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

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18
19 vs.

20 FAR WEST RESTAURANT GROUP, LLC
21 (D/B/A WINGSTOP), a California limited
liability company; ZION RESTAURANT
22 GROUP, LLC (D/B/A WINGSTOP), a
California limited liability company; and DOES
23 2–50, inclusive,

24 *Defendant(s).*

Case No. 23STCV12284

**PLAINTIFF OLGA SOTELO’S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: January 13, 2025

Hearing Time: 9:00 a.m.

Hearing Dept.: 17, The Honorable Laura
A. Seigle

Action filed: May 31, 2023

Trial Date: Not set



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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiff Olga Sotelo ("Plaintiff") submits this memorandum of points and authorities in
5 support of her unopposed motion for preliminary approval of the Joint Stipulation and Settlement
6 Agreement to Resolve Class Action and PAGA Claims (the "Settlement")², which provides for a
7 Gross Settlement Amount ("GSA") of \$1,050,000.00 in compromise of all disputed claims on
8 behalf of all non-exempt, hourly-paid employees of Defendants employed in California at a
9 restaurant location during the period beginning either (a) May 28, 2022 for Class Members who
10 worked for Defendant Far West Restaurant Group, LLC (D/B/A WingStop); or (b) June 5, 2023
11 for Class Members who worked for Defendant Zion Restaurant Group, LLC (D/B/A WingStop),
12 and ending on the date the Court grants preliminary approval of the Settlement, subject to the
13 escalator provision in paragraph 48(a)(ii) of the Settlement. Through this Motion, Plaintiff
14 respectfully requests for this Court to (1) provisionally certify the below-defined Class for
15 settlement purposes only under Code of Civil Procedure § 382; (2) preliminarily approve the
16 Settlement; (3) preliminarily appoint Plaintiff, who is defined as the "Named Plaintiff" in the
17 Settlement, as Class Representative; (4) appoint David Spivak of The Spivak Law Firm and
18 Benjamin J. Smith of Smith Law as Class Counsel; (5) approve the proposed notice procedures
19 and related forms; and (6) schedule a final approval hearing.

20 This Court should grant Plaintiff's motion because: (1) for settlement purposes, the
21 Settlement Class meets the requirements for class certification under Code of Civil Procedure
22 § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
23 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as Class
24 Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed
25 notice procedures, and related forms, fully comport with due process and adequately apprise Class
26 Members of their rights; and (6) a final approval hearing must be scheduled to allow Class
27 Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly,
28 for the reasons detailed below, this Court should grant Plaintiff's Motion in its entirety and
preliminarily approve the Settlement.

² The Settlement is attached as Exhibit ("Ex.") 1 to the Declaration of David Spivak ("DS"), which is submitted herewith under a separate cover.



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1 **II. BACKGROUND**

2 Defendants are owners and operators of WingStop restaurants. DS, ¶ 11. Plaintiff was a
3 food worker at three of these restaurants from about September 23, 2021 until April 15, 2024. *Id.*

4 **A. The Claims and Procedural History**

5 On May 26, 2023, Plaintiff notified Defendant Far West Restaurant Group, LLC (D/B/A
6 WingStop) (“Defendant Far West”) and the California Labor and Workforce Development
7 Agency (“LWDA”), pursuant to the California Private Attorneys General Act of 2004, California
8 Labor Code section 2698, *et seq.* (“PAGA”), of alleged Labor Code violations committed by
9 Defendant Far West. DS, ¶ 12, Ex. 2. On June 5, 2024, Plaintiff notified Defendant Far West,
10 Defendant Zion Restaurant Group, LLC (D/B/A WingStop) (“Defendant Zion”), and the LWDA,
11 pursuant to PAGA, of alleged Labor Code violations committed by Defendants. DS, ¶ 12, Ex. 3.

12 On May 31, 2023, Plaintiff filed a Class Action Complaint in the Los Angeles County
13 Superior Court, Case No. 23STCV12284, against Defendant Far West on behalf of herself and
14 others similarly situated, alleging causes of action on a class-wide basis for: (1) Failure to Pay All
15 Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay
16 (Lab. Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Meal Periods (Lab. Code
17 §§ 226.7, 512, and 1198); (3) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (4)
18 Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code
19 §§ 226); and (6) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*). DS, ¶ 13, Ex. 4. On
20 August 1, 2023, Plaintiff filed her First Amended Complaint adding a claim under PAGA. DS, ¶
21 13, Ex. 5. On August 12, 2024, Plaintiff filed her Second Amended Complaint adding Defendant
22 Zion as a defendant and adding causes of action for (1) Failure to Pay Reporting Time Pay (Lab.
23 Code § 1198); (2) Failure to Pay Vested Vacation Time at Separation (Lab. Code § 227.3); (3)
24 Paid Sick Leave Violations (Lab. Code § 246); (4) Recordkeeping Violations (Lab. Code §§ 432,
25 1174, and 1198); (5) Failure to Issue Proper Payment (Lab. Code §§ 212, 213); (6) Failure to
26 Provide Required Notices (Lab. Code § 2810.5); (7) Failure to Timely Pay Wages During
27 Employment (Lab. Code § 204); and (8) Failure to Pay All Wages Due Upon Separation (Lab.
28 Code § 203) against all Defendants. On September 6, 2024, Defendants filed an answer to
Plaintiff’s Second Amended Complaint. DS, ¶ 13, Ex. 7. Defendants deny all of Plaintiff’s
allegations and strongly contend that their wage and hour policies, practices, and procedures are
fully compliant with all applicable laws. DS, ¶ 13.



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1 **B. Sampling**

2 On September 13, 2023, Plaintiff requested that Defendants informally disclose
3 documents and data to enable Plaintiff to prepare for settlement discussions, including the number
4 of putative class members and aggrieved employees, the number of paychecks, and the number
5 of workweeks for the various limitations periods applicable to Plaintiff's claims. DS, ¶ 14.
6 Plaintiff also requested a reasonable, randomly selected sample of Defendants' time, payroll, and
7 expense records, and related personnel records. *Id.* Finally, Plaintiff requested Defendants'
8 written policies applicable to the claims at hand and asked Defendants to identify any and all
9 comparable claims against them.

10 The Parties thereafter engaged in an informal, voluntary exchange of information in the
11 context of privileged settlement discussions to facilitate an early mediation. Defendants produced
12 Plaintiff's entire personnel file (including policies and agreements she signed and acknowledged)
13 and copies of their relevant company written policies. DS, ¶ 15.

14 Defendant Far West disclosed and Plaintiff discovered that there have been two
15 comparable court actions against Defendant Far West: One by the County of Los Angeles ("the
16 County") and one by Luis Guzman Ramirez, another hourly, non-exempt employee of Defendant
17 Far West in Los Angeles County.

18 On July 1, 2016, the County instituted a minimum wage of \$10.50 per hour for employers
19 with 26 or more employees, with scheduled yearly increases. The County charged Defendant Far
20 West with violating the County's Minimum Wage Ordinance. Following an investigation by the
21 Department of Consumer and Business Affairs ("DCBA"), Defendant Far West agreed to a
22 \$667,414 settlement with 309 employees for alleged violations that took place from 2017 to 2021.
23 Plaintiff is uncertain whether or not she stands to receive relief under the County's action.
24 Regardless, the County's action does not have a preclusive effect on Plaintiff's minimum wage
25 claims because they involve a different factual predicate. The County action is for wage
26 underpayments by Defendant Far West to its employees for hours that it does not dispute they
27 worked. In contrast, Plaintiff's minimum wage claims stem from Defendant Far West's failure to
28 pay any wages for hours its employees worked off-the-clock at Defendant Far West's direction.
DS, ¶ 20.

Ramirez v. Far West Restaurant Group, LLC, No. 21STCV26982 (Los Angeles County
Superior Court) ("*Ramirez*"), a class action lawsuit filed on July 22, 2021, involved the following



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1 causes of action against Defendant Far West: (1) Failure to Authorize or Permit Rest Periods in
2 Violation of Labor Code Section 226.7; (2) Failure to Timely Pay Earned Wages During
3 Employment in Violation of Labor Code Section 204; (3) Failure to Provide Complete and
4 Accurate Wage Statements in Violation of Labor Code Section 226; (4) Failure to Timely Pay
5 All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation
6 of Labor Code Sections 201, 202, and 203; and (5) Unfair Business Practices in Violation of
7 Business and Professions Code Sections 17200, *et seq.* On May 26, 2023, plaintiff Ramirez filed
8 his First Amended Complaint adding a claim under PAGA. DS, ¶ 21, Exh. 10.

9 The Class Period in *Ramirez* was from July 22, 2017 through March 17, 2023, and the
10 PAGA Period was from July 22, 2020 through March 17, 2023. The Class Release in *Ramirez*
11 released the following claims: (1) any and all claims involving failure to provide compliant rest
12 periods, including failure to pay rest period premium pay; (2) any and all claims involving any
13 alleged failure to timely pay all wages during employment; (3) any and all claims involving any
14 alleged failure to provide compliant wage statements; and (4) any and all claims involving any
15 alleged failure to timely pay all earned wages and final paychecks due at the time of separation
16 of employment. The PAGA Release in *Ramirez* released all claims, demands, rights, liabilities,
17 and causes of action seeking civil penalties under PAGA that were alleged, or reasonably could
18 have been alleged, based on the facts contained in the operative complaint and the PAGA notice
19 and ascertained in the course of the action. DS, ¶ 22, Exh. 11.

20 Plaintiff's claims with respect to unpaid wages, unprovided meal periods, unreimbursed
21 expenses, failure to pay reporting time pay, failure to pay vested vacation time at separation, paid
22 sick leave violations, recordkeeping violations, failure to issue proper payment, failure to provide
23 required notices, and related penalties are distinct from Ramirez because its release did not cover
24 these claims. Plaintiff's claims with respect to failure to authorize or permit rest periods, failure
25 to timely pay wages during employment, failure to pay all wages due upon separation, failure to
26 provide complete and accurate wage statements, unfair business practices, and related penalties
27 are only foreclosed up until March 17, 2023 by the *Ramirez* release. DS, ¶ 23.

28 On September 5, 2023, Plaintiff filed a lawsuit against Defendant Far West and Luis
Medrano, Los Angeles Superior Court no. 23STCV21287, for sexual harassment (Gov. Code §
23940(j)) and failure to prevent, investigate, and remedy harassment (Gov. Code §§ 12940(j), (l)
& (k)). The Parties negotiated and settled the sexual harassment claims in principle prior to the



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1 mediation of Plaintiff's representative class and PAGA claims. The sexual harassment settlement,
2 which was fully executed on April 19, 2024, expressly excludes Plaintiff's representative class
3 and PAGA claims. On May 15, 2024, Plaintiff's sexual harassment lawsuit was dismissed with
4 prejudice. DS, ¶ 24, Exh. 15.

5 Defendants contend that they employed 4,153 putative class members during the period
6 of May 28, 2022 to January 27, 2024. Defendants produced the records for over 4,000 of the
7 putative class members for the period of May 1, 2019 to January 27, 2024. The sample consisted
8 of payroll and time records, and related records. DS, ¶ 16.

9 Plaintiff retained Sridhar Srinivasan, a data analyst, to analyze the sample. Plaintiff also
10 employed the Raosoft Sample Size calculator (<http://www.raosoft.com/samplesize.html>) to
11 determine if the sample size selected is statistically reliable.³ *Bell v. Farmers Ins. Exch.* (2004)
12 115 Cal. App. 4th 715 and *Duran v. U.S. Bank* (2014) 59 Cal.4th 1. The *Bell* court found a relative
13 margin of error of 32.4 percent was unacceptable whereas the *Duran* court found a relative margin
14 of error of 43.3 percent was unacceptable. Using a margin of error of 32%, a confidence level of
15 95%, and a population size of 4,153, the Raosoft Sample Size Calculator recommended a sample
16 of 10. DS, ¶ 17, Exhibit 8 (Raosoft Sample Size Calculator results print-out). Thus, the sample
17 population that Plaintiff's data analyst evaluated is statistically reliable. *Id.*

18 **C. Mediation**

19 On March 28, 2024, following much of the foregoing informal discovery and exchange
20 of information, the Parties participated in a mediation session presided over by Mediator Lisa
21 Klerman, an experienced class action mediator. During the mediation, the Parties had a full day
22 of productive negotiations and reached agreement on a class-wide settlement after the mediation
23 session. During the mediation sessions, each side, represented by her / their respective counsel,
24 recognized the risk of an adverse result in the Action and agreed to settle the Action and all other
25 matters covered by this Settlement pursuant to the terms and conditions of this Settlement. DS, ¶

26 ³ Raosoft advertises, "Raosoft, Inc. produces EZSurvey for the Internet, InterForm, SurveyWin,
27 EZReport and Rapid Report innovative survey software programs for information gathering and
28 analysis. The family of survey software supports data collection and reporting for any form-
based data. Support is for web-surveys and forms, email distribution, diskette, PDA, laptop or
pen-based: all types of distribution." The Raosoft webpage advertises that it is a "database web
survey software for gathering information." <http://www.raosoft.com/>. It also advertises, "The
parameters of the sample size calculation are something that you choose."
<http://www.raosoft.com/suggestreading.html>.



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18.

III. OVERVIEW OF THE SETTLEMENT

A. Settlement Class and Aggrieved Employees Definition

The Settlement defines the Class or Class Members as all non-exempt, hourly-paid employees of Defendants employed in California at a restaurant location at any time during the relevant Class Period. The Class Period means the period which begins on either (a) May 28, 2022 for Class Members who worked for Defendant Far West; or (b) June 5, 2023 for Class Members who worked for Defendant Zion, and which ends on March 22, 2024. *Id.* The “Aggrieved Employees” are all non-exempt, hourly-paid employees of Defendants employed in California at a restaurant location at any time during the PAGA Period. The “PAGA Period” begins on either (a) May 28, 2022 for Aggrieved Employees who worked for Defendant Far West or (b) June 5, 2023 for Aggrieved Employees who worked for Defendant Zion, and ends on the date the Court grants preliminary approval of the Settlement, subject to the escalator provision in paragraph 48(a)(ii) of the Settlement. *Id.*

B. Monetary Terms

The Parties agree, subject to Court approval and the conditions specified in the Agreement, that the Gross Settlement Amount (“GSA”) shall be apportioned as follows:

Class Counsel Attorneys’ Fees and Costs: At the final approval hearing, Class Counsel will apply to the Court for an award of Attorneys’ Fees of no more than one-third (33 and 1/3%) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 48 of the Settlement, equals \$350,000.00. Class Counsel will also apply to the Court for an award of actual costs incurred by Class Counsel not to exceed the amount of \$25,000.00. These fees and costs are included in, and shall come from, the Gross Settlement Amount. The Spivak Law Firm and Smith Law will each be issued an IRS Form 1099 for any fees and costs awarded by the Court pursuant to Paragraph 49.a of the Settlement. Except as provided in Paragraph 49.a of the Settlement, each party will bear its own attorneys’ fees, costs, and expenses incurred in the prosecution, defense, or settlement of the Action. If the Court awards a lower amount of Attorneys’ Fees and Costs than the amount requested, any amount not awarded will be part of the distribution to the Participating Class Members as set forth in the Settlement and shall not be a reason to invalidate/terminate the Settlement. Settlement, ¶ 49.a.

Settlement Administrator Costs: At the final approval hearing, Class Counsel will apply to the Court for approval of Settlement Administration Costs, currently estimated at \$26,750.



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1 These costs are included in, and shall come from, the Gross Settlement Amount. If the actual
2 amount of the Settlement Administration Costs is less than \$26,750, the difference shall be added
3 to the Net Class Settlement Amount. If the Settlement Administration Costs exceed \$26,750, then
4 such excess will be paid solely from the Gross Settlement Amount, and Defendants will not be
5 responsible for paying any additional funds in order to pay these additional costs. Settlement, ¶
49.b.

6 Class Representative Enhancement Award: At the final approval hearing, Class Counsel
7 will apply to the Court for an award of up to \$20,000.00 to the Class Representative as an
8 Enhancement Award for her services and for assuming the risks associated with this litigation and
9 for the time spent in assisting Class Counsel to litigate this Action. Defendants will not oppose
10 such application. The Enhancement Award is included in, and shall come from, the Gross
11 Settlement Amount. The Class Representative will be issued an IRS Form 1099 for the
12 Enhancement Award approved by the Court pursuant to paragraph 49.c of the Settlement. The
13 Enhancement Award payable to the Class Representative shall be in addition to any payment she
14 may receive pursuant to Paragraph 49.e of the Settlement. If the Court awards less than the amount
15 requested, any amount not awarded will be part of the distribution to the Participating Class
16 Members as set forth in this Agreement and shall not be a reason to invalidate/terminate the
Settlement. Settlement, ¶ 49.c.

17 PAGA Amount: At the final approval hearing, Class Counsel will apply to the Court for
18 approval of the PAGA Amount of \$100,000.00, subject to the escalator provision in paragraph
19 48(a)(ii) of the Settlement, for claims for civil penalties asserted under PAGA. Class Counsel will
20 submit notice of the Settlement to the LWDA, as required by Labor Code § 2699(l)(2). The Parties
21 agree that 75% of the PAGA Amount (\$75,000.00) will be paid to the LWDA as the “LWDA
22 Payment,” and the remaining 25% (\$25,000.00) will be allocated to the Aggrieved Employees as
23 the “PAGA Payment.” The portion of the PAGA Payment allocated to each of the Aggrieved
24 Employees will be calculated using the same formula as set forth in Paragraph 49.e of the
25 Settlement. Any Class Members who worked during the PAGA Period and who opt out of the
26 Settlement will still be considered Aggrieved Employees for purposes of Paragraph 49.d of the
27 Settlement and, therefore, will (i) receive their portion of the PAGA Payment (the “Individual
28 PAGA Payment”); and (ii) release all PAGA Claims against the Released Parties. Settlement, ¶
49.d.



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1 Individual Settlement Payments. The Individual Settlement Payments shall consist of: (i)
2 each Participating Class Member's pro rata portion of the Net Class Settlement Amount (the
3 "Participating Class Member Payment"); and (ii) if applicable, each Aggrieved Employee's pro
4 rata portion of the PAGA Payment (the "Individual PAGA Payment"). Settlement, ¶ 49.e.

5 Participating Class Member Payment: After deducting the approved amounts specified in
6 Paragraphs 49.a-d of the Settlement, each Participating Class Member will be entitled to a pro
7 rata portion of the remaining amount. Participating Class Member Payments will be calculated
8 from the Net Class Settlement Amount based on the respective number of pay periods worked by
9 each Participating Class Member in a non-exempt position during the Class Period. All Class
10 Members will be deemed to have worked during at least one pay period during the Class Period.
11 Each Participating Class Member's share of the Net Class Settlement Amount will be calculated
12 by dividing the Participating Class Member's pay periods worked in a non-exempt position by
13 the total number of pay periods worked by all Class Members in a non-exempt position during
14 the Class Period and multiplying this figure by the Net Class Settlement Amount. The Class
15 Notice will include the number of pay periods that the Class Member worked during the Class
16 Period and the amount the Class Member is estimated to receive under the terms of the Settlement.
17 Settlement, ¶ 49.e.i.

18 Individual PAGA Payment: For each Aggrieved Employee, the Individual Settlement
19 Payment will also include the Class Member's pro rata share of the PAGA Payment, as set forth
20 in Paragraph 49.d (the "Individual PAGA Payment"). Settlement, ¶ 49.e.ii.

21 The Parties acknowledge and agree that the formula used to calculate the Individual
22 Settlement Payments (including the Participating Class Member Payments and Individual PAGA
23 Payments) does not mean that all of the elements of damages, restitution, and penalties alleged in
24 the Action is not being taken into account. The above formula was devised as a practical and
25 logistical method to simplify the participation process. Settlement, ¶ 49.f.

26 Participating Class Member Payments shall be distributed only to Participating Class
27 Members. The portion of the Net Class Settlement Amount allocated to Class Members who opt
28 out of the Settlement will be distributed to Participating Class Members on a pro rata basis based
on the formula set forth in Paragraph 49.e of the Settlement. Individual PAGA Payments will be
distributed to all Aggrieved Employees. Settlement, ¶ 49.g.

The Parties agree that, under no circumstances shall Defendants be obligated to pay any

1 amount under the Settlement to any Class Member other than Participating Class Members, with
2 the exception of the Individual PAGA Payments which are not affected by a Class Member opting
3 out of the Settlement. In addition, the Parties agree that, except as provided in Paragraph 48 of
4 the Settlement, under no circumstances shall Defendants be obligated to pay more than the Gross
5 Settlement Amount in full settlement of the Action. Settlement, ¶ 49.h.

6 **C. Timing of Payments**

7 Within ten (10) calendar days of the close of the Notice Period, the Settlement
8 Administrator will provide a draft declaration to Class Counsel and Defendants' counsel setting
9 forth the number of Participating Class Members and Aggrieved Employees; the identity of those
10 individuals who opted out of the Settlement; the total amount payable to all Participating Class
11 Members and Aggrieved Employees; and the total PAGA Amount, Attorneys' Fees and Costs,
12 Enhancement Award, Settlement Administration Costs, Net Class Settlement Amount, and the
13 appropriate applicable employer's taxes for any portion of the Individual Settlement Payments
14 designated as wages. Settlement, ¶ 56.a.

15 Upon the Court entering the Final Order and Judgment, and within 15 days after the
16 Effective Date, Defendant Far West shall remit to the Settlement Administrator the Gross
17 Settlement Amount of \$1,050,000.00, and Defendants each shall remit to the Settlement
18 Administrator each of the employer's respective taxes for any portion of the Individual Settlement
19 Payments designated as wages (collectively, the "Settlement Fund"). The delivery by Defendants
20 of the Settlement Fund to the Settlement Administrator will constitute the full and complete
21 discharge of the entire obligation of Defendants under this Agreement, unless anything further is
22 requested by the Settlement Administrator to ensure timely and proper disbursement. No Released
23 Party will have any further obligation or liability to the Class Representative, Participating Class
24 Members, Aggrieved Employees, or Class Counsel under this Agreement, in connection with the
25 claims released herein, regardless of whether the Class Representative, Participating Class
26 Members, Aggrieved Employees, or Class Counsel receive the payments from the Settlement
27 Administrator set forth in the Settlement. Settlement, ¶ 56.b.

28 The distribution of Individual Settlement Payments to Participating Class Members and
Aggrieved Employees will occur no later than ten (10) calendar days after receipt of the
Settlement Fund from Defendants ("Settlement Proceeds Distribution Deadline"). The Settlement
Administrator shall be deemed to have timely distributed Individual Settlement Payments,



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1 including Individual PAGA Payments, if it places in the mail the Individual Settlement Payments
2 for all Participating Class Members and the Individual PAGA Payments for all Aggrieved
3 Employees by the Settlement Proceeds Distribution Deadline. No person will have any claim
4 against the Settlement Administrator, Defendants, Class Counsel, Defendants' counsel, or any
5 other agent designated by the Class Representative or Class Counsel based upon the distribution
6 of Individual Settlement Payments made substantially in accordance with the Settlement or
7 further orders of the Court. Settlement, ¶ 56.c.

8 The distribution of the LWDA Payment, Attorneys' Fees and Costs, and the Enhancement
9 Award shall occur no later than ten (10) calendar days after the Settlement Administrator receives
10 the Settlement Fund from Defendant Far West. Settlement, ¶ 56.d.

11 Defendants will not be obligated to make any payments contemplated by the Settlement
12 unless and until the Court enters the Final Order and Judgment, and after the Effective Date of
13 the Settlement. Settlement, ¶ 56.f.

14 Within sixty (60) calendar days of the Settlement Proceeds Distribution Deadline, the
15 Settlement Administrator will provide written certification of completion of settlement
16 administration to Class Counsel and to Defendants' Counsel. Settlement, ¶ 56.g.

17 **D. Apportionment of Settlement Shares**

18 Taxation of Settlement Proceeds. All settlement payments paid to Participating Class
19 Members, Aggrieved Employees, and the Class Representative will be paid in a net amount after
20 applicable state and federal tax withholdings, including payroll taxes, have been deducted.
21 Settlement, ¶ 51.

22 The Participating Class Member Payments shall be reported as follows: (i) 20% of the
23 amount distributed to each Participating Class Member will be considered wages, and will be
24 reported as such to each Participating Class Member on a W-2 Form; (ii) 40% of the amount
25 distributed to each Participating Class Member will be considered interest on the unpaid wages,
26 and will be reported as such to each Participating Class Member on an IRS Form 1099; and (iii)
27 40% of the amount distributed to each Participating Class Member will be considered statutory
28 penalties, and will be reported as such to each Participating Class Member on an IRS Form 1099.
The PAGA Payments distributed to each Aggrieved Employee will be considered penalties and
will be reported on an IRS Form 1099. Settlement, ¶ 51.a.



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1 **E. The Releases**

2 Released Claims means, for the duration of the Class Period, any and all claims against
3 Defendants and the other Released Parties that arise from the facts, matters, transactions, or
4 occurrences alleged in the Action or that could have been alleged in the Action based on such
5 facts. Without limiting the foregoing, and in addition to the foregoing, the Released Claims
6 include claims for alleged failures to pay all wages earned for all hours worked at the correct rate
7 including minimum, regular, and overtime wages; provide meal periods or additional pay in lieu
8 thereof; provide rest breaks or additional pay in lieu thereof; provide paid sick leave; report paid
9 sick leave; pay reporting time; pay vested vacation time at termination; waiting time penalties;
10 reimburse necessary business expenses; timely pay wages upon separation; timely pay wages
11 owed during employment; issue accurate itemized wage statements; maintain accurate payroll
12 records; provide wage theft notice; claims for violations of California Labor Code §§ 201–204,
13 205.5, 210, 212–213, 216, 221, 223, 226, 226.3, 226.6, 226.7, 227.3, 245–248.6, 432, 510, 512,
14 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 2802, and 2810.5; related
15 violations of the applicable California Wage Orders; violations of all related or corresponding
16 federal laws; and violations of California Business and Professions Code section 17200, *et seq.*
in connection with the alleged Labor Code violations alleged (or that could be alleged based on
the facts pled) in the Action. Settlement, ¶ 27.

17 Released Parties means and includes Far West Restaurant Group, LLC (D/B/A
18 WingStop), Zion Restaurant Group, LLC (D/B/A WingStop), and their respective current and
19 former parents, predecessors or successors, holding companies, affiliated companies or entities,
20 owners, investors, shareholders, members, partners, officers, directors, managers, employees, and
agents, attorneys, insurers, and representatives. Settlement, ¶ 28.

21 **F. Notice and Claims Process and Procedures**

22 Notice Procedure. Within 14 calendar days after entry of the Preliminary Approval Order,
23 Defendants will provide to the Settlement Administrator a list of Class Members that identifies
24 each Class Member by name, Social Security Number, employer, and last-known address; and
25 specifies the number of pay periods worked by each Class Member in a non-exempt position
26 during the Class Period and the PAGA Period (the “Class List”). Defendants will provide the
27 Class List in an Excel file or other format reasonably acceptable to the Settlement Administrator.
28 The Settlement Administrator will keep the list confidential, except it shall be provided to Class
Counsel upon request with Social Security Numbers and address information redacted, and Class



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1 Counsel agree to use such information only for the purposes described in the Settlement.
2 Settlement, ¶ 52.

3 Upon receipt of the Class List, the Settlement Administrator shall perform a search based
4 upon the National Change of Address Database to update and correct any known or identifiable
5 address changes. The Settlement Administrator shall exercise its best judgment to determine the
6 current mailing address for each Class Member. Within 14 calendar days after receipt of the Class
7 List from Defendants, the Settlement Administrator will send the Class Notice to each Class
8 Member via First Class U.S. Mail. Receipt of the Class Notice shall be presumed as to each and
9 every Class Member whose Class Notice is not returned to the Settlement Administrator as
undeliverable within 14 calendar days after mailing. Settlement, ¶ 52.a.

10 The Settlement Administrator will re-mail any notice packet returned by the United States
11 Postal Service with a forwarding address on or before the expiration of the Notice Period. It shall
12 be conclusively presumed that those Class Members whose re-mailed Class Notice is not returned
13 to the Settlement Administrator as undeliverable within 14 calendar days after re-mailing,
14 received the Class Notice. Class Members who receive a re-mailed Class Notice shall have either
15 60 days from the original mailing or 15 days from the re-mailing, whichever is later, to object,
16 opt out, or dispute the workweeks attributed to the Class Member. Settlement, ¶ 52.b.

17 The Settlement Administrator will use the appropriate skip tracing and National Change
18 of Address searches to increase the likelihood of delivery of the Class Notice to Class Members,
19 and to re-mail the notice packets returned by the Postal Service without a forwarding address
upon locating new or alternate addresses after a reasonable search. Settlement, ¶ 52.c.

20 Class Counsel will provide to the Court, in connection with seeking final approval of the
21 Settlement, a declaration from the Settlement Administrator confirming that the Class Notice was
22 mailed to all Class Members as required by the Settlement, as well as any additional information
23 Class Counsel deem appropriate to provide to the Court. Settlement, ¶ 52.d.

24 **1. Disputes**

25 Dispute Procedure. The Class Notice will include a procedure by which a Class Member
26 may dispute the number of pay periods allocated to the Class Member by submitting a written
27 dispute sent via U.S. Mail to the Settlement Administrator postmarked no later than the expiration
28 of the Notice Period (“Pay Period Dispute”). To be valid, a Pay Period Dispute must contain the
following: (i) the Class Member’s full name, current address, and signature; (ii) the Action name



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1 and case number; (iii) the number of pay periods the Class Member maintains is correct; and (iv)
2 documentary evidence sufficient to prove that Defendants' calculation of the pay periods for the
3 Class Member is incorrect, if any. Upon receipt of notice of a Pay Period Dispute, the Settlement
4 Administrator shall promptly serve Defendants' counsel with a copy of the Pay Period Dispute
5 and any accompanying papers. Defendants' counsel will inform Class Counsel of any such
6 dispute. No Pay Period Dispute shall be effective or considered for any purpose unless it is timely
7 mailed by U.S. mail to and received by the Settlement Administrator as provided in the
8 Settlement. Defendants shall have the right to respond to the Pay Period Dispute by any Class
9 Member. The Settlement Administrator will resolve the Pay Period Dispute and make a final and
binding determination without hearing or right of appeal. Settlement, ¶ 53.

10 Within 14 calendar days after the close of the Notice Period, the Settlement Administrator
11 will provide Class Counsel and Defendants' counsel with a report listing the amount of all
12 Individual Settlement Payments, including Individual PAGA Payments, to be made to
13 Participating Class Members and Aggrieved Employees. The report to Class Counsel will not
14 include the names or contact information of Participating Class Members and Aggrieved
Employees. Settlement, ¶ 53.a.

15 **2. Opting Out**

16 Opt-Out Procedure. Unless a Class Member opts out of the settlement described in the
17 Settlement, the Class Member will be bound by the terms and conditions of the Settlement,
18 including the release of the Released Claims that arose during the Class Period. A Class Member
19 will not be entitled to opt out of the Settlement unless the Class Member submits a valid opt-out
20 request ("Opt-Out Request"). A valid Opt-Out Request must: (i) contain the Class Member's full
21 name, current address, and signature; (ii) the Action name and case number; (iii) a written request
22 clearly expressing the Class Member's desire to be excluded from (or opt out of) the Settlement;
23 and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period. Any
24 Class Members who worked during the PAGA Period and who opt out of the Settlement will still
be considered Aggrieved Employees for purposes of the Settlement. Settlement, ¶ 54.

25 Upon receipt of any Opt-Out Request within the Notice Period, the Settlement
26 Administrator shall review the Opt-Out Request to confirm that it complies with the opt-out
27 requirements of the Settlement. Settlement, ¶ 54.a.

28 Any Class Member who fails to submit a timely, complete, and valid Opt-Out Request



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1 will be barred from opting out of the Settlement, unless otherwise ordered by the Court. If the
2 Settlement Administrator receives a timely Opt-Out Request that is incomplete, it will make
3 reasonable attempts to contact the Class Member to cure the defect. The Settlement Administrator
4 will not consider any Opt-Out Request postmarked after the end of the Notice Period, but will
5 report its receipt of any such requests to Class Counsel and counsel for Defendants. It shall be
6 presumed that if an Opt-Out Request is not postmarked on or before the end of the Notice Period,
7 the Class Member did not make the request in a timely manner. A declaration submitted by any
8 Class Member attesting to the mailing of an Opt-Out Request on or before the expiration of the
9 Notice Period shall be insufficient to overcome the conclusive presumption that the Opt-Out
10 Request was untimely. Under no circumstances shall the Settlement Administrator have the
11 authority to extend the deadline for Class Members to submit a request to opt out of the settlement
without the Parties' joint written consent. Settlement, ¶ 54.b.

12 At the close of the Notice Period, the Settlement Administrator shall report the names of
13 all individuals who opted out of the Settlement to the Parties and include this information in a
14 Declaration regarding the distribution of the notice that will be provided in support of Plaintiff's
Motion for Final Approval. Settlement, ¶ 54.c.

15 If 10% or more Class Members timely opt out of the Settlement, Defendants will have the
16 sole and absolute discretion to withdraw from the Settlement within ten (10) calendar days after
17 Defendants receive notice of the number of opt-outs. Defendants will provide written notice to
18 Class Counsel if they intend to withdraw from the Settlement. In the event that Defendants elect
19 to so withdraw, the withdrawal shall have the same effect as a termination of the Settlement for
20 failure to satisfy a condition of settlement, the Settlement shall become null and void and have no
21 further force or effect, and the Class certified pursuant to the Settlement will be decertified for all
22 purposes. If Defendants choose to terminate the Settlement under this provision, they shall be
23 responsible to pay the Settlement Administrator's fees and costs. If the Settlement is terminated
24 for any other reason, including the Court's failure to grant final approval of the Parties'
25 Settlement, then Class Counsel and Defendants will be jointly responsible for the Settlement
Administrator's fees and costs. Settlement, ¶ 54.d.

26 **3. Objecting**

27 Objections To Settlement. Any Class Member may object to the Settlement. Any written
28 objection must be mailed to the Settlement Administrator (who shall promptly provide a copy to



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1 Class Counsel and counsel for Defendants) by the close of the Notice Period. Class Counsel will
2 ensure that any written objections are filed with the Court concurrently with the final approval
3 documents by having them attached to the Settlement Administrator's Declaration. Class
4 Members who have not objected in writing may still appear and be heard at the Settlement
Hearing. Settlement, ¶ 55.

5 Written objections to the Settlement must contain at least the following: (i) the objecting
6 Class Member's full name, current address, and signature; (ii) a clear reference to the Action; (iii)
7 a statement of the specific reasons why the objector believes the Settlement is unfair or objects to
8 the Settlement; and (iv) a statement of whether the objector intends to appear at the final approval
9 hearing, either in person or through counsel and, if through counsel, a statement identifying that
10 counsel by name, bar number, address, and telephone number. All objections shall be signed by
11 the objecting Class Member or the Class Member's legally-authorized representative. Settlement,
12 ¶ 55.a.

13 Class Counsel or Defendants' counsel may, up to five (5) court days before the Final
14 Hearing Date, file responses to any written objections submitted to the Court. Settlement, ¶ 55.b.

15 Unless they opt out of the Settlement as specified in Paragraph 54 of the Settlement, Class
16 Members who object to the proposed Settlement will remain Participating Class Members, and
17 shall be deemed to have voluntarily waived their right to pursue an independent remedy against
18 Defendants and the other Released Parties. To the extent any Participating Class Member objects
19 to the proposed Settlement and such objection is overruled in whole or in part, such individuals
will be bound by the Court's Final Approval Order. Settlement, ¶ 55.c.

20 In the event that any person objects to or opposes the Settlement, or attempts to intervene
21 in or otherwise enter the Action, the Parties and Class Counsel will use their best efforts to defend
22 the Settlement. Settlement, ¶ 55.d.

23 A Class Member cannot both opt out and object to the Settlement. If a Class Member both
24 objects and opts out of the Settlement, the opt-out will control and the objection will be deemed
invalid. Settlement, ¶ 55.e.

25 **G. Uncashed Checks**

26 If a Participating Class Member's or Aggrieved Employee's check is returned to the
27 Settlement Administrator, the Settlement Administrator will make reasonable efforts to re-mail it
28 to the Participating Class Member or Aggrieved Employee at the correct address. It is expressly



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1 understood and agreed that the checks for the Individual Settlement Payments, including the
2 Individual PAGA Payments, will become void and no longer available if not cashed within 180
3 calendar days after mailing. After the checks are voided, the remaining funds from the voided
4 checks will be transferred to Court Appointed Special Advocates of Los Angeles as a *cy pres*
5 recipient. Settlement, ¶ 56.e.

6 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

7 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
8 and its members are too numerous for joinder to be practical; (2) the representative and absent
9 class members share a community of interest and questions of law and fact common to the class
10 predominate over questions unique to individual class members; (3) the representative's claims
11 are typical of the class's claims; and (4) the representative will fairly and adequately represent the
12 class's interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Moreover,
13 in the settlement context, the Court can use a lesser standard to determine the appropriateness of
14 a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.* (1996) 48
15 Cal.App.4th 1794, 1807. As explained below, all of these requirements are met in this case.

16 **A. The Settlement Class Is Objectively Ascertainable**

17 A class is ascertainable when it may be readily identified without unreasonable expense
18 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
19 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the above-
20 defined Class is ascertainable because its members may be identified by reference to Defendants'
21 records, and Defendants have agreed to share the relevant information from their records to
22 facilitate the settlement process. DS, ¶ 27. Therefore, the Settlement Class is ascertainable.

23 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

24 The Settlement Class has sufficiently numerous members to render joinder impractical.
25 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
26 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 4,308 Class
27 Members. DS, ¶ 28. Plaintiff maintains that it would be impractical and economically inefficient
28 to require each Class Member to separately maintain an individual action or be joined as a named
plaintiff in this action. The California Supreme Court has upheld a class of as few as 10
individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these considerations,
the Settlement Class's membership is sufficiently numerous. DS, ¶ 28. *See Daar v. Yellow Cab*
Co. (1967) 67 Cal.2d 695.



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1 **C. Class Members Share a Well-Defined Community of Interest**

2 The community of interest requirement “embodies three factors: (1) predominant common
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
4 (3) class representatives who can adequately represent the class.” *Sav-On Drug Stores, Inc. v.*
5 *Superior Court* (2004) 34 Cal.4th 319, 326. It “does not mandate that class members have uniform
6 or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
7 Cal.App.4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
8 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
9 renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

10 To justify certification, the class proponent “must show ... that questions of law or fact
11 common to the class predominate over the questions affecting the individual members” *See*
12 *Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank,*
13 *FA v. Superior Court* (2001) 248 Cal.4th 906, 913). In light of the more lenient standard for
14 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
15 the claims of the Class Members all stem from the same sources. DS, ¶ 42.

16 In this case, Plaintiff asserts all Class Members were subject to the same or similar
17 operations and employment policies, practices, and procedures. The claims arise from
18 Defendants’ alleged policy-driven failure to provide meal periods, failure to pay wages, failure to
19 authorize and permit rest periods, failure to indemnify for business expenses, failure to issue
20 proper wage statements, failure to timely pay wages during and after employment, failure to
21 maintain required payroll records, failure to pay reporting time pay, failure to pay vested vacation
22 time at separation, failure to pay sick leave, failure to issue proper payment, failure to provide
23 required notices, and related labor law violations, all of which Plaintiff claims constitute unfair
24 business practices and give rise to PAGA penalties. Plaintiff asserts that common questions
25 include, but are not limited to: (1) Whether Defendants failed to pay all wages earned to Class
26 Members for all hours worked at the correct rates of pay; (2) Whether Defendants failed to provide
27 the class with all meal and rest periods in compliance with California law; (3) Whether
28 Defendants failed to pay the Class one additional hour of pay on workdays they failed to provide
29 the Class with one or more meal or rest periods in compliance with California law; (4) Whether
30 Defendants failed to indemnify the Class Members for all necessary business expenditures
31 incurred during the discharge of their duties; (5) Whether Defendants failed to pay reporting time



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1 pay; (6) Whether Defendants failed to pay vested vacation time at separation; (7) Whether
2 Defendants failed to properly pay sick leave; (8) Whether Defendants failed to properly maintain
3 records; (9) Whether Defendants failed to issue proper payment; (10) Whether Defendants failed
4 to provide required notices; (11) Whether Defendants failed to timely pay wages during
5 employment; (12) Whether Defendants knowingly and intentionally failed to provide the Class
6 with accurate wage statements; (13) Whether Defendants willfully failed to provide the Class
7 with timely final wages; and (14) Whether Defendants engaged in unfair competition within the
8 meaning of Business and Professions Code section 17200, *et seq.*, with respect to the Class. DS,
¶ 29. Therefore, common questions predominate.

9 **D. Plaintiff Is Typical of the Settlement Class**

10 The class representative must be similarly situated to the rest of the purported class. *See*
11 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 (stating “it has never been the law in California
12 that the class representative must have identical interests with the class members. The only
13 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *see*
14 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
15 Plaintiff’s claims and the claims alleged on behalf of the class”). Plaintiff contends that her claims
16 are typical for the purposes of certifying the Settlement Class. Plaintiff asserts that she, like absent
17 Class Members, was subject to the same relevant policies and procedures governing her
18 compensation, hours of work, and meal and rest periods. Because Plaintiff contends that she was
19 subject to the same general course of conduct as absent Class Members, resolving the common
20 questions as they apply to Plaintiff will determine Defendants’ *prima facie* liability to all Class
21 Members. Moreover, Plaintiff’s claims could potentially be subject to the same primary
22 affirmative defenses as those of absent Class Members. Accordingly, Plaintiff’s claims are typical
23 of the Class. DS, ¶ 30.

24 **E. Plaintiff Will Adequately Represent the Settlement Class**

25 The adequacy requirement is met where the plaintiff is represented by counsel qualified
26 to conduct the litigation and the plaintiff’s interest in the litigation is not antagonistic to the class’s
27 interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words, where the
28 plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling
conflicts of interest that might hinder the plaintiff’s ability to represent the class. DS, ¶ 31.

First, Class Counsel have supplied the Court with declarations to show that they are
adequate to represent the Settlement Class and that they have significant experience in



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1 employment litigation generally, and wage and hour and employment-related class action
2 litigation specifically. *See* DS, ¶¶ 33-40; Declaration of Benjamin J. Smith (“Smith Decl.”) ¶¶ 4-
3 5. Thus, Plaintiff’s counsel are adequate to serve as Class Counsel.

4 Second, Plaintiff contends that she is an adequate class representative. Plaintiff and the
5 Class Members have strong and co-extensive interests in this litigation because they all worked
6 for Defendants during the relevant time period, allegedly suffered the same alleged injuries from
7 the same alleged course of conduct, and there is no evidence of any conflict of interest between
8 Plaintiff and the Class Members. DS, ¶ 32. Moreover, Plaintiff has demonstrated her commitment
9 to the Settlement Class by, among other things, retaining experienced counsel, providing counsel
10 with documents, and extensively speaking with them to assist in identifying the claims asserted
11 in this case, assisting them in identifying witnesses, as well as exposing herself to the risk of
12 attorneys’ fees and costs awards against her if this lawsuit had been unsuccessful. DS, ¶ 32. Thus,
13 Plaintiff is adequate to serve as settlement class representative. Accordingly, this Court should
14 find that Plaintiff and her counsel are adequate to represent the Settlement Class as required under
15 Code of Civil Procedure § 382.

16 **F. Class Action Treatment Is the Superior Means For Resolving The Claims**
17 **Of The Class Members**

18 Plaintiff further contends that a class action is also superior to other means of adjudicating the
19 issues in this action. The predominance of common legal and factual questions shows that this
20 Court could fairly adjudicate the claims of Class Members through a single class action. In view
21 of the *theoretical* alternatives that proposed class members could potentially utilize—
22 representative PAGA action (where there is less relief available), individual civil lawsuits or wage
23 claims through the Division of Labor Standards Enforcement (where there would be relatively
24 little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly
25 superior to all of them. Thus, this consideration supports conditional class action treatment for
26 purposes of this Settlement only. DS, ¶ 41.

27 ///

28 ///

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1 **V. INTRODUCTION: THE COURT SHOULD GRANT PRELIMINARY**
2 **APPROVAL BECAUSE THE SETTLEMENT IS FAIR, ADEQUATE, AND**
3 **REASONABLE**

4 **A. Legal Standard**

5 A class action settlement requires court approval. California Rules of Court (“CRC”),
6 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
7 written motion for preliminary approval, the proposed class settlement, and the proposed class
8 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
9 hearing where class members may be heard regarding the settlement, and at which evidence and
10 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
11 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
12 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
13 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

14 **B. The Settlement Is Presumptively Fair**

15 In assessing preliminary approval, a court evaluates if the settlement process has certain
16 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached through
17 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
18 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
19 of objectors is small.” *Kullar*, 168 Cal.App.4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
20 48 Cal.App.4th at 1794.

21 The class settlement here satisfies all of these factors. DS, ¶ 42. The Settlement resulted
22 from thorough, arms’ length negotiations between experienced counsel with the assistance of a
23 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
24 weaknesses of their respective cases and Defendants’ estimated exposure. *Id.*

25 Plaintiff prepared “damages” estimates in advance of the mediation. DS, ¶ 43, Ex. 13.
26 Plaintiff determined Defendants’ maximum possible exposure for restitution and penalties to be
27 approximately \$73,136,315.03 (consisting of \$3,344,090.21 in unpaid wages, \$3,344,090.21 in
28 liquidated damages, \$19,613,309.15 in missed meal period premium wages, \$3,885,041.38 in
missed rest break premium wages, \$3,619,914.80 in unreimbursed expenses, \$3,159,896.56 for
wage statement penalties, \$4,274,455.54 for waiting time penalties, and \$31,895,517.18 for civil
penalties under PAGA). Plaintiff calculated the damages based on the number of workweeks and
pay periods provided by Defendants, Plaintiff’s reports, and the sample data. *Id.*

However, based on the difficulties of proof, the Defendants’ defenses, and the other



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1 attendant risks Plaintiff identifies, Plaintiff estimates the likely awards at trial should Plaintiff
2 prevail to be the following amounts:

- 3 a. Unpaid wages and liquidated damages with interest in the amount of
4 \$837,896.34;
- 5 b. Meal period premium wages with interest in the amount of \$558,615.08;
- 6 c. Rest period premium wages with interest in the amount of \$308,049.52;
- 7 d. Unreimbursed expenses with interest in the amount of \$165,968.17;
- 8 e. Statutory pay stub penalties in the amount of \$789,974.14;
- 9 f. Waiting time penalties in the amount of \$459,480.59; and
- g. Civil penalties in the amount of \$3,157,000.00.

10 The total of these amounts is \$6,276,983.84. DS, ¶ 62.

11 Plaintiff also considered the possibility that Defendants could launch a *Pick Up Stix*
12 campaign and pursue individual release agreements from the Class Members. Defendants also
13 represented that they had interviewed Defendants' current employees regarding Plaintiff's claims,
14 all of whom would provide declarations, under penalty of perjury, that were favorable to
15 Defendants with respect to the relevant factual issues at issue in Plaintiff's action. Plaintiff's
16 Counsel applied discounts to the maximum possible exposure to account for all other risks
17 discussed below. While it is difficult to assign anything but crudely-determined percentages of
18 risk to any of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude
19 recovery for such employees is substantial and alone justifies a significant discount because
20 Defendants would likely by trial have gathered releases from the majority of the Class Members.
Id.

21 Plaintiff is aware of only two significant awards under the PAGA in a contested
22 proceeding, both issued by federal district courts.⁴ DS, ¶ 58. PAGA penalty awards are often

23 _____
24 ⁴ In *Bernstein v. Virgin Am., Inc.*, (N.D. Cal. 2022) 2022 WL 17994018, the court awarded civil
25 penalties under the PAGA of \$12,277,500.00 where total adjusted damages were
\$18,695,692.58. In this regard, the district court stated,

26 The plain language of PAGA provides that “a court may award a lesser amount than the
27 maximum civil penalty amount specified by this part if, *based on the facts and*
28 *circumstances of the particular case*, to do otherwise would result in an award that is
unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code s 2699(e)(2) (emphasis
added). The relationship between the amount of total damages and the amount of



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1 small even for egregious, intentional violations of the Labor Code.⁵ *Id.* For instance, on October
2 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by
3 very experienced counsel, civil penalties totaling only \$50.00. *Shields v. Security Paving*
4 *Company, Inc.*, LA Superior Court case no. BC492828. Further, in *Carrington v. Starbucks Corp.*
5 (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a
6 PAGA penalty of only \$5 per pay period for the defendant's meal period violations. A similar
7 result could occur here. *Id.*

8 Plaintiff's initial estimates do not realistically account for the risks outlined below or the
9 risk that a class will not be certified. *Id.* Therefore, Plaintiff believes a class settlement for
10 \$1,050,000.00 is fair and reasonable. *Id.*

11 **C. The Settlement Satisfies the Kullar Factors for Approval**

12 The *Kullar* case sets forth several factors a court should consider in determining whether
13 to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the
14 risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining
15 class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery
16 completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence
17 of a governmental participant; and (8) the reaction of the class members to the proposed
18 settlement. 168 Cal.App.4th at 128. As demonstrated herein, the Settlement satisfies each of these
19 factors.

20 maximum PAGA penalties is certainly a "circumstance" of the case under the term's
21 ordinary meaning. The weight given to that circumstance is greater in this case because
22 Plaintiffs' PAGA penalties are based on PAGA claims that are all derivative of Plaintiffs'
23 individual claims except for one. As a general matter, it would be excessively punitive
24 for the penalty imposed as a consequence of a discrete injury or set of injuries to exceed
25 the damages caused by that injury or set of injuries.

26 *Id.*, fn. 9. The district court further stated, "Virgin 'has not presented any evidence that the full
27 penalty would be excessive in relation to its ability to pay,' the weight of this factor is lessened."
28 *Id.*

In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
awarded approximately \$102 million in damages, primarily based on the Defendant's failures to
comply with the requirements of California Labor Code section 226.

⁵ In 2012, Plaintiff's Counsel tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court
case number BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. The
plaintiff sought in excess of \$9 million in civil penalties under the PAGA. After a bench trial, the
Honorable Judge Ronald M. Sohigian awarded approximately \$325,000 in civil penalties under
the PAGA.



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1 **1. Evaluation of Plaintiff's Case**

2 **a. Risks Associated With the Arbitration Agreements**

3 The arbitration agreements entered into between Defendants on the one hand, and the
4 Class Members, on the other, present a significant risk to the success of Plaintiff's class action
5 litigation. DS ¶ 46. According to Defendants, the majority of the Class entered into arbitration
6 agreements with Defendants. *Id.* As the arbitration agreements in question restrict potential
7 litigants from bringing class actions against Defendants, Plaintiff would be effectively barred
8 from pursuing claims on behalf of the Class in Court. *Id.* Thus, there is a significant risk the Court
9 could determine that those Class Members who have not entered into arbitration agreements with
10 Defendants do not constitute a sufficiently numerous class to justify class action treatment. As
11 such, by continuing to trial on class-wide claims, Plaintiff would run the high risk of suffering
12 defeat due to the existence of the arbitration agreements. Moreover, the arbitration agreements
13 would pose danger to any class certification motion brought by Plaintiff. Because different
14 defenses would apply to some Class Members and not others – i.e., the existence of signed
15 arbitration agreements – there is a risk that the Court could determine that Plaintiff's claims
16 present too many individualized inquiries to justify class certification. *Id.*

17 **b. Risks Associated with the Unpaid Wages Claim**

18 There is a risk that Plaintiff's recovery for unpaid wages would be extremely limited at
19 best, largely because Defendants' written policies throughout the relevant time period prohibited
20 off-the-clock work. DS, ¶ 47. Off-the-clock claims are difficult where a defendant requires in its
21 written policies that all work must take place while clocked in. *See Jong v. Kaiser Foundation*
22 *Hospital* (2014) 226 Cal.App.4th 391 (employer must have notice of off-the-clock work for it to
23 be compensable). *Id.* In its written employment policies, Defendants mandate that employees
24 must record all time worked accurately on their time records and strictly prohibit employees from
25 performing any work off-the-clock. DS, ¶ 47. Moreover, while Defendants dispute that off-the-
26 clock work occurred, they contends that any time spent off the clock was *de minimis*. The
27 California Supreme Court in *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 835 suggested
28 that irregular and minute periods of time may still be subject to a *de minimis* defense even if
 compensable. (Stating: "We do not decide whether there are circumstances where compensable
 time is so minute or irregular that it is unreasonable to expect the time to be recorded."). Following
 Troester, Defendants contend that the *de minimis* doctrine may apply here because the time spent
 off the clock was minute and insignificant. Accordingly, a large award of penalties seems unlikely



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1 with respect to this claim. *Id.*

2 The difficulty inherent in proving that off-the-clock work occurred poses a significant
3 hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove this claim.
4 Generally, a court will not certify a class unless it can determine an appropriate class wide
5 methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. Here, Plaintiff
6 may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially given
7 the lack of records indicating when such off-the-clock work may have taken place. Individualized
8 inquiries would need to be conducted person-by-person, day-by-day, to determine if an individual
9 in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there is a significant
10 risk that the Court would consider this evidentiary showing insufficient as a class wide
methodology. DS, ¶ 48.

11 **c. Risks Associated with the Meal Period Claims**

12 There are risks to Plaintiff’s meal period claim. DS, ¶ 49. Defendants contend that, to
13 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
14 was not taken. *Brinker*, 53 Cal.4th at 1004. So long as an employer provides employees with a
15 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
16 breaks and ensure no work thereafter is performed.” *Id.* at 1040–41. Instead, a plaintiff must show
17 the employer impeded, discouraged, or prohibited the employee from taking a proper break, or
18 otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to
19 the meal break claim is the reason that a particular employee may have failed to take a meal
break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*

20 Defendants contend they did not impede or discourage Plaintiff, or any other employees,
21 from taking their meal or rest periods. DS, ¶ 50. Defendants’ policies mandate that employees
22 take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time
23 of their meal breaks each day on their time records. *Id.* The time records that comprise the sample
24 Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken
25 the vast majority of the time. *Id.* Of the time records that show a late, short, or no lunch,
26 individualized evidence may be necessary to determine whether they occurred due to conduct of
27 the Defendants or each of the employees concerned. Accordingly, there is a significant risk that
the value of Plaintiff’s meal period claim would be substantially reduced at trial. *Id.*



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1 **d. Risks Associated with the Rest Break Claims**

2 There are risks to Plaintiff's rest period claim. DS, ¶ 51. Employers are not required to
3 record rest periods, and such periods are paid. *Id.* Defendants contend they provided non-exempt
4 employees the opportunity to take rest periods in accordance with California law. Further,
5 Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.*
6 Thus, unlike meal periods, where there are often records showing whether an employee clocked
7 out or not, there is no such evidence to prove a missed rest period or that the employer refused to
8 authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.*
9 Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
10 victory with such evidence is certainly possible, relevant caselaw makes such claims risky from
11 a trial management and due process perspective. *Id.*, see also *Duran v. U.S. Bank Nat'l Assn.*,
12 (2014) 59 Cal.4th 1, 31 (explaining "[I]f sufficient common questions exist to support class
13 certification, it may be possible to manage individual issues through the use of surveys and
14 statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corp. v.*
15 *Behrend* (2013) 133 S.Ct. 1426.

16 **e. Risks Associated with the Failure to Indemnify Claim**

17 There is a risk that the Court may consider Plaintiff's claims as to Defendants' alleged
18 failure to indemnify for business expenses to be individual in nature and thus decline to certify
19 the class. DS, ¶ 52. Plaintiff alleges that Defendants required Plaintiff and the Class Members to
20 use their personal items including cellular phones, pens, and markers, and failed to indemnify
21 them for these business expenses. *Id.* Defendants presented evidence that they supplied their
22 employees with phones and other supplies and had an expense reimbursement policy. As such,
23 there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit
24 for class wide resolution. *Id.*

25 **f. Risks Associated with the Waiting Time Penalty Claims**

26 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and
27 PAGA penalties. Under Labor Code section 226, wage statements must include various
28 information, including the applicable rates of pay, corresponding hours worked, and gross pay.
DS, ¶ 53.

 Here, Plaintiff's wage statement claim has the same underlying risks as the above claims,
as it is derivative of them. *Id.* On their face, the wage statements issued by Defendants comply
with the requirements of Labor Code § 226. DS, ¶ 53.



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1 **g. Risks Associated with the Waiting Time Penalty Claims.**

2 Without proof of willful behavior, Plaintiff will be unable to recover these penalties.

3 **h. Risks Associated With the PAGA Claim**

4 Regarding PAGA, a court has discretion to award a lesser amount than the maximum
5 penalty. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
6 Cal.App.4th 1112, 1135 (reducing PAGA award). As set forth above, Defendants have posed
7 valid defenses to the Labor Code claims underlying Plaintiff's PAGA allegations. Thus, the
8 PAGA claims likewise face significant uncertainty. DS, ¶ 55. There is a risk that the Court would
9 consider the maximum civil penalty available to be confiscatory.

10 This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and required a
11 significant discount for settlement purposes. DS, ¶ 57. For mediation purposes, Plaintiff's counsel
12 estimated a maximum possible exposure of approximately \$73,136,315.04 in civil penalties. This
13 estimate did not take into account any of the risks discussed above and assumed a violation for
14 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
15 period for the same alleged violations of different Labor Code provisions and derivative
16 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
17 in this fashion may be appropriate to determine the amount in controversy for purposes of removal
18 jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding plaintiffs
19 multiple PAGA penalties for the same violation for the same pay period under different Labor
20 Code provisions. *Id.* This may be because the PAGA does not provide for what many employers
21 characterize as claim splitting and not merely stacking. *Id.*

22 **i. Risks Associated With A Pick Up Stix Campaign**

23 An employer enjoys the right to settle a putative class member's disputed wage claims
24 individually, without the consent or involvement of class counsel. DS, ¶ 60. *See Chindarah v.*
25 *Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796. *Id.* As discussed above, Defendants may launch
26 a "pick off" settlement campaign to pursue individual release agreements from the Class
27 Members, thereby potentially narrowing the size of the Settlement Class – 4,308 members – until
28 it is no longer numerous enough for class certification. *Id.* Plaintiff, then, may not have sufficient
29 number of employees to represent. This led to a significant reduction of claim value in settlement
30 negotiations. *Id.*

31 While the evidence gathered through Plaintiff's discovery supports the merits of the
32 claims asserted in this lawsuit, Plaintiff and her counsel recognize that continued litigation



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1 presents significant risks that support a downward departure from Defendants’ estimated liability
2 exposure. DS, ¶ 61. In view of the risks, the Settlement reflects Plaintiff’s estimate of the total
3 amount of damages, monetary penalties, or other relief that the Class could reasonably expect to
4 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
5 It also represents a fair, adequate, and reasonable compromise amount for these claims and
6 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
7 1376 (the financial condition of defendant predominated in assessing the reasonableness of
8 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
9 concerning defendant’s financial stability “strongly supports the reasonableness of the
10 settlement”); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
WL 2465049, *3.

11 **2. Allocation of the PAGA Payment**

12 The settlement of PAGA penalties in the sum of \$100,000.00, subject to the escalator
13 provision in paragraph 48(a)(ii) of the Settlement, of which 75% (\$75,000.00) will be paid to the
14 LWDA and 25% (\$25,000.00) will be distributed to the Class, is reasonable and appropriate under
15 the circumstances. DS, ¶ 63. The Parties negotiated a good faith amount for PAGA Penalties to
16 be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA was not the result
17 of self-interest at the expense of other Class Members. *Id.* Where settlements “negotiate[] a good
18 faith amount” for PAGA penalties and “there is no indication that this amount was the result of
19 self-interest at the expense of other Class Members,” such amounts are generally considered
20 reasonable. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009
21 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith
22 attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because
23 imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and
24 oppressive. *Id.* *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming
25 trial court’s award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The
26 amount to be paid to the LWDA comports with PAGA settlement amounts approved by other
27 courts. *See, e.g., Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL
28 672645, at *1 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund);
Lazarin v. Pro Unlimited, Inc. (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA
payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v.*



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1 *Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA
2 settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589
3 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
4 approved settlements for \$20,000 or less. See, e.g., *Hicks v. Toys ‘R’ Us–Delaware, Inc.* (C.D.
5 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in a case
6 involving \$4 million settlement); *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. Nov. 27, 2012)
7 2012 WL 5941801 at *14 (approving PAGA penalties of \$10,000 as part of \$2.5 million
8 settlement); *Garcia v. Gordon Trucking* (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575, at *3
(approving PAGA payment of \$10,000 as part of \$3.7 million common-fund settlement). *Id.*

9 **3. Presence of Governmental Participant**

10 As required under Labor Code section 2699(l)(2), Plaintiff will provide notice of this
11 settlement to the LWDA with the filing and service of this motion. DS, ¶ 112, Ex. 24.

12 **4. Reaction of Class Members to Proposed Settlement**

13 If the settlement is preliminarily approved, Class Members will be provided with the Class
14 Notice (attached as Exhibits A, B, C, and D to the Preliminary Approval Order) and an
15 opportunity to object. DS, ¶ 84. The Parties’ proposed notice fully complies with California Rules
16 of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the
17 proposed Settlement. *Id.*

18 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
19 **COMPENSATES CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
20 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
21 **COMPARED TO OTHER CLASS MEMBERS**

22 The Individual Settlement Payments will be paid to each Class Member based on his or
23 her eligible Pay Periods compared to the total Pay Periods. DS, ¶ 92. Because this method
24 compensates Class Members based on the extent of their potential injuries, in that Class Members
25 who worked for Defendants longer would have been subject to more alleged violations, it is fair,
26 adequate, and reasonable. *Id.*

27 Plaintiff estimates that there are 69,134 Pay Periods for the Class Period. So, each Pay
28 Period has a value of approximately \$7.60 (\$525,500.00 Net Class Settlement Amount / 69,134
Pay Periods = \$7.60). Plaintiff had 29 Pay Periods during the Class Period. Based on this, it is
anticipated that Plaintiff Olga Sotelo will receive an Individual Settlement Payment of
approximately \$220.43 as a Participating Class Member (29 Pay Periods x \$7.60 = \$220.43) while
the average estimated Individual Settlement Payment to Participating Class Members will be



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1 approximately \$122.98. Some Class Members – those who worked more Pay Periods during the
2 Class Period - will receive more, and some less. The highest possible Individual Settlement
3 Payment to a participating Class Member (i.e., to those who qualify for all 47 Pay Periods in the
4 Class Period) will be approximately \$357.26. The lowest possible Individual Settlement Payment
5 to a participating Class Member (i.e., to those who qualify for only one Pay Period in the Class
6 Period) will be approximately \$7.60. *See* DS, ¶ 81.

7 It is anticipated that the average Individual PAGA Payment will be \$6.68. *Id.*
8 Plaintiff's Individual PAGA Payment, her individual share of 25% of the PAGA Penalties, will
9 be less than that of some absent Aggrieved Employees. Under the Settlement, each Aggrieved
10 Employee will receive a *pro rata* distribution of 25% of the PAGA Penalties proportionate to the
11 number of paychecks he or she had with Defendants during the PAGA Period, compared to the
12 total of all paychecks of all Aggrieved Employees during the PAGA Periods, as reflected by
13 Defendants' records. Plaintiff estimates that there are 92,904 Aggrieved Employee paychecks
14 for the PAGA Period as of September 20, 2024, and this number will increase by the time this
15 Court grants preliminary approval of this settlement in accordance with the escalator provision in
16 paragraph 48(a)(ii) of the Settlement. So, each Aggrieved Employee paycheck from the PAGA
17 Period has a value of approximately \$.36 (25% of \$,132,720 in PAGA Penalties (as increased by
18 the escalator clause in paragraph 48 of the Settlement through the period ending on September
19 20, 2024) / 92,904 Aggrieved Employee paychecks = \$.36). It is anticipated that Plaintiff Olga
20 Sotelo will receive an Individual PAGA Payment of approximately \$10.33 as an Aggrieved
21 Employee (29 paychecks during the PAGA Period x \$.36 paycheck value = \$10.33) while the
22 average estimated Individual PAGA Payment to an Aggrieved Employee will be approximately
23 \$6.68 (25% of \$,132,720 in PAGA Penalties (as increased by the escalator clause in paragraph
24 48(a)(ii) of the Settlement through the period ending on September 20, 2024)/ 4,953 Aggrieved
25 Employees during the PAGA Period = \$6.68 Individual PAGA Payment). Some Aggrieved
26 Employees – those who had more paychecks during the PAGA Period – will receive more, and
27 some less. The highest possible Individual PAGA Payment to an Aggrieved Employee (i.e., to
28 those who qualify for all paychecks in the PAGA Period (currently 60 as of September 20, 2024)
will be approximately \$21.37. The lowest possible Individual PAGA Payment to an Aggrieved
Employee (i.e., to those who qualify for only one paycheck in the PAGA Period) will be
approximately \$.36 *See* DS, ¶ 83. However, as noted above, these figures will continue to



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1 increase through the date the Court grants preliminary approval pursuant to the terms of the
2 escalator provision in paragraph 48(a)(ii) of the Settlement Agreement.

3 **VII. ALLOCATION FOR CLASS COUNSEL’S FEE AWARD AND ATTORNEYS’**
4 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

5 The Settlement states Class Counsel may seek attorneys’ fees of one-third of the GSA,
6 which, unless escalated pursuant to Paragraph 48 of the Settlement, equals \$350,000.00, and up
7 to \$25,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the
8 Action. Settlement ¶ 49.a. These amounts are reasonable, given the facts and circumstances of
9 the case. DS, ¶¶ 64-67.

10 Trial courts have “wide latitude” in assessing the value of attorneys’ fees, and their
11 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
12 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the “experienced
13 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
14 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
15 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
16 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82
17 Cal.App.4th at p. 48–49). The Supreme Court has recently approved fees equal to one-third (1/3)
18 of the common fund. *Laffitte, supra*, 1 Cal.5th 480. Many courts have similarly approved fee
19 awards similar to or greater than the percentage requested here. *See, e.g., In re Pacific*
20 *Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re*
21 *Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re*
22 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

23 The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
24 took in bringing the case, (2) the extensive time, effort, and expense dedicated to the case, (3) the
25 skill and determination Class Counsel have shown, (4) the results Class Counsel achieved, (5) the
26 value that Class Counsel achieved for the Class, and (6) the other cases Class Counsel turned
27 down to devote time to this matter. DS, ¶ 65. Class Counsel interviewed and obtained information
28 from putative class members, met and conferred with Defendants’ counsel on numerous
occasions, reviewed and analyzed thousands of pages of data and documents provided by
Defendants and obtained through other sources, researched applicable law, and provided
estimates of “damages” for purposes of settlement discussions, among other tasks. *Id.*

Class Counsel have borne all the risks and costs of litigation and will receive no



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1 compensation until recovery is obtained. DS, ¶ 66. Class Counsel are well-experienced in wage-
2 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
3 Considering the amount of the attorneys' fees requested, the work performed, and the risks
4 incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

5 **VIII. THE ENHANCEMENT AWARD TO PLAINTIFF SHOULD BE**
6 **PRELIMINARILY APPROVED BECAUSE IT IS FAIR, ADEQUATE, AND**
7 **REASONABLE**

8 Courts routinely approve incentive awards to compensate named plaintiffs for the services
9 they provide and the risks they incur during class action litigation, often in much higher amounts
10 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
11 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
12 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
13 enhancement award). The Settlement provides that Plaintiff may seek an Enhancement Award of
14 up to \$20,000.00. This amount is entirely reasonable given Plaintiff's efforts in this action and
15 the risks she undertook on behalf of Class Members. DS, ¶ 68. Plaintiff has devoted many hours
16 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
17 retaining experienced counsel, providing them with information about her work history with
18 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
19 issue, participating in mediation, and being actively involved in the settlement process to ensure
20 a fair result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to
21 significant risks, including the risk of an order to pay Defendants' attorneys' fees and costs if this
22 action had been unsuccessful (*See* Labor Code §§ 218.5–218.6). The efforts and risks that Plaintiff
23 undertook on behalf of the Settlement Class shows that the proposed Enhancement Award is fair,
24 adequate, and reasonable, and thus warrants preliminary approval. DS, ¶ 68.

25 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
26 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
27 **AND REASONABLE**

28 With regard to the settlement administration costs ("Settlement Administration Costs")
provision, it is reasonable. CPT Group, Inc. ("CPT Group") is a well-respected settlement
administrator whose bids are consistently lower than or comparable to those of other settlement
administration firms. CPT Group's bid of \$26,750 is in line with settlement administration costs
for class and/or PAGA settlements involving a similar number of individuals and translation
services. DS, ¶ 105. Before agreeing to CPT Group, Inc. and its bid of \$26,750, the Parties sought



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1 and reviewed bids from other reputable third-party administrators, which were similar. DS, ¶¶
2 105-106, Exs. 21, 22, and 23 (bid from ILYM, for \$26,750 in estimated fees, and \$24,950 after
3 discounts, and bid from Phoenix Settlement Administrators, for \$27,000). Thus, the settlement
4 administration costs provision should be given preliminary approval.

5 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
6 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO**
7 **GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO**
8 **EXERCISE THEIR RIGHTS**

9 This Court should approve the proposed plans for giving notice to the Settlement Class
10 and administering the Settlement. The standard for determining the adequacy of notice is whether
11 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
12 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
13 measures to ensure that as many Class Members as practicable receive actual notice of the
14 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
15 the Notice by First Class U.S. mail only. Settlement, ¶ 52a. Although there are current employee
16 Class Members, it is uncertain whether Defendants’ records of their contact information include
17 email addresses, and Class Members, who perform all of their work away from a desk, are not in
18 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
19 DS, ¶ 92.

20 With respect to its content, “[The] notice given to the class must fairly apprise the class
21 members of the terms of the proposed compromise and of the options open to dissenting class
22 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
23 The purpose of the notice in class settlement context is to give class members sufficient
24 information to decide whether they should accept the benefits offered, opt out and pursue their
25 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
26 Class Members with all pertinent information that they need to fully evaluate their options and
27 exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
28 other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the
Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
individual Settlement Class Member’s estimated payment. Additionally, the Class Notice will



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1 include the number of Pay Periods a Class Member had during the Class Period. Accordingly, the
2 Notice should be approved because it describes the Settlement with sufficient clarity and
3 specificity to explain to Class Members what this action is about, their rights under the Settlement,
4 and how to exercise those rights. DS, ¶ 92.

5 **XI. CONCLUSION**

6 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and
7 adopt the proposed order submitted concurrently herewith.

8 Respectfully submitted,

9 THE SPIVAK LAW FIRM

10 Dated: November 5, 2024

11 By: David Spivak
12 DAVID G. SPIVAK
13 LAUREN R. DAVIS, Attorneys for
14 Plaintiff, OLGA SOTELO, and all
15 others similarly situated
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