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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SACRAMENTO

14 GLORIA NAZARENO, et al.,) CASE NO. 34-2020-00278363
15)
16 Plaintiffs,) CLASS ACTION
17 vs.)
18 ANAND, INC, dba JACK IN THE BOX et al.,) MEMORANDUM OF POINTS AND
19) AUTHORITIES IN SUPPORT OF
20) PLAINTIFFS' MOTION FOR
21) PRELIMINARY APPROVAL OF
22) CLASS ACTION SETTLEMENT
23)
24) Date: July 14, 2023 BY FAX
25) Time: 9:00 a.m.
26) Dept.: 28
27) Judge: Hon. Jill Talley
28)
29) Complaint filed: May 8, 2020
30) Trial Date: Not Set
31)

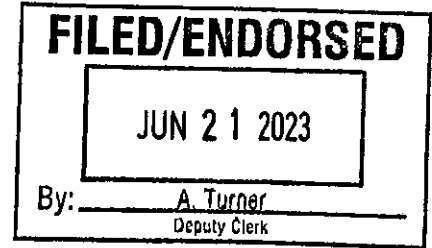


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TABLE OF AUTHORITIES

Cases

<i>Adoma v. Univ. of Phoenix, Inc.</i> , 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012)	3
<i>Amchem Products v. Windsor</i> (1997) 521 U.S. 591	20
<i>Bellinghausen v. Tractor Supply Co.</i> , 306 F.R.D. 245 256-257 (N.D. Cal. 2015)	6, 14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980)	17
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 617 (N.D. Cal. 1979)	13
<i>Bravo v. Gale Triangle, Inc.</i> , 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)	14
<i>City and County of San Francisco v. Sweet</i> , (1995)12 Cal. 4th 105, 110	17-18
<i>City of San Jose v. Superior Court</i> (1974) 12 Cal.3d 447, 460	20
<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27, 46-47	20
<i>Cold Spring Granite Co.</i> , 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017)	14
<i>Dunk v. Ford Motor Co.</i> , (1996) 48 Cal. App. 4th 1794, 1801	12, 19
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Secs. Litig.)</i> , (9 th Cir. 2000) 213 F.3d 454, 459	6
<i>Duran v. U.S. Bank Nat'l Ass'n</i> , (2014) 59 Cal.4 th 1	6
<i>Gay v. Waiters' & Dairy Lunchmen's Union</i> , 489 F.Supp. 282 (N.D. Cal. 1980), <i>aff'd</i> 694 F.2d 531 (9 th Cir. 1982)	19

1	<i>Green v. Obledo,</i>	
2	29 Cal.3d 126, 145-46 (1981)	10
3	<i>Hammon v. Barry,</i>	
4	752 F. Supp. 1087, 1093 (D.D.C. 1990)	3
5	<i>Hanlon v. Chrysler Corp.,</i>	
6	(9 th Cir. 1998) 150 F.3d 1011, 1027	11, 20, 21
7	<i>Hebbard v. Calgrove</i>	
8	(1972) 28 Cal. App. 3d 1017, 1030	19
9	<i>Hernandez v. Restoration Hardware, Inc.</i>	
10	(2018) 4 Cal. 5 th 260	10
11	<i>In re Omnivision Technologies, Inc.,</i>	
12	559 F.Supp.2d 1036, 1042 (N. D. Cal. 2007)	14, 15
13	<i>Ingram v. The Coca Cola Co.,</i>	
14	200 F.R.D. 685, 694 (N.D. Ga. 2001)	16
15	<i>Jamison v. Butcher & Sherrerd,</i>	
16	(E.D. Pa. 1975) 68 F.R.D. 479, 481	11
17	<i>Kullar v. Foot Locker Retail, Inc.</i>	
18	(2008) 168 Cal. App. 4th 116, 129	14-15
19	<i>Laffitte v. Robert Half Int'l</i>	
20	(2016) 1 Cal. 5th 480, 503 (2016)	18
21	<i>Lee v. Dynamex, Inc.,</i>	
22	(2008) 166 Cal. App. 4th 1325, 1334	19
23	<i>McGhee v. Bank of America</i>	
24	(1976) 60 Cal.App.3d 442, 450-51	21
25	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
26	(2010) 186 Cal. App. 4th 399	14-15
27	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
28	221 F.R.D. 523, 528 (C.D. Cal. 2004)	3, 4
	<i>Neary v. Regents of Univ. of Cal.</i>	
	(1992) 3 Cal. 4th 273, 277-281	11

1	<i>Noel v. Thrifty Payless, Inc.</i>	
2	(2019) 7 Cal.5th 955, 980	19
3	<i>Nordstrom Com. Cases</i>	
4	(2010) 186 Cal. App. 4th 576, 589	22
5	<i>North County Contr. 's Assn., Inc. v. Touchstone Ins. Svcs.,</i>	
6	(1994) 27 Cal. App. 4th 1085, 1089-90	11
7	<i>Officers for Justice v. Civil Serv. Comm'n,</i>	
8	688 F.2d 615, 628 (9 th Cir. 1982)	14
9	<i>Palacios v. Penny Newman Grain, Inc.,</i>	
10	2015 U.S. Dist. LEXIS 87457, 2015 WL 4078135, at *19.	3
11	<i>Rebney v. Wells Fargo Bank</i> (1990)	
12	220 Cal.App.3d 1117, 1139	14
13	<i>Reed v. 1-800 Contacts, Inc.,</i>	
14	2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014)	15
15	<i>Richmond v. Dart Industries</i>	
16	(1981) 29 Cal.3d 462, 469	20
17	<i>Rose v. City of Hayward</i>	
18	(1981) 126 Cal.App.3d 926, 932	19
19	<i>Serrano v. Priest,</i>	
20	(1977) 20 Cal. 3d 25, 34 ("Serrano III")	17,
21	<i>Steinberg v. Carey,</i>	
22	470 F. Supp. 471, 474 (S.D.N.Y. 1979)	3
23	<i>Van Ba Ma v. Covidien Holding Inc.,</i>	
24	2014 U.S. Dist. LEXIS 13296 at *12	
25	(C.D. Cal. 2014, No. 8:12-cv-02161)	6
26	<i>Van Vranken v. Atlantic Richfield Co.,</i>	
27	901 F.Supp. 294 (N.D. Cal. 1995)	16
28	<i>Vincent v. Hughes Air West, Inc.,</i>	
	557 F.2d 759, 769 (9th Cir. 1997)	17
	<i>Wershba v. Apple Computer, Inc.,</i>	
	(2001) 91 Cal. App. 4th 224	10, 11, 13, 17

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Statutes

Bus. & Prof. Code sec. 17200	1, 2
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Other Authorities

Conte & Newberg, Newberg on Class Actions, §11.47 (4th Ed.)	4
California Rules of Court, Rule 3.769	10
Fed. R. Civ. Proc., Rule 23(e)	10

1 **I. INTRODUCTION**

2 On May 8, 2020, Plaintiff Gloria Nazareno filed a class action Complaint in Sacramento
3 County on behalf of herself and other non-exempt employees of Defendant Anand, Inc. dba
4 Jack in the Box (“Defendant”). A First Amended Complaint was filed on July 16, 2020, adding
5 Eloise Iyar as a Plaintiff. Eloise Iyar and Gloria Nazareno shall be collectively referred to as
6 “Plaintiffs”. A Second Amended Complaint was filed on or about June 14, 2023, which added a
7 PAGA cause of action violation of Labor Code sections 2698, et seq. Additionally, in their
8 Complaint, Plaintiffs allege that Defendant failed to provide meal and rest periods, failed to
9 provide indemnify for work related expenditures, failed to pay earned wages, failed to provide
10 accurate pay stubs, and, by engaging in such unlawful conduct, violated California Business &
11 Professions Code section 17200 *et. seq.* Defendant denies each and every allegation in the
12 Complaint.
13
14

15 Prior to the settlement of this action, Plaintiff and Defendant (together, the “Parties”)
16 thoroughly investigated the facts relating to the claims alleged in the Complaint and engaged in
17 a thorough study of the legal principles applicable to the claims asserted against Defendant.
18 Defendant provided voluminous information related to pay and work records of the class.
19 Thereafter, the Parties commenced settlement negotiations through a private mediator and were
20 ultimately able to reach a settlement in the gross amount of \$260,000. The Parties believe that
21 this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class
22 certification and the merits of this case.
23
24

25 Although Plaintiff and his counsel believe that they could prevail on class certification,
26 as well as on the merits, they recognize that Defendant is prepared to mount a vigorous defense
27 at every stage in the litigation. Plaintiff also recognizes the inherent risks in drawn-out
28

1 litigation and the specific risks that a class may not be certified and/or that Plaintiff could fail to
2 establish liability. Based on their own respective independent investigations and evaluations,
3 the Parties and their counsel are of the opinion that the Settlement for the consideration and on
4 the terms set forth in the Parties' Stipulation is fair, reasonable, and adequate and is in the best
5 interests of the Class and Defendant in light of all known circumstances and the expenses and
6 risks inherent in litigation.
7

8 Therefore, the Parties respectfully request that the Court grant this Motion for
9 Preliminary Approval of Class Action Settlement.

10 **II. PROCEDURAL AND LITIGATION HISTORY**

11 As set forth above, Plaintiffs' operative Second Amended Class Action Complaint was
12 filed on or about June 13, 2023, in the Sacramento County Superior Court on behalf of
13 themselves and putative Class Members alleging claims for failure to provide meal and rest
14 periods, failure to provide indemnify for work related expenditures, failure to pay earned wages,
15 failed to provide accurate pay stubs, and, by engaging in such unlawful conduct, violated
16 California Business & Professions Code section 17200 *et. seq.* There is no date set for a motion
17 for class certification or trial in this matter. *See*, Declaration of Matthew Schoech ("Schoech
18 Decl."), at ¶ 3.
19

20 Plaintiff thoroughly investigated issues affecting certification, the merits of the class
21 claims, and potential damages for such claims. *See*, Schoech Decl., at ¶ 4. After the lawsuit
22 was filed, the Parties engaged formal and informal discovery, reviewed Defendant's written
23 policies for all Class Members during the relevant time period, and caused retained experts to
24 analyze the extensive payroll and timecard data produced by Defendant and prepare a damage
25 model based on Defendant's own records. *See*, Schoech Decl., at ¶ 5. The information allowed
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1 Plaintiffs' expert to conduct a detailed analysis of the copious amounts of data in order to
2 determine the extent and frequency of any violations in accordance with Plaintiffs' contentions
3 and create a damages assessment based on Plaintiffs' contentions to assess the reasonableness of
4 any settlement. *See*, Schoech Decl., at ¶ 6.

5 After analysis of the payroll and timecard data and detailed review of the policies and
6 records provided by Defendants, the Parties agreed to participate in private mediation. The first
7 mediation took place on April 15, 2021, with the Hon. Judge Richard L. Gilbert (ret.) presiding.
8 The mediation was unsuccessful to the parties commenced with additional discovery and
9 analysis of the claims. The second mediation took place with the Hon. Judge Richard L. Gilbert
10 (ret.) on February 6, 2023, at which the parties were able to come to a resolution in this matter
11 as set forth herein. At all times, the Parties' settlement negotiations have been non-collusive,
12 adversarial, and at arm's length. *See*, Schoech Decl., at ¶ 7.

13 **III. PROPOSED SETTLEMENT**

14 **A. Settlement Terms and Evaluation.**

15 A settlement following sufficient discovery and genuine arms-length negotiation is
16 presumed fair. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
17 Cal. 2004); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012).
18 Courts do not substitute their judgment for that of the proponents, particularly where, as here,
19 settlement has been reached with the participation of experienced counsel familiar with the
20 litigation. *Nat'l Rural Telecomms. Coop., supra*; *Hammon v. Barry*, 752 F. Supp. 1087, 1093
21 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471, 474 (S.D.N.Y. 1979). In addition,
22 participation in mediation "tends to support the conclusion that the settlement process was not
23 collusive." *Palacios v. Penny Newman Grain, Inc.*, 2015 U.S. Dist. LEXIS 87457, 2015 WL
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1 4078135, at *19.

2 Where the recommendations of counsel proposing the settlement are not collusive, the
3 Court can properly take them into account, particularly where, as here, they have been involved
4 in discovery and negotiations for some period of time, appear to be competent, have experience
5 with this type of litigation, and have exchanged substantial evidence from the opposing party.
6 *See* Conte & Newberg, *Newberg on Class Actions*, §11.47 (4th Ed.); *Nat'l Rural Telecomms.*
7 *Coop., supra*, 221 F.R.D. at 528 (“[g]reat weight’ is accorded to the recommendations of
8 counsel, who are most closely acquainted with the facts of the underlying litigation”).
9

10 Here, both Plaintiffs’ and Defendant’s counsel have a great deal of experience in wage
11 and hour class action litigation. Plaintiffs’ counsel has been approved as class counsel in
12 multiple wage and hour class actions and has extensive experience dealing with complex civil
13 litigation. *See, Schoech Decl., at ¶ 8.* Based on Plaintiffs’ and Defendant’s counsel’s
14 experience and analysis of the claims and respective factual contentions, legal theories, and
15 defenses, the Parties were able to participate in an arm’s length negotiation and reach a
16 settlement of the claims. *See, Schoech Decl., at ¶ 8.*
17

18 For its part, Defendant was prepared to defend itself at the class certification phase and
19 on the merits based on the following arguments, all of which are contested by Plaintiff.
20 Defendant asserts that Plaintiffs’ claims were subject to binding arbitration agreements that
21 prohibit class claims but, to date, Defendant has been unable to produce the arbitration
22 agreements. Defendant also claims that it had comprehensive meal period and rest break
23 policies that strictly comply with California law and that, if a meal or rest break was missed,
24 Defendant paid premiums to its employees. Defendant argues that the payroll data provided
25 demonstrates the potential for 18.8% of non-compliant meal breaks and that it paid over
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1 \$87,000 in meal period premiums over the class period. Defendants further argue that
2 California law does not require reimbursement of the cost to launder and maintain uniforms that
3 were given to its employees by Defendant. Defendant further asserts that none of its non-
4 exempt employees had their shifts cut short by more than one-half, so it had no obligation to
5 pay reporting time pay. Defendant further contends that Plaintiffs would be unable to certify
6 their class claims, as they would be unable to demonstrate that Defendant had any uniform
7 unlawful policies or practices relating to the above claims and, thus, individualized inquiries
8 would be required as to each class member to determine liability. And, lastly, Defendant
9 asserts that Plaintiffs' wage statement claim is derivative of his meal and rest period claims and
10 thus is without merit for the same reasons and that the wage statements issued by Defendant
11 accurately reflect what Plaintiff and other employees were paid. *See*, Schoech Decl., at ¶ 24.
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14 Although Plaintiffs disagree with each of these legal and factual contentions, they
15 recognize that litigating these issues carries risks of limited recovery and/or a substantially
16 delayed recovery. Plaintiffs have factored these risks into their decision to settle the case and
17 his conclusion that the settlement amount is fair, adequate, and reasonable in light of these risks,
18 including the substantial risks relative to class certification and the costs of pursuing such
19 litigation. The settlement is the result of extensive arm's length negotiations between the
20 Parties and their counsel and was facilitated by an experienced and neutral mediator.
21

22 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the
23 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs
24 involved in not prevailing on one or more of the causes of action or theories alleged in the
25 operative Complaint, the possibility of non-certification, and potential for appeals. *See*,
26 Schoech Decl., at ¶ 9. These risks on class certification are highlighted by the California
27
28

1 Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, (2014) 59 Cal.4th 1. There, the
2 plaintiffs obtained class certification and subsequently prevailed at trial after eight years of
3 litigation, but the judgment and the certification ruling were reversed by the California Supreme
4 Court after an additional five years of litigation. The case was remanded back to superior court
5 where class certification was denied, and plaintiffs' subsequent appeal also was denied.
6

7 Indeed, numerous courts have held that gross settlements approximating between only 8
8 and 25% of the defendant's potential exposure are fair and reasonable. *See, e.g., Dunleavy v.*
9 *Nadler (In re Mego Fin. Corp. Secs. Litig.)*, (9th Cir. 2000) 213 F.3d 454, 459 (holding that class
10 action settlement recovering 1/6 (16%) of potential exposure was fair and reasonable; "[i]t is
11 well-settled law that a cash settlement amounting to only a fraction of the potential recovery
12 does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy
13 of the settlement should be assessed relative to risks of pursuing the litigation to judgment");
14 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 256-257 (N.D. Cal. 2015) (holding that
15 class action settlement recovering between 8.5% and 25% of the defendant's potential exposure
16 was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 U.S. Dist. LEXIS 13296 at *12 (C.D. Cal.
17 2014, No. 8:12-cv-02161) (court granted preliminary approval of wage and hour class
18 settlement which obtained *only 9.1%* of projected damages, given the risks of continued
19 litigation). Here, based on Plaintiffs' counsel's analysis after reviewing copious amounts of
20 data and documentation, the potential recovery for the core class allegations regarding missed
21 meal breaks and reporting time pay which can be proven by Defendants' own payroll and
22 timekeeping records, and for which they had the greatest chance of obtaining class certification,
23 is approximately \$1,013,540 .59 (not including interest and attorney's fees), such that the
24 Settlement Amount covers approximately 25.65% of the maximum damages potentially
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1 recoverable by the settlement class. *See*, Schoech Decl., at ¶ 16. The settlement represents a
2 reasonable compromise given the percentage of the total demand that was secured, the average
3 recovery per class member, Defendant's defenses to Plaintiffs' claims, and the uncertainty of
4 class certification. *Id.*

5
6 Despite the asserted fairness of the settlement terms, as set forth in the Notice of Class
7 Action Settlement ("Notice of Settlement"), should any Class Member wish to pursue his or her
8 own case for the claims being released herein, each Class Member has the right to submit a
9 request for exclusion (*i.e.*, opt-out) from the settlement. *See*, Schoech Decl., at ¶ 13, Exh. C.
10 Moreover, as set forth in the Notice of Settlement, Class Members are advised of their right to
11 attend the final approval hearing and object to any of the terms contained in the Stipulation.
12

13 **B. The Terms of the Settlement.**

14 Pursuant to the Parties' Joint Stipulation Regarding Class Action Settlement,
15 Plaintiff and Defendant have agreed to the following:

16 1. The following group of individuals is covered by the Settlement:

17
18 **All individuals in California who have, or continue to, perform**
19 **work for Defendant, Anand, Inc., from April 6, 2016, up to the**
20 **date a signed order preliminarily approving the settlement is**
21 **filed.**

22 (*See*, Schoech Decl., Exh. B, ¶ ¶ 1.9, 4.1.). Individuals entitled to recover under the agreement
23 must submit a timely and valid Claim Form to become a Qualified Claimant. (*See*, Schoech
24 Decl., Exh. B, ¶ ¶ 1.8, 1.31, 4.1.).

25 2. Defendant will pay a Maximum Gross Settlement Amount of \$260,000 to
26 resolve and release the claims alleged in the Complaint. *See id.* at ¶ 5.1. Any portion of the
27 Net Settlement Amount not claimed by class members will be returned to Defendant *See id.* at
28

¶ 5.6.

3. The parties agree that up to \$5,000 each (\$10,000 total) will be paid as a Class Representative Enhancement Payment to Plaintiffs Gloria Nazareno and Eloise Iyar. This amount will be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

4. The parties agree that the cost of administering this class action settlement shall be paid from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, Inc. ("ILYM"), to act as the class action claims administrator. ILYM has provided a cost estimate of less than \$17,650 to administer the class settlement. The difference between any actual administration costs and the \$5,000 allocated under the Agreement, if any, will be paid to Class Members on a pro rata basis. *See, Schoech Decl., See id.* at ¶ 5.3.

5. The parties agree that up to Thirty-Three and 1/3 Percent (33 1/3%) of the Gross Settlement Amount, or up to \$86,666.67 will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. *See, Schoech Decl., Exh. B* at ¶ 5.2. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. Additionally, the parties agree that Plaintiff also will be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$23,000. *Id.* The difference between any actual costs and the \$23,500 will be redistributed to Class Members on a pro rata basis. *Id.* The proposed Notice of Settlement to be sent to class members will state this information. *See, Schoech Decl., Exh. C.*

6. The Parties agree that \$10,000 of the Maximum Gross Settlement Amount shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of

1 the PAGA Payment will be paid to the LWDA and Twenty-Five percent (25%) will be paid to
2 Aggrieved Employees on a pro rata basis. Any amount not approved by the Court for the
3 allocated PAGA Payment shall be added to the Net Settlement Amount to be distributed to
4 Qualified Claimants on a pro rata basis. *See*, Schoech Decl., Exh. B, ¶ 5.5.

5
6 7. Claims Administrator Costs, Class counsel's fees and costs, and the Class
7 Representative Enhancement Payment will be paid out from the Gross Settlement Amount, not
8 in addition to the Gross Settlement Amount. *See*, Schoech Decl., Exh. B, ¶ 5.8.1.

9
10 8. In consideration for the value received in the Agreement, Class Members
11 who do not timely opt-out of this settlement will be deemed to have fully, finally, and forever
12 released all claims as set forth in the Agreement. *See*, Schoech Decl., Exh. B, ¶ 6.1. All
13 aggrieved employees will also be deemed to have fully, finally, and forever released the PAGA
14 claims as to Defendants. *See*, Schoech Decl., Exh. B, ¶ 6.2. Plaintiffs will enter into a general
15 release of claims as well as releasing all Qualified Claimant Released Claims. *See*, Schoech
16 Decl., Exh. B, ¶ 6.3.

17
18 9. For any portion of the Net Settlement Sum allocated to Qualified
19 Claimants that is not claimed by them by cashing their respective settlement checks within 120
20 days, the remaining amount shall be paid to the Yolo County Children's Alliance under the
21 doctrine of *cy pres*. *See*, Schoech Decl., Exh. B, at ¶ 5.5.

22
23 10. The Parties agree that Ten Percent (10%) of each Qualified Claimants'
24 Claim Amount shall be allocated for payment of disputed wages and shall be subject to required
25 payroll taxes. Qualified Claimants shall receive an IRS Form W-2 for reporting of this portion
26 of their Claim Amount. *See*, Schoech Decl., Exh. B, at ¶ 5.9.1. The Parties further agree that
27 Ninety percent (90%) of each Qualified Claimants' Claim Amount shall be allocated for
28

disputed statutory penalties and interest, and no amount shall be deducted for any payroll taxes. This portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive an IRS Form 1099-MISC. *See*, Schoech Decl., Exh. B, at ¶ 5.9.2.

11. Payment to Qualified Claimants of their Claim Amount will require the submission of a claim form. *See*, Schoech Decl., Exh. B, at ¶ 7.5.4. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, employer employment taxes and the Claims Administrator Costs. Each Class Member's share will be determined by multiplying their Qualifying Workdays in the Class Period by the Class Member's most current/last hourly rate of pay to obtain the individual Class Member's "Workday Pay." The individual Workday Pay for each Class Member is then divided by the total Workday Pay for all Class Members. That fraction will then be multiplied by the portion of the Net Settlement Amount to arrive at the Class Member's individual Claim Amount. *See*, Schoech Decl., Exh. B, ¶¶ 1.25, 5.7.

IV. LEGAL ARGUMENT

A. Class Action Settlements are Subject to Court Review and Approval.

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35, disapproved on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260. However, courts should give

¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See*, *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 “proper deference to the private consensual decision of the parties,” since “the court’s intrusion
2 upon what is otherwise a private consensual agreement negotiated between the parties to a
3 lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement
4 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and
5 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned. (citation
6 omitted).” *Hanlon v. Chrysler Corp.*, (9th Cir. 1998) 150 F.3d 1011, 1027. Where a settlement
7 is reached on terms agreeable to all parties, a court should disapprove of the settlement “only
8 with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, (E.D. Pa. 1975) 68 F.R.D.
9 479, 481. The law favors settlement of lawsuits, particularly class actions and other complex
10 cases where substantial resources can be conserved by avoiding the time, expense, and rigors of
11 formal litigation. *See, Neary v. Regents of Univ. of Cal.* (1992) 3 Cal. 4th 273, 277-281.
12

13
14 **B. The Terms of The Settlement Are Fair and Reasonable.**

15 The purpose of the Court’s preliminary evaluation of a proposed class action settlement
16 is to determine only whether the proposed settlement is within the range of possible approval
17 and whether notice to the class of its terms and conditions and the scheduling of a formal
18 fairness hearing is warranted. *See, Wershba, supra*, 91 Cal. App. 4th at 234-235. If the Court
19 finds a proposed settlement falls within “the range of reasonableness,” it should grant
20 preliminary approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc.*
21 *v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085, 1089-90. To make the fairness
22 determination, the Court must consider several factors, including:
23
24

25 the strength of the Plaintiff’s case, the risk, expense, complexity
26 and likely duration of further litigation, the risk of maintaining
27 class action status through trial, the amount offered in settlement,
28 the extent of discovery completed and the stage of the proceedings,
the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to

the proposed settlement.

Dunk v. Ford Motor Co., (1996) 48 Cal. App. 4th 1794, 1801. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “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.” *Id.* at 1802.

1. The Settlement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations between the Parties.

Settlement in this case was reached only after litigation and extensive arm’s length negotiations during two full-day mediations facilitated by an experienced mediator, the Hon. Judge Richard Gilbert (ret.). *See*, Schoech Decl., at ¶ 10. At all times, the negotiations were adversarial and contentious, although still professional in nature. *Id.* Further, while Plaintiffs contend that they would ultimately prevail on the claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to further litigation. *See*, Schoech Decl., at ¶ 9. As Defendant asserts numerous legal and factual grounds for defending this action, there is no guarantee that Class Members would recover any amount if the parties continued to litigate these claims, and any recovery would only have been after protracted litigation. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *Id.*

2. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

The parties were in possession of all necessary information during the mediation at

1 which the settlement was reached. The parties engaged in substantial formal discovery and
2 exchange of documents, including all of Defendant's written and rest period policies, uniform
3 policies, and pay and time records for Class Members. *See*, Schoech Decl., at ¶ 11. Plaintiff
4 was in possession of this information prior to calculating the potential damages in this case. *Id.*
5 As a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability.
6 *Id.* For these reasons, the settlement now before the Court was reached at a stage where "the
7 parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to
8 support the settlement. *See*, *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

10 **3. Plaintiffs' Counsel are Experienced in Similar Litigation.**

11 Plaintiffs' counsel has considerable experience in class actions and wage and hour
12 litigation. Plaintiffs' counsel has been litigating complex matters throughout California for over
13 19 years and has litigated and resolved over 200 complex civil actions, including wage and hour
14 cases and class actions. *See*, Schoech Decl., at ¶ 15. Based on Plaintiffs' expert's analysis of
15 the timekeeping and payroll records produced by Defendant, Plaintiffs' counsel believes that the
16 settlement represents a reasonable compromise given the percentage of the total demand that
17 was secured, the average recovery per class member, Defendant's defenses to Plaintiffs' claims,
18 and the uncertainty of class certification. *Id.* at ¶ 16.

21 **4. The Settlement is Fair and Reasonable Based on the Strength of Plaintiffs' Case**
22 **and the Risks and Costs of Further Litigation.**

23 A review of the Agreement's terms does not give rise to any doubts about its fairness.
24 Based on the records and facts of this case, Plaintiff has secured an average gross award per
25 class member of approximately \$100.78. *See*, Schoech Decl., at ¶ 17. This settlement is a
26 reasonable compromise of the class claims and is within the percentile ranges of the total
27 available damages that have been approved in other class settlements. *See*, *Wershba, supra*, 91
28

1 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;
2 *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
3 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (N. D. Cal. 2007) (noting that
4 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for
5 attorney's fees was higher than median percentage for recoveries in shareholder class action
6 settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017
7 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to
8 class members was approximately 7.5% of the projected maximum recovery amount); *Avila v.*
9 *Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a
10 settlement with a gross recovery of 11% of the projected maximum damages available and a net
11 recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor*
12 *Supply Co.*, *supra*, 306 F.R.D. 245 (N.D. Cal 2015)(approving a settlement where the gross
13 recovery was approximately 8.5% of the projected maximum recovery). Based on Plaintiffs'
14 counsel's analysis, the Settlement Amount covers approximately 25.65% of the maximum
15 damages potentially recoverable with the core claims by the settlement class. *See*, Schoech
16 Decl., at ¶ 16.

20 **5. The Proposed Settlement is a Reasonable Compromise of Claims.**

21 The case of *Kullar v. Foot Locker Retail, Inc.* requires additional information be
22 presented to the Court, acting as a fiduciary for the absent class members, "to ensure that the
23 recovery represents a reasonable compromise, given the magnitude and apparent merit of the
24 claims being released, discounted by the risks and expenses of attempting to establish and
25 collect on those claims by pursuing the litigation . . ." *Kullar v. Foot Locker Retail, Inc.* (2008)
26 168 Cal. App. 4th 116, 129. In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
27
28

1 186 Cal. App. 4th 399, the court clarified that a *Kullar* showing does not require the parties to
2 submit an illusory prediction of the outer reaches of exposure without taking into account the
3 actual risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not
4 require an explicit statement of the maximum amount the plaintiff class could recover if it
5 prevailed on all its claims provided there is a record that allows “an understanding of the
6 amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.
7
8 The *Munoz* Court found that the record before the trial court was sufficient, having included the
9 number of class members, payroll data, declarations describing hours and overtime worked, as
10 well as variances in duties and rest and meal period experience, and a companion action
11 alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from
12 which to garner a reasonably adequate understanding of the amount that is in controversy within
13 the meaning of *Kullar*.” *Id.*

15 Plaintiff similarly relied upon payroll, timekeeping, and Class Member data to determine
16 the realistic potential damages suffered by the class as a whole. *See, Schoech Decl.*, ¶¶ 6, 16.
17 This analysis allowed Plaintiff to determine the extent and frequency of potential violations on
18 all claims as to all Class Members. *See id. at* ¶ 6. Ultimately, Plaintiff secured approximately
19 25.65% of the maximum damages potentially recoverable for the core claims by the putative
20 class, which is well within the range of what has been found to be sufficient in several other
21 cases. *See, Schoech Decl.* ¶ 16, Exh. B.; *see, case authorities discussed supra; see also, e.g., In*
22 *re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014
23 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the
24 maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful
25 recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
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1 approximately \$800 per class member). Here, the settlement represents a reasonable
2 compromise given the percentage of the total demand that was secured, the average recovery
3 per class member, Defendant's strong defenses to Plaintiffs' claims, and the uncertainty of class
4 certification. *See, Schoech Decl.*, ¶ 16.

5
6 6. The Enhancement Payment to the Named Plaintiff for his Services to the
7 Putative Class is Reasonable.

8 The Enhancement Payment to the named Plaintiffs are intended to recognize the time
9 and effort expended on behalf of the class. Indeed, Courts routinely approve enhancement
10 payments to compensate named plaintiffs for the services they provide and the risks they
11 incurred during the course of the class action litigation. *See, Ingram v. The Coca Cola Co.*, 200
12 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of
13 \$300,000.00 to each named plaintiff in recognition of the services they provided to the class by
14 responding to discovery, participating in the mediation process, and taking the risk of stepping
15 forward on behalf of the class. *Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901
16 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

17
18 In this case, Plaintiffs participated in numerous meetings with counsel—preparing for
19 litigation, gathering documents, providing, and explaining documents, discussing the practices
20 of policies of Defendant, generally being available at any time to discuss the case with
21 Plaintiffs' counsel, discussing the progression of the matter, including the review of the
22 proposed terms of Settlement. *See, Schoech Decl.*, at ¶ 18. Plaintiffs also spent a significant
23 amount of time pursuing this litigation for the benefit of all putative Class Members, including
24 attending two full-day mediations which enabled the parties reached a settlement. Further,
25 Plaintiffs brought this action knowing there would be a delay in any payment as the litigation
26 progressed, rather than proceeding on individual claims in front of the California Labor
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1 Commissioner. *Id.* Payment of \$5,000 to each Plaintiff is appropriate given the risk, assistance,
2 and time required in bringing this case and resolution of this case.

3 7. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable
4 and Customarily Approved by Courts

5 California state and federal courts have long recognized that an appropriate method for
6 determining the award of attorneys' fees is based on a percentage of the total value of benefits
7 to class members by the settlement. *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th
8 at 254; *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 ("Serrano III"); *Boeing Co. v. Van Gemert*,
9 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).
10 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread
11 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
12 bear the entire burden alone." *Id.* at 769.
13

14 The Common Fund doctrine is predicated on the principle of preventing unjust
15 enrichment. When a litigant's efforts create or preserve a fund from which others derive
16 benefits, she may require the passive beneficiaries to compensate those who created the fund.
17 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
18 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet* (1995)
19 12 Cal. 4th 105, 110, the California Supreme Court recognized that the Common Fund doctrine
20 has been applied "consistently in California when an action brought by one party creates a fund
21 in which other persons are entitled to share." The reasons for applying the common fund
22 doctrine include: "...fairness to the successful litigant, who might otherwise receive no benefit
23 because his recovery might be consumed by the expenses; correlative prevention of an unfair
24 advantage to the others who are entitled to share in the fund and who should bear their share of
25 the burden of its recovery; encouragement of the attorney for the successful litigant who will be
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1 more willing to undertake and diligently prosecute proper litigation for the protection or
2 recovery of the fund if he is assured that he will be properly and directly compensated should
3 his efforts be successful.” *Id.*

4 Indeed, most recently, the California Supreme Court has also held that the award of
5 attorneys’ fees in common fund wage and hour class action settlements should start with the
6 percentage method. *See, Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480, 503 (2016) (“We
7 join the overwhelming majority of federal and state courts in holding that when class action
8 litigation establishes a monetary fund for the benefit of the class members, and the trial court in
9 its equitable powers awards class counsel a fee out of that fund, the court may determine the
10 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).
11

12 The Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. 1 Cal.
13 5th at 506. This was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487.
14 As the Court held, only when the multiplier is “extraordinarily high or low [should] the trial
15 court [] consider whether the percentage method should be adjusted so as to bring the imputed
16 multiplier within a justifiable range.” *Id.* at 505.
17

18 Here, the Parties have agreed to a payment of 33 1/3 percent the Gross Settlement
19 Amount (\$260,000) for payment of attorneys’ fees in the amount of eighty-six-thousand-six-
20 hundred-sixty-six dollars and sixty-seven cents (\$86,666.67). *See, Schoech Decl., Exh. B at ¶*
21 5.2. Since, the Parties have agreed to the foregoing payment of attorneys’ fees, this payment
22 should be presumed to be fair.
23

24 Further, the Parties have agreed to reimbursement of Class Counsel’s litigation expenses
25 up to \$23,00. *See, Schoech Decl., Exh. B at ¶ 5.2.* Class Counsel have, at their own risk,
26 expended costs, for example, to file this instant action, perform service of process, and pay other
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1 litigation-related costs, including mediation and expert costs. *See*, Schoech Decl., at ¶ 20.

2 Based on the foregoing, the Court should preliminarily approve the attorneys' fees and
3 costs requested by the Parties.

4 **C. Provisional Certification of the Class is Appropriate.**

5 Class certification is appropriate when: (1) the class is ascertainable and (2) there is "a
6 well-defined community of interest in the questions of law and fact involved affecting the
7 parties to be represented." *Dunk v. Ford Motor Co*, *supra*, 48 Cal. App. 4th at 1806. The
8 "community of interest" element "embodies three factors: (1) common questions of law or fact
9 predominate; (2) class representatives with claims or defenses typical of the class; and (3) class
10 representatives who can adequately represent the class." *Id.* Here, the parties agree that, for the
11 purposes of settlement, these prerequisites are met. *See*, Schoech Decl., Exh. B, at ¶ 5.11

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13
14 **1. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous.**

15 The proposed settlement class is ascertainable because all putative class members can be
16 readily identified through employee personnel and payroll files. *See*, *Noel v. Thrifty Payless,*
17 *Inc.* (2019) 7 Cal.5th 955, 980; *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932; *Lee v.*
18 *Dynamex, Inc.* (2008) 166 Cal. App. 4th 1325, 1334. The numerosity requirement is met
19 because there are approximately 1,318 individuals who fall within the definition of Class
20 Member, which makes joinder of all members impracticable. *See*, *Gay v. Waiters' & Dairy*
21 *Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982);
22 *Hebbard v. Calgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting no set minimum to meet the
23 numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
24 these requirements are satisfied.

25
26
27 **2. The Commonality, Predominance, and Typicality Requirements are**
28 **Satisfied.**

1 The commonality requirement is met when there are questions of law or fact regarding
2 the class as a whole. *Hanlon v. Chrysler Corp*, 150 F.3d 1011 1019 (9th Cir. 1998).
3
4 Commonality requires only that some common legal or factual questions exist; Plaintiff need
5 not show that all issues in the litigation are identical. *See, Richmond v. Dart Industries* (1981)
6 29 Cal.3d 462, 469; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460. Common
7 questions of law or fact must also predominate over individual questions and class-wide
8 treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at
9 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by
10 representation. *Hanlon, supra*, 150 F.3d at 1022. The typicality requirement is met when
11 claims of the named representative are typical of those of the class, though “they need not be
12 substantially identical.” *Id.* at 1020; *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47.
13

14 The common questions of law and fact in this case stem from Plaintiffs’ contention that
15 Defendant violated California law by failing to provide legally compliant meal periods, failing
16 to provide legally compliant rest periods, failing to pay for reporting time pay, failing to
17 reimburse employees for maintaining uniforms, and failing to provide accurate, itemized wage
18 statements. Plaintiffs’ final claim for unfair competition is derivative of these other claims.
19 Plaintiff and the Class Members seek the same remedies under California law. Under these
20 specific circumstances, the commonality and predominance requirements are satisfied for
21 settlement purposes. Regarding the typicality requirement, Plaintiff contends he suffered from
22 the same unlawful policies, practices, and circumstances as Class Members did, will request the
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27 ²When assessing predominance and superiority, a court may consider that the
28 class will be certified for settlement purposes only and that manageability
of trial is therefore irrelevant. *See Amchem Products v. Windsor* (1997) 521
U.S. 591.

1 same remedies, and will rely on the same methods of proof to establish liability and damages.
2 *See, Schoech Decl., Exh. A.* Thus, the typicality requirement is also satisfied for settlement
3 purposes.

4 3. The Adequacy Requirement is Satisfied.

5 The adequacy of representation requirement is met if the named representative and
6 counsel have no interests adverse to those of the putative class members and are committed to
7 vigorously prosecuting the case on behalf of the class. *See, Hanlon, supra*, 150 F.3d at 1020;
8 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51. Those standards are met here.
9 Under the proposed settlement, Plaintiffs and the putative class members will receive a pro rata
10 share of the settlement based on the number of workweeks they worked for Defendant. *See,*
11 *Schoech Decl., Exh. B* at ¶ 5.8.1. Finally, any settlement class member who wishes to opt-out
12 of the settlement may do so, and he or she may also dispute the number of workweeks stated in
13 the Notice of Settlement. *See, Schoech Decl., Exh. C.*

14 Here, there is no conflict of interest between Plaintiff and Class Members. Plaintiff and
15 Plaintiffs' counsel have pursued the claims made in the operative Complaint vigorously on
16 behalf of the class. Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the
17 claims made in this case by Plaintiff. Plaintiffs' counsel thereafter performed a detailed
18 damages analysis and participated, along with defense counsel, in a full-day mediation with an
19 experienced mediator in wage and hour matters. Moreover, Plaintiffs' counsel has experience
20 defending and bringing wage and hour claims. Because Plaintiffs' counsel has vigorously
21 pursued Plaintiffs' and the class members' claims, the adequacy requirement is met.

22 D. The Court Should Approve the PAGA Settlement

1 Under Labor Code § 2699(l)(2), settlement of a civil action brought pursuant to PAGA
2 requires court approval. Here, under the terms of the Joint Stipulation for Class Action
3 Settlement Agreement, the Parties agree that \$10,000 of the Settlement Amount will be paid to
4 the LWDA in connection with the settlement of Plaintiffs' PAGA claims. See Schoech Decl.,
5 Ex. B, ¶¶ 5.5. Pursuant to Labor Code § 2699(i), 25% of this amount will go to the Aggrieved
6 Employees and 75% of the amount going to the LWDA. *Id.*

7 Counsel for Plaintiffs submitted a PAGA letter to the California LWDA in this Action on
8 April 3, 2023. *See*, Schoech Decl., ¶ 25. The PAGA cause of action was based on Defendant's
9 alleged failure to provide rest and meal breaks and pay all wages owed and due, and reimburse
10 necessary work-related expenditures, among other alleged Labor Code violations. *Id.* Based on
11 Defendant's payroll data, we calculated maximum potential PAGA penalties to be in the order of
12 \$818,050. PAGA penalties are discretionary and, based on my experience, \$10,000 for PAGA
13 penalties is clearly reasonable considering Defendant's records demonstrating that they were
14 80% compliant with meal breaks and the numerous obstacles present in bringing a PAGA action
15 to trial and beyond to obtain discretionary penalties. *Ibid.*

16 Plaintiffs have allocated the PAGA portion of the Settlement based on the following
17 factors: (1) the Settlement is a compromise which does not fully reimburse Class Members for
18 all premium pay and wages owed; (2) the PAGA claim was not a driving factor in the
19 prosecution or settlement of this Class Action; and (3) the actual value of the PAGA claim is
20 highly uncertain at this stage. Further, the amount is subject to discretionary reduction. Labor
21 Code § 2699(e)(2). Under these circumstances, the allocation of \$10,000 to settle Plaintiffs'
22 representative claims under PAGA (3.8% of the Settlement Amount) is fair and adequate in all
23 respects, similar to amounts courts have approved in similar settlements, and is more than
24 adequate to achieve the LWDA's enforcement objectives under PAGA. (See, e.g., (affirming
25 settlement allocating no part of \$6.4 million settlement to PAGA penalties).

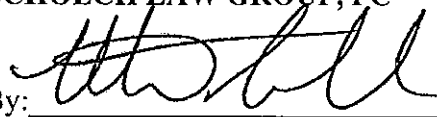
1 On June 21, 2023, the LWDA was notified of this motion and the proposed settlement of
2 the PAGA claim by submitting a copy of the executed settlement agreement and this motion via
3 the online submission process on the LWDA website. See Schoech Decl. at ¶ 26.

4
5 **V. CONCLUSION**

6 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant this
7 Motion for Preliminary Approval of Class Action Settlement.

8
9
10 DATED: June 21, 2023

Respectfully submitted,
SCHOECH LAW GROUP, PC

11 
12 By: _____
13 MATTHEW R. SCHOECH
14 Attorney for Plaintiffs
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