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8 NATALIAH DEVOL GREEN, and all others similarly situated

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 NATALIAH DEVOL GREEN, on behalf of
14 herself and all others similarly situated, and the
15 general public, and as an “aggrieved employee”
16 on behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General Act of
2004,

17 *Plaintiff(s),*

18 vs.

19
20 MORGAN COOKIE GROUP CULVER LLC, a
21 California limited liability company; MORGAN
22 COOKIE GROUP LLC, a California limited
23 liability company; MORGAN COOKIE
24 GROUP DOWNEY LLC, a California limited
25 liability company; CRUMBL LLC, a Utah
26 limited liability company; POCKETS SMITTY
27 LLC, a Utah limited liability company; and
28 DOES 1–50, inclusive,

Defendant(s).

Case No. 23STCV11939

**PLAINTIFF’S SUPPLEMENTAL
BRIEFING IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: January 12, 2026

Hearing Time: 9:30 a.m.

Hearing Dept.: Dept. 11, The Honorable
David S. Cunningham

Action filed: May 25, 2023

**Submitted Herewith Under Separate
Cover:**

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak; Nataliah Devol Green, and Timmy Smith;
3. [Proposed] Order



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SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff NATALIAH DEVOL GREEN submits this supplemental briefing in support for her unopposed motion for preliminary approval of class action settlement. Pursuant to the Court's Checklist for Preliminary Approval of Class Action Settlement ("Checklist") dated June 18, 2025 (Supplemental Declaration of David G. Spivak ("Suppl. DS"), the Parties amended the Class Action and PAGA Settlement Agreement and Class Notice (Suppl. DS, Ex. A) to address the Court's concerns. The Parties seek approval of this new settlement agreement entitled First Amended Class Action and PAGA Settlement Agreement and Class Notice (the "Amended Settlement"). Suppl. DS, Exs. B (clean) and C (redline). The Plaintiff also proposes a new preliminary approval order. Each of the Court's comments in the Checklist are recited below in bold, followed by a discussion of the Parties' response to the comment/question.

- 1. Provide evidence that each proposed class representative has agreed to act as same and understands his or her responsibilities. (See *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155- 156; *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).**

As discussed in her declaration, Plaintiff understands her responsibilities as a class representative and has demonstrated her commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, as well as exposing herself to the risk of attorneys' fees and costs awards against her if this lawsuit had been unsuccessful. *See* Green Supp. Decl., ¶¶ 2-4, 7.

- 2. If notice will be given in English only, explain why this is sufficient.**

As stated in the Amended Settlement, Defendants represent that an English only Class Notice is sufficient. Amended Settlement, ¶ 1.10; *see also* Timmy Smith Decl., ¶ 10.

- 3. Provide information regarding any fee splitting agreement and whether the client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th 219; *Rules Prof. Conduct*, rule 1.5.1; *Cal. Rules of Court*, rule 3. 769.)**

According to the "Attorney Consultation and Fee Contract For Contingency Cases" signed by Plaintiff and her counsel (*see* Suppl. DS, ¶ 6, Ex. D), if the total legal fees received in this case are \$250,000.00 or greater, it is agreed that Smith Law shall receive 33 and 1/3% of the total legal fees received and the Spivak Law Firm will receive the remaining 66 and 2/3% of the total legal fees received. If the total legal fees received in this case are less than \$250,000.00, it is agreed that Smith Law will receive 25% of the total legal fees received and the Spivak Law Firm shall receive the remaining 75% of the total legal fees received. *See* Ex. D, par 2.02.1.



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1 4. **Explanation as to why any class representative enhancement is reasonable,**
2 **including what the class representative did beyond the expected services of**
3 **any class representative. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles***
4 **(2010) 186 Cal.App.4th 399, 412; *Radcliffe v. Experian Information Solutions***
5 ***Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.) In PAGA settlements explanation**
6 **should be provided as to why an incentive award is appropriate.\$15,000**
7 **seems excessive for an incentive award.**

8 Courts routinely approve class representative service payments to compensate plaintiffs
9 for the services they provide and the risks they incur during class action litigation, often in much
10 higher amounts than that sought here. See, e.g., *Bell v. Farmers Ins. Exchange* (2004) 115
11 Cal.App.4th 715, 726 (upholding “service payments” to plaintiff for their efforts in bringing the
12 case); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving
13 \$50,000 enhancement award).

14 **A. The Class Representative Service Payment Is a Very Small Percentage**
15 **of the GSA**

16 Here, the Settlement provides that Plaintiff may seek a Class Representative Service
17 Payment of \$15,000.00. Approving a Class Representative Service Payment of \$15,000.00 to
18 Plaintiff amounts to 3.3 percent of the GSA to Plaintiff ($\$15,000.00 / \$450,000.00 = 3.3\%$). Supp.
19 DS, ¶ 7.

20 **B. The Time and Effort Plaintiff Expended on This Litigation Justifies**
21 **the Class Representative Service Payment.**

22 Plaintiff began the investigation of her claims and retention of counsel in approximately
23 July of 2022. Awarding Plaintiff 3.3 percent of the GSA is entirely reasonable given Plaintiff’s
24 efforts in this case undertaken on behalf of absent Class Members. In this case, Plaintiff has
25 devoted several hours of her time advancing the interests of the Class Members and also expects
26 to devote additional hours of her time with Class Counsel overseeing the administration of the
27 Settlement if the Court grants final approval of the Settlement. Supp. DS, ¶ 8; *see generally*
28 Declaration of Declaration of Nataliah Devol Green. She has done this by, among other things,
 retaining experienced counsel, providing them with extensive information about her work history
 with Defendants and Defendants’ policies and practices with respect to the wage and hour claims
 at issue, participating in a full day of mediation, foregoing pursuit of her individual claims in
 favor of a fair class-wide resolution, and being actively involved in the settlement process to
 ensure a fair result for the Class Members as a whole.

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1 **C. Plaintiff's Heavy Fiduciary Responsibilities Justifies the Class**
2 **Representative Service Payment.**

3 As Class Representative, Plaintiff agreed to (1) consider the interests of the class just as
4 she would consider her own interests and, in some cases, to put the interests of the class before
5 her own interests; (2) actively participate in the lawsuit, as necessary, by among other things,
6 answering interrogatories, producing documents to Defendants and giving deposition and trial
7 testimony if requested; (3) travel to give such testimony; (4) recognize and accept that any
8 resolution of the lawsuit by dismissal or settlement, is subject to court approval, and must be
9 designed in the best interest of the class as a whole; (5) follow the progress of the lawsuit and
10 provide all relevant facts to Class Counsel; (6) champion many other people with similar claims
11 and injuries because of the importance of the case and that necessity that all Class Members
12 benefit from the lawsuit; and (7) fight for a resolution in which the individual recovery to each
13 class member, including Plaintiff, may be relatively small. Plaintiff agreed to shoulder all of these
14 responsibilities in exchange for a proportionate share of funds made available for distribution to
15 the Class Members. Supp. DS, ¶ 9; *see generally* Declaration of Nataliah Devol Green. Plaintiff
16 had no guarantee of a Class Representative Service Payment. This justifies the Class
17 Representative Service Payment sought.

18 In class actions, especially since *Genesis HealthCare Corp., et al. v. Symczyk* (2013) 569
19 U.S. 66, 133 S. Ct. 1523, the risk always exists that defendants will offer the named plaintiff an
20 individual settlement exceeding what she can hope to recover as a class member or as a Class
21 Representative Service Payment. There is a high risk of an individual settlement offer to the class
22 representative in the context of class actions prosecuted by low wage workers who may have lost
23 their sources of income working for the employer-defendant. The Class Representative Service
24 Payment Plaintiff seeks is justified in part because, consistent with her fiduciary duties to the
25 Class Members, she did not seek an individual settlement for her wage and hour claims at all,
26 instead choosing to prosecute this matter on behalf of her coworkers. *See generally* Declaration
27 of Nataliah Devol Green. By pursuing the claims of all Class Members, Plaintiff also renders her
28 own individual payment uncertain and delays her payment by several months (at the least). *Id.*
These are additional grounds for her Class Representative Service Payment.

D. The Risks That Plaintiff Undertook Justify the Class Representative
 Service Payment.

 In taking the actions outlined above, Plaintiff has exposed herself to significant risks,



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1 including the risk that she could have been ordered to pay Defendants' attorneys' fees and costs
2 if this Action had been unsuccessful (see Lab. Code §§ 218.5-218.6), as well as the risk that she
3 could, in the future, face a potentially hostile work environment and worsened career prospects
4 for suing a prior employer for wage and hour violations and serving as the Plaintiff in a class
5 action lawsuit. Additionally, Plaintiff has exposed herself to the risk that she could end up
6 receiving less than Defendants would have paid her at the beginning of the Action via a C.C.P. §
7 998 offer or other individual settlement offer to drop her class allegations. On many occasions,
8 California courts have ordered wage and hour plaintiffs and would be class representatives to pay
outrageous fee and/or cost awards for unsuccessful claims. A few examples are:

- 9 • *Zalewa v. Tempo Research Corp.* (CA 2nd Dist. March 1, 2013) No. B238142, 2013
10 WL 766535 (court awarded the employer \$2,210,360 in attorney's fees to be paid by
11 employee for employee's unsuccessful suit for unpaid bonuses) (Supp. DS, ¶ 10, Ex.
12 E);
- 13 • *Cun v. Café Tiramisu LLC* (CA 1st Dist. Nov. 30, 2011) No. A131241, 2011 WL
14 5979937 (court ordered the employee to pay \$36,612.50 in attorney's fees and costs
15 to employer for unsuccessful suit for unpaid wages) (Supp. DS, ¶ 10, Ex. F);
- 16 • *Csaszi v. Sharp Healthcare*, No. D038558, 2003 WL 352422 (CA 4th Dist. Feb. 18,
17 2003) (court ordered the employee to pay \$20,269 in attorney's fees and costs to the
18 employer for unsuccessful suit for unpaid wages and overtime) (Supp. DS, ¶ 10, Ex.
19 G); and
- 20 • *Villalobos v. Guertin*, No. CIV. S-07-2778 LKK/GGH, 2009 WL 4718721 (U.S.D.C.
21 Eastern Dist. Dec. 3, 2009) (court ordered Plaintiff's counsel to pay \$21,180 in
22 attorney's fees and \$1,525.80 in costs to defense counsel for unpaid wages) (Supp.
DS, ¶ 10, Ex. H).

23 Such costs awards are higher than the share of the Net Settlement Amount ("NSA") that Plaintiff
24 stands to receive as a participating Class Member. It is unfair in view of the substantial risk of an
25 adverse fee or cost award of several thousand dollars that Plaintiff receives less as a reward for
26 taking such a risk. Moreover, we cannot lose sight of the fact that Plaintiff is not a high wage
27 earner. Supp. DS, ¶ 10. Even the lowest of the cost awards listed above would have devastating
28 consequences for Plaintiff in view of her modest earnings. *Id.*

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E. Plaintiff's Share of the NSA Can be Less Than Those Absent Class Members Employed for Greater Portions of the Class Period.

Plaintiff's individual share of the recovery can be less than that of some absent participating Class Members. Under the Settlement, a participating Class Member will receive a *pro rata* distribution of the Settlement proceeds proportionate to the number of workweeks he or she worked for Defendants during the Class Period, compared to the total of the total number of workweeks worked by all participating Class Members, as reflected by Defendants' records. Defendants employed Plaintiff Nataliah Devol Green from approximately May 24, 2022 until September 15, 2022. Some Class Members – those who worked more workweeks during the Class Period - will receive more, and some less. Because Plaintiff may have been employed for a shorter period during the Class Period, some Class Members will have worked more workweeks than Plaintiff and, as a result, receive larger shares in the recovery – *even though they did not actively participate in the lawsuit*. To encourage employees like Plaintiff to don the helm of class champions (and thereby advance the important public policies behind class actions), the Court should award something substantial to Plaintiff for her readiness to receive less than absent Class Members while assuming all the risk and delay of payment. Supp. DS, ¶ 11.

F. The Public Policy Behind Class Actions Justifies the Class Representative Service Payment.

The public policy behind class actions that seek an aggregate recovery of otherwise small amounts of money is equally important and has been recognized by the courts. “The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone’s (usually an attorney’s) labor.” *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591 quoting *Mace v. Van Ru Credit Corp.* (1997) 109 F.3d 338, 344. “Frequently numerous consumers are exposed to the same dubious practice by the same seller so that proof of the prevalence of the practice as to one consumer would provide proof for all. Individual actions by each of the defrauded consumers are often impracticable because the amount of individual recovery would be insufficient to justify bringing a separate action; thus an unscrupulous seller retains the benefits of its wrongful conduct.” *Vasquez v. Superior Court* (1971) 4 Cal.3d 800. “A company which wrongfully exacts a dollar from each of millions of customers will reap a handsome profit; the class action is often the only effective way to halt and redress such



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1 exploitation.” *Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381. “A current employee
2 who individually sues his or her employer is at greater risk of retaliation. We have recognized
3 that retaining one’s employment while bringing formal legal action against one’s employer is not
4 a viable option for many employees.” *Gentry v. Superior Court* (2007) 42 Cal.4th 443. If would-
5 be class action plaintiffs are not adequately incentivized to assume the risk of a substantial cost
award, it is unlikely that they will bring such lawsuits in the first place.

6 The average putative class member in this case would be unlikely to pursue individually
7 the claims Plaintiff brought against Defendants because such claims would be too small to justify
8 the cost and the risk. A putative class member will be unlikely to find an attorney who is willing
9 to pursue an individual’s claims because the claims are too small to justify the hundreds of hours
10 of legal work necessary to prove each claim. Only the class action vehicle, which allows for the
11 aggregation of hundreds of risky small dollar value claims, makes such claims advantageous for
12 an attorney to pursue on a contingency basis and there can be no class action without a class
13 member assuming the great fiduciary responsibilities of as class representative. This court should
14 allow the Class Representative Service Payment requested because to do otherwise would
15 discourage employees (and attorneys) from bringing class actions in the first place. Supp. DS, ¶
12.

16 If would-be class action plaintiffs are not adequately incentivized to advance the public
17 policy behind class actions in court in light of the time and risk it will entail, it is unlikely that
18 they will bring class action lawsuits in the first place. Once employers realize that such lawsuits
19 are unlikely, they will have no incentive to comply with wage and hour laws. Sup. DS, ¶ 13.

20 **G. The Risk of Impairment to Plaintiff’s Job Prospects Justifies the Class
Representative Service Payment.**

21 Plaintiff faced the risk that she could face worsened career prospects for suing a former
22 employer for wage and hour violations and serving as the Plaintiff in a class action lawsuit. Supp.
23 DS, ¶ 14; *see generally* Declaration of Nataliah Devol Green. Because she filed a lawsuit in the
24 California Superior Court, a public record now exists that Plaintiff sued her employer for Labor
Code violations – a fact that won’t be lost on prospective employers considering her for a job.
25 Common sense dictates that an employer will think twice about hiring someone who sued their
26 last employer. Legal experts have recognized this fact. Supp. DS, ¶ 14, Exs. I-J (“Employees:
27 Better Think Twice Before Suing Your Employer (Four Reasons Why)” and “What To Expect If
28 You Sue Your Employer”). California even has laws to address this risk: Labor Code § 1102.5



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1 prohibits retaliation against employees who speak up about Labor Code violations and Labor
2 Code § 98.6 prohibits discrimination against employees who bring Labor Code violations to the
3 attention of the Labor Commissioner. Thus, the risk to Plaintiff's future employment shows that
4 the Class Representative Service Payment sought is fair, adequate, and reasonable, and warrants
5 final approval of the Court. *Id.*

6 **H. Class Counsel's Dependence on Plaintiff Justifies the Class**
7 **Representative Service Payment.**

8 Class Counsel depended on Plaintiff's input to prosecute this lawsuit. Plaintiff made this
9 case possible for a number of reasons. First, Plaintiff challenged her employers on an unlawful
10 practice that led to Defendants paying a large percentage of the unpaid wages in question plus
11 interest to the remainder of its employees— in spite of Defendants' financial limitations. Plaintiff
12 provided Class Counsel with detailed descriptions of how Defendants' business operates, the
13 hours and scheduling of employees, and the nature of the work Class Members performed. Supp.
14 DS, ¶ 15; see generally Declaration of Nataliah Devol Green.

15 **I. Plaintiff Did Not Pursue Individual Claims.**

16 By agreeing to settle the case in the best interest of the Class Members, Plaintiff has given
17 up the right to pursue individual claims and recover substantially more in unpaid wages, interest,
18 waiting time penalties, pay stub penalties, and civil penalties that she will release as part of the
19 Settlement. Supp. DS, ¶ 16. Plaintiff did not seek an individual settlement for her claims at all,
20 instead choosing to prosecute the claims on behalf of the Class Members. *Id.*

21 **J. Plaintiff Has Achieved A Result The Class Can Be Proud Of.**

22 In view of the risks, Plaintiff achieved a result the Class can be proud of. There were
23 significant risks (outlined in the preliminary approval motion) to any award on behalf of the Class
24 Members and still Plaintiff achieved a settlement of \$450,000.00.
25 Supp. DS, ¶ 17. This outstanding result calls for significant awards to Plaintiff for making the
26 result possible.

27 **5. Defendants are to provide declarations evidencing the need for a payment**
28 **plan.**

Due to their financial condition at the time this settlement was agreed to, Pocket Smitty
and/or the Franchises were unable to pay the entire settlement amount in one lump sum payment.
See Timmy Smith Decl., ¶¶2-8.

6. Revise 4.4 so that Counsel and Plaintiff are only paid after the Class and
Aggrieved Employees have been fully paid.



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1 The Parties Amended the agreement and the Notice Packet to state that Class Counsel
2 and Plaintiff will receive their share of each distribution after the employees have been fully paid
3 their shares of each distribution. *See* Amended Settlement, ¶ 4.4

4 **7. Paragraph 9 of the Settlement Agreement provides that "If the number of**
5 **valid Requests for Exclusion exceeds 10% of the total of all Class Members,**
6 **Defendants may elect to withdraw from the Settlement." (Paragraph 9) Do**
7 **all of the Defendants have to agree to withdraw or can one Defendant**
8 **withdraw and not the others? How will the settlement funding be effected in**
9 **such an instance?**

10 The Parties Amended the agreement and the Notice Packet to clarify that all Defendants
11 will have to agree to withdraw for this provision to be effective. *See* Amended Settlement, ¶ 9.

12 **8. Why is it proper that Defendant CRUMBL LLC is not obligated to fund any**
13 **portion of the Gross Settlement Amount? (Paragraph 4.3)**

14 Pockets Smitty cannot seek contribution from Crumbl LLC for several reasons: (1)
15 Crumbl LLC is a franchisor, it does not operate any of Pocket Smitty-affiliated entity, (2) Crumbl
16 LLC does not employ any of the putative class members, and (3) the Franchises respective
17 agreements with Crumbl LLC do not provide for contribution or indemnification. *See* Tommy
18 Smith Decl., ¶ 9.

19 Respectfully submitted,

20 THE SPIVAK LAW FIRM

21 Dated: September 19, 2025

22 By:



23 DAVID G. SPIVAK, Attorneys for
24 Plaintiff, NATALIAH DEVOL
25 GREEN



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