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

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| **SALVADOR RODRIGUEZ, GERMAN RODRIGUEZ,** on Behalf of Themselves and All Other Current and Former Employees Similarly Situated,<br><br>**Plaintiffs,**<br>**v.**<br><br>**WNU LLC DBA PAPA JOHNS,** a Washington Limited Liability Company, **PAUL URBINA, BRISIA OCHOA,** Individuals, and **DOES 1 to 50, Inclusive.**<br><br>**Defendants**. | **CASE NO. 23STCV28934**<br><br>*Assigned for All Purposes to the Honorable William F. Highberger*<br><br>Dept. No. 10<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINAY APPROVAL OF CLASS SETTLEMENT**<br><br>Hearing Date: October 28, 2025<br>Hearing Time: 10:30 AM<br>Place: Dept. 10<br>Action Filed: November 22, 2023<br>Trial Date: Not Set |

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## I. INTRODUCTION

Plaintiffs Salvador Rodriguez and German Rodriguez ("Plaintiffs") respectfully submit this memorandum in support of the unopposed motion for preliminary approval of the proposed class action settlement with Defendants WNU LLC dba Papa Johns, a Washington limited liability company, Paul Urbina, an individual, and Brisia Ochoa, an individual ("Defendants"), and seek entry of an order: (1) preliminarily approving the proposed settlement of this class action with Defendants; (2) for settlement purposes only, conditionally certifying the Class, which is comprised of "all persons employed by WNU LLC in California and classified as non-exempt who worked at WNU LLC during the Class Period.," which is November 22, 2019 to March 18, 2025 (excluding these employees who signed an arbitration agreement); (3) provisionally appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Eli Kantor as Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that notice of the proposed settlement be given to the class; (7) appointing ILYM Group as Administrator, and (8) scheduling a final approval hearing date, for the proposed date of 02/25/2026 which is at least 120 days from preliminary approval, to consider Plaintiffs' motion for final approval of the settlement and for approval of attorneys' fees and expenses. Plaintiffs and Defendants (collectively the "Parties") have reached a full and final settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement ("Agreement") filed concurrently with the Court. A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Eli Kantor ("Decl. Kantor"), served and filed herewith along with the Class Notice which is attached as Exhibit A to the Agreement. The form of the Agreement is based upon the Los Angeles County Superior Court model form for a class and PAGA settlement.

As consideration for this settlement, the non-reversionary Gross Settlement Amount of ($456,000.00) (the "Gross Settlement Amount") is to be paid by Defendant WNU LLC as set forth in this Agreement. The Gross Settlement Amount will settle all issues pending in the

Action between the Parties and will be made in full and final settlement of the Released Class Claims in exchange for the payments to Participating Class Members from the Net Settlement Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs, (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the LWDA and 25% to the Aggrieved Employees. (Decl. Kantor at ¶ 4.)

**$456,000** (Gross Settlement Amount)

- $10,000 (Plaintiff's proposed service award not to exceed $10,000 each
- $10,000 (Plaintiff's proposed service award not to exceed $10,000 each
- $25,000 (Class Counsel Litigation Expenses Payment – not to exceed amount)
- $152,000 (Class Counsel Fees Payment – not to exceed 1/3 of settlement)
- $10,000 (PAGA Payment – 75% to LWDA, 25% to Aggrieved Employees)
- $15,000 (Administrative Expenses Payment – not to exceed amount)

**$234,000** (Net Settlement Amount)

Table/Breakdown of key financial terms and proposed deductions

On January 14, 2025, the Parties participated in an all-day mediation session presided over by Brandon McKelvey, Esq., an experienced mediator of wage and hour class actions. In preparation for the mediation, Defendants provided Class Counsel with payroll and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. (Decl. Kantor at ¶ 6) The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are significant litigation and class-certification risks. Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

## II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is Four-Hundred-Fifty-Six Thousand Dollars ($456,000.00). (Agreement at 12 ¶ 1.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and (5) the PAGA Penalties payment. (Agreement at page 13-14 ¶ 3.) The Gross Settlement Amount does not include Defendants' share of payroll taxes. (Agreement at page 12 ¶ 1.) The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at page 4 ¶ T) (Decl. Kantor at ¶ 17)

WNU LLC will pay the Gross Settlement Amount in three (3) installments: (1) One Hundred Fifty-Two Thousand Dollars and Zero Cents ($152,000.00) paid no later than nine (9) months following the later of January 17, 2025, which is the date of the Acceptance of the Mediator's Proposal ("Acceptance of the Mediator's Proposal Date"); or ten (10) days after the Final Approval of this Settlement by the Court; (2) One Hundred Fifty-Two Thousand Dollars and Zero Cents ($152,000.00) paid no later than three (3) months after the First Payment Date; (3) One Hundred Fifty-Two Thousand Dollars and Zero Cents ($152,000.00) paid the earlier of: six (6) months following the First Payment Date; or eighteen (18) months after Acceptance of the Mediator's Proposal Date. For each installment WNU LLC timely pays, Defendants will receive a credit towards the Gross Settlement Amount in the amount of the installment. If WNU LLC fails to timely pay an installment, Defendants shall have until the last day of the subsequent month to cure the failure by paying the overdue installment and the currently due installment. If Defendants fail to cure an overdue installment, they shall not receive the corresponding credit for the installment. WNU LLC shall deposit all installments with the Claims Administrator. The money will remain with the Claims Administrator and will not be distributed until all installments are paid and after Final Approval is granted by the Court, whichever is later. (Agreement at page 12-13 ¶ 2) (Decl. Kantor at ¶ 18)

The Gross Settlement Amount and any other actions and forbearances taken by Defendants shall constitute adequate consideration for the Settlement Agreement and will be made in full and final settlement of: (1) the aggregate of all Individual Settlement Payments to Participating Class Members; (2) Class Representatives' Enhancement, as approved by the Court, not to exceed a total of Ten Thousand Dollars and Zero Cents ($10,000.00) each; (3) the Class Counsel Fees, as approved by the Court, not to exceed 33.33% of the Gross Settlement Amount; (4) Class Counsel Litigation Expenses, as approved by the Court, not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00); (5) the reasonable fees and expenses of the Claims Administrator, as approved by the Court not to exceed $15,000; and (6) civil penalties recoverable under California's Private Attorneys General Act (PAGA) in the amount of Ten Thousand Dollars and Zero Cents ($10,000.00), of which 75% or Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) will be paid to the California Labor Workforce Development Agency ("LWDA") and 25% or Two Thousand Five Hundred Dollars and Zero Cents ($2,500.00) allocated among the PAGA Class Members as part of the Non-Reversionary Settlement Fund. The Non-Reversionary Settlement Fund shall be paid in Individual Settlement Payments to Participating Class Members. (Agreement at page 13 ¶ 3-4). (Decl. Kantor at ¶ 19)

Settlement Payments will be paid from the Non-Reversionary Settlement Fund to Participating Class Members based on the number of Qualifying Workweeks Worked in the Class Position during the Class Period credited to the Participating Class Member as a percentage of the total Qualifying Workweeks Worked in the Class Position during the Class Period credited to all Participating Class Members. (Agreement at page 15 ¶ 3) (Decl. Kantor at ¶ 20)

For purposes of calculating Individual Settlement Payments, the Qualifying Workweeks Worked by the Class Members will include weeks estimated to have been actually worked by the Class Members based on available data. The Individual Settlement

Payment for each Participating Class Member will be determined by, first, determining the value of a single Qualifying Workweek during the Class Period and then by multiplying the value of a single Qualifying Workweek by the number of Qualifying Workweeks worked by each Participating Class Member. If any eligible Class Members choose to opt out of the Settlement, the Qualifying Workweeks worked by such opt-out Class Members will be excluded from the calculation of the total Qualifying Workweeks for determining allocation of Individual Settlement Payments. (Agreement at page 15 ¶ 4) (Decl. Kantor at ¶ 21)

Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at page 29 to 33, Exhibit A to Settlement Agreement - Class Notice). All Class Members who do not "opt out" will be deemed Participating Class Members who will be bound by the Settlement and will be entitled to receive an Individual Class Payment. (Agreement at page 31 ¶ 4) All Aggrieved Employees, including those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of their request for exclusion. (Agreement at page 30-32 ¶¶ 2-3, 6) Finally, the Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their Workweeks. (Agreement at page 32-33 ¶¶ 8, 1-3, Exhibit A to Settlement Agreement - Class Notice) (Decl. Kantor at ¶ 22)

A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at page 16 ¶ 6.) If the participating class member does not cash the checks within one hundred and eighty (180) days after issuance, then at that time the Claims Administrator will void any such uncashed or unclaimed checks. (Agreement at page 16 ¶ 6.) The Claims Administrator will take additional reasonable steps, including a skip-trace or other search using the name, address, and social security number or Federal tax identification number of the Class Member involved, to locate such persons for a period of up to forty-five (45) days, after which the Claims Administrator will disburse or cause to disburse all remaining balance of Non-Reversionary Settlement Fund to the Legal Aid Foundation of Los Angeles. (Agreement at page 16 ¶ 6.) (Decl. Kantor at ¶ 23)

Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement in this action (“Administrator”). (Agreement at page 26 ¶ 1.) The Administrator will be paid for settlement administration in an amount not to exceed $15,000. (Agreement at page 20 ¶ F.) ILYM has provided an estimate of $9,950 for administration expenses. (See Exhibit 5 to Decl. of Eli Kantor - Declaration of Lisa Mullins of ILYM Group, Inc.) (Decl. Kantor at ¶ 24)

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement at page 19 ¶ 1.) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation Expenses Payment in an amount not to exceed $25,000. (Agreement at page 19 ¶ 1.) Subject to Court approval, the Agreement provides for a payment of no more than $10,000 each to the Plaintiffs as the Class Representative Service Payments. (Agreement at page 17 ¶ 1.) (Decl. Kantor at ¶ 25)

Subject to Court approval, the PAGA Penalties will be paid from the Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor Code Section 2698, et seq. (“PAGA”). The PAGA Penalties are $10,000. (Agreement at page 18 ¶ D) Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: 75% shall be allocated to the Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the number of their respective PAGA Pay Periods. (Agreement at page 16-17 ¶ 7.) The Law Offices of Eli Kantor have submitted the Settlement Agreement as well as the Motion for Preliminary Approval of Class and PAGA Action Settlement and supporting Declaration to the LWDA pursuant to the

Private Attorney General's Act ("PAGA") which is attached to the Declaration of Eli Kantor as Exhibit 3. (Decl. Kantor at ¶ 26)

## III. CASE BACKGROUND

On April 24, 2023, Plaintiffs Salvador Rodriguez and German Rodriguez filed with the LWDA and served on Defendants notices under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations. The PAGA Notice by Plaintiffs German Rodriguez and Salvador Rodriguez is attached to the Declaration of Eli M. Kantor as Exhibit #2 for the Court's reference. (Decl. Kantor at ¶ 10)

On November 22, 2023, Plaintiffs Salvador Rodriguez and German Rodriguez, on behalf of themselves and all other current and former employees similarly situated, filed a class action Complaint against Defendants alleging ten causes of action for:

1. Failure to Provide Required Rest Breaks, *California Labor Code* § 226.7;
2. Failure to Provide Meal Periods, *California Labor Code* § 226.7;
3. Failure to Pay Minimum Wages, *California Labor Code* §§ 1194, 1197 and 1197.1;
4. Failure to Pay Overtime Wages, *California Labor Code* §§510 and 1194;
5. Failure to Provide Accurate Itemized Wage Statement to Employees, *California Labor Code* §226 (a) and §226(e)(2)(B);
6. Failure to Pay Unpaid Wages Upon Termination, *California Labor Code* §203;
7. Failure to Indemnify Employees, *California Labor Code* §2802 and Failure to Maintain a Uniform;
8. Failure to pay Split Shift Premium, *California Labor Code* §1194;
9. PAGA, Labor Code §2699
10. Unlawful Business Practices Under *Business and Professions Code* §17200.

(Decl. Kantor at ¶ 11)

Both before and after initiating the Action on behalf of the putative class, Plaintiffs and Class Counsel diligently investigated the claims alleged and conducted legal research regarding Defendants' potential liability and defenses. Prior to attending private mediation, the Parties engaged in informal discovery, and the production of documents, class data, and other information, allowing for the full and complete analysis of liabilities and defenses to the claims in the Action.

The information for mediation obtained by Plaintiffs included: (1) data concerning the class; (2) payroll data and time punch data for the class covering 77,617 shifts; (3) Defendants' wage and hour policies; (4) the employment files for the Plaintiffs; and (5) samples of wage statements provided by Defendants. As such, Class Counsel received the data and information for the class, which was sufficient for Plaintiffs' expert to prepare the valuations of the claims for the Class. (Decl. Kantor at ¶ 12)

Plaintiffs and Defendants agreed to discuss resolution of the Action through a mediation. Prior to mediation, the Parties engaged in the above investigation and the exchange of documents and information in connection with the Action. On January 14, 2025, the Parties participated in an all-day mediation presided over by Brandon McKelvey, a respected and experienced mediator of wage and hour class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Acton based upon a mediator's proposal which was memorialized in a memorandum of understanding. The Parties then negotiated the final terms of the settlement as set forth in the Agreement. At all times, the negotiations were at arm's length and contentious. (Decl. Kantor at ¶ 14)

## IV. <u>THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL</u>

California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all class members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769. The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection." *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining." W*ershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

### A. The Role of The Court In Preliminary Approval Of A Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba, supra,* 91 Cal.App.4th at 234-235; *Dunk* , 48 Cal.App.4th 1794. In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice*, 688 F.2d at 624. Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

### B. Factors To Be Considered In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval and therefore the presumption applies.

**1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel**

This settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced and well-respected mediator. Defendants have expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is appropriately tethered to the allegations in this Action as the "Released Claims" are defined as "all claims that were expressly alleged in this Class Action or could have been alleged in the Class Acton based upon the factual and legal allegations in the Complaint. (Agreement at page 7-8 ¶ LL)

Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage and hour employment class actions, as Class Counsel has previously litigated and certified similar claims against other employers. ( Decl. Kantor at ¶35). The view of qualified and well-informed counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

The Parties attended an arms-length mediation session with Brandon McKelvey, a respected attorney and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendants provided Class Counsel with payroll and employment data and other information regarding the Class Members, various internal documents, and other compensation and employment-related materials. Class Counsel analyzed the data with the assistance of damages expert, Eric Lietzow, and prepared and submitted a mediation brief to the mediator. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. (Decl. Kantor at ¶ 12-14).

As consideration for this settlement, the non-reversionary Gross Settlement Amount of ($456,000.00) is to be paid by Defendant WNU LLC as set forth in this Agreement.

Class Counsel has conducted an investigation into the facts of the class action. Informal discovery was obtained, which included the production of hundreds of pages of documents. Class Counsel engaged in a thorough review and analysis of the relevant documents and data with the assistance of an expert. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. In addition, Class Counsel previously negotiated settlements with other employers in actions involving nearly identical issues and analogous defenses. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential appellate issues. (Decl. Kantor at ¶ 16)

Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendants through possible appeals which could take several years. Class Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. (Decl. Kantor at ¶ 27)

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392, (D. Ariz. 1989).

**2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for Approval**

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at page 15 ¶ 3-4.)

The calculations to compensate for the amount due to the Class at the time of the mediation were calculated by Eric Lietzow, Plaintiffs' Damages Expert. Defendants provided Plaintiffs with a "wish list" of samples of time and payroll data of 22% of the class employees which represented the employees who had not signed arbitration agreements. All of the employees who had signed arbitration agreements were *excluded* from the settlement and are excluded from the class action claims; however, they are still part of the PAGA class. Plaintiffs were making their calculations based upon the following data: the class period being from November 22, 2019 to March 18, 2025. The number of class members being 512; the number of work weeks being 18,330, the number of shifts being 77,617 shifts. The number of PAGA Class Members being 425; The number of pay periods for the PAGA Class period being 10,597. The number of wage statements from April 24, 2022 to the date of Mediation were 10,597. The average hourly rate for the Class was $14.96.[1]

Eric Lietzow, Plaintiff's Expert, reviewed this information and determined the following: For alleged meal period violations, he calculated $447,075.61 for alleged meal period damages based upon a 34.42% violation rate for shifts worked after deducting meal premiums actually paid by Defendants. He also calculated meal period damages for times when employees allegedly worked through their meal periods at a violation rate of 75% which resulted in $370,223.97. For rest breaks damages, he calculated $1,275,893.18 at a violation rate of 100%. For missed minimum wage, he calculated that the class members were entitled to $145,060.99 for off-the-clock work, based on the class members working 9,696.59 unpaid hours multiplied by an average of $14.96. For overtime damages, he calculated $94,093.61 based on the class members working 4,193.12 off-the-clock hours for days in excess of 8 hours at an average rate of $22.44 (1.5 x $14.96). For split-shift premiums he calculated $16,747.93 based upon a potential violation rate of 1.15%. For unreimbursed expenses, the alleged damages were $194,529.18 based upon cell phone usage at $40 per month and mileage reimbursement at the respective IRS levels for each year. As a result, the total damage valuation was calculated that the Defendants were subject to a maximum damage claim in the amount of $2,543,624.47. (Decl. Kantor at ¶ 8)

As to the potential penalties, Plaintiffs calculated the potential waiting time penalties were $1,490,016.00; wage statements at $180,000.00, Liquidated damages at $145,060.94. Total maximum damages with penalties calculated at $4,358,701.41. Because the PAGA

[1] The Parties inserted an escalator clause in the settlement agreement in case the number of class members, PAGA class members, and/or pay periods increased after the execution of the agreement. (Settlement Agreement at page 37 ¶ I). According to the Declaration of Paul Urbina, which has been attached hereto as Exhibit 4, the numbers are as follows: the number of class members is 531; the number of work weeks for all employees who did not sign an arbitration agreement is 18,489; the number of PAGA class members is 548; and the number of pay periods for the PAGA Class Period is 11,977.

claim is not a class claim and primarily is paid to the State of California, Plaintiffs have not included the PAGA claim in this discussion of the value of the class claims. The PAGA claim is addressed in the Decl. Kantor ¶41. Defendants vigorously disputed Plaintiffs' calculations and their exposure. While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses asserted by Defendants, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendants' position that Plaintiffs and Class Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute has to whether and when the wages were due.") (Decl. Kantor at ¶ 9)

Consequently, the Gross Settlement Amount of $456,000 with an average of $25 per work week payment to the Class Members, represents more than 17% of the maximum value of the alleged damages (not including penalties) at issue in this case at the time this settlement was negotiated. The above maximum calculations should then be adjusted in consideration for both the risk of class certification and the risk of establishing class-wide liability on all claims. Given the amount of the settlement as compared to the potential value of claims in this case the defenses asserted by Defendants, this settlement is fair and reasonable. See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a settlement where the settlement amount constituted approximately 25% of the estimated overtime damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of a class settlement which represented "roughly onesixth of the potential recovery".) Clearly the goal of this litigation has been met. (Decl. Kantor at ¶ 9)

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of potential defenses Defendants assert could present serious threats to the claims of the Plaintiffs and the other Class Members. Defendants could assert that Defendants' practices complied with all applicable labor laws. Defendants could argue that Class Members were paid for all time worked, that all work time was properly recorded. Defendants could contend that its meal and rest period policies fully complied with California law and Defendants did not fail to provide the opportunity for legally required meal and rest breaks. Defendants could argue that its payment of significant meal period premiums is evidence of its lawful practices. Defendants could argue that based on the sampling of data in Mediation, wherein there was only a 34.2% rate of shifts with meal break violations, Plaintiffs would face a difficult challenge trying to certify a meal break class. Defendants could contend that there was no failure to pay for business expenses and any cell phone usage was merely convenient and voluntary such that reimbursement was not legally required. Defendants could also argue that any mileage reimbursement was all voluntary and that there were only a few unique instances wherein any reimbursement was required. Finally, Defendants could argue that our Supreme Court decision in *Brinker v. Superior Court, 53 Cal. 4th 1004 (2012),* weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendants could also argue that based on its facially lawful practices, Defendants acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. If successful, Defendants' defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendants could maintain these defenses have merit and therefore present a serious risk to recovery by the Class. (Decl. Kantor at ¶ 28)

There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable to obtain a certified class and maintain the certified class through trial, and thereby not recover on behalf of any employees other than themselves. At the time of the mediation, Defendants forcefully opposed the propriety of class certification, arguing that individual issues precluded class certification. Further, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. While other cases have approved class certification in wage and hour claims, class certification in this action was hotly disputed and the maintenance of a certified class through trial was by no means a foregone conclusion. (Decl. Kantor at ¶ 29)

Payment Plan

Plaintiffs' Counsel believe the payment plan as opposed to a lump sum payment as stated in the Agreement on page 12-13 ¶ 2 is justified. Plaintiffs' counsel reviewed Defendants' Corporate Financials and its tax returns and verified WNU LLC's financial distress. The negotiation was hard fought and intense. Defendants continued to stress throughout the day that financial distress is a major factor as to why Plaintiffs should accept a $25 per work week settlement with a payment plan. The only way that Plaintiffs could achieve a $25 per work week settlement was if Plaintiffs agreed to a payment plan. Based on Defendants' representations during mediation, the Mediator's representation, and Plaintiffs' independent review of the financial records, the payment plan is justified. (Decl. Kantor at ¶ 30)

After arm's length negotiations between experienced and informed counsel, the Parties recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of $456,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

> "In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'"

2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

**3. The Settlement Does Not Improperly Grant Preferential Treatment to Class Representatives or Segments Of The Class**

The relief provided in the Settlement will benefit all members of the Class. The Settlement does not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class Members are all determined under a neutral methodology. Each Participating Class Member will receive the same opportunity to participate in and receive payment through a neutral formula that is based upon the Workweeks for that individual. (Decl. Kantor at ¶ 21)

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for their service and for the risks undertaken on behalf of the Class. (Agreement at page 17 ¶ 1-2.) Plaintiffs performed their duties admirably by working with Class Counsel over the course of litigation. The Declarations of the Plaintiffs are submitted herewith in support. (Decl. Kantor at ¶ 31) At this stage, the requested service award of $10,000 each is well within the accepted range of awards for purposes of preliminary approval. See e.g. *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000 in enhancements). *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.,* 2018 U.S. Dist. LEXIS 71386 (E.D.Cal. 2018) (awarding $12,500 where average class member payment was $351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving $10,000 service award where class member recovery was $375); As explained in *Glass*, service awards are routinely awarded to class representatives to compensate the employees for the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

**4. The Stage of The Proceedings Are Sufficiently Advanced to Permit Preliminary Approval Of The Settlement**

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before the Action were filed, and during the course of litigation, Class Counsel engaged in informal discovery to obtain necessary information. Class Counsel conducted a review and analysis of the relevant documents and data. Class Counsel was also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (Decl. Kantor at ¶ 32)

Based on the above data and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for both parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (Decl. Kantor at ¶ 33)

## V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

Plaintiffs contend that the proposed settlement meet all of the requirements for class certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows: "All persons employed by WNU LLC in California classified as non-exempt who worked for WNU LLC during the class period and who did not sign an arbitration agreement." (Agreement at page 1 ¶ B). The class period is November 22, 2019 to March 18, 2025. (Agreement at page 3 ¶ K)

### A. California Code of Civil Procedure § 382

Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well- defined community of interest among class members. (*citations omitted*). The "community of interest"

> requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

*Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements, the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Class should be certified for purposes of settlement only. (Agreement at page 11 ¶ F.)

B. **The Proposed Class Is Ascertainable and Numerous**

Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class members can readily be determined through examination of Defendants' files. Given that the Class consists of 531 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.) Here, Plaintiffs assert that the 531 current and former employees that comprise the Class can be identified based on Defendants' records and are sufficiently numerous for class certification. (Decl. Kantor at ¶ 34, Exhibit 4 to Decl. Kantor – Declaration of Paul Urbina re: Class Members and Quantifying Workweeks.)

**C. Common Issues of Law and Fact Predominate**

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003). Here, Plaintiffs contend that common questions of law and fact are present, specifically the common questions of whether Defendants' employment practices were lawful, whether Defendants failed to provide meal and rest periods to Class Members, whether Class Members were lawfully compensated for all hours worked, whether Class Members were lawfully compensated for all overtime wages, whether Defendants failed to provide an accurate itemized wage statement, whether Defendants violated Labor Code §§ 201-203 by failing to pay compensation due and owing at the time any Class Members' employment with Defendants terminated, whether Defendants failed to provide required expense reimbursement, whether Defendants' conduct was willful, whether Defendants violated § 17200, *et seq.* of the Business and Professions Code by engaging in the acts previously alleged; whether Defendants violated Labor Code §1194 by failing to pay employees no less than one hour's pay at the minimum wage when they work a split shift, and whether Class Members are entitled to damages and penalties as a result of these practices. Plaintiffs contend that certification of this Class is appropriate because Defendants allegedly engaged in uniform practices with respect to the Class Members. As a result, these common questions of liability could be answered on a class wide basis. (Decl. Kantor at ¶ 33) Defendants dispute that common questions predominate but will not oppose such a finding for purpose of this Settlement only.

### D. The Claims of the Plaintiffs Are Typical of the Class Claims

The typicality requirement requires the Plaintiffs to demonstrate that the members of the Class have the same or similar claims as the Plaintiffs. "The typicality requirement is met when the claims of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon*, *supra*, 150 F.3d at 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."

In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like every other member of the Class, were employed by Defendants as non-exempt employees, and, like every other member of the Class, were subject to the same employment practices. Plaintiffs, like every other member of the Class, also claim owed compensation as a result of the Defendants' uniform company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from the same course of conduct by Defendants, involve the same issues, and are based on the same legal theories. (Decl. Kantor at ¶ 34). For purposes of settlement, Plaintiffs assert that the typicality requirement is met as to the common issues presented in this case. Defendants do not oppose a finding of typicality for purposes of this Settlement only.

### E. The Class Representation Fairly and Adequately Protected the Class

Plaintiffs contend that the Class Members are adequately represented here because Plaintiffs and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. This requirement is met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with Class Counsel, provided documents and information to Class Counsel, and participated in the investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained competent counsel who are experienced in wage and hour class actions and who have no conflicts. (Decl. Kantor at ¶ 34) Third, there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Kantor at ¶ 34)

Under such circumstances, there can be no conflicts of interest, and adequacy of representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020). Defendants dispute that the adequacy requirement is satisfied but will not oppose such a finding for purposes of this Settlement only.

**F. The Superiority Requirement Is Met**

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

"Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. "It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues." *Sav-On*, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.,* 141 F.R.D. 58, 67 (S.D. Ohio 1991).

Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiffs. While Defendants dispute that class treatment is superior, Defendants do not dispute a finding of superiority in this action for purposes of this Settlement only.

## VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Agreement, no later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Class Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Class Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Class Administrator employees who need access to the Class Data to effect and perform under this Agreement. (Agreement at page 14 ¶ 2). Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice [with Spanish translation, if applicable] (Agreement at page 28 ¶ i.)

The Class Notice drafted jointly and agreed upon by the parties through their respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to Settlement Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys' fees and expenses to be sought; (v) the amount of the Plaintiffs' service award request; and (vi) the anticipated expenses of the Administrator. (Decl. Kantor at ¶ 40)

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit a written objection. (Agreement at pages 28-33, Exhibit A – Class Notice Page 3.) Class Members shall be given the opportunity to object to the Settlement and/or requests for attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at page 33 ¶ 2.) Class Members who do not submit a timely and proper request to opt-out will automatically receive a payment of their Individual Class Payment. This notice program was designed to meaningfully reach the Class Members and it advises them of all pertinent information concerning the Settlement. Decl. Kantor at ¶40. The mailing and distribution of the Class Notice satisfies the requirements of due process and is the best notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

## VII. CONCLUSION

Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final approval hearing for the proposed date of 02/25/2026, which date is at least one hundred twenty (120) days from the date of Preliminary Approval.

Dated: August 7, 2025

ELI M. KANTOR
Attorney for Plaintiffs SALVADOR RODRIGUEZ, GERMAN RODRIGUEZ and All Others Similarly Situated