys for Plaintiff MOSES SANTAMARIA,  
26           on behalf of himself and others similarly situated  
27  
28

## TABLE OF CONTENTS

|                                                                                                                                                   |           |
|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| MEMORANDUM OF POINTS AND AUTHORITIES .....                                                                                                        | 1         |
| <b>I. INTRODUCTION.....</b>                                                                                                                       | <b>1</b>  |
| <b>II. SUMMARY OF THE LITIGATION.....</b>                                                                                                         | <b>3</b>  |
| <b>A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-LENGTH NEGOTIATIONS.....</b>                                                           | <b>3</b>  |
| <b>1. The Parties .....</b>                                                                                                                       | <b>3</b>  |
| <b>2. Procedural History .....</b>                                                                                                                | <b>3</b>  |
| <b>3. Discovery .....</b>                                                                                                                         | <b>3</b>  |
| <b>4. Arms-Length Negotiations .....</b>                                                                                                          | <b>4</b>  |
| <b>III. ARGUMENT .....</b>                                                                                                                        | <b>5</b>  |
| <b>A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES .....</b>                                                                                       | <b>5</b>  |
| 1. The Proposed Class Is Ascertainable and Numerous.....                                                                                          | 6         |
| 2. Common Issues of Law and Fact Predominate .....                                                                                                | 6         |
| 3. The Claims of the Named Plaintiff Is Typical .....                                                                                             | 6         |
| 4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class .....                                                               | 7         |
| <b>B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, &amp; REASONABLE.....</b> | <b>7</b>  |
| 1. The Preliminary Approval Standard is Met .....                                                                                                 | 8         |
| a. The Strength of Plaintiff's Case .....                                                                                                         | 9         |
| b. Risk, Expense, Complexity, and Duration of Further Litigation .....                                                                            | 9         |
| c. Risk of Maintaining Class Action Status .....                                                                                                  | 9         |
| d. Overview of the Settlement Agreement .....                                                                                                     | 10        |
| e. The Parties Engaged in Fair and Honest Negotiations.....                                                                                       | 11        |
| f. Amount Offered in Settlement Given Realistic Valus of Claims .....                                                                             | 11        |
| g. The Settlement Amount is Within the Range of Possible Approval .....                                                                           | 22        |
| h. The Experience Views of Counsel .....                                                                                                          | 24        |
| i. Attorney's Fees and Costs .....                                                                                                                | 24        |
| j. Administrative Costs .....                                                                                                                     | 27        |
| k. Class Representative Service Payment .....                                                                                                     | 27        |
| l. PAGA Payment .....                                                                                                                             | 28        |
| m. Payroll Taxes and Individual Settlement Payment Tax Allocation .....                                                                           | 29        |
| n. Uncashed Funds .....                                                                                                                           | 29        |
| o. Released Parties and Scope of Release .....                                                                                                    | 29        |
| <b>C. THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES .....</b>                                                                                  | <b>30</b> |
| <b>D. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE TO CLASS MEMBERS.....</b>                                                        | <b>30</b> |
| <b>E. THE COURT SHOULD SET A FINAL APPROVAL HEARING .....</b>                                                                                     | <b>31</b> |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

|                            |           |
|----------------------------|-----------|
| <b>IV. CONCLUSION.....</b> | <b>31</b> |
|----------------------------|-----------|

## **TABLE OF AUTHORITIES**

### **Cases**

|                                                                                                                                    |            |
|------------------------------------------------------------------------------------------------------------------------------------|------------|
| <i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135, 1161-1162 .....                       | 5          |
| <i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.</i> (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9..... | 22         |
| <i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157.....                                                               | 17, 20, 22 |
| <i>Apple Computer, Inc. v. Superior Court</i> (2005) 126 Cal. App. 4th 1253, 1270 .....                                            | 25         |
| <i>Armenta v. Osmose, Inc.</i> 135 Cal.App.4th 314, 324 (2005) .....                                                               | 12         |
| <i>Atempa v. Pedrazzani</i> (2018) 27 Cal.App.5th 809 .....                                                                        | 22         |
| <i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341.....                                               | 6          |
| <i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701, 726 .....                                           | 6          |
| <i>Bowles v. Sup. Ct.</i> , (1955) 44 Cal.2d 574.....                                                                              | 6          |
| <i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610, 617 .....                                                          | 9          |
| <i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004, 1049 .....                                               | 13         |
| <i>Capital People First v. State Dept. of Developmental Services</i> (2007) 155 Cal.App.4th 676, 697.....                          | 7          |
| <i>Ceja-Corona v. CVS Pharm., Inc.</i> , 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 .....                                 | 21         |
| <i>City &amp; County of San Francisco v. Sweet, supra</i> , 12 Cal. 4th at 110 .....                                               | 25         |
| <i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801.....                                                                | 8          |
| <i>Dunleavy v. Nadler</i> (9th Cir. 2000) 213 F.3d 454, 459.....                                                                   | 23         |
| <i>Duran v. U.S. Bank National Association</i> (2014) 59 Cal.4th 1, 25.....                                                        | 13, 15     |
| <i>Eisen v. Carlisle &amp; Jacquelin</i> (1974) 417 U.S. 156.....                                                                  | 30         |
| <i>Faulkinbury v. Boyd &amp; Assoc., Inc.</i> (2013) 216 Cal.App.4th 220 .....                                                     | 6          |
| <i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011 .....                                                                | 5          |
| <i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16 .....                                                                        | 26         |
| <i>Huntington Memorial Hospital v. Superior Court</i> (2005) 131 Cal.App.4th 893 .....                                             | 16         |
| <i>In re Activision Sec. Litig.</i> (N.D. Cal 1989) 723 F. Supp. 1373, 1375.....                                                   | 25, 26     |
| <i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F.2d 167, 179 .....                                            | 5          |
| <i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380, 1393-94.....                                             | 27         |
| <i>In re Immune Response Securities Litigation</i> (S.D. Cal. 2007) 497 F. Supp. 2d 1166.....                                      | 26         |

|    |                                                                                                                                       |           |
|----|---------------------------------------------------------------------------------------------------------------------------------------|-----------|
| 1  | <i>In re Online DVD-Rental Antitrust Litig.</i> , 779 F.3d at 947.....                                                                | 27        |
| 2  | <i>In re Pacific Enterprises Securities Litigation</i> (9th Cir. 1995) 47 F.3d 373 .....                                              | 24, 26    |
| 3  | <i>In re Syncor ERISA Litig.</i> (9th Cir. 2008) 516 F.3d 1095.....                                                                   | 7         |
| 4  | <i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i> (1981) 452 U.S. 905 .....                                         | 5         |
| 5  | <i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 130 .....                                                       | 8, 11, 24 |
| 6  | <i>Laffitte v. Robert Half Int'l, Inc.</i> (2016) 1 Cal.5th 480 .....                                                                 | 25, 26    |
| 7  | <i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal. App. 4th 19, 26.....                                                      | 25, 26    |
| 8  | <i>Linney v. Cellular Alaska Partnership</i> (9th Cir. 1998) 151 F. 3d 1234, 1242.....                                                | 23        |
| 9  | <i>Maldonado v. Epsilon Plastics, Inc.</i> (2018) 22 Cal.App.5th 1308 .....                                                           | 19        |
| 10 | <i>Mallick v. Superior Court</i> (1979) 89 Cal.App.3d 434, 438 .....                                                                  | 8         |
| 11 | <i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442.....                                                                        | 7         |
| 12 | <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 409 .....                                       | 8         |
| 13 | <i>Nen Thio v. Genji, LLC</i> , 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014).....                                                       | 21        |
| 14 | <i>Nordstrom Comm'n Cases</i> , 186 Cal. App. 4th 576, 589 (2010).....                                                                | 20, 28    |
| 15 | <i>Quinn v. State</i> (1975) 15 Cal. 3d 162, 168.....                                                                                 | 25        |
| 16 | <i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App. 3d 1117, 1139 .....                                                             | 23        |
| 17 | <i>Reed v. United Teachers San Bernardino</i> (2012) 208 Cal.App.4th 322 .....                                                        | 5         |
| 18 | <i>Sav-On Drug Store, Inc. v. Superior Court (Rocher)</i> (2004) 34 Cal.4th 319, 327 .....                                            | 6         |
| 19 | <i>Sevidal v. Target Corp.</i> (2010) 189 Cal.App.4th 905, 916 .....                                                                  | 6         |
| 20 | <i>Shine v. Williams Sonoma</i> (2018) 23 Cal.App.5th 1070.....                                                                       | 29        |
| 21 | <i>Spann v. J.C. Penney Corp.</i> (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1265.....                                                    | 27        |
| 22 | <i>Trustees of Const. Industry &amp; Laborers Health and Welfare Trust v. Redland Ins. Co.</i> (9th Cir.<br>2006) 460 F.3d 1253 ..... | 26        |
| 23 | <i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224, 234-35.....                                                         | 8, 23     |

**Statutes**

|    |                                       |            |
|----|---------------------------------------|------------|
| 1  | 29 U.S.C. § 207(e)(2)-(3) .....       | 16         |
| 2  | Cal. Civ. Proc. § 382 .....           | 6          |
| 3  | Cal. Lab. Code §1194.....             | 19         |
| 4  | Cal. Lab. Code §1194.2.....           | 19         |
| 5  | Cal. Lab. Code §1197.....             | 19         |
| 6  | Cal. Lab. Code §1198.....             | 19         |
| 7  | Cal. Lab. Code §201 through 204 ..... | 20         |
| 8  | Cal. Lab. Code §204.....              | 19         |
| 9  | Cal. Lab. Code §210.....              | 20         |
| 10 | Cal. Lab. Code §226.....              | 18         |
| 11 | Cal. Lab. Code §226(e) .....          | 19         |
| 12 | Cal. Lab. Code §226.7.....            | 15, 18, 19 |
| 13 | Cal. Lab. Code §227.3.....            | 19         |
| 14 | Cal. Lab. Code §2804.....             | 20         |
| 15 | Cal. Lab. Code §510.....              | 19         |
| 16 | Cal. Lab. Code §512.....              | 19         |
| 17 | Cal. Lab. Code §516.....              | 19         |
| 18 | Cal. Lab. Code §558.....              | 19         |

## **Other Authorities**

|                                                         |          |
|---------------------------------------------------------|----------|
| 4 Newberg on Class Actions § 14.6 (4th Ed. 2013)        | 26       |
| California Rule of Court 3.766(d)                       | 30       |
| California Rule of Court 3.766(e)                       | 31       |
| California Rule of Court 3.769                          | 5, 7, 31 |
| Newberg on Class Actions (4 <sup>th</sup> Ed.) §11:25.) | 8        |

## **Rules**

|                                                                                                                                                                 |        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>Ashker v. Sayre</i> (N.D. Cal. 2011), No. 05-03759 CW, 2011 WL 825713, at * 3 .....                                                                          | 26     |
| <i>Bercea v. AE Retail West</i> , Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012).....                                                     | 23     |
| <i>Carrington v. Starbucks Corporation</i> (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) .....                                            | 22     |
| <i>Chu v. Wells Fargo Investments, LLC</i> , Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. 2011) .....                                                | 21, 28 |
| <i>Doty v. Costco Wholesale Corp.</i> , Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) .....                                                              | 23     |
| <i>Edmiston v. Loma Linda University Medical Center – Murrieta, et al.</i> , Case No. MCC 1300610, Riverside Superior Court, Hon. Craig R Riemer presiding..... | 28     |
| <i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15, 18, <i>affd.</i> 661 F.2d 939 (9th Cir. 1981).....                                     | 24     |
| <i>Finder v. Leprino Foods Co.</i> (E.D. Cal. Mar. 12, 2015) Case No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151 at *5 .....                                         | 18     |
| <i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i> (E.D. Pa. 1985) 630 F.Supp. 482, 488 .....                                                                | 24     |
| <i>Franco v. Ruiz Food Prods.</i> , 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 .....                                                                 | 21     |
| <i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3.....                                                              | 21     |
| <i>Glass v. UBS Finan. Servs.</i> , Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) ..                                                              | 22     |
| <i>Global Minerals &amp; Metals Corp. v. Superior Court</i> (2003) 113 Cal.App.4th 836, 859 .....                                                               | 5      |
| <i>Gomez v. Amadeus Salon, Inc.</i> , Case No. BC392297 (L.A. County Super. Ct. July 23, 2010).....                                                             | 23     |
| <i>Green v. Lawrence Service Co.</i> (C.D. Cal. 2013) 2013 WL 3907506, *5, fn. 5.....                                                                           | 21     |

|    |                                                                                                           |    |
|----|-----------------------------------------------------------------------------------------------------------|----|
| 1  | <i>Hopson v. Hanesbrands, Inc.</i> (S.D. Cal. Apr. 13, 2009) No. CV 08-0844 EDL, 2008 WL 3385452,         |    |
| 2  | at *1 .....                                                                                               | 28 |
| 3  | <i>In re M.L. Stern Overtime Litig.</i> (S.D. Cal. Apr. 13, 2009) No. CV 07-0118 BTM (JMAx), 2009         |    |
| 4  | WL 995864, at *1 .....                                                                                    | 28 |
| 5  | <i>Lim v. Victoria's Secret Stores, Inc.</i> , Case No. 04CC00213 (Orange County Super. Ct. Jan. 20,      |    |
| 6  | 2006).....                                                                                                | 23 |
| 7  | <i>Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523, 527 .....            | 23 |
| 8  | <i>Palencia v. 99 Cents Only Stores</i> , Case No. 34-2010-00079619 (Sacramento County Super. Ct.) ..     | 23 |
| 9  | <i>Poisson v. Dispatch Transportation, Inc., et al.</i> , Case No. RIC1504851, Riverside Superior Court,  |    |
| 10 | Hon. Craig Reimer presiding .....                                                                         | 28 |
| 11 | <i>Ressler v. Federated Department Stores, Inc.</i> , Case No. BC335018 (L.A. County Super. Ct. Jan. 2,   |    |
| 12 | 2009).....                                                                                                | 23 |
| 13 | <i>Ross v. U.S. Bank Nat'l Ass'n</i> , Civ. (N.D. Cal. Sept. 29, 2010) No. 3:07-2951 SI, 2010 WL 3833922, |    |
| 14 | at *3 .....                                                                                               | 27 |
| 15 | <i>Schiller v. David's Bridal, Inc.</i> , Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17          |    |
| 16 | (E.D. Cal. June 11, 2012) .....                                                                           | 23 |
| 17 | <i>Sorenson v. PetSmart, Inc.</i> , Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) .....        | 23 |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Moses Santamaria (“Plaintiff”) has reached a proposed class and representative  
4 action settlement with Defendant Mayabeque, Inc., d/b/a Versailles Cuban Food (“Defendant”), to  
5 resolve alleged wage-and-hour violations. Plaintiff asserts that Defendant engaged in the following  
6 unlawful practices: (1) failure to pay all minimum and overtime wages; (2) meal period violations,  
7 including (i) requiring employees to work through, delay, or shorten first meal periods due to work  
8 demands, and (ii) failing to provide second meal periods for shifts exceeding 10 hours; (3) rest period  
9 violations; (4) failure to indemnify employees for necessary expenditures and losses, such as  
10 deducting credit card processing fees from tips and gratuities; and (5) failure to provide proper sick  
11 pay. In connection with these alleged violations, Plaintiff also asserts derivative claims for failure to  
12 timely pay all wages owed—including final wages upon separation—failure to provide accurate wage  
13 statements, and seeks civil penalties pursuant to the Private Attorneys General Act of 2004  
14 (“PAGA”).

15 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,  
16 common-fund class action settlement,<sup>1</sup> in which Defendant has agreed to pay Two-Hundred  
17 Thousand Dollars and Zero Cents (\$200,000.00) on behalf of the following Class:

18 All non-exempt employees who worked for Defendant at any time during  
19 the Class Period (“Class” or “Class Members”). The “Class Period” as  
20 referred to herein shall be from March 9, 2019 to March 19, 2024.

21 All non-exempt employees who worked for Defendant at any time during  
22 the PAGA Period (“PAGA Period”). The “PAGA Period as referred to  
23 herein shall be from March 16, 2019 to March 19, 2024.

24 Significantly, Class Members do not need to file a claim to benefit from the Settlement  
25 because all Class Members will automatically receive a payment unless they affirmatively opt-out.

26 <sup>1</sup> The executed Class Action and PAGA Settlement Agreement and Class Notice (“Settlement”), which is  
27 nearly identical to the Los Angeles Superior Court Model Class Action and PAGA Settlement Agreement and  
28 Class Notice, is attached to the Declaration of David Lavi as Exhibit 1. All defined terms in this motion have  
the same definitions as used in the Settlement. Plaintiff’s PAGA notice letter to the LWDA, which was  
submitted on March 16, 2023, and confirmation of filing, is attached to the Declaration of David Lavi as  
Exhibit 2. Plaintiff uploaded the proposed Settlement to the LWDA on September 4, 2025. The confirmation  
is attached as Exhibit 3.

1 There are approximately 199 Class members, who worked approximately 16,721 workweeks,  
2 rendering the average payment to Class Members to be approximately \$416.50 should they have  
3 worked equal pay periods. This is an excellent result given the risks of non-certification due to  
4 Defendant's numerous bona-fide defenses.

5 The Settlement was reached following a full-day mediation with Kelly Knight, Esq., a  
6 respected wage-and-hour class action mediator. In preparation for mediation, Defendant produced  
7 key data points concerning the size of various classes, relevant timekeeping and payroll records for  
8 Class Members, and documents reflecting its wage-and-hour policies, including the employee  
9 handbook and Plaintiff's personnel file. Plaintiff, with the assistance of his retained economics expert,  
10 Mr. Bennett Berger, Partner and Senior Data Analyst at Berger Consulting Group, conducted a  
11 thorough analysis of Defendant's potential exposure. On January 19, 2024, the Parties engaged in a  
12 full-day mediation, after which continued negotiations ensued. Ultimately, the Parties accepted the  
13 mediator's proposal for a classwide resolution of all claims asserted in the Class and Representative  
14 Action Complaint.

15 As stated, if the Settlement is approved, Defendant will pay a non-reversionary Gross  
16 Settlement Amount ("GSA") of \$200,000.00. After deducting administration costs, Plaintiff's Class  
17 Representative Service Payments, attorneys' fees and costs, and payment of PAGA penalties to the  
18 California Labor and Workforce Development Agency ("LWDA"), the remaining Net Settlement  
19 Amount ("NSA") of approximately \$82,884.00 will be distributed to all Class Members who do not  
20 opt-out of the Settlement ("Class Members"), which includes 25% of the PAGA Penalties (or  
21 \$2,500.00) designated to be distributed to certain non-exempt employees regardless of whether they  
22 opt-out of the Settlement ("Individual PAGA Payment").

23 This proposed Settlement is within the range of possible approval in light of the significant  
24 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the  
25 monetary benefits to be received by Plaintiff and the Class. For the reasons discussed herein, Plaintiff  
26 respectfully requests that the Court grant preliminary approval of the Settlement.

1 **II. SUMMARY OF THE LITIGATION**

2  
3 **A. THE PARTIES, PROCEDURAL HISTORY, DISCOVERY, AND ARMS-  
LENGTH NEGOTIATIONS**

4 **1. The Parties**

5 Defendant is a restaurant that advertises themselves as the “World’s Most Famous Cuban  
6 Restaurant,” and is recognized as serving Cuban cuisine for over five decades. As a service attendant  
7 and/or waiter, Plaintiff was responsible for assisting customers, taking orders, serving food, and  
8 hands-on assistant to other service attendants/waiters. *See* Declaration of David Lavi In Support of  
9 Plaintiff’s Motion for Preliminary Approval of Settlement (“Lavi Decl.”), ¶3; *see also*, Declaration  
10 of Moses Santamaria in Support of Class Action Settlement (“Plaintiff Decl.”) ¶2. Plaintiff worked  
11 for Defendant from approximately October 2015 to on or about December 13, 2022. *Id.* Like the vast  
12 majority of other non-exempt employees of Defendant, Plaintiff worked for Defendant on an hourly  
13 basis as a service attendant and/or waiter. *Id.* Plaintiff was also subject to Defendant’s wage and hour  
14 policies that are at issue in this action. *Id.*

15 **2. Procedural History**

16 Plaintiff filed a class action complaint against Defendant on March 9, 2023, in Los Angeles  
17 County Superior Court, which alleges class wide causes of action for: (1) minimum wage violations  
18 (2) failure to pay all overtime wages; (3) meal period violations; (4) rest period violations; (5) failure  
19 to pay all accrued and vest vacation/paid-time-off; (6) failure to provide sick pay; (7) failure to  
20 reimburse for necessary business expenses; (8) failure to timely pay earned wages during  
21 employment; (9) waiting time penalties; (10) wage statement violations; and (11) unfair competition.  
22 Lavi Decl., ¶4.

23 On November 6, 2024, Plaintiff amended his complaint as a matter of right pursuant to Labor  
24 Code Section 2699.3(a)(2)(c) to add an additional cause of action for civil penalties under the Private  
25 Attorneys General Act pursuant to Labor Code Sections 2698 *et seq.* *Id.*

26 **3. Discovery**

27 After agreeing to participate in mediation, Defendant produced nearly all sampling data of its  
28

1 relevant time and pay records during the Class Period as well as its wage and hour policies through  
2 the employee handbook and other documents and information relevant to the claims alleged in  
3 advance of mediation informal discovery. Lavi Decl., ¶5.

4 Prior to mediation, Class Counsel conducted a detailed review of the time and payroll records  
5 produced by Defendant. Lavi Decl., ¶¶ 5–6. Class Counsel transmitted this data to their retained  
6 expert, Mr. Bennett Berger, Partner and Senior Data Analyst at Berger Consulting Group, and  
7 requested that he (i) confirm the date range of the data provided, and (ii) extrapolate key metrics,  
8 including: the total number of pay periods and shifts worked during the Class Period and PAGA  
9 Period; the average rate of pay for the Class; the number of shifts exceeding 3.5, 5.0, 6.0, 8.0, 10.0,  
10 and 12.0 hours; and the incidence of first and second meal period violations based on the time records.  
11 *Id.*

12 In addition, Class Counsel directed Mr. Berger to analyze the data to determine unpaid wages  
13 attributable to (a) rounding practices, (b) deductions from tips, and (c) the failure to properly calculate  
14 the regular rate of pay. Lavi Decl., ¶¶ 5–6. Finally, Mr. Berger was asked to formulate a reasonable  
15 estimate of tip deductions—applied by Defendant to cover credit card processing fees—using a 5%  
16 margin of tips received during the Class Period. *Id.*

17 This expert analysis enabled Plaintiff to evaluate the scope of the alleged violations in the  
18 Class Action Complaint and to assess Defendant’s potential exposure in the absence of settlement.  
19 Lavi Decl., ¶¶ 5–6.

#### 20 **4. Arms-Length Negotiations**

21 On January 19, 2024, following extensive research and analysis—including Class Counsel’s  
22 evaluation of Defendant’s potential exposure with the assistance of a retained economics expert—the  
23 Parties participated in a full-day mediation before Mr. Kelly Knight, Esq., a highly respected wage-  
24 and-hour class action mediator. Lavi Decl. ¶ 7. During the mediation, the Parties vigorously disputed  
25 their respective legal positions, the likelihood of class certification, and the merits of the claims and  
26 defenses asserted in the Class Action Complaint. *Id.* After a full-day mediation, the Parties ultimately  
27 accepted a mediator’s proposal for a class and representative wide settlement. *Id.* And due to  
28 circumstances thereafter, including a motion for judgment on the pleadings and medical leave of

1 counsel for Defendant, the Parties signed the Class Action and PAGA Settlement Agreement and  
2 Class Notice (“Settlement”) most recently, which is nearly identical to the Los Angeles Superior  
3 Court Model Class Action and PAGA Settlement and Class Notice. *Id.*

### 4 **III. ARGUMENT**

#### 5 **A. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

6 California Rule of Court 3.769 conditions settlement of a class action on court approval, which  
7 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of  
8 Civil Procedure. *See Reed v. United Teachers San Bernardino* (2012) 208 Cal.App.4th 322, 337 (Rule  
9 3.769 requires the trial court to determine “that the settlement is fair, reasonable and adequate to all  
10 concerned”); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 (Rule 23(e) requires the  
11 trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and  
12 reasonable”). Courts act within their discretion in approving settlements which are fair, not collusive,  
13 and take into account “all the normal perils of litigation as well as the additional uncertainties inherent  
14 in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179,  
15 *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S.  
16 905.)

17 For settlement purposes, courts use a less stringent standard for certification of classes.  
18 (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason  
19 for this is that no trial is anticipated in a settlement class case, so the case management issues inherent  
20 in the ascertainable class determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for*  
21 *Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming  
22 certification of class action for settlement purposes only].) Accordingly, this Court has discretion to  
23 certify Plaintiff’s class for settlement purposes only.

24 As further explained below, the Class satisfies the criteria for certification of a Class under  
25 California law because: (1) the Class is so numerous that joinder would be impractical; (2) common  
26 questions of law and fact predominate over individual questions such that class certification is the  
27 most efficient and desirable way to maintain this litigation; (3) Plaintiff’s claims are typical of the  
28 claims of absent Class Members; and (4) Plaintiff and their counsel will fairly and adequately

1 represent Class Members' interest. *See* Cal. Civ. Proc. § 382.

2 **1. The Proposed Class Is Ascertainable and Numerous**

3 A class is “ascertainable” where the members “may be readily identified without unreasonable  
4 expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* (2010)  
5 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined as all non-  
6 exempt employees who worked for Defendant at any time during the period of March 9, 2019 to  
7 March 19, 2024 (“Class Period”). *See* Settlement, ¶¶1.5, 1.44. Therefore, Class Members can be  
8 identified via Defendant’s personnel and employment records. Defense counsel represents that the  
9 Class consists of approximately 199 current and former employees as of the date of mediation. Lavi  
10 Decl., ¶¶8; 14; Settlement ¶4.1. It would therefore be impracticable to bring all Class Members before  
11 the Court, or for each Class Member to bring an individual lawsuit. The proposed Class therefore  
12 satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, (1955) 44 Cal.2d 574 (holding a class representing  
13 10 beneficiaries of a trust sufficiently numerous).

14 **2. Common Issues of Law and Fact Predominate**

15 The focus in a certification dispute is not the merits, but rather on what types of questions,  
16 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*  
17 *Court (Rocher)* (2004) 34 Cal.4th 319, 327. Plaintiff’s claims are predicated on, among other issues,  
18 Defendant’s alleged failure to pay unpaid wages due to: (a) rounding, (b) tip deduction, and (c) failure  
19 to properly calculate the regular rate of pay, and its meal and rest period policies/practices. Lavi Decl.,  
20 ¶¶1; 4. These types of claims are commonly held to be proper for class certification. *See e.g., Benton*  
21 *v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 (certifying meal and rest period  
22 claims); *Bluford v. Safeway, Inc.*, (2013) 216 Cal.App.4th 864, 871 (reversing denial for certification  
23 of rest period claim); *Faulkinbury v. Boyd & Assoc., Inc.* (2013) 216 Cal.App.4th 220, 240 (certifying  
24 failure to pay all wages claim).

25 **3. The Claims of the Named Plaintiff Is Typical**

26 The typicality requirement is satisfied where class representatives have claims that are typical  
27 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d  
28 1341, 1347 (finding typicality satisfied where named plaintiff purchased the same goods as the

putative class in a consumer class action). Here, Plaintiff's claims are typical of those asserted by the proposed Class. Like other Class Members, Plaintiff was employed by Defendant as a non-exempt hourly employee and compensated under Defendant's pay plans during the Class Period. Lavi Decl., ¶¶ 3–6; Plaintiff Decl., ¶¶ 2–5. Plaintiff alleges that, like other Class Members, he was not provided with all legally compliant meal and rest periods or premium pay in lieu thereof. *Id.* He further alleges that he was not compensated for all hours worked and was, at times, paid at an improper overtime rate for overtime hours worked. *Id.* In addition, Plaintiff contends that Defendant routinely deducted tips to cover credit card processing fees, failed to timely pay all earned wages upon separation, and issued non-compliant wage statements. *Id.* Because Plaintiff alleges the same types of injuries arising from the same policies and practices that affect the Class as a whole, the typicality requirement is satisfied.

#### 4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff and his counsel will adequately represent the Class, as there are no conflicts between Plaintiff and the proposed Class, and Plaintiff possess claims that are in line with those of the Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Moreover, Plaintiff understood the requirements of a class representative and his obligations to absent class members and enthusiastically took on those responsibilities for their benefit. *See* Plaintiff Decl., at ¶¶9-10. Class Counsel also have experience in wage and hour class action litigation. *See* Lavi Decl., ¶13.

#### **B. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE PROPOSED CLASS ACTION SETTLEMENT BECAUSE IT IS FAIR, ADEQUATE, & REASONABLE**

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101 . The court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair.

1 See e.g., *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here,  
2 the Settlement was negotiated at arm's-length by Class Counsel and with the assistance of an  
3 experienced wage and hour class action mediator. See e.g. *Kullar v. Foot Locker Retail, Inc.* (2008)  
4 168 Cal.App.4th 116, 130. However, the record need not contain an explicit statement of the  
5 maximum theoretical recovery:

6 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record  
7 in all cases to contain evidence in the form of an explicit statement of the maximum  
8 amount the plaintiff class could recover if it prevailed on all its claims—a number  
9 which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell  
10 claims, require any such explicit statement of value; it requires a record which  
allows “an understanding of the amount that is in controversy and the realistic  
ranges of outcomes of the litigation.”

11 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

12 The purpose of the preliminary evaluation of class action settlements is to determine only  
13 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice  
14 to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*  
15 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4<sup>th</sup> Ed.) §11:25.)  
16 Courts have broad powers to determine whether a proposed settlement is fair under the circumstances  
17 of the case. (*Wershba*, *supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89  
18 Cal.App.3d 434, 438.)

### 19 1. The Preliminary Approval Standard is Met

20 To make a fairness determination, the Court should consider several factors, including: “the  
21 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the  
22 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
23 discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”  
24 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and  
25 the court is free to engage in a balancing and weighing of the factors depending on the circumstances  
26 of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. As discussed below,  
27 the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in  
28 this case. This litigation, therefore, has reached the stage where “the Parties certainly have a clear

1 view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v.*  
2 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617). Furthermore, courts must give “proper  
3 deference to the private consensual decision of the parties” because “the court’s intrusion upon what  
4 is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be  
5 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of  
6 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken  
7 as a whole, is fair, reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9<sup>th</sup> Cir.  
8 1998) 150 F.3d 1011, 1027.)

9 **a. The Strength of Plaintiff’s Case**

10 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff  
11 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As  
12 described below, Defendant presented multiple defenses to Plaintiff’s claims, both on the merits and  
13 with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through  
14 class certification, and ultimately trial, success was far from certain.

15 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

16 Although the Parties engaged in informal discovery prior to mediation, substantial additional  
17 discovery would have been required had the matter proceeded in formal litigation. Lavi Decl., ¶ 12.  
18 Such discovery would have necessitated significant time and expense for both Parties, likely  
19 extending over several years. *Id.* Even if Plaintiff succeeded in certifying the classes, the Parties  
20 would face additional litigation risks and costs, including a potential motion for decertification, trial,  
21 and possible appeals. *Id.* The Settlement avoids these risks and conserves the substantial resources  
22 that would otherwise be expended. *Id.*

23 **c. Risk of Maintaining Class Action Status**

24 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which  
25 Plaintiff’s proposed classes are certifiable is somewhat speculative. Absent settlement, there was a  
26 risk that there would not be a certified class at the time of trial, or if there were, it would consist of a  
27 significantly smaller group of employees than the proposed Class (either due to a narrowing of the  
28 class definition in a Court order on a contested motion for class certification, or through settlement

1 agreements entered into by Defendant with individual Class Members by way of *Pick-Up-Stix* type  
2 settlement agreements and the expected recovery could be significantly reduced, given the settlement  
3 amounts that are typically offered through the *Pick-Up-Stix* process). Thus, these factors support  
4 preliminary approval of the Settlement.

5 **d. Overview of the Settlement Agreement**

6 If the Court preliminarily approves this Settlement, Defendant will pay a Gross Settlement  
7 Amount (“GSA”) of \$200,000.00. *See* Settlement, ¶3.1. The Settlement Administrator shall hold all  
8 portions of the Gross Settlement Amount for the benefit of the Class until the time for disbursement.  
9 *See* Settlement, ¶4.3. Significantly, this Settlement is non-reversionary, and no Class Member will  
10 have to submit a claim form to receive an Individual Class Payment and Individual PAGA Payment.  
11 *See* Settlement, ¶3.1. Each Class Member will automatically receive an Individual Class Payment and  
12 Individual PAGA Payment, if eligible, unless he or she affirmatively opts-out of the Settlement. *See*  
13 Settlement, ¶7.5.1.

14 The Settlement Administrator shall hold all portions of the Maximum Settlement Amount in  
15 an interest-bearing account for the benefit of the Settlement Class until the time for disbursement. *See*  
16 Settlement, ¶4.3. The monetary terms of the Settlement are summarized below:

|                                                       |                     |
|-------------------------------------------------------|---------------------|
| <b>Gross Settlement Amount (“GSA”):</b>               | <b>\$200,000.00</b> |
| Minus Court-approved attorneys’ fees (1/3 of GSA):    | \$66,666.00         |
| Minus Court-approved, verified costs (not to exceed): | \$25,000.00         |
| Minus Court-approved Service Payment (not to exceed): | \$7,500.00          |
| Minus Settlement Administrator costs (not to exceed): | \$7,950.00          |
| Minus PAGA Payment to the LWDA:                       | \$10,000.00         |
| <b>Net Settlement Amount (“NSA”):</b>                 | <b>\$82,884.00</b>  |

21 After deducting amounts for the Court-approved attorneys’ fees and verified costs, the Class  
22 Representative Service Payment to Plaintiff, Settlement Administrator costs, and the PAGA payment  
23 to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) amount  
24 of approximately \$82,884.00 to all Class Members who do not timely opt out (“Class Members”).  
25 *See* Settlement, ¶¶3.1-3.2 *et seq.*<sup>2</sup> The NSA shall be distributed to all Class Members based on each  
26 participating Class Member’s proportionate number of Eligible Workweeks that he or she was worked  
27

28 <sup>2</sup> Defendant will pay the employer’s share of payroll taxes separately from, and in addition to, the Gross Settlement Amount. *See* Settlement, ¶ 3.1.

1 during the Class Period. *See* Settlement, ¶3.2.4. Ten-Thousand Dollars (\$10,000.00) of the NSA has  
2 been designated as the “PAGA Amount,” and shall be distributed to Class Members proportionally  
3 based on the number of pay periods worked during the PAGA Period. *See* Settlement, ¶¶3.2.5, 3.2.5.1.

4 According to Defendant, there are approximately 199 total Class Members who worked  
5 approximately 16,721 workweeks. *See* Settlement, ¶4.1; Lavi Decl., ¶¶8; 14. Therefore, the average  
6 Individual Settlement Payment is projected to be approximately \$416.50 assuming Class Members  
7 worked equal pay periods. *Id.* Class Members will have sixty (60) days from the mailing of the Class  
8 Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice  
9 without unduly delaying the Settlement. *See* Settlement, ¶1.41; 7.7.2. The deadline will be extended  
10 fourteen (14) calendar days for any Class Member who is remailed a Notice by the Claim  
11 Administrator. *See* Settlement, ¶¶1.41; 7.4.4. Those Class Members who do not opt-out of the  
12 Settlement will be bound by its terms and will release all claims against Defendant included within  
13 the Settlement through the Class Period. *See* Settlement, ¶5.2.

14 **e. The Parties Engaged in Fair and Honest Negotiations**

15 The Settlement resulted from an exchange of substantial information, arm’s-length  
16 negotiations by counsel, a full day of mediation before an experienced wage and hour mediator, and  
17 negotiating the Memorandum of Understanding, and after subsequent unforeseen circumstances,  
18 which lead to execution of the long-form settlement agreement most recently. Lavi Decl., ¶7. Thus,  
19 the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at  
20 130. As discussed above, Plaintiff carefully vetted the claims at issue and reviewed Class Members’  
21 relevant records and conducted a detailed analysis of the data with the assistance of an economics  
22 expert to arrive at his estimated class wide damages figures. *See* Lavi Decl., ¶¶5-7. Thus, this factor  
23 supports preliminary approval.

24 **f. Amount Offered in Settlement Given Realistic Valus of Claims**

25 The Settlement provides a fair and reasonable recovery for the Class in light of the disputed  
26 nature of the claims. Plaintiff conducted an extensive analysis of underpaid wages and penalties  
27 arising from Defendant’s alleged: (1) failure to pay all minimum and overtime wages; (2) meal period  
28 violations, including (i) missed, late, and/or shortened first meal periods due to work demands, and

(ii) failure to provide second meal periods for shifts exceeding 10 hours; (3) rest period violations; (4) failure to indemnify employees for necessary expenditures and losses, such as deducting credit card processing fees from tips and gratuities; and (5) failure to provide compliant sick pay.

In addition, Plaintiff asserted derivative claims for failure to pay all wages owed—including final wages upon separation—failure to issue accurate wage statements, and sought civil penalties under the Private Attorneys General Act of 2004 (“PAGA”). A summary of Plaintiff’s exposure analysis is set forth below.

**Failure To Pay Minimum Wages/Overtime/Rounding: \$3,287.77**

Plaintiff alleges that, during the Class Period, Defendant unlawfully deducted 5% of employees’ tips to cover credit card processing fees, thereby reducing Plaintiff’s minimum wages in violation of Labor Code sections 1194 and 1197, as well as the applicable IWC Wage Order. In addition, Plaintiff contends that Defendant maintained a rounding policy that systematically favored the employer. *Lavi Decl.*, ¶ 15. Specifically, timekeeping data confirmed that Defendant rounded employees’ clock-in entries in 15-minute increments. *Id.* Plaintiff alleges that this rounding practice consistently operated to the detriment of employees, such that shift hours and meal periods were routinely rounded against them. *Id.* Consequently, Plaintiff asserts that Defendant’s timekeeping policy failed to compensate Class Members for all hours actually worked and failed to provide full, legally compliant 30-minute meal periods. *Id.*

Defendant’s alleged failure to pay Class Members for all hours worked, if established, would violate California law, which is designed to ensure payment for all hours worked. *See Armenta v. Osmose, Inc.*, (2005) 135 Cal.App.4th 314, 324 (“California’s labor statutes reflect a strong public policy in favor of full payment of wages for all hours worked.”); *Morillion v. Royal Packing Co.*, (2000) 22 Cal.4th 575, 583 (“hours worked” includes “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”). Plaintiff’s allegations that Defendant’s 5% deduction of tips to cover credit-card processing fees can be challenged as not deducting from minimum wage, but rather tips earned, and therefore have no effect on minimum wage at all. *Lavi Decl.*, ¶16. Plaintiff’s further allegation that Defendant’s one way rounding policy resulted in an estimate of 15 minutes each shift

1 of off-the-clock being performed, resulting in the Class Members being underpaid 601 hours during  
2 the Class Period, nearly all of which would constitute overtime hours worked. *Id.* Accordingly,  
3 Plaintiff estimated Defendant's exposure as follows: 601 unpaid overtime hours \* \$15.63 average  
4 overtime rate of pay = \$9,393.63. *Id.*

5 Defendant countered that throughout the Class Period it maintained and enforced its policy  
6 prohibiting off-the-clock work and that it always paid Class Members for all hours worked. Lavi  
7 Decl., ¶17. Defendant argued further that by its very nature this claim is not suited for class treatment,  
8 as there are no records to indicate how often or how much off-the-clock work was performed thereby  
9 prohibiting class certification of this claim. *Id.*; see also *Duran v. U.S. Bank National Association*  
10 (2014) 59 Cal.4th 1, 25 (holding that the defendant must be provided an opportunity to litigate  
11 affirmative defenses, even when they turn on individual questions). Additionally, Defendant  
12 countered that to the extent that rounding ever occurred, that it was legal because it was applied in a  
13 neutral even-handed way. *Id.*; *Ferra v. Loews Hollywood Hotel, LLC*, (2019) 40 Cal. App. 5th 1239,  
14 1253 (holding that a facially neutral rounding policy that resulted in employees losing time on 55%  
15 of shifts, gaining time on 22.8% of shift, and resulted in neither gaining or losing time on the  
16 remainder of shifts was not sufficient to show the rounding policy systemically undercompensated  
17 employees.)

18 In light of these defenses, Plaintiff discounted the maximum amount for these claims by 50%  
19 for risk of non-certification, and an additional 30% for being unsuccessful on the merits, or having  
20 the amount of damages reduced due to an over estimation of the amount of off-the-clock work  
21 performed to arrive at an estimated exposure of \$3,287.77. Lavi Decl., ¶18.

22 **First & Second Meal Period Violations: \$208,038.74**

23 Plaintiff alleges that Plaintiff and the Class Members were routinely denied meal periods in  
24 favor of working through them, and that meal periods were often not received prior to the end of their  
25 fifth hour worked. See Lavi Decl., ¶19; *Brinker Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th  
26 1004, 1049 ("Under the wage order, as under the statute, an employer's obligation is to provide a first  
27 meal period after no more than five hours of work."). While Defendant's written meal period policies  
28 are generally compliant, Plaintiff alleges that he and the Class Members in reality were subject to an

1 inconsistent meal period policy/practice that did not serve to properly provide timely meal periods.  
2 *Id.* Accordingly, Plaintiff alleges that he and the Class Members often did not receive meal periods  
3 and when they did, the meal periods were often late and not duty-free as they were subject to the  
4 whims of their supervisor's desires to meet the needs of the restaurant, and the busy foot-traffic. *Id.*;  
5 *Brinker, supra*, 53 Cal.App.4th at 1040 (“[w]age orders and governing statute do not countenance an  
6 employer’s exerting coercion against the taking of, creating incentives to forgo, or otherwise  
7 encouraging the skipping of legally protected breaks.”). Plaintiff also alleged that second meal periods  
8 were not provided on shifts over 10.0 hours thus providing further exposure based on second meal  
9 period violations. *Id.*

10 Indeed, the records provided to Plaintiff for analysis reflect approximately 31,691 unique meal  
11 period violations<sup>3</sup> during the class period taking into account that (1) 13,267 shifts (26%) reflected  
12 meal periods being exercised after the conclusion of the 5th hour worked; (2) 10,068 shifts (57.5%)  
13 between 5 and 6 hours without a recorded 1<sup>st</sup> meal break; (3) 3,170 shifts (6.8%) greater than 6 hours  
14 reflected no first meal break; (4) 5,961 shifts (11.2%) with shorter than 30 minutes for their first meal  
15 break. As such, Plaintiff alleges that nearly 42% of shifts worked by the putative class were unlawful  
16 and trigger meal period violations due to this rounded practice. Lavi Decl., ¶20.

17 Based on the timekeeping records provided in connection with mediation, Plaintiff estimated  
18 Defendant’s maximum exposure for first and second meal period violations at \$495,330.33 (31,691  
19 meal period violations \* \$15.63 average meal premium). Lavi Decl., ¶21.

20 However, Defendant maintains that it has provided legally compliant first and second meal  
21 periods to Class Members and maintained and enforced lawful meal period policies which provide  
22 for timely and duty-free meal periods. Lavi Decl., ¶22. Additionally, Defendant argues that any  
23 allegations of systemic meal period violations should not apply to the entire Class because the alleged  
24 practice was one that, if it occurred, was limited to a handful of employees who voluntarily either  
25 skipped meal periods and/or returned back from lunch early, without Defendant’s knowledge. *Id.*

---

26  
27 <sup>3</sup> Unique meal period violations are defined as shifts with at least one of the following: 1) recorded 1<sup>st</sup> meal  
28 break after the end of the 5<sup>th</sup> hour for shifts greater than 5 hours; 2) first meal break less than 30 minutes for  
shifts greater than 5 hours; 3) no 1<sup>st</sup> meal break for shifts greater than 5 hours; or 4) no 2<sup>nd</sup> meal break for shifts  
greater than 10 hours.

1 Defendant argues that the presence of these affirmative defenses as to the voluntariness of a  
2 particular meal period decision would preclude class certification. Lavi Decl., ¶23; *see Duran, supra*,  
3 59 Cal.4th at 25 (holding that the defendant must be provided an opportunity to litigate affirmative  
4 defenses, even when they turn on individual questions). Therefore, Plaintiff discounted the maximum  
5 amount that the class could potentially recover for meal period violations by 40% for a risk of non-  
6 certification, and an additional 30% for a risk of losing on the merits, or having exposure reduced due  
7 to Defendants' waiver arguments, to arrive at an estimated exposure amount of \$208,038.74. *Id.*

8 **Rest Period Violations: \$174,454.24**

9 Plaintiff argues that Defendant failed to authorize duty-free rest periods and that they and the  
10 Class Members were made to work through the entirety of their shifts without rest periods. Lavi Decl.,  
11 ¶24; *see also, Brinker, supra*, 53 Cal.4th at 1028-31 (discussing the rate at which rest periods must  
12 be authorized and permitted). California law requires that "[d]uring required rest periods, employers  
13 must relieve their employees of all duties and relinquish any control over how employees spend their  
14 break time," just as they must do during meal periods. *See Augustus v. ABM Security Svcs., Inc.*, (2016)  
15 2 Cal.App.5th 257, 260. Moreover, Defendant also failed to pay any rest period premium wages per  
16 Labor Code Section 226.7 and Defendant failed to maintain any pay code for paying rest period  
17 premium wages per Labor Code Section 226.7. *Id.*; *See, Safeway, Inc. v. Superior Court (Esparza)*,  
18 (2016) 238 Cal.App.4th 1138, 1159 (2015) (certifying a UCL class based on failure to make premium  
19 payments). Therefore, Plaintiff calculated Defendant's maximum exposure for rest period violations,  
20 assuming a rest period violation on all shifts over 3.5 hours, as follows: 74,410 rest period violations  
21 \* \$15.63 average rest period premium = \$1,163,028.30. *Id.*

22 However, Defendant contends that, despite Plaintiff's arguments to the contrary, it maintained  
23 legally compliant rest period policies and practices throughout the Class Period, authorized and  
24 permitted all rest periods to class members, and in practice did not prevent the Class Members from  
25 leaving the job site during rest periods. Lavi Decl., ¶25. Defendant further argues that Plaintiff's rest  
26 period claim is inherently unsuited for class treatment as there are no records of whether or not rest  
27 periods were taken, therefore requiring an individualized inquiry into whether each class member  
28 failed to take rest periods on each shift, which would devolve into an unmanageable series of mini-

1 trials. *Id.* In light of these defenses, Plaintiff discounted the maximum amount for this claim by 70%  
2 for risk of non-certification, and an additional 50% for a risk of being unsuccessful on the merits or  
3 having the amount of violations determined to be less than Plaintiff allege to arrive at an estimated  
4 exposure of \$174,454.24. *Id.*

5 **Regular Rate Claim: \$583.19**

6 Throughout the Class Period, Defendant paid its employees non-discretionary payments that  
7 were not factored into the Class’ respective regular rates of pay for overtime purposes. Lavi Decl.,  
8 ¶26. As stated, these non-discretionary payments must be included in the regular rate of pay when  
9 calculating employees’ overtime rates of pay. *Id.*; see e.g., *Huntington Memorial Hospital v. Superior*  
10 *Court* (2005) 131 Cal.App.4th 893, 902-903 (discussing regular rate calculation requirements); *Clark*  
11 *v. AMN Servs., LLC*, 987 F.3d 848, 850 (9th Cir. 2021) (“[t]he record establishes that the contested  
12 benefits functioned as compensation for work rather than as reimbursement for expenses incurred,  
13 and that the per diem benefits were thus improperly excluded from Plaintiff’s regular rate of pay for  
14 purposes of calculating overtime pay.”). Plaintiff’s expert determined that Defendant’s failure to  
15 include these bonuses when calculating an overtime rate of pay led to a total underpayment of  
16 \$6,665.00 during the Class Period. *Id.*

17 However, Defendant counters that the incentive compensation represents discretionary  
18 payments and/or not compensation for hours of employment and therefore is not required to be  
19 included in the “regular rate” of pay. Lavi Decl., ¶27; 29 U.S.C. § 207(e)(2)-(3) (discretionary  
20 bonuses, and compensation not made as compensation for hours of employment, need not be included  
21 in “regular rate”). Moreover, Defendant argues that differences in the frequency, type, and amount of  
22 incentive pay received by different Class Members would preclude class certification of this claim.  
23 *Id.* In light of these defenses, Defendant also asserts that the trivial amount of violation is in itself  
24 evidence that not all Class Members received non-discretionary payments. As such, Plaintiff  
25 discounted the maximum amount that the class could potentially recover for these violations by 75%  
26 for a risk of non-certification, and an additional 65% for a risk of losing on the merits, to arrive at an  
27 estimated exposure amount of \$583.19. *Id.*

1  
2       **Waiting Time Penalties: \$78,392.58**

3       Plaintiff alleges that Defendant is also liable for waiting time penalties as a result of its failure  
4 to pay all unpaid wages due to rounding, tip deduction, and regular rate of pay, along with meal and  
5 rest break premiums. *See, e.g., Amaral v. Cintas Corp. No. 2*, (2008) 163 Cal.App.4th 1157, 1201  
6 (“willful” under Section 203 means the “employer has intentionally failed or refused to perform an  
7 act which was required to be done” and need not be “based on deliberate evil purpose”). There are  
8 approximately 86 Class Members who separated their employment with Defendant within the  
9 relevant time period. Lavi Decl., ¶28. The estimated average waiting time penalty per former  
10 employee was calculated at \$3,376.08 (\$15.63 average hourly rate of pay \* 7.2 hours per day \* 30  
11 days = \$3,376.08), resulting in a total maximum exposure of \$290,342 (86 former employees x  
12 \$3,376.08). *Id.*

13       To the extent that Plaintiff’s waiting time penalty claim was derivative of his unpaid wage  
14 claims, Defendant argues that not all former employees (if any) did, in fact, experience under payment  
15 of wages (and therefore Plaintiff’s exposure was overstated). Lavi Decl., ¶29. Defendant also  
16 contends that because it possessed good-faith defenses to the underlying claims, any failure to pay  
17 wages was not “willful” as a matter of law. *Id.* Defendant further maintains that waiting time penalties  
18 are not recoverable at all for meal and rest period violations. *Id.*; *see also Ling v. P.F. Chang’s China*  
19 *Bistro, Inc.*, (2016) 245 Cal.App.4th 1242, 1261 (suggesting that waiting time penalties are not  
20 recoverable as a result of unpaid meal period premiums).

21       As a result, Plaintiff discounted the maximum exposure by 40% to account for the risk of non-  
22 certification of the claims upon which the waiting time penalties rely, and an additional 55% for  
23 failing to prevail on the merits, including the inability to recover waiting time penalties for missed  
24 meal and rest period premium payments, including the inability to establish willfulness, to arrive at  
25 an estimated exposure of \$78,392.58. Lavi Decl., ¶30.

26       **Failure to Reimburse: \$89,398.20**

27       Plaintiff alleged that Defendant as a matter of policy/practice deducted credit-card processing  
28 fees from tips earned by Plaintiff and Class Members. And as a consequence of their policy, Plaintiff

1 and Class Members are entitled to a reimbursement of their tips earned – a combination of violation  
2 of wages earned, and failure to reimburse. Labor Code Section 351 provides in relevant part that  
3 employees are entitled to the “full amount of the gratuity that the patron indicated on the credit card  
4 slip,” and that an employer cannot deduct “credit card payment processing fees or costs” from the  
5 tips earned. However, Defendant illegally passed the credit card processing fees onto Plaintiff and  
6 Class Members by withholding money from tips that were paid by credit card. Reimbursement claims,  
7 and the legal determination of whether a certain expense must be reimbursed by the employer is the  
8 type of common question that is routinely certified. *See Sevilla v. Aaron’s Inc.*, 2019 WL 2879874,  
9 at \*12 (C.D. Cal. Mar. 25, 2019) (“The question of whether logoed apparel qualifies as a necessary  
10 business expense under Section 2802 is a factual question common to all members of the Business  
11 Expense Reimbursement Subclass. Its answer will ‘drive resolution of the action in one stroke,’  
12 whether in favor of Plaintiff or Defendant.” (citation omitted). For purposes of calculating wages  
13 owed, Plaintiff assumed that Defendant reduced tips by a margin of 5% during the class period =  
14 \$148,997.00. Lavi Decl., ¶31.

15 As it relates to reimbursement, Defendant argues that this claim is not suitable for class  
16 treatment, as it would require individualized determinations as to whether each Class Member  
17 incurred a deduction, and if so, how much deduction each Class Member incurred. Lavi Decl., ¶32.  
18 Therefore, in light of these arguments, Plaintiff discounted the maximum exposure by 25% for the  
19 risk of non-certification, and an additional 20% for risk of losing on the merits and/or not receiving  
20 the total reimbursement sought, to arrive at an estimated exposure of \$89,398.20. *Id.*

21 **Wage Statement Violations: \$168,000.00**

22 With respect to wage statement violations, Plaintiff contends that for each pay period in which  
23 there is a minimum or overtime violation, meal or rest period violation, or reimbursement claim,  
24 Plaintiff and the Class Members would have received a non-compliant wage statement in violation of  
25 Labor Code Section 226. Lavi Decl., ¶33. These types of derivative claims are routinely certified.  
26 *See, e.g., Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) Case No. 1:13-CV-2059 AWI-BAM,  
27 2015 WL 1137151 at \*5 (“Thus, this court relies on *Murphy* in finding that Section 226.7 premiums  
28 constitute wages, and are therefore required to be included in wage statements under Section 226”).

1 Plaintiff's data analysis reflected that there were approximately 3,303 total wage statements issued  
2 during the relevant period and approximately 140 unique employees during the relevant time period.  
3 Lavi Decl., ¶33. Plaintiff calculated Defendant's maximum exposure for wage statement violations  
4 at \$184,000.00 (140 employees \* \$4,000 aggregate penalty) = \$560,000.00. *Id.*; *see also* Labor Code  
5 § 226(e). (However, should staking be argued, then Defendant's maximum exposure for wage  
6 statement violations is [ $\$50 \times 140$ ] + [ $\$100 \times (3,303-140)$ ] = \$323,300.00). *Id.*

7 Based on Defendant's arguments that: (i) no violations occurred, (ii) any alleged violations  
8 were not "knowing and intentional" as required by Labor Code § 226(e), (iii) no injury was suffered,  
9 and (iv) the decision in *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, which holds  
10 that there is no wage statement violation when the wage statements accurately reflect the  
11 compensation received by an employee, Plaintiff discounted the calculated exposure by 60% for a  
12 risk of non-certification and an additional 25% for a risk of being unsuccessful on the merits or having  
13 the number of violations reduced since only a subset of the wage statements contained an alleged  
14 derivative violation based on failure to pay all overtime wages to arrive at an estimated total of  
15 \$168,000. Lavi Decl., ¶34.

16 **Vacation Pay: No Value**

17 Plaintiff additionally alleged that Defendants as a matter of policy/practice failed to  
18 compensate Plaintiff and the Class Members for all vested, unused vacation pay at the time of their  
19 separation of employment in violation of Labor Code § 227.3. Upon further investigation, however,  
20 Plaintiff discovered that this was an issue individualized to Plaintiff, and not a claim typical of other  
21 Class Members. As such, Plaintiff assigned no value to this claim. Lavi Decl., ¶35.

22 **PAGA Penalties: \$481,320.00**

23 Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor  
24 Code violations. Lavi Decl., ¶36. The specific statutory violations upon which Plaintiff bases the  
25 claim under PAGA are: (i) Cal. Lab. Code §1194, 1194.2, 1197 for failing to pay all minimum wages  
26 owed; (ii) Labor Code sections 204, 510, 558, 1194, and 1198 for failing to pay all overtime wages  
27 owed; (iii) Labor Code sections 226.7, 512, and 558 for meal period violations; (iv) Labor Code  
28 sections 226.7, 516, and 558 for rest period violations; (v) Labor Code section 226(e) for failing to

1 provide accurate, itemized wage statements; (vi) Labor Code sections 201 through 204, and 210 for  
2 failing to pay all timely wages, including wages owed upon termination; and (vii) Labor Code 2802  
3 and 2804 for failure to reimburse necessary business expenses. *Id.* Based on the violations addressed  
4 above, Plaintiff contends that Defendant is liable for PAGA civil penalties for each of the estimated  
5 3,303 pay periods worked during the PAGA period. *Id.* Accordingly, Plaintiff estimates Defendant's  
6 exposure as follows:

7 a. PAGA For Unpaid Wages: for 608 PAGA pay periods at \$100 per violation,  
8 the PAGA penalty is \$60,800.00

9 b. PAGA For Tip Deduction: for 1,525 pay periods at \$100 per violation, the  
10 PAGA penalty is \$152,500.00

11 c. PAGA for Meal Breaks: for 135 employees with 2,661 pay periods,  $(\$100 \times$   
12  $135 \text{ aggrieved employees}) + [\$100 \times (2,661 - 135)] = \$266,100.00$

13 d. PAGA for Rest Breaks: for 140 employees with 3,298 pay periods, at \$100 per  
14 initial violation, and \$100 per subsequent violation, the PAGA penalty is  $(\$100 \times 140 \text{ aggrieved}$   
15  $\text{employees}) + [\$100 \times (3,298 - 140)] = \$329,800.00$

16 e. PAGA for Wage Statement Violation: for 140 employees with 3,303 pay  
17 periods, at \$100 per initial violation, and \$100 per subsequent violation, the PAGA penalty is  $[\$100$   
18  $\times 140 \text{ aggrieved employees}] + [\$100 \times (3,303 - 140)] = \$330,300.00$

19 f. PAGA For Waiting Time Penalty: PAGA for Waiting Time Penalty: 65  
20 Former Employees  $\times \$100 \text{ violation} = \$6,500.00$

21 g. Total PAGA exposure: **\$1,146,000.00**

22 *See, Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate  
23 applies until the employer is notified that it is violating a Labor Code provision: Regarding the PAGA  
24 penalty exposure analysis, as an initial matter, in wage and hour class action cases that settle, which  
25 are the overwhelming majority of such cases, very little of the total settlement is paid to PAGA  
26 penalties in order to maximize payments to class members. *See, e.g., Nordstrom Com. Cases*, 186  
27 Cal. App. 4th 576, 589 (2010) (no abuse of discretion to approve class action settlement allocating \$0  
28 to PAGA claims); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500,

1 at \*2-3 (E.D. Cal. Jan. 14, 2015) (preliminarily approving \$10,000 in PAGA penalties out of a total  
2 settlement amount of \$900,000), report and recommendation adopted, 2015 U.S. Dist. LEXIS 25730,  
3 2015 WL 925598 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D.  
4 Cal. 2014) (preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of  
5 \$1,250,000); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at \*14  
6 (E.D. Cal. Nov. 27, 2012) (granting final approval of \$10,000 in PAGA penalties out of a total  
7 settlement amount of \$2,500,000); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052,  
8 2012 WL 5364575, at \*3 (E.D. Cal. Oct. 31, 2012) (granting final approval of \$10,000 in PAGA  
9 penalties out of a total settlement amount of \$3,700,000); *Chu v. Wells Fargo Invs., LLC*, 2011 U.S.  
10 Dist. LEXIS 15821, 2011 WL 672645, at \*1 al. Feb. 16, 2011) (granting final approval of \$10,000 in  
11 PAGA penalties out of a total settlement amount of \$6,900,000). In these settlements, the parties  
12 generally maximize statutory penalties and minimize PAGA penalties. *See, e.g., Franco*, 2012 U.S.  
13 Dist. LEXIS 169057, 2012 WL 5941801, at \*2, \*14 (approving a \$10,000 PAGA award out of a total  
14 settlement amount of \$2,500,000).

15         However, Defendant asserts a number of credible defenses to Plaintiff's claims. First, the vast  
16 majority of these penalties derive from the underlying wage and hour violations discussed above,  
17 which Defendant vigorously disputes. Lavi Decl., ¶37; *see e.g., Green v. Lawrence Service Co.* (C.D.  
18 Cal. 2013) Case No. LA CV12-06155 JAK (VBKx), 2013 WL 3907506, \*5, n.5 (explaining that a  
19 PAGA claim's success was determined by the merits of its underlying claims). Defendant also  
20 maintains that given its good faith defenses, this Court would exercise its discretion to substantially  
21 reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. *Id.*  
22 Defendant further alleges that none of the violations would be deemed knowing and intentional as  
23 there is no evidence to suggest Defendant intentionally violated the Labor Code and that Defendant's  
24 policies and procedures demonstrate that Defendant acted in good faith in regards to paying the Class  
25 Members all wages due. *Id.* For these reasons, Defendant argues the Court would drastically reduce  
26 any award of PAGA penalties as "confiscatory." *Id.*; *see Thurman v. Bayshore Transit Mgmt., Inc.*,  
27 (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties). Indeed, courts while  
28 considering the issue have refused to "stack" PAGA penalties. *See Carrington v. Starbucks*

1 *Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving  
2 PAGA penalty reduction to \$5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th  
3 809. California’s appellate courts have held that “[u]ntil the employer has been notified that it is  
4 violating a Labor Code provision (whether or not the commissioner or court chooses to impose  
5 penalties), the employer cannot be presumed to be aware [of the violation]” and therefore, until a  
6 Court or the Commissioner issues a finding of a violation, the initial \$100 violation rate applies for  
7 each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163  
8 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit*  
9 *Service, Inc.* (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at \*9 (“[u]nder California law, courts  
10 have held that employers are not subject to heightened penalties for subsequent violations unless  
11 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”).  
12 Therefore, Plaintiff discounted the maximum PAGA exposure by 30% for risk of losing on the merits,  
13 and an additional 40% to account for the possibility of this Court reducing penalties, to arrive at an  
14 estimated exposure of \$481,320.00. *Id.*

15 **g. The Settlement Amount is Within the Range of Possible Approval**

16 Using these estimated figures for each of the claims described above, Plaintiff predicted that  
17 the potential recovery for the Class would be approximately \$1,203,474.70. Lavi Decl., ¶38. The  
18 proposed settlement of \$200,000 therefore represents approximately 16% of the reasonably forecasted  
19 recovery for the Class. *Id.* Preliminary approval is appropriate since the Settlement will provide  
20 significant monetary relief to Class Members, which is consistent with what Plaintiff’s counsel  
21 believes could have been recovered had the case proceeded through trial. *Id.*

22 As stated, the proposed settlement reflects approximately 16% of the estimated recovery the  
23 Class could reasonably expect in light of the significant litigation risks, and will provide tangible,  
24 monetary compensation for hotly disputed claims desperately needed by Class Members now more  
25 than ever due to looming economic recession. Indeed, the percentage of the liability exposure  
26 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS*  
27 *Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, \*4 (approving  
28 settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* 213 F.3d 454, 459

1 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural*  
2 *Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“it is well-settled law that  
3 a proposed settlement may be acceptable even though it amounts to only a fraction of the potential  
4 recovery that might be available to the Class Members at trial”). Further, assuming equal workweeks,  
5 the average Individual Settlement Amount of \$461.50 is relatively appropriate as in other wage and  
6 hour class action settlements. <sup>4</sup> Lavi Decl., ¶39. There are significant legal uncertainties associated  
7 with cases such as this as they can be factually complex and require protracted litigation to resolve.  
8 A settlement is not judged solely against what might have been recovered had plaintiff prevailed at  
9 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.  
10 (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91  
11 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead,  
12 “[c]ompromise is inherent and necessary in the settlement process...even if the relief afforded by the  
13 proposed settlement is substantially narrower than it would be if the suits were to be successfully  
14 litigated, this is no bar to a class settlement because the public interest may indeed be served by a  
15 voluntary settlement in which each side gives ground in the interest of avoiding litigation” (*Wershba*,  
16 91 Cal.App.4th at 250.)

17 Thus, Plaintiff submits that the proposed settlement is within the range of possible approval,

---

18 <sup>4</sup> See e.g., *Bercea v. AE Retail West* (Sacramento County Super. Ct. May 9, 2012) Case No. 34-2012-  
19 00123947 (average net recovery of approximately \$105); *Ressler v. Federated Department Stores,*  
20 *Inc.* (San Bernardino County Super. Ct. Jan. 2, 2009) Case No. BC335018 (average net recovery of  
21 approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento  
22 County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*  
23 (C.D. Cal. May 14, 2007) Case No. CV05-3241 FMC-JWJx (average recovery of approximately \$65);  
24 *Lim v. Victoria's Secret Stores, Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213  
25 (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, (San Bernardino County  
26 Super. Ct. July 23, 2010) Case No. BC392297 (average net recovery of approximately \$20); *Sorenson*  
27 *v. PetSmart, Inc.* (E.D. Cal. Dec. 17, 2008) Case No. 2:06-CV-02674-JAM-DAD (wage and hour  
28 class action settlement approved where average recovery was approximately \$60); *Schiller v. David's*  
*Bridal, Inc.* (E.D. Cal. June 11, 2012) Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at \*17  
 (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery  
where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar actions  
where the gross recoveries per class member were less than \$90...[T]he Court finds that the results  
achieved are good”); and *Williams v. Centerplate, Inc.* (S.D. Cal. Aug. 26, 2013) Case Nos. 11-CV-  
2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428 (average recovery of approximately \$108).

1 such that notice should be provided to the Class so that they can consider the Settlement. The Court  
2 will have the opportunity to again assess the reasonableness of the Settlement after the Class has had  
3 the opportunity to opt-out or object.

4 **h. The Experience Views of Counsel**

5 “Parties represented by competent counsel are better positioned than courts to produce a  
6 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*  
7 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378 . The view of the attorneys actively conducting  
8 the litigation “is entitled to significant weight” in deciding whether to approve the settlement. (*Fisher*  
9 *Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air*  
10 *Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel*  
11 *Corp., supra*, 485 F.Supp. at 617). Here, Plaintiff is represented by competent, experienced counsel  
12 who possess experience in wage-and-hour class actions. Lavi Decl., ¶41. Class Counsel conducted an  
13 in-depth review of Defendant’s relevant policies and Class Members’ records with the assistance of  
14 a retained expert, and drew on their extensive experience in similar cases in preparing their analysis  
15 to assess the strengths and weaknesses of Plaintiff’s case. *Id.* The Settlement was also reached with  
16 the assistance of an experienced and respected wage and hour class action mediator. Lavi Decl., ¶¶  
17 *Id.*, 7, 13. These factors strongly supports preliminary approval of the Settlement. *See Kullar, supra*,  
18 168 Cal.App.4th at 130.

19 **i. Attorney’s Fees and Costs**

20 Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which is  
21 currently estimated to be \$66,666.67 and up to \$25,000.00 in verified costs reimbursement. *See*  
22 *Settlement*, ¶3.2.2. Plaintiff submits the requested fee is fair compensation for undertaking complex,  
23 risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel has  
24 incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff’s claims,  
25 engaging in informal discovery, conducting legal research, reviewing Defendant’s documents and  
26 policies, analyzing Class Members’ relevant records, working with a retained expert to create a  
27 comprehensive damages model, preparing for and attending a full day mediation, negotiating and  
28 preparing the long-form Settlement Agreement over a period of multiple months, preparing this

1 Motion, and otherwise litigating the case. Lavi Decl., ¶43. Class Counsel expects to expend additional  
2 attorney time in attending the hearing on this Motion, overseeing the notice process and fielding  
3 questions from Class Members, preparing the final approval papers, and attending the Final Approval  
4 hearing. *Id.*

5 California courts have recognized that an appropriate method for awarding attorney’s fees in  
6 class actions is to award a percentage of the “common fund” created as a result of the settlement. See  
7 e.g., *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (holding “the percentage of fund  
8 method survives in California class action cases”). (*City & County of San Francisco v. Sweet* (1995)  
9 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; see also *Apple Computer, Inc.*  
10 *v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000)  
11 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who  
12 might otherwise receive no benefit because his recovery might be consumed by the expenses;  
13 correlative prevention of an unfair advantage to others who are entitled to share in the fund and who  
14 should bear their share of the burden of its recovery; encouragement of the attorney for the successful  
15 litigant, who will be more willing to undertake and diligently prosecute proper litigation for the  
16 protection or recovery of the fund if he is assured that he will be properly and directly compensated  
17 should his efforts be successful. (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at  
18 111.) In *Quinn*, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning  
19 a suit which creates a fund from which others derive benefits may require those passive beneficiaries  
20 to bear a fair share of the litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in  
21 *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied  
22 “consistently in California when an action brought by one party creates a fund in which other persons  
23 are entitled to share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.) Lavi  
24 Decl., ¶44

25 Several courts have expressed frustration with the alternative “lodestar” approach for  
26 deciding fee awards, which usually involves wading through voluminous and often indecipherable  
27 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal  
28 1989) 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1)

1 it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution  
2 of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the  
3 demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth  
4 Circuit now routinely uses the percentage of the common fund approach to determine the award of  
5 attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir.  
6 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

7 Class Counsel's request for fees of one-third of the GSA is well within the range of  
8 reasonableness, and indeed is considered the typical rate for common fund settlements. Historically,  
9 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of  
10 the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013). Moreover, as part of the final  
11 approval motion, Class Counsel will provide the necessary information regarding hours reasonably  
12 expended and Class Counsel's reasonable hourly rate to allow the Court to perform a lodestar cross-  
13 check. Lavi Decl., ¶44; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503-506.

14 The settlement also provides for reimbursement of costs reasonably incurred not to exceed  
15 \$25,000.00. *See* Settlement, ¶3.2.2. To date, Class Counsel has incurred approximately \$16,747.65 in  
16 litigation costs. Lavi Decl., ¶45. Counsel anticipates additional charges pertaining to filing the instant  
17 motion and motion for final approval, and supplement filings requested by the Court, and the costs of  
18 any future appearance. *Id.* As part of Plaintiff's motion for final approval, Class Counsel will request  
19 only the reimbursement of costs reasonably incurred supported by declaration with an itemized cost  
20 sheet. The costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris*  
21 *v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses  
22 that would normally be charged to a fee paying client"); *Ashker v. Sayre* (N.D. Cal. 2011), No. 05-  
23 03759 CW, 2011 WL 825713, at \* 3 ("costs of reproducing pleadings, motions and exhibits are  
24 typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const.*  
25 *Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* 460 F.3d 1253, 1258-59 (9th Cir.  
26 2006)(legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F.  
27 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal  
28 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).

1                   **j. Administrative Costs**

2                   Phoenix Settlement Administrators settlement administration fees have been quoted at no  
3 more than \$7,950.00 after having factored in the hard and hourly costs associated with administrating  
4 the settlement. *See* Declaration of Jodey Lawrence (“Lawrence Decl.”). This request is reasonable in  
5 light of the proposed class size of approximately 199 Class Members and the costs and expenses  
6 associated with administering the notices and distributing the awards. Lavi Decl., ¶46

7                   **k. Class Representative Service Payment**

8                   Plaintiff will separately apply for a Class Representative Service Payment at the time of  
9 seeking final approval of the proposed class action settlement in the amount of \$7,500 for his service  
10 to the Class. *See* Settlement, ¶3.2.1. “[I]ncentive awards are fairly typical in class action cases . . . and  
11 are intended to compensate class representatives for work done on behalf of the class [and] to make  
12 up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee*  
13 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94. As will be fully briefed at the time of  
14 final approval, Plaintiff’s requested Class Representative Service Payment is intended to recognize  
15 the time and effort Plaintiff expended on behalf of the Class, including providing substantial factual  
16 information and documents to Class Counsel, engaging with informal discovery, attending both in-  
17 personal and multiple virtual meetings with Class Counsel to discuss the claims and theories at issue  
18 in the litigation, reviewing and discussing policies produced by Defendant, actively participating in  
19 the prosecution of the putative class claims, discussing the claims and case strategy during the full-  
20 day mediation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named  
21 plaintiff in this case. Lavi Decl., ¶47; Plaintiff Decl. ¶10. *see, e.g., In re Online DVD-Rental Antitrust*  
22 *Litig.*, 779 F.3d at 947 (approving an award \$45,000 in enhancement payments, which was roughly  
23 417 times greater than average award but, in aggregate, only 0.17% of gross settlement); *Spann v.*  
24 *J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1265 (awarding enhancement payment of  
25 \$10,000, approximately 50 times average award and less than 0.02% of gross settlement); *Ross v.*  
26 *U.S. Bank Nat’l Ass’n*, Civ. (N.D. Cal. Sept. 29, 2010) No. 3:07-2951 SI, 2010 WL 3833922, at \*3  
27 (approving award of \$14,000 to each of four named plaintiffs where settlement fund was \$1,050,000,  
28 based on their contributions to litigation and risk that being a class representative would harm their

1 reputation).

2 **I. PAGA Payment**

3 The Parties have agreed to designate \$10,000 of the GSA as PAGA penalties, of which  
4 \$7,500.00 (75%) will be paid to the LWDA, with the remaining \$2,500.00 (25%) part of the NSA for  
5 distribution to the Class. *See* Settlement, ¶¶3.2.5. The estimated total number of employees during  
6 the PAGA period and the estimated total pay periods therein are 65 and 3,303, respectively. This  
7 \$10,000 represents roughly 5% of the \$200,000 Gross Settlement Amount and is consistent with the  
8 zero to two percent range for PAGA claims approved by Courts. *See e.g., In re M.L. Stern Overtime*  
9 *Litig.* (S.D. Cal. Apr. 13, 2009) No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at \*1 (approving  
10 PAGA settlement of 2 percent, or \$14,000); *Hopson v. Hanesbrands, Inc.* (S.D. Cal. Apr. 13, 2009)  
11 No. CV 08-0844 EDL, 2008 WL 3385452, at \*1 (approving a PAGA settlement of 0.3 percent, or  
12 \$1,500); *Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage  
13 and hour class action claims and PAGA claims under which no money was allocated to the PAGA  
14 claims); *Poisson v. Dispatch Transportation, Inc., et al.*, Case No. RIC1504851, Riverside Superior  
15 Court, Hon. Craig Reimer presiding (approving \$14,000 PAGA allocation in a \$970,000 settlement);  
16 *Edmiston v. Loma Linda University Medical Center – Murrieta, et al.*, Case No. MCC 1300610,  
17 Riverside Superior Court, Hon. Craig R Riemer presiding (approving \$10,000 PAGA allocation in a  
18 \$912,500 settlement); *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. 2011) Case No. C 05-4526  
19 MHP, 2011 WL 672645 at \*1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million  
20 common-fund settlement); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal. 2013).

21 Further, neither the Court nor a jury has made a factual finding of a violation of any Labor  
22 Code provision such that approving an amount that is less than the statutory maximum is appropriate.  
23 Lavi Decl., ¶49. As discussed above (and without waiving the mediation privileges and confidentiality  
24 agreements), the Parties specifically negotiated the payment, like the other terms of the settlement,  
25 and ultimately agreed to resolve the PAGA claim for \$10,000.00. *Id.* Approval of less than the  
26 statutory maximum is appropriate in this case because Defendant expressly denies and continues to  
27 deny any liability. *See* Settlement, ¶2.1.1, 12.1.

1                   **m. Payroll Taxes and Individual Settlement Payment Tax Allocation**

2           The Settlement provides that the employer’s share of payroll taxes shall be paid separately  
3 from, and in addition to, the Gross Settlement Amount. Settlement, ¶3.1. Moreover, the Parties have  
4 agreed to allocate 20% of the Individual Settlement Payments as unpaid wages and 80% as penalties  
5 and interest. Settlement, ¶3.2.4.1; Lavi Decl., ¶50

6                   **n. Uncashed Funds**

7           The Settlement provides that Class Members will have 180 days from the date the Settlement  
8 Administrator mails the checks to negotiate them. *See* Settlement, ¶4.4.1. The funds from any  
9 uncashed checks shall be transferred by the settlement administrator to the California Controller’s  
10 Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue”  
11 subject to the requirements of Code of Civil Procedure § 384, subdivision (b). *See* Settlement, ¶4.4.3.  
12 After final distribution of the settlement funds, Class Counsel will submit a declaration regarding  
13 disbursement of Settlement funds. *See* Settlement, ¶7.8.6. The declaration shall state the date the  
14 checks were mailed, the total number of checks mailed to Class Members, the average amount of  
15 those checks, the number of checks that remain uncashed, the total value of those uncashed checks,  
16 the average amount of the uncashed checks, and the nature and date of the disposition of those  
17 unclaimed funds. *Id.*; Lavi Decl., ¶51

18                   **o. Released Parties and Scope of Release**

19           The scope of the release includes all claims and factual allegations that were or could have  
20 been alleged in the in the operative Complaint, as set forth more fully in the Settlement Agreement.  
21 *See* Settlement, ¶5.2. Therefore, the language expressly confirms that the scope of the release is  
22 limited to the claims which could have been asserted based on the same allegations as set forth in the  
23 operative complaint. *Id.*, ¶2.1. This type of release is permissible in wage and hour class action  
24 settlements such as this one. *Shine v. Williams Sonoma* (2018) 23 Cal.App.5th 1070, 1078 (“[A]  
25 judgment pursuant to a class settlement can bar [subsequent] claims based on the allegations  
26 underlying the claims in the settled action. This is true even though the preclude claim was not  
27 presented, and could not have been presented, in the class action itself (citation omitted).”) Lavi Decl.,  
28 ¶52

1                   **C.     THE SETTLEMENT IS DEVOID OF OBVIOUS DEFICIENCIES**

2           Preliminary approval of the Settlement is also warranted because there are no obvious  
3 deficiencies. The Settlement will provide monetary relief to Class Members. The amounts proposed  
4 for Class Counsel’s attorneys’ fees and costs, the Class Representative Service Payment, and the  
5 PAGA allocation are all reasonable and appropriate based on the facts of this case. Further, the Parties  
6 utilized the judicially crafted LASC Model Class Action and PAGA Settlement Agreement and Class  
7 Notice, giving rise to the presumption that the terms of the settlement are fair and comprehensive.  
8 Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.  
9 Lavi Decl., ¶53

10                   **D.     THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**  
11                   **NOTICE TO CLASS MEMBERS**

12           This Court should order distribution to the Class of the proposed Class Notice by U.S. Mail,  
13 postage prepaid, using last known mailing address information provided by Defendant. *See*  
14 Settlement, ¶7.4 *et seq.* This manner of giving notice is the “best notice practicable” under the  
15 circumstances because it provides “individual notice to all members who can be identified through  
16 reasonable effort.” *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173. Here, Plaintiff  
17 proposes that the Settlement be administered by Phoenix Settlement Administrators (“Phoenix”), an  
18 experienced class action settlement administrator. *See generally* Declaration of Jodey Lawrence  
19 (“Lawrence Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable through  
20 Defendant’s personnel and payroll records, which Defendant will provide to Phoenix within Fifteen  
21 (15) days of preliminary approval of the Settlement. *See* Settlement, ¶4.2. Within fourteen (14) days  
22 of receipt of the class list information, Phoenix will run the addresses through the United States Postal  
23 Service Notice of Change of Address database (which provides updated addresses for any individual  
24 who has moved in the previous four years and has notified the U.S. Postal Service of a forwarding  
25 addresses) and mail the notices to Class Members. *See* Settlement, ¶7.4.2. To the extent that any  
26 notices are returned, Phoenix will perform a “skip trace” to track any Class Member’s current mailing  
27 address. *See* Settlement, ¶7.4.3.

28           The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because

1 it advises Class Members of the nature of the claims, basic contentions and denials of the parties and  
2 the key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the  
3 procedures by which to do so, explains the recovery formula and expected recovery amount for each  
4 Class Member, and advises them that they will be bound by the terms of the Settlement if they do not  
5 opt-out. *See* Lavi Decl., Exh. 1, Exh. A. Class Members to whom Notice Packets are re-sent after  
6 having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) days  
7 from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a  
8 Request for Exclusion, challenge or objection. *See* Settlement, ¶¶ 7.4.4., 7.5.1., 7.6, 7.7.2. The  
9 proposed Notice will be sent in Spanish and English. Settlement ¶ 7.4.2. The proposed Class Notice  
10 will also notify Class Members of the final approval hearing date and provides the contact information  
11 for Class Counsel. The proposed Notice further provides that relevant case documents, including the  
12 final judgment, and any changes to the final approval hearing date and time will be posted on the  
13 Settlement Administrator's website. *Id.* This manner of giving notice satisfies California Rule of  
14 Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

15 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

16 Finally, this Court should set a hearing for final approval of the Settlement on a date  
17 appropriately scheduled to follow the deadline by which Class Members must file objections to the  
18 Settlement or opt-out. *See* California Rule of Court 3.769.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve  
21 the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted  
22 concurrently herewith.

23 Dated: September 4, 2025

Respectfully submitted,  
**E&L, LLP**

25 

26 By: \_\_\_\_\_

27 Davi Lavi, Esq.  
Arie Ebrahimian, Esq.  
28 Attorneys for Plaintiff MOSES SANTAMARIA,  
on behalf of himself and others similarly situated