

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff DIONYSIOS YURI SHALLAN

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 PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: September 9, 2021

Hearing Time: 9:00 a.m.

Reservation No. 2562306

Honorable Judge Christopher E. Krueger
Department 54

Trial Date: Not Set

Action Filed: November 16, 2020

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I. INTRODUCTION

Plaintiff Dionysios Yuri Shallan (“Plaintiff”) respectfully submits this memorandum in support of the motion for preliminary approval of the proposed class and Private Attorneys General Act (“PAGA”) action settlement with Defendant Scott’s Sacramento River, Inc. (“Defendant”), and seeks entry of an order: (1) preliminary approving the settlement of this Action with Defendant; (2) approving the form and method for providing notice; (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

Plaintiff and Defendant have reached a settlement of the above-captioned action, which is embodied in the Stipulation of Settlement of Class Action and Private Attorneys General Act Claims and Release of Claims Between Plaintiff and Defendant (“Agreement”). A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount to be paid by Defendant is One Hundred and Two Thousand and Five Hundred Dollars (\$102,500). (Agreement at ¶III(A)(1)). Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) Individual Settlement Payments of the Net Settlement Amount to each Settlement Class Member, (2) Class Counsel Fees Payment and Litigation Expenses Payment, (3) the fees and expenses of the Settlement Administrator, (4) the Payment to the Labor and Workforce Development Agency (“LWDA”), and (5) the Class Representative Service Payment to the Plaintiff. (*Id.*). The Gross Settlement Amount does not include Defendant’s share of payroll taxes. (*Id.*). The Gross Settlement Amount shall be all-in with no reversion to Defendant (*Id.*).

Within approximately forty calendar days of final approval and the Judgment becoming Final, the Defendant will fund the Gross Settlement Amount. The payment of the Settlement Shares to Participating Class Members will be within fifteen calendar days after Defendant funds

1 the Gross Settlement Amount, the Settlement Administrator will pay the Individual Settlement
2 Payments to the Class Members. (Agreement at ¶II(M)(1)(e)). (Decl. Zakay at ¶14).

3 The Settlement Administrator will pay a Settlement Share from the Net Settlement
4 Amount to each Class Member. The submission of a claim form is not required. (Agreement at ¶
5 II(M)(1)(a)). The Settlement Share for each Class Member will be calculated based on the
6 workweeks worked during the Class Period. (Agreement at *Id.*). (Decl. Zakay at ¶15).

7 Class Members will have 45 days after the mailing of the Class Notice to exclude
8 themselves or submit written objections. (Agreement at Definitions at (BB)). Class Members may
9 choose to opt-out of the Settlement by following the directions in the Class Notice. (Agreement at
10 ¶III(L)(7)). All Class Members who do not “opt out” will be deemed Class Members who will be
11 bound by the Settlement and will be entitled to receive a settlement payment. (*See* Agreement at
12 *Id.*). Finally, the Class Notice will advise the Class Members of their right to object to the
13 Settlement (Agreement at ¶III(L)(8)). (Decl. Zakay at ¶17).

14 If a check is returned to the Settlement Administrator, the Settlement Administrator will
15 make all reasonable efforts to re-mail it to the Class Member at the correct address. If a Class
16 Member’s Individual Settlement Payment check is not cashed within 180 days after its mailing to
17 the Class Member, the funds from such uncashed check will be paid to the Children’s Advocacy
18 Institute in accordance with CCP §384 in the name of the Class Member and the Class Member
19 will remain bound by the Settlement. (Agreement at ¶III(M)(1)(f)). None of the Parties or
20 counsel has any interest, pecuniary or otherwise, in CAI. (Decl. Zakay at ¶18).

21 The Parties have agreed to use ILYM Group as the Settlement Administrator for the
22 Settlement. (Agreement at Definitions at (DD)). ILYM Group shall receive payment for services
23 in an amount not to exceed \$4,500.00. (Agreement at ¶III(M)(5)). (Decl. Zakay at ¶19).

24 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
25 not to exceed 1/3 of the Gross Settlement Amount, currently estimated to be \$34,166.66, as their
26 Class Counsel Fees Payment. (Agreement at ¶ III(M)(3)). Class Counsel will also be allowed to
27 apply separately for an award of litigation expenses incurred in the prosecution and settlement of
28 the Action (currently not exceeding \$10,000). (Agreement at *Id.*). In support of this request,

1 Class Counsel will provide evidentiary support, including lodestar. Subject to Court approval, the
2 Agreement provides for payment of Class Representative Service Payment of no more than
3 \$7,500 for Plaintiff, or such lesser amount as may be approved by the Court.¹ (Agreement at
4 ¶III(M)(2)).

5 Subject to Court approval, \$5,000 will be allocated from the Gross Settlement Amount for
6 settlement of civil penalties under PAGA. Pursuant to the requirements of Labor Code §2699(i)
7 the PAGA Payment shall be allocated \$3,750 (75%) to the LWDA (the “LWDA Payment”) as the
8 LWDA’s share of the settlement of civil penalties and \$1,250 (25%) to the Net Settlement
9 Amount for distribution to the Class Members. (Agreement at ¶ III(M)(4)).

10 Finally, the Settlement provides for non-monetary relief to ensure that Defendant’s alleged
11 conduct giving rise to this Action does not recur in the future. Specifically, the Agreement
12 requires Defendant to revise its policy relating to Catering/Banquet Contract Service Charges to
13 either (1) clearly and unambiguously state that the Service Charge is not a gratuity and is not
14 shared with the banquet staff or (2) clearly state what amount of the Service Charge is intended to
15 be used as a gratuity and share that amount with the banquet staff. (Agreement at ¶ III(A)(2)).

16 **III. CASE BACKGROUND**

17 On March 24, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the
18 same on Defendant. The Notice to the LWDA included a proposed Complaint which Plaintiff
19 planned on filing with the Court, which asserted that Defendant: (1) Violated California Business
20 and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation of California
21 Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of
22 California Labor Code §§ 510, *et seq.*; (4) Failed to provide meal periods in violation of
23 California Labor Code §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods
24 in violation of California Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to
25 provide accurate and complete itemized wage statements in violation of California Labor Code §
26 226; (7) Failed to provide wages when due in violation of California Labor Code §§ 201, 202, and
27

28 ¹ Plaintiff will address the reasonableness of this award when filing his final approval papers.

203; and (8) Failed to provide gratuities in violation of California Labor Code §351. (Decl. Zakay at ¶7).

Plaintiff sought to represent a putative class of banquet employees who worked for Defendant in California between March 24, 2016 and September 29, 2020. The Action seeks alleged unpaid wages, unpaid gratuities, penalties, attorneys' fees and costs, and any other equitable or legal relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing claims. (Decl. Zakay at ¶8).

On July 28, 2020, after agreeing to attend mediation, the Parties entered into a Statute of Limitations Tolling Agreement, preserving the statute of limitations applicable to Plaintiff's claims until after the mediation is complete. Prior to mediation, the Parties engaged in investigation, formal discovery, and the exchange of documents and information. As part of this process, Defendant provided payroll and time records, as well as other relevant documents to Class Counsel to review and analyze. On September 29, 2020, the Parties participated in an half-day mediation presided over by the Honorable Steven R. Denton (Ret.) a respected jurist and mediator of wage and hour class and PAGA actions. At the conclusion of the mediation, the Parties were able to reach an agreement pursuant to a mediator's proposal, which was accepted by both Parties and memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties entered into the Agreement, which was signed by the Parties and is now presented to this Court for preliminary approval. On November 16, 2020, pursuant to the Parties Agreement, Plaintiff filed this Action against Defendant for the purpose of seeking approval of the Agreement. (Decl. Zakay at ¶9).

For purposes of this Settlement, the "Class" is defined as "all of Defendant's current and former non-exempt banquet employees who worked for Defendant in the State of California during the Class Period." (Agreement at Definition at (EE)). The Class Period is the period of time from March 24, 2016 and September 29, 2020. (See Agreement at Definitions at (G)).

Although a settlement has been reached, Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the. Defendant contends, among other things, that it has correctly and fully compensated the Class Members for wages and gratuities, provided

1 compliant meal and rest periods, provided complete, accurate itemized wage statements, and
2 complied at all times with the California Labor Code and Wage Orders. Further, Defendant
3 contends that class certification would be inappropriate for any reason other than for settlement.
4 Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further
5 contends that the Action is appropriate for class certification on the basis that the Plaintiff's
6 claims meet the requisites for class certification. Without admitting that class certification is
7 proper, Defendant has stipulated that the Class may be certified for settlement purposes only.
8 (Agreement at ¶I(F)). (Decl. Zakay at ¶11)

9 Class Counsel have diligently evaluated the Class Members' claims against Defendant.
10 Class Counsel reviewed the time and pay data, as well as other relevant documents provided by
11 the Defendant. Class Counsel reviewed and analyzed the data. Prior to mediation, counsel for
12 Defendant provided Class Counsel with access to the necessary data and information for the
13 Class, including a sample of time and payroll data. Based on the foregoing data, the evaluation of
14 Class Counsel, and their investigation, Class Counsel believe that the settlement with Defendant
15 on the terms set forth in the Agreement is fair, reasonable, and adequate and are in the best
16 interest of the Class in light of all known facts and circumstances, including the risk of significant
17 delay, the defenses asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶12).

18 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT** 19 **TO GRANT PRELIMINARY APPROVAL**

20 When a proposed class-wide settlement is reached, the settlement must be submitted to the
21 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at
22 §11.41, p.11-87). California "[p]ublic policy generally favors the compromise of complex class
23 action litigation." (*Nordstrom Comm'n Cases* (2010) 186 Cal. App. 4th 576, 581) Class action
24 settlements are approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk*
25 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794).

26 The primary question presented on an application for preliminary approval of a proposed
27 class action settlement is whether the proposed settlement is "within the range of possible
28 approval." (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d

1 616, 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so
2 that “the proposed settlement... may be submitted to members of the prospective Class for their
3 acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard*
4 *Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970)). There is an initial presumption of fairness
5 when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is
6 presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*
7 (2001) 91 Cal.App.4th 224, 245 [citation omitted]). However, the ultimate question of whether the
8 proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is
9 given to the Class Members and a final settlement hearing is held by the Court.

10 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

11 The approval of a proposed settlement of a class action suit is a matter within the broad
12 discretion of the trial court. (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235
13 (2001)). In considering a potential settlement for preliminary approval purposes, the trial court
14 does not have to reach any ultimate conclusions on the issues of fact and law which underlie the
15 merits of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91
16 Cal.App.4th at 239-40). The question whether a proposed settlement is fair, reasonable, and
17 adequate necessarily requires a judgment and evaluation by the attorneys for the parties based
18 upon a comparison of “the terms of the compromise with the likely rewards of litigation.”
19 (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983)).
20 Thus, when analyzing the settlement, the amount is “not to be judged against a hypothetical or
21 speculative measure of what might have been achieved by the negotiators.” (*Officers for Justice*,
22 688 F.2d at 625, 628). With regard to class action settlements, the opinions of counsel should be
23 given considerable weight both because of counsel’s familiarity with this litigation and previous
24 experience with cases such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982).
25 “The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness.”
26 (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979)). As a result, courts hold that the
27 recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms. Coop. v.*
28 *DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004)).

1 **B. Factors To Be Considered In Granting Preliminary Approval**

2 A number of factors are to be considered in evaluating a settlement for purposes of
3 preliminary approval. In determining whether to grant preliminary approval, the court considers
4 whether the "(1) the proposed settlement appears to be the product of serious, informed, non-
5 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
6 treatment to class representatives or segments of the class, and (4) falls within the range of
7 possible approval." (*In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal.
8 2007)). No one factor should be determinative, but rather all factors should be considered. Here,
9 the Settlement meets all of these criteria for preliminary approval.

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

12 This settlement is the result of hard-fought litigation and negotiations before an
13 experienced and well-respected mediator. Defendant has expressly denied and continues to deny
14 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
15 Class Counsel have determined that it is desirable and beneficial to the Class Members to put to
16 rest the Released Class Claims.²

17 The Parties attended an arms-length private mediation before a respected mediator.
18 Plaintiff analyzed the data and prepared and submitted a mediation brief. At the conclusion of the
19 mediation, the Parties were able to reach an agreement, but only after the mediator made a
20 proposal, which was accepted by both Parties. Plaintiff and his Counsel believe that this
21 Settlement is fair, reasonable, and adequate.

22 Class Counsel have diligently evaluated the Class Members' claims against Defendant.
23 Class Counsel reviewed the time and pay data, as well as other relevant documents provided by
24 the Defendant. Based on the foregoing data, and their investigation, evaluation and experience,
25 Class Counsel believe that the settlement with Defendant on the terms set forth in the Agreement
26 is fair, reasonable, and adequate and are in the best interest of the Class in light of all known facts

27 ² Released Class Claims are defined in the Settlement Agreement at in the Definitions Section at
28 (Y) and are limited to claims based facts and theories asserted in the Action.

1 and circumstances, including the risk of significant delay, the defenses asserted by Defendant, and
2 potential appellate issues (Decl. Zakay at ¶12).

3 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
4 trying the Action against Defendant through possible appeals which could take several years.
5 Class Counsel have also taken into account the uncertain outcome and risk of litigation, especially
6 in complex actions such as the Action. Class Counsel are also mindful of, and recognize, the
7 inherent problems of proof under, and asserted defenses to, the claims asserted in the Action.
8 Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set
9 forth in the Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶22).

10 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
11 capable advocacy on both sides. The Parties were represented by experienced and capable
12 counsel who zealously advocated their respective positions with the assistance of an experienced
13 mediator. Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations
14 were vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re*
15 *Wash. Public Power*, 720 F. Supp. at 1392).

16 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of
Approval.**

17 The proposed Settlement here has no "obvious deficiencies" and is well within the range
18 of possible approval. All Class Members will receive an opportunity to participate in the
19 Settlement and receive payment according to the same formula.

20 The amounts to compensate the Class for the alleged violations at the time this Settlement
21 was negotiated were calculated by Class Counsel. For the Class, Plaintiff estimates that Defendant
22 was subject to liability for *damages* in the amount of **\$568,178.36**, consisting of \$409,647.36 for
23 unpaid gratuities, \$8,990.84 for unpaid wages, \$107.890 for meal and rest breaks, and \$41,650 for
24 unreimbursed expenses. In addition, Plaintiff calculated that Defendant could be liable for
25 \$85,750.00 for wage statement penalties and \$190,394.40 waiting time penalties. Finally,
26 Plaintiff calculated PAGA penalties in an amount exceeding \$269,150.00.³ (Decl. Zakay at ¶6).

27 _____
28 ³ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
226 and various PAGA penalties, Plaintiff recognizes that these claims were subject to various
defenses asserted by Defendant, including, but not limited to, a good faith dispute defense as to

1 Consequently, the settlement of \$102,500.00 represents more than **18%** of the value of the
2 maximum *damages* at issue. Even when including the penalties for Plaintiff's claim for violations
3 under Labor Code §226 and Labor Code §203, the settlement represents more than **12%** of the
4 maximum potential liability, assuming all of these amounts could be proved at trial. Given the
5 amount of the settlement as compared to the potential value of claims in this case, the settlement
6 is fair and reasonable. The Settlement also provides for non-monetary relief, as described
7 hereinabove on Page 3. Clearly, the goal of this litigation to provide compensation to class
8 members for unpaid time and for breaks allegedly missed has been met. (Decl. Zakay at ¶39).

9 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D.
10 Cal. 2015) the court approved a settlement of an action claiming unpaid wages where the
11 settlement amount constituted roughly 10% of the estimated actual damages to the class. In
12 *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) the 9th
13 Circuit Court of Appeal approved a settlement of an action claiming unpaid wages where the
14 settlement amount constituted roughly 1/6 of the estimated actual damages to the class. Here, the
15 settlement consideration exceeds the percentage approved in *Stovall-Gusman* and *Dunleavy*. In
16 *Dunleavy*, the court ruled that the settlement which represented approximately 16.66% of the
17 estimated loss to the class was fair, reasonable, and adequate. As a result, this settlement, which
18

19 whether any premium wages for meal or rest periods or other wages were owed given
20 Defendant's position that Plaintiffs were properly compensated. See *Reber v. AIMCO/Bethesda*
21 *Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion
22 for summary judgment on claim for failure to provide accurate itemized wage statements "because
23 a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to
24 provide [Section 226] statements"). Additionally, there is serious doubt as to whether violations of
25 the meal/rest period regulations, which require payment of a "premium wage" for each improper
26 meal period, give rise to claims under sections 203 and 226. See *Naranjo v. Spectrum Sec. Servs.,*
27 *Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest
28 break premiums "do not entitle employees to pursue the derivative penalties in sections 203 and
226." **In fact, under *Naranjo*, the value for claims under Labor Code §§ 203 and 226 could be \$0.** Further, *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of
PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
attempt at complying 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%.

1 exceeds the percentage approved in *Dunleavy* and *Stovall-Gusman*, is entitled to preliminary
2 approval. Where both sides face significant uncertainty, the attendant risks favor settlement.
3 (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)).

4 Here, a number of defenses asserted by Defendant presented serious threats to the claims
5 of the Plaintiff and the other Class Members. Most importantly and relevant to this case,
6 Defendant strongly argued that Plaintiff and the Class Members did not forfeit any gratuities.
7 Defendant argued that the service charge, which was added to the banquet bills, constituted only a
8 charge for the actual amount due for managerial and planning services of the banquet, and not any
9 sum over and above the actual amount due for food and drink sold its patrons. Defendant further
10 argued that it specifically suggested to its banquet customers to separately and additionally pay
11 gratuities to the service staff, and that its customers regularly paid such additional gratuities.
12 Defendant argued, therefore, that California Labor Code § 351 did not apply to Plaintiff and the
13 Class Members. Because this claim represented approximately 2/3 of Plaintiff's damages, this
14 defense could substantially reduce any recovery to the Class. While Plaintiff believes that this
15 defense, and others, could be overcome, Defendant maintains these defenses have merit and
16 therefore present a serious risk to recovery for the Class. (Decl. Zakay at ¶25).

17 There was also a risk that, if the Action was not settled, Plaintiff would be unable to obtain
18 class certification and thereby not recover on behalf of any employee other than herself.
19 Defendant argued that the individual experience of each employee varied with respect to the
20 alleged claims. While other cases have approved class certification of wage and hour claims,
21 class certification in this action would have been hotly disputed and was by no means a foregone
22 conclusion. Finally, as demonstrated by the California Supreme Court decision in *Duran v. U.S.*
23 *Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-
24 wide recovery even where the class has been certified. (Decl. Zakay at ¶26).

25 Further supporting the fairness and reasonableness of the settlement is Defendant's
26 financial condition. Defendant operates a restaurant, including banquet services. This business
27 has suffered significantly as a result of the effects of the COVID-19 virus and the Governor's
28 order closing restaurants and prohibiting large events and gatherings. Considering Defendant's

1 significant financial hardship, the settlement provides great value for the Class Members, while
2 also allowing Defendant to stay in business. Simply put, Defendant could not have afforded to
3 defend the instant action while staying in business following the economic effects of COVID-19
4 on its operations. Further, during the time that Defendant's operations, including its banquet
5 services, were mandated closed by state and local authorities during the COVID-19 pandemic, the
6 alleged violations could not have occurred.

7 Here, the risk of further litigation is substantial. After arm's-length negotiations between
8 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
9 settlement.

10 **3. The Settlement Does Not Improperly Grant Preferential Treatment to Class
Representative or Segments of The Class**

11 The relief provided in the settlement will benefit all members of the Class. The settlement
12 does not grant preferential treatment to Plaintiff or segments of the Class in any way. All Class
13 Members will receive the same opportunity to participate in and receive payment through a
14 neutral formula that is based upon the weeks worked for that individual. (Decl. Zakay at ¶4).

15 Plaintiff will apply to the Court for a service payment in consideration for his service and
16 for the risks undertaken on behalf of the Class. (Agreement at Definitions at (F)). At this stage,
17 the requested Plaintiff's service payment is well within the accepted range of awards for purposes
18 of preliminary approval. (Decl. Zakay at ¶29).

19 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary
Approval Of The Settlement**

20 The stage of the proceedings at which this settlement was reached also militates in favor of
21 preliminary approval and ultimately, final approval of the settlement. Class Counsel has
22 conducted a thorough investigation into the facts of the class action. Class Counsel performed
23 significant review and analysis of Defendant's data and documents. Class Counsel engaged in
24 informal discovery in preparation for the mediation and obtained substantial and meaningful
25 discovery from Defendant. Class Counsel engaged in a thorough research and analysis of the
26 relevant claims and data. Class Counsel were also experienced with the claims at issue here, as
27 Class Counsel previously litigated and settled similar claims in numerous other actions.
28 Accordingly, the agreement to settle did not occur until Class Counsel possessed sufficient

1 information to make an informed judgment regarding the likelihood of success on the merits and
2 results that could be obtained through further litigation. (Decl. Zakay at ¶30).

3 There can be no doubt that Counsel for both Parties possessed sufficient information to
4 make an informed judgment regarding the likelihood of success on the merits and the results that
5 could be obtained through further litigation.

6 In *Glass*, the Northern District of California granted final approval of an unpaid wages
7 action although in *Glass* no formal discovery had been conducted prior to the settlement:

8 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
9 observed, however, "[i]n the context of class action settlements, 'formal discovery
10 is not a necessary ticket to the bargaining table' where the parties have sufficient
11 information to make an informed decision about settlement." [citations omitted].
(*Glass*, 2007 U.S. Dist. LEXIS 8476 at *14).

12 Here, like in *Glass*, Class Counsel engaged in informal discovery, and therefore was in an
13 equally strong position to evaluate the fairness of this settlement because Class Counsel had the
14 same sufficient information, as well as document production, independent investigations and due
15 diligence to confirm the accuracy of the information supplied by Defendant.

16 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

17 Plaintiff contends that the proposed settlement meets all the requirements for class
18 certification under the California Code of Civil Procedure §382 as demonstrated below, and
19 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
20 should conditionally certify the Class for settlement purposes only, defined as follows: "All of
21 Defendant's current and former non-exempt banquet employees who worked for Defendant in the
22 State of California during the Class Period." (Agreement at Definitions at (EE)). The Class
23 Period is the period of time from March 24, 2016 through September 29, 2020. (Agreement at
24 Definitions at (G)). The Parties estimate that there are 66 Class Members who collectively
25 approximately worked approximately 3,332 workweeks. (Agreement at ¶ II(A)(3).)

26 **A. California Code of Civil Procedure §382**

27 Plaintiff seeks certification of this Class for settlement purposes under California Code of
28 Civil Procedure § 382. While Defendant reserves all rights to dispute that the Plaintiff can satisfy
any of these requirements, Defendant will not dispute that these requirements may be satisfied in

1 this case for purposes of settlement and therefore, the proposed Class should be certified for
2 purposes of settlement only. (Agreement at ¶III(G))

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

4 Plaintiff brings this action on behalf of a putative class of non-exempt banquet employees
5 during the applicable Class Period. All of these employees are ascertainable because the class
6 members can readily be determined through examination of Defendant employment files. Given
7 that the class consists of approximately 66 members, numerosity is easily satisfied. (*Rose v. City*
8 *of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
9 requirement.)). Here, the approximately 66 current and former non-exempt banquet employees
10 that comprise the Class can be identified based on Defendant’s records and are sufficiently
11 numerous for class certification. (Decl. Zakay at ¶32(a)).

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

13 Predominance of common issues of law or fact does not require that the common issues be
14 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
15 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). “Predominance is a comparative
16 concept, and ‘the necessity for class members to individually establish eligibility and damages
17 does not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334).
18 Commonality exists if there is a predominant common legal question regarding how an
19 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
20 1524, 1536 (2008). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at
21 the certification stage since the question is “a procedural one that does not ask whether an action
22 is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003)).

23 Here, Plaintiff contends that common questions of law and fact are present, and
24 specifically the common questions of whether Defendant’s employment practices were lawful,
25 whether Defendant failed to pay gratuities, failed to provide breaks, whether Defendant provided
26 incomplete wage statements, whether Defendant failed to properly compensate employees for
27 overtime, and whether the Class is entitled to damages and penalties. (Decl. Zakay at ¶32(b)).
28

1 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

2 “The typicality requirement is met when the claims of the Plaintiff [] arise from the same
3 event or are based on the same legal theories.” (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th
4 Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
5 “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are reasonably
6 coextensive with those of absent class members; they need not be substantially identical.” (50
7 F.3d at 1020).

8 Here, the Plaintiff, like every other member of the Class, was employed by Defendant as a
9 banquet staff member and is a member of the Class. Plaintiff was subject to the same
10 employment practices concerning the banquet service charges, meal and rest periods and wage
11 compensation, and received similar wage statements. Thus, the claims of the Plaintiff and the
12 Class Members arise from the same conduct by the Defendant, involve the same employment
13 policies, and are based on the same theories. (Decl. Zakay at ¶32(c)). Therefore, the typicality
14 requirement is met as to common issues presented in this case.

15 **E. The Class Representative Fairly and Adequately Protected the Class**

16 Plaintiff contends that the Class Members are adequately represented here because
17 Plaintiff and his counsel (a) do not have any conflicts of interest with other class members, and (b)
18 will prosecute the case vigorously on behalf of the class (*See Hanlon* 150 F.3d at 1020). These
19 requirements are met here. First Plaintiff is well aware of his duties as the representative of the
20 Class and has actively participated in the prosecution of this case to date. He effectively
21 communicated with counsel, provided documents to counsel and participated in discovery,
22 investigation and negotiations in the Action. Second, Plaintiff retained competent counsel who
23 are experienced in employment class actions. Third, there is no antagonism between the interests
24 of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary
25 relief under the same set of facts and legal theories. (Decl. Zakay at ¶32(d)).

26 **F. The Superiority Requirement Is Met**

27 To certify a class, the Court must also determine that a class action is superior to other
28 available methods for the fair and efficient adjudication of the controversy. “Where classwide

litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996)). Here, a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. The Class Notice to be approved by the Court, includes all relevant information. (Decl. Zakay at ¶34).

The notice will state that the Class Members have 45 days from the date that the Class Notice is mailed to them to request exclusion or to submit an objection. The Class Members will be given an opportunity to object to the terms of the Agreement and/or the request for attorneys’ fees and costs and to participate at the final approval hearing, in accordance with the instructions set forth in the Class Notice. This notice program was designed to meaningfully reach the Class Members and advises them of all pertinent information concerning the settlement. (Decl. Zakay at ¶34). The mailing and distribution of the Class Notice satisfies the requirements of due process, and is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto. The Class Notice provides the date, time and place of the final settlement approval hearing; and the procedure and deadline for submitting comments, objections, and requests for exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f).

VII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for a date at least 120 days after the date of Preliminary Approval.

DATED: August 13, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff