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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

DIONYSIOS YURI SHALLAN, an individual,
on behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

v.

SCOTT'S SACRAMENTO RIVER, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No: 34-2020-00288630

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: December 16, 2021
Time: 9:00am

Honorable Judge Christopher E. Krueger
Department 54

Trial Date: Not Set
Action Filed: November 16, 2020

Reservation No.

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1 **I. INTRODUCTION**

2 Plaintiff DIONYSIOS YURI SHALLAN (“Plaintiff”) and Defendant SCOTT'S
3 SACRAMENTO RIVER, INC. (“Defendant”), have reached a full and final settlement of the
4 above-captioned action, which is set forth in the Class Action Settlement Agreement (hereinafter
5 the “Agreement”) filed herewith.¹ The Court preliminarily approved the Agreement via its
6 Preliminary Approval Order dated September 9, 2021 (“Preliminary Approval Order”); and
7 pursuant to the Preliminary Approval Order the approved Class Notice has been disseminated to
8 the Class.²

9 On October 6, 2021, counsel for Plaintiff and Defendants (collectively “Parties”) discovered
10 that estimated workweek count for the Class is 3,720. The Settlement Agreement provided, at
11 Paragraph III(A)(3), that if the number of workweeks in the Class exceed 3,581, the Gross
12 Settlement Amount shall increase proportionately with each added workweek. As a result of the
13 increase in the workweek count, the Gross Settlement Amount has increased from \$102,500.00 to
14 \$106,451.88.

15 After disseminating notice to the members of the Class, to date there have been no objections
16 and no opt outs, which means that 100% of the Class is currently participating in the Settlement.
17 (Decl. Zakay ¶9.) This is a positive response from the class evidencing their approval of the
18 Settlement.

19 This \$106,451.88 settlement is an excellent result for the Class Members in light of the
20 serious doubts as to the result of the adjudication of their claims, along with further uncertainty as
21 to whether class certification can be maintained through trial.

22 Considered as a whole, the \$106,451.88 in Settlement represents approximately 18% of
23 Defendant’s liability exposure for damages, and 12% of Defendant’s liability exposure for damages
24 and statutory penalties, as estimated by Class Counsel at the time of mediation, which Class Counsel

25
26 ¹ A copy of the Agreement is attached as Exhibit 2 to the Declaration of Shani O. Zakay (“Decl.
27 Zakay”), served and filed herewith. Capitalized terms in this Memorandum have the same meaning
28 as contained in the Agreement.

² The “Class” is all of Defendant’s current and former non-exempt banquet employees who worked
for Defendant in the State of California during the Class Period. The Class Period is the period of
time from March 24, 2016 and September 29, 2020

1 calculated to be \$568,178.36 for damages and \$844,322.76 for damages and statutory penalties for
2 violations of Labor Code Sections 226 and 203.³ Under *Kullar v. Foot Locker Retail, Inc.*, 168
3 Cal.App.4th 116 (2008), this Settlement is a fair and reasonable recovery on these claims (which
4 were subject to considerable uncertainty, both as to the merits and certification). The response of
5 the Class has been positive. Accordingly, Plaintiff respectfully submits that the Class Settlement
6 should be finally approved as fair, reasonable, and adequate.

7 **II. THE SETTLEMENT BEFORE THE COURT**

8 Plaintiff and Defendant reached a full and final Settlement of the above-captioned action,
9 which is embodied in the Agreement filed concurrently with the Court. As consideration for this
10 Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of One Hundred Six
11 Thousand, Four Hundred Fifty-One Dollars and Eighty Eight Cents (\$106,451.88) (“Gross
12 Settlement Amount”). The Gross Settlement Amount includes all Settlement Shares to Participating
13 Class Members, the Class Representative Service Payment to Plaintiff, Settlement Administration
14 Expenses, the PAGA Payment, and Court-approved attorneys’ fees and costs. Defendant will
15 separately pay the employer’s share of payroll taxes to the qualified settlement fund, per the
16 Agreement. (Decl. Zakay ¶3(a).)

17 The Net Settlement Amount shall equal the net amount available for Settlement shares to
18 Participating Class Members from the Gross Settlement Amount after deducting the Court-
19 approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment,
20 the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the fees and expenses of
21 the Settlement Administrator. The Settlement Administrator will pay a Settlement Share from the
22 Net Settlement Amount to each Participating Class Member. The submission of a claim form is not
23 required to be paid. The Settlement Share for each Participating Class Member will be calculated
24 based on the workweeks worked by each Participating Class Member during the Class Period. The
25 entire Net Settlement Fund shall be distributed. (Decl. Zakay ¶3(b).)

26 Class Members were sent the Court approved Class Notice, using the procedure approved
27 by the Court, by mailing the notice packets after updating class members’ addresses using the
28

³ The damage analysis is detailed in the declaration of Shani O. Zakay. (Decl. Zakay, ¶ 14)

1 National Change of Address database and, for any notice packets returned as undeliverable, re-
2 mailing such notices to any forwarding address provided or updated address located through skip
3 tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if
4 they did not want to participate in the Settlement. Class Members who did not “opt out” are deemed
5 Participating Class Members who are bound by the Settlement and will be mailed a settlement
6 payment. The Class Notice also advised Class Members of their right to object to the
7 Settlement. This notice process is documented in the accompanying Declaration of
8 L l u v i a I s l a s (the Settlement Administrator), which is filed concurrently herewith. (Decl.
9 Zakay ¶3(c).)

10 If a Participating Class Member’s Settlement Share check is not cashed within 180 days
11 after its last mailing to the Participating Class Member, the funds from such uncashed checks will
12 be paid to the Children’s Advocacy Institute in accordance with California Code of Civil Procedure
13 section 384 in the name of the Participating Class Member and the Participating Class Member
14 will remain bound by the Settlement. (Decl. Zakay ¶4).

15 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
16 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will also be
17 allowed to apply separately for an award of litigation expenses incurred in the prosecution and
18 settlement of the Action in an amount not exceeding \$10,000. **In support of this request,**
19 **Class Counsel is providing evidentiary support, including lodestar, in the declarations**
20 **submitted concurrently herewith.** The Agreement provides for payment of Class
21 Representative Service Payment of no more than \$7,500 for Plaintiff, or such lesser amount
22 as may be approved by the Court in compensation for his services. Defendant does not
23 oppose a motion for approval of attorneys’ fees, costs and a service award consistent with the
24 Agreement. (Decl. Zakay ¶5).

25 The Parties allocated \$5,000 from the Gross Settlement Amount for settlement of
26 civil penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of
27 Labor Code §2699(i) the PAGA Payment shall be allocated \$3,750 to the LWDA (the “LWDA
28 Payment” or the “PAGA Payment”) as the LWDA’s share of the settlement of civil penalties and
\$1,250 to the Net Settlement Amount for distribution to the Participating Class Members. (Decl.

1 The Settlement was reached through arm's length negotiations. On September 29, 2020,
2 the Parties participated in an all-day mediation presided over by (Ret.) Hon. Stephen Denton, a
3 respected jurist and mediator of wage and hour class and PAGA actions. Prior to the mediation,
4 the Parties prepared by exchanging data, calculating damages, and submitting mediation briefs to
5 the Mediator. Defendant provided Class Counsel with necessary records and information for the
6 members of the Class. Defendant produced a sample consisting of pay records and time records for
7 some of the Class Members for the entire Class Period. Defendant also produced Defendant's
8 relevant employment policies, banquet policy information, including compensation policies and
9 timekeeping policies. Plaintiff analyzed the data with the help of an expert and prepared and
10 submitted a mediation brief to Hon. Stephen Denton. At the conclusion of the mediation, the Parties
11 reached a settlement, which was supported by Hon. Stephen Denton. The Parties documented the
12 agreement in the form of a Memorandum of Understanding. The Parties then prepared the full
13 Agreement that was signed by the Parties and received preliminary approval from the Court by
14 Order dated September 9, 2021. (Decl. Zakay ¶7).

15 The Settlement is fair, adequate and reasonable to the Class and should be finally approved
16 for the same reasons the Court granted preliminary approval to the Settlement, finding that it is fair,
17 adequate, and reasonable as to all potential Class Members. In sum, this Settlement valued at
18 \$106,451.88 is an excellent result for the Class. This result is particularly favorable in light of the
19 fact that liability in this case was far from certain in light of the defenses asserted by Defendant.
20 There have been no objections and no opt outs. Given the complexities of this case, the defenses
21 asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and
22 appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.
23 (Decl. Zakay ¶8).

24 **III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND** 25 **APPROVAL OF CLASS ACTION SETTLEMENTS**

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th
27 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is
28 particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners*

1 for *Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary conciliation
2 and settlement are the preferred means of dispute resolution. This is especially true in complex class
3 action litigation.”)

4 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
5 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
6 (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579
7 (1980).) The court must decide whether the proposed settlement falls within the range of reasonable
8 settlements, taking into account that settlements are compromises between the parties reflecting
9 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See
10 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to
11 be judged against a hypothetical or speculative measure of what might have been achieved had
12 plaintiffs prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given
13 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
14 underlying class claims are not a basis for upsetting the settlement of a class action.” *Id.*; see also
15 *7-Eleven, supra*, at 1150.

16 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
17 that the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not
18 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
19 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel
20 and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3)
21 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
22 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
23 pp. 11-91. Here, all of these factors support a presumption of fairness.

24 IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

25 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
26 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service*
27 *Com’n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is “the protection of
28

1 those class members, including the named plaintiffs, whose rights may not have been given due
2 regard by the negotiating parties.” *Dunk, supra*, at 1801.

3 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
4 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that
5 the trial court should consider in evaluating the reasonableness of a class action settlement
6 agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
7 of further litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
9 views of counsel, the presence of a governmental participant, and the reaction of the class members
10 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)
11 (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App.
12 4th 399, 408 (2010).

13 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at
14 1801. Due regard should be given to what is otherwise a private consensual agreement between the
15 parties. *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that
16 the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
17 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
18 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
19 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

20 These factors are analyzed seriatim below, and all support final approval of the class action
21 Settlement before this Court, consistent with this Court’s Preliminary Approval Order.

22 **1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act**
23 **Intelligently**

24 On March 24, 2020, Plaintiff filed a Notice of Violations with the Labor and Workforce
25 Development Agency (LWDA) and served the same on Defendant. The Notice to the LWDA
26 included a proposed Complaint which Plaintiff planned on filing with the Court, which asserted that
27 Defendant: (1) Violated California Business and Professions Code § 17200 *et seq.*; (2) Failed to
28 pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1997.1; (3) Failed

1 to pay overtime wages in violation of California Labor Code §§ 510, *et seq.*; (4) Failed to provide
2 meal periods in violation of California Labor Code §§ 226.7 & 512, and IWC Wage Order; (5)
3 Failed to provide rest periods in violation of California Labor Code §§ 226.7 & 512, and IWC Wage
4 Order; (6) Failed to provide accurate and complete itemized wage statements in violation of
5 California Labor Code § 226; (7) Failed to provide wages when due in violation of California Labor
6 Code §§ 201, 202, and 203; and (8) Failed to provide gratuities in violation of California Labor
7 Code §351. (Decl. Zakay at ¶11(a)).

8 Defendant denied liability for each of Plaintiff's claims. Defendant denies any liability or
9 wrongdoing of any kind associated with the claims alleged in the. Defendant contends, among
10 other things, that it has correctly and fully compensated the Class Members for wages and
11 gratuities, provided compliant meal and rest periods, provided complete, accurate itemized wage
12 statements, and complied at all times with the California Labor Code and Wage Orders. Further,
13 Defendant contends that class certification would be inappropriate for any reason other than for
14 settlement. (Decl. Zakay at ¶ 11(a)).

15 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
16 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
17 engaged in informal discovery in preparation for the mediation, and received significant responses
18 and documents to the discovery requests. Defendant produced a sample consisting of employee file
19 and pay records, hiring/review and separation documents, payroll and time records for some of the
20 Class Members for the entire Class Period. Defendant also produced Defendant's relevant
21 employment policies, including compensation policies and timekeeping policies. Class Counsel
22 conducted extensive review of time records and data with the help of an expert. Based on the
23 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
24 believe that the settlement with Defendant on the terms set forth in the Agreement is fair, reasonable,
25 and adequate and are in the best interest of the Class in light of all known facts and circumstances,
26 including the risk of significant delay, the defenses asserted by Defendant, and potential appellate
27 issues.
28

1 **2. The Settlement Was Reached Through Arm’s Length Bargaining**

2 This Settlement was the result of arm’s-length negotiations as well as informal settlement
3 conferences between the Parties through their respective attorneys. After comprehensive legal and
4 factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the
5 case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel
6 reviewed and outlined the case based upon the information for the Class, and determined the
7 conditions of settlement that would be fair and reasonable to the Class. Class Counsel was
8 experienced in the types of settlement appropriate to resolve these wage and hour claims on behalf
9 of employees. (Zakay Decl. ¶12(a)).

10 The fact that the Settlement was negotiated with the assistance of a mediator supports
11 approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin.*
12 *Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
13 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
14 litigation, with the assistance of a well-respected mediator with substantial experience in
15 employment litigation[, and] this factor supports approval of the settlement.”)

16 **3. Class Counsel is Experienced in Similar Litigation**

17 California Courts have previously approved Class Counsel as experienced Class Counsel.
18 As set forth in the declarations submitted in support of preliminary approval and this motion, all
19 Class Counsel have extensive experience litigating wage and hour class actions involving
20 employees and claims similar to this case. All Class Counsel support approval of the Settlement
21 based upon their experience in wage and hour litigation.

22 **4. There Are No Objections by the Class Members**

23 The reaction of the Class unequivocally supports approval of the Settlement. On October
24 7, 2021, the Settlement Administrator Court-approved Class Notice to the Class Members, which
25 provided each Class Member with the terms of the Settlement, including notice of the claims at
26 issue and the financial terms of the settlement, including the attorneys’ fees, costs, and service
27 awards that were being sought, how individual settlement awards would be calculated, and the
28 specific, estimated payment amount to that individual. In disseminating the Class Notice, the

1 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
2 Approval Order. Significantly, there have been no objections and no opt outs. (See Declaration of
3 Lluvia Islas at ¶¶ 11-12.) As a result, the entire Class has elected to participate in the Settlement
4 and will be sent a settlement check.

5 The administration process, including details regarding the mailing of the Notice Packet,
6 notices returned as undeliverable, the administrator's efforts to locate class members and re-mail
7 notices, and the final administration results, are all documented in the Declaration of Lluvia Islas,
8 which is filed concurrently herewith. (See Decl. of Lluvia Islas).

9 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
10 the Settlement. See *In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
11 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
12 indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-
13 119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey*
14 *v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
15 the proposed settlement should be considered when determining fairness of settlement). Here,
16 where there are no objections, the approval of the Class is evident.

17 **5. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

18 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
19 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
20 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted
21 by Defendant presented serious threats to the claims of the Plaintiff and the other Class Members.
22 Defendant asserted that the employment practices complied with all applicable Labor Laws.

23 Most importantly and relevant to this case, Defendant strongly argued that Plaintiff and the
24 Class Members did not forfeit any gratuities. Defendant argued that the service charge, which was
25 added to the banquet bills, constituted only a charge for the actual amount due for managerial and
26 planning services of the banquet, and not any sum over and above the actual amount due for food
27 and drink sold its patrons. Defendant further argued that it specifically suggested to its banquet
28 customers to separately and additionally pay gratuities to the service staff, and that its customers

1 regularly paid such additional gratuities. Defendant argued, therefore, that California Labor Code
2 § 351 did not apply to Plaintiff and the Class Members. Because this claim represented
3 approximately 2/3 of Plaintiff's damages, this defense could substantially reduce any recovery to
4 the Class. While Plaintiff believes that this defense, and others, could be overcome, Defendant
5 maintains these defenses have merit and therefore present a serious risk to recovery for the Class.
6 (Decl. Zakay at ¶13(a)).

7 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any employee other than
9 themselves. Defendant argued that the individual experience of each employee varied with respect
10 to the alleged claims, particularly with regard to banquet managers and staff. While other cases
11 have approved class certification of wage and hour claims, class certification in this action would
12 have been hotly disputed and was by no means a foregone conclusion. Finally, even if class
13 certification was successful, as demonstrated by the California Supreme Court decision in *Duran v.*
14 *U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-
15 wide recovery even where the class has been certified. (Decl. Zakay at ¶13(b)).

16 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
17 trying the Action against Defendant through possible appeals which even if successful could take
18 several years. Class Counsel have also taken into account the uncertain outcome and risk of
19 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
20 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
21 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
22 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal
23 in the event of an adverse judgment. A post-judgment appeal by Defendant would have required
24 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
25 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
26 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
27 motions and appeals would have been inevitable. Costs would have mounted and recovery would
28 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and

1 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
2 their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the
3 Agreement is in the best interest of the Class Members. (Decl. Zakay ¶13(c)).

4 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
5 significant recovery, particularly when viewed in light of the fact that Defendant asserted serious
6 and substantial defenses both to liability and to class certification. Given the complexities of this
7 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
8 reasonable and adequate, and should be finally approved. (Decl. Zakay ¶13(d)).

9 **6. The Amount Offered in Settlement**

10 The Settlement in this case is fair, reasonable and adequate considering Defendants'
11 significant defenses, which it believes to be valid, to Plaintiff's claims. As detailed during
12 preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims.
13 Class Members will receive immediate and certain payments of considerable amounts under the
14 Settlement. Currently, the overall maximum and average Participating Class Member allocations
15 are estimated to be \$2,694.93 and \$695.66 respectively (Decl. Islas at ¶ 14).

16 Faced with the serious doubts as to recovery, the Settlement of \$106,451.88 plus the
17 employer's share of payroll taxes compares favorably to the damage estimates alleged to have been
18 suffered by the Class. Considered as a whole, the \$106,451.88 in Settlement represents
19 approximately 18% of Defendant's liability exposure for damages, and 12% of Defendant's liability
20 exposure for damages and statutory penalties, as estimated by Class Counsel at the time of
21 mediation, which Class Counsel calculated to be \$568,178.36 for damages and \$844,322.76 for
22 damages and statutory penalties for violations of Labor Code Sections 226 and 203.

23 If he could prove the claims, Plaintiff estimates that Defendant was subject to liability for
24 *damages* in the amount of **\$568,178.36**, consisting of \$409,647.36 for unpaid gratuities, \$8,990.84
25 for unpaid wages, \$107.890 for meal and rest breaks, and \$41,650 for unreimbursed expenses. In
26 addition, Plaintiff calculated that Defendant could be liable for \$85,750.00 for wage statement
27
28

1 penalties and \$190,394.40 waiting time penalties. Finally, Plaintiff calculated PAGA penalties in
2 an amount exceeding \$269,150.00.⁴

3 Consequently, the settlement of \$106,451.88 represents more than **18%** of the value of the
4 maximum *damages* at issue. Even when including the penalties for Plaintiff's claim for violations
5 under Labor Code §226 and Labor Code §203, the settlement represents more than **12%** of the
6 maximum potential liability, assuming all of these amounts could be proved at trial. Given the
7 amount of the settlement as compared to the potential value of claims in this case, the settlement is
8 fair and reasonable. (Decl. Zakay ¶14(b)).

9 **V. CONCLUSION**

10 Plaintiff respectfully submits that the proposed Settlement satisfies the standard of fairness
11 established in California law and should therefore be finally approved as fair, reasonable and
12 adequate and request entry of the Final Approval Order and Judgment.

13
14 DATED: November 21, 2021

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16 **ZAKAY LAW GROUP, APLC**

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18 By: 

19 Shani O. Zakay
20 Attorney for Plaintiff
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25 ⁴ *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
26 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced
27 the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying
28 with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at
539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the
PAGA penalties were reduced by 90%.