

EDWARD J. WYNNE, SBN 165819
ewynne@wynnelawfirm.com
GEORGE R. NEMIROFF, SBN 262058
gnemiroff@wynnelawfirm.com
WYNNE LAW FIRM
80 E. Sir Francis Drake Blvd., Suite 3G
Wood Island
Larkspur, CA 94939
Telephone: (415) 461-6400
Facsimile: (415) 461-3900

CAMAR JONES (*pro hac vice pending*)
cjones@shavitzlaw.com
SHAVITZ LAW GROUP, P.A.
622 Banyan Trail, Suite 200
Boca Raton, FL 33431
Telephone: (561) 447-8888

Attorneys for Plaintiffs and the putative class

SUPERIOR COURT OF CALIFORNIA

SAN FRANCISCO COUNTY

REBECCA GREELEY, MARK HERNANDEZ,
individually and on behalf of other members of
the general public similarly situated,

Plaintiffs,

v.

BLUE BOTTLE COFFEE, LLC and DOES 1
through 50, inclusive,

Defendant.

Case No. CGC-23-610084

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA SETTLEMENT**

Date: December 17, 2024

Time: 10:00 a.m.

Hon. Ethan P. Schulman

Dept. 304

(approved by Dept. 304)

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

11/08/2024
Clerk of the Court

BY: VERA MU
Deputy Clerk

TABLE OF CONTENTS

I.	STATEMENT OF FACTS.....	1
II.	STATEMENT OF THE CASE	2
III.	SETTLEMENT TERMS	3
A.	CLASS DEFINITION	3
B.	SETTLEMENT FUND	4
C.	RELEASE BY CLASS MEMBERS	4
D.	CLASS REPRESENTATIVES AND CLASS COUNSEL	5
E.	NOTICE PROCEDURE.....	5
F.	PLAN OF ALLOCATION.....	5
1.	NET SETTLEMENT VALUE	5
2.	ENHANCEMENT AWARD.....	6
3.	CLASS COUNSEL’S FEES AND COSTS	6
4.	LWDA PAYMENT	6
5.	SETTLEMENT ADMINISTRATOR	6
IV.	CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT	6
A.	NUMEROSITY AND ASCERTAINABILITY	7
B.	COMMONALITY	7
C.	TYPICALITY.....	8
D.	ADEQUACY	9
E.	PREDOMINANCE	9
V.	THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED	9
A.	THE STANDARD FOR PRELIMINARY APPROVAL	9
B.	STRENGTH OF PLAINTIFFS’ CASE	11
C.	THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER LITIGATION	12
D.	THE AMOUNT OFFERED IN SETTLEMENT	13
E.	EXTENT OF DISCOVERY COMPLETED.....	14
VI.	THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE.....	14
VII.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>Abdullah v. U.S. Sec. Assocs., Inc.</i> (9th Cir. 2013) 731 F.3d 952	7
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal.1979) 485 F. Supp. 610.....	12
<i>Duran v. U.S. Bank Nat. Assn.</i> (2014) 59 Cal.4th 1	9
<i>Gautreaux v. Pierce</i> (7th Cir. 1982) 690 F.2d 616	10
<i>General Tel. Co. of the Sw. v. Falcon</i> (1982) 457 U.S. 147	8
<i>Ghazaryan v. Diva Limousine, Ltd.</i> (2008) 169 Cal.App.4th 1524.....	7
<i>Hammon v. Barry</i> (DDC 1990) 752 F.Supp. 1087.....	14
<i>Hanlon v. Chrysler Corp.</i> (9 th Cir. 1998) 150 F.3d 1011	8, 11
<i>In re Armored Car Anti - Trust Litigation</i> (ND GA 1979) 472 F. Supp. 1357	14
<i>In re General Motors Corp.</i> (3rd Cir.1995) 55 F.3d 768.....	12
<i>In re Traffic Executive Association-Eastern Railroads</i> (2d Cir. 1980) 627 F.2d 631	10
<i>Lerwill v. Inflight Motion Pictures, Inc.</i> (9th Cir. 1978) 582 F.2d 507	9
<i>Linder v. Thrifty Oil Co.</i> (2000) 23 Cal.4th 429	7
<i>Linney v. Cellular Alaska Partnership</i> (9th Cir. 1998) 151 F.3d 1234	10, 13
<i>Martinez v. Joe's Crab Shack Holdings</i> (2014) 231 Cal. App. 4th 362.....	8
<i>Officers for Justice v. Civil Service Comm'n</i> (9th Cir. 1982) 688 F.2d 615	10
<i>Overton v. Hat World, Inc.</i>	

(E.D. Cal. 2012 2012 U.S. Dist. LEXIS 144116..... 15

Richmond v. Dart Industries, Inc.
(1981) 29 Cal.3d 462 7

Rose v. City of Hayward
(1981) 126 Cal.App.3d 926 7

Sommers v. Abraham Lincoln Federal Savings & Loan Association
(ED PA 1978) 79 F.R.D. 571 14

Steinberg v. Carey
(NY 1979) 470 F.Supp. 471 14

Torrisi v. Tucson Elec. Power Co.
(9th Cir. 1993) 8 F.3d 1370 11

Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.
(2nd Cir. 2005) 396 F.3d 96 10

Wit v. United Behavioral Health
(N.D. Cal. 2016) 317 F.R.D. 106 7

STATUTES

California Labor Code
§2699 6

OTHER AUTHORITIES

Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004)..... 10

RULES

Fed. R. Civ. P. 23 7

1 Plaintiffs, REBECCA GREELEY and MARK HERNANDEZ (“Plaintiffs”) seek
2 preliminary approval of this \$675,000.00 non-reversionary class action and representative action
3 settlement between Plaintiffs and Defendant BLUE BOTTLE COFFEE, LLC (“Defendant” or
4 “BBC”). The proposed settlement, if approved, will fully resolve all claims between Plaintiffs and
5 Defendant that are pending before this Court. The proposed settlement covers certain wage and
6 hour claims on behalf of Plaintiffs and all other individuals employed by BBC as Café Leaders
7 (“CLs”) in the State of California during the relevant period: October 30, 2019 and April 1, 2024
8 (“Class Members”).

9 Plaintiffs submit that the proposed settlement is fair, reasonable, adequate, and in the best
10 interests of the class members and furthers the interests and purpose of PAGA. The proposed
11 settlement provides substantial, immediate recovery for the class members while avoiding the
12 delays and uncertainties associated with trial and subsequent appeals.

13 **I. STATEMENT OF FACTS**

14 Plaintiffs filed their class and PAGA representative action alleging claims for unpaid
15 wages, and related statutory claims under California Labor Code on behalf of themselves and a
16 class of salaried, exempt-classified CLs employed during the relevant period. Plaintiffs alleged
17 in their Complaint that: (a) Defendant denied them overtime compensation by misclassifying them
18 and other CLs as exempt from the overtime provisions in violation of Cal. Labor Code §§ 510,
19 1194 and the applicable IWC Wage Order; (b) Defendant failed to provide 30-minute
20 uninterrupted meal breaks where Plaintiffs and the other CLs were relieved of all duties and failed
21 to authorize and permit its employees to take 10-minute rest breaks in violation of Cal. Labor
22 Code §§ 512, 226.7 and the applicable IWC Wage Order; (c) Defendant failed to provide CLs
23 accurate, itemized wage statements because their wage statements did not reflect all hours worked
24 based on Defendant’s failure to keep record of all the hours CLs worked, including the overtime
25 hours they worked and the compensation for that time, which is a violation of Cal. Labor Code §§
26 226, 1174, 1174.5; (d) Defendant failed to timely pay CLs all wages owed upon the termination
27 of their employment in violation of Labor Code §§ 201, 202 and 203; and (e) Defendant engaged
28 in unfair competition in violation of California Business & Professions Code. Plaintiffs also

1 asserted a claim pursuant to the California Private Attorney General Act of 2004 (“PAGA”) for
2 civil remedies relating to the aforementioned violations by the Defendant.

3 Defendant denied, and continues to deny, the allegations asserted in the Complaint.

4 **II. STATEMENT OF THE CASE**

5 Plaintiffs initially filed a Notice of Claim with California Labor and Workforce
6 Development Agency (“LWDA”) on August 4, 2023 on behalf of Greeley (Ex. 3 to Decl. of
7 Jones), and other similarly-situated CLs employed by BBC, alleging that BBC violated the
8 following California Labor Code provisions: (a) overtime wages pursuant to Cal. Labor Code §§
9 510, 1194 and the applicable IWC Wage Order; (b) missed meal and rest periods pursuant to Cal.
10 Labor Code §§ 512, 226.7 and the applicable IWC Wage Order; (c) failure to furnish accurate,
11 itemized wage statements pursuant to Cal. Labor Code §§ 226, 1174, 1174.5; and (d) waiting time
12 penalties pursuant to Labor Code §§ 201, 202 and 203. Ex. 1 (LWDA Submission).

13 Thereafter, on October 30, 2023, Plaintiffs brought this putative class action in this Court
14 on behalf of all CLs employed by Defendant in California between October 30, 2019 and April 1,
15 2024. On January 2, 2024, Defendant filed its Answer to the Complaint. In its Answer, Defendant
16 denied all allegations in the Complaint, and asserted as its 28th affirmative defense that CLs were
17 not entitled to any relief sought because they were exempt from the provisions of California Labor
18 Code. Def. Answer at p.9, 28th Affirmative Defense (“Plaintiffs’ Complaint fails because Plaintiffs
19 and/or any allegedly similarly situated and/or aggrieved employees were exempt employees as
20 defined by California law, and thus were and are not entitled to any overtime compensation,
21 additional minimum wage compensation, or meal period and/or rest break premium pay.”). The
22 next day, on January 3, 2024, Defendant filed its Notice of Removal in this Court.

23 Upon being removed to the District Court for Northern District of California, Plaintiffs
24 filed their Motion to Remand on February 2, 2024. After full briefing, the Court ultimately granted
25 Plaintiffs’ Motion for Remand on March 18, 2024.

26 Upon being remanded to this Court, on March 27, 2024, Plaintiffs served two sets of
27 special interrogatories and set of production demands on Defendant.

28 Thereafter, the parties conferred and decided to attend mediation with renowned

1 employment mediator, Michael Russell, Esq., to attempt to resolve the claims asserted in the
2 Complaint. In advance of the mediation, Defendant provided specific data to assist the parties in
3 evaluating the claims and defenses, as well as the class of CLs' potential damages. Specifically,
4 Defendant provided data that reflected:

- 5 a. the total number of CLs employed during the relevant period was 106;
- 6 b. the average salary for CLs during the relevant period was \$67,532.88;
- 7 c. the total number of former CLs that separated from employment during the
8 relevant period was 55;
- 9 d. the total number of workweeks worked by the CLs during the relevant period was
10 10,028;
- 11 e. the total number of CLs employed between August 4, 2022 to April 1, 2024 ("the
12 PAGA period") was 65; and
- 13 f. the total number of pay periods CLs were employed during the PAGA period
14 was 2014.

15 Defendant also produced the job description(s) for CLs during the relevant period.

16 The Parties attended mediation on August 29, 2024. Although the Parties made progress
17 at mediation, they did not reach a resolution at mediation. The Parties continued settlement
18 negotiations with the assistance of the mediator after mediation, and ultimately reached a
19 settlement and agreement on the essential terms on September 12, 2024. The terms of the parties'
20 settlement are memorialized in the parties Joint Stipulation of Class Action Settlement and
21 Release ("Joint Stipulation"), and summarized below.

22 **III. SETTLEMENT TERMS**

23 The details of the settlement are set forth in the Joint Stipulation marked and attached to
24 the Declaration of Camar R. Jones as Exhibit 1. Attached as an exhibit to the Joint Stipulation is
25 the Class Notice. A summary of the settlement terms is set forth below:

26 **A. Class Definition**

27 Subject to Court approval, the parties have stipulated to certification for settlement
28 purposes only the following class definition: all persons employed by Defendant as salaried,

1 exempt-classified CLs in California from October 30, 2019 through April 1, 2024. There are
2 approximately 106 CLs covered by this action. (Decl. of Jones, ¶ 9).

3 **B. Settlement Fund**

4 In return for a release of the claims, BBC shall create a non-reversionary \$675,000.00
5 settlement fund entitled, “Gross Settlement Amount” or “GSA.” Because this is not a claims-made
6 settlement, Class Members will not be required to make a submission to participate in the
7 settlement. (Decl. of Jones, ¶ 10). The GSA will be deposited into an account maintained by the
8 Settlement Administrator within thirty-one (31) days of the Effective Date as defined in the Joint
9 Stipulation.

10 After certain deductions identified below, all Class Members will be paid on a pro rata
11 basis based on the number of weeks they worked for BBC as CLs in California between October
12 30, 2019 and April 1, 2024. The deductions from the GSA include attorneys’ fees and costs, class
13 representative enhancement awards, payment to the LWDA and the cost of settlement
14 administration. (Decl. of Jones, ¶¶ 10, 15)

15 **C. Release By Class Members**

16 In exchange for their respective payments, Class Members will release Defendant from all
17 claims under state, federal and local law that were or could have been asserted based on the facts
18 and allegations made in this action, and any amendments thereto, as to the Class Members,
19 including without limitation CLC sections 200, 201, 202, 203, 204, 210, 221, 223, 225.5, 226,
20 226.3, 226.7, 246, 510, 512, 516, 558, 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1197,
21 1197.1, 1198, 2698, *et seq.*, and 2802, California Industrial Commission Wage Orders, Cal. Code
22 Regs., title 8, section 11040, *et seq.*, California Code of Civil Procedure section 1021.5, Business
23 and Professions Code section 17200, *et seq.*, the federal Fair Labor Standards Act, 29 U.S.C. §§
24 201, *et seq.*, as amended (“FLSA”), and including all claims for or related to alleged unpaid wages,
25 overtime or double time wages, minimum wages, regular rate of pay, timely payment of wages
26 during employment, timely payment of wages at separation, meal periods and meal period
27 premiums, rest periods and rest period premiums, payroll deductions, unreimbursed business
28 expenses, wage statements, payroll records and recordkeeping, failure to pay additional 401(k)

benefits and/or deferred compensation benefits and/or matching benefits for payments received under the settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties and waiting time penalties), interest, fees, costs, as well as all other claims (collectively, the “Released Claims”) and allegations alleged in this action between October 30, 2019 and April 1, 2024.

D. Class Representatives and Class Counsel

Subject to Court approval and for settlement purposes only, the parties have stipulated that Plaintiffs, REBECCA GREELEY and MARK HERNANDEZ, will be appointed class representatives. Also subject to Court approval, the parties have stipulated that Edward J. Wynne of Wynne Law Firm, and Camar R. Jones of Shavitz Law Group, P.A. be appointed class counsel. (Decl. of Edward Wynne, ¶¶ 6, 9; Decl. of Jones, ¶ 22).

E. Notice Procedure

Subject to Court approval, the parties have agreed on Phoenix Class Action Administration Solutions (“Phoenix” or “Settlement Administrator”) as the Settlement Administrator. After updating the database provided by BBC through the National Change of Address database, the Settlement Administrator will mail the Class Notice to each class member. The Class Notice will include the estimated settlement amount to each Class Member, and instructions on how to opt-out of or object to the settlement. (Decl. of Jones, ¶ 16.)

F. Plan of Allocation

1. Net Settlement Value

The Net Settlement Value is estimated to be at approximately \$383,750.00 after deductions for attorneys’ fees (\$225,000.00) and costs (a maximum of \$15,000.00), enhancement awards (\$10,000.00 total), the cost of settlement administration (\$6,250.00) and payment to the LWDA (\$35,000.00). Payments to individual Class Members shall be calculated and apportioned from the Net Settlement Value based on the number of weeks each Class Member actually worked as a CL in California during the relevant period. (Decl. of Jones, ¶ 15).

1 **2. Enhancement Award**

2 Pursuant to the parties’ agreement, Plaintiffs will seek, and BBC will not oppose, a
3 payment of \$5,000.00 to each of the Plaintiffs as Enhancement Awards. (Decl. of Jones, ¶ 10.)

4 **3. Class Counsel’s Fees and Costs**

5 Pursuant to the parties’ agreement, the Court may award Class Counsel for the services
6 they have rendered and will render to Plaintiffs and the Class Members in relation to prosecuting
7 the claims involved in this lawsuit. Class Counsel will seek a fee award not to exceed \$225,000.00
8 or one-third of the GSA. Class Counsel will also seek reimbursement of costs in an amount not to
9 exceed \$15,000. Because this is a non-reversionary, common fund settlement, any portion of the
10 requested fees and costs that are not approved by the Court would be distributed to the Class
11 Members. (Decl. of Jones, ¶ 10).

12 **4. LWDA Payment**

13 The parties have agreed to pay the LWDA \$26,250.00, or 75% of the \$35,000 attributed
14 to the PAGA claim, per Labor Code § 2699 (i) to settle this claim, and the parties have submitted
15 or will submit this settlement to the California Labor Workforces Development Agency
16 (“LWDA”) per California Labor Code section 2699(1)(2). (Decl. of Jones, ¶ 14). The remaining
17 25% (\$8,750.00) will be payable to the PAGA Members. *Id.*

18 **5. Settlement Administrator**

19 The proposed Settlement Administrator, Phoenix Class Action Administration Solutions,
20 has agreed to cap its fee at \$6,250.00. (Ex. 2 to Decl. of Jones.) Class Counsel solicited bids from
21 three other well-known settlement administrators and Phoenix was the most competitive. (Decl.
22 of Jones, ¶ 13).

23 **IV. CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT**

24 Plaintiffs submit that the proposed settlement class meets the requirements for certification
25 in the context of settlement. California Code of Civil Procedure § 382 authorizes class suits when
26 “the question is one of a common or general interest, of many persons, or when the parties are
27 numerous, and it is impracticable to bring them all before the court.” To obtain certification a
28 party must establish the existence of both an ascertainable class and a well-defined community of

1 interest among the class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435. The
2 community of interest requirement involves three factors: “(1) predominant common questions of
3 law or fact; (2) class representatives with claims or defenses typical of the class; and, (3) class
4 representatives who can adequately represent the class.” *Lockheed Martin Corp. v. Superior Court*
5 (2000) 29 Cal.4th 1096, 1104. Finally, the court must determine that the class action proceeding
6 is superior to alternate means for a fair and efficient adjudication of the litigation. *Richmond v.*
7 *Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. These prerequisites for class certification are met
8 here. While Defendant disputes that a litigation class could be certified, it does not object to
9 certification in the context of settlement.

10 **A. Numerosity and Ascertainability**

11 The proposed class includes approximately 106 individuals, making joinder of all
12 members impractical and meeting the numerosity requirement. *Rose v. City of Hayward* (1981)
13 126 Cal.App.3d 926, 934 (class of 42 is sufficiently numerous). “[T]he purpose of the
14 ascertainability requirement is to ensure notice to potential class members.” *Ghazaryan v. Diva*
15 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1533. Here, Defendant’s own records provide the
16 ability to identify each and every class member.

17 **B. Commonality**

18 A single key common question that is capable of class-wide resolution satisfies the
19 commonality requirement. *Abdullah v. U.S. Sec. Assocs., Inc.* (9th Cir. 2013) 731 F.3d 952, 957;
20 *Wit v. United Behavioral Health* (N.D. Cal. 2016) 317 F.R.D. 106, 121. Commonality is met
21 because “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Here,
22 common questions include, *inter alia*, (a) whether Defendant uniformly compensated CLs on a
23 salary-basis and classified them as exempt under California Labor Code; (b) whether CLs spent
24 more than 50% of their days performing non-exempt tasks; (c) whether Defendant’s policies and
25 practices violated California law with respect required meal and rest breaks; (d) whether
26 Defendant failed to provide CLs accurate, itemized wage statements; and (e) whether Defendant
27 failed to timely pay CLs all wages owed upon the termination of employment.

28 It is undisputed that Defendant did not pay CLs overtime compensation because Defendant

1 classified them as exempt from overtime. Plaintiffs allege that consistent with this policy, they
2 and other CLs employed in California were not paid overtime compensation, although they
3 regularly worked over 40 hours a week. Plaintiffs also alleged that Defendant's policies denied
4 them and other California CLs meal and rest breaks. Plaintiffs further alleged that as a result of
5 these practices, Defendant failed to furnish accurate, itemized wage statements, and failed to
6 timely compensate them and other CLs. These are class-wide policies and practices which unite
7 all the Class Members. Accordingly, the commonality requirement is satisfied.

8 **C. Typicality**

9 A class representative's claims are typical if they are "reasonably coextensive with those
10 of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp.* (9th
11 Cir. 1998) 150 F.3d 1011, 1020. Typicality tends to merge with commonality, such that "a finding
12 of commonality will ordinarily support a finding of typicality." *General Tel. Co. of the Sw. v.*
13 *Falcon*, (1982) 457 U.S. 147, 157 n.13. The typicality requirement's purpose "is to assure that
14 the interest of the named representative aligns with the interests of the class. Typicality refers to
15 the nature of the claim or defense of the class representative, and not to the specific facts from
16 which it arose or the relief sought. The test of typicality is whether other members have the same
17 or similar injury, whether the action is based on conduct which is not unique to the named
18 plaintiffs, and whether other class members have been injured by the same course of conduct."
19 *Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal. App. 4th 362, 375.

20 Here, Named Plaintiffs' and the CLs' claims arise from the same practices, and are based
21 on the same legal theory, for the reasons set forth above. The Plaintiffs were employed by BBC
22 as CLs in California during the class period, and allege they were not paid overtime despite having
23 worked over 40 hours per week because Defendant misclassified them as exempt from the
24 California Labor Code's overtime provisions. Further, Plaintiffs allege that Defendant maintained
25 a policy of denying them and other California CLs meal and rest breaks. Class Members and the
26 Plaintiffs have been affected by these same uniform policies. Accordingly, typicality is therefore
27 satisfied.
28

1 **D. Adequacy**

2 “[T]wo criteria for determining the adequacy of representation have been recognized.
3 First, the named representatives must appear able to prosecute the action vigorously through
4 qualified counsel, and second, the representatives must not have antagonistic or conflicting
5 interests with the unnamed members of the class.” *Lerwill v. Inflight Motion Pictures, Inc.* (9th
6 Cir. 1978) 582 F.2d 507, 512. Plaintiffs have no interest that is antagonistic to those of the other
7 Class Members because they have not brought any individual non-class claims in this case. Also,
8 Plaintiffs have retained counsel who are very experienced in employment class actions in the food
9 and beverage industry. (Decl. of Edward Wynne, ¶¶ 6-9; Decl. of Jones, ¶ 19-24).

10 **E. Predominance**

11 In examining the predominance requirement, the “ultimate question” is whether “the
12 issues which may be jointly tried, when compared with those requiring separate adjudication, are
13 so numerous or substantial that the maintenance of a class action would be advantageous to the
14 judicial process and to the litigants.” *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 28. “The
15 answer hinges on ‘whether the theory of recovery advanced by the proponents of certification is,
16 as an analytical matter, likely to prove amenable to class treatment.’ ‘As a general rule if the
17 defendant's liability can be determined by facts common to all members of the class, a class will
18 be certified even if the members must individually prove their damages.’” *Id.*

19 For the entire relevant period, Plaintiffs allege that Defendant classified all CLs in
20 California as exempt from overtime, and did not pay them overtime despite them having worked
21 over 40 hours per week. Accordingly, the question of whether Defendant properly classified CLs
22 as exempt, and whether they are entitled to overtime compensation is a question equally applicable
23 to all Class Members. Because Defendant’s liability can be determined by this purely legal
24 question, predominance is satisfied.

25 **V. THE STANDARDS FOR PRELIMINARY APPROVAL ARE SATISFIED**

26 **A. The Standard for Preliminary Approval**

27 The “universal standard” for evaluating the fairness of a settlement is whether the
28 settlement is “fundamentally fair, adequate and reasonable.” *Officers for Justice v. Civil Service*

1 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625. “[T]he court’s intrusion upon what is otherwise a
2 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
3 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
4 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
5 whole, is fair, reasonable and adequate to all concerned.” *Id.*

6 “[T]he very essence of a settlement is compromise.” *Id.* at 624. “[I]t is the very uncertainty
7 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
8 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
9 measure of what might have been achieved by the negotiators.” *Linney v. Cellular Alaska*
10 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Even if the amount of a proposed monetary
11 settlement is a fraction of the potential recovery, that does not necessarily mean the settlement is
12 inadequate. *Id.*

13 Court approval of a class action settlement is a two-step process. The first step is counsel
14 submitting the proposed terms of the settlement to the court where the court makes a preliminary
15 fairness evaluation. If the preliminary evaluation of the settlement does not disclose a basis to
16 doubt its fairness or other obvious deficiencies, the court directs that notice be given to the class
17 and sets a final fairness hearing. Herr, *Manual for Complex Litigation, Fourth*, § 21.632 (2004).

18 Preliminary approval should be granted if the proposed settlement falls “within the range
19 of possible final approval.” *Gautreaux v. Pierce* (7th Cir. 1982) 690 F.2d at 616, 621, n.3.
20 Preliminary approval is “a determination that there is what might be termed ‘probable cause’ to
21 submit the proposal to class members and hold a full-scale hearing as to its fairness.” *In re Traffic*
22 *Executive Association-Eastern Railroads* (2d Cir. 1980) 627 F.2d 631, 634.

23 A proposed settlement is presumed to be fair when: it is reached through arm’s-length
24 negotiations; the putative class is represented by experienced counsel; and the parties have
25 conducted sufficient discovery. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.* (2nd Cir. 2005) 396 F.3d
26 96, 116. Here, all of the factors giving rise to a presumption of fairness exist. The proposed
27 settlement was the product of arm’s-length, non-collusive negotiations, overseen by an
28 experienced mediator; the class is represented by experienced counsel; and the parties have

1 conducted sufficient discovery. Thus, the settlement is presumed to be fair.

2 Courts consider the following factors in evaluating the fairness of a class action settlement:
3 (a) the strength of the plaintiff's case; (b) the risk, expense, complexity, and likely duration of
4 further litigation; (c) the risk of maintaining class action status throughout the trial; (d) the amount
5 offered in settlement; (e) the extent of discovery completed and the stage of the proceedings; (f)
6 the experience and views of counsel; (g) the presence of a governmental participant; and (h) the
7 reaction of the class members to the proposed settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998)
8 150 F.3d 1011, 1026. The relative degree of importance to be attached to any particular factor
9 depends upon the circumstances of each case. *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993)
10 8 F.3d 1370, 1376. Here, the pertinent factors weigh in favor of granting preliminary approval.

11 **B. Strength of Plaintiffs' Case**

12 The settlement takes into account the risks associated with the Plaintiffs being able to
13 prove liability, and to obtain class certification, neither of which was guaranteed under the present
14 facts. There is no dispute that BBC classified CLs as exempt from overtime until April 1, 2024,
15 when BBC reclassified the CLs in California to hourly, non-exempt employees. Plaintiffs allege
16 that they and other CLs spent well in excess of 50% of their time performing the same tasks as
17 non-exempt employees. Further, they alleged they worked in excess of forty (40) hours a week
18 with no overtime compensation. On the other hand, Defendant maintains that CLs were at all
19 times properly classified as exempt. Further, Defendant maintained that even if CLs were
20 improperly classified, they rarely worked overtime, and therefore, any potential damages would
21 be limited. BBC would also argue that the Court should award the initial violation amount for
22 each PAGA violation, as opposed to the higher continuing violation amount.

23 While the parties strongly believed in their positions, if a trier of fact agreed with
24 Defendant that CLs were properly classified as exempt, there would be no recovery. Further,
25 Plaintiffs' counsel obtained a recovery on behalf of a class of CLs employed in California although
26 the CLs signed arbitration agreements containing class and collective action waivers, which would
27 require the CLs to assert their own individual claims to obtain a recovery. Nevertheless, they will
28 enjoy the benefit of obtaining a recovery now without having to incur the cost and inconvenience

1 of asserting their individual claims. Had the Plaintiffs and all other CLs been forced to pursue
2 their claims individually, there would have been discovery (including document production and
3 depositions) and motion practice in *each* of potentially 106 separate arbitrations. Plaintiffs'
4 Counsel would have had to incur the cost of litigate each individual action, which would cost
5 significantly more than the cost incurred in this litigation to obtain a recover on behalf of the class.
6 Further, Defendant would incur the cost of paying an arbitrator by the hour, which would be funds
7 that could be used to fund the settlement. In Plaintiffs' Counsel's experience, an arbitrator's *initial*
8 *deposit* alone in each case could be upwards of \$10,000.00 before even considering the cost of the
9 litigating the proceeding to final hearing. In just the first 5 months of this litigation, the parties
10 have already spent over \$100,00.00 before even embarking on discovery. This outlay is an
11 indicator of the potential attorneys' fees the parties would incur if they pursued individual
12 arbitrations.

13 **C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

14 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
15 must weigh the immediacy and certainty of substantial settlement proceeds against the risks
16 inherent in continued litigation. *In re General Motors Corp.* (3rd Cir.1995) 55 F.3d 768, 806 ("The
17 present value of the damages plaintiffs would likely recover if successful, appropriately
18 discounted for the risk of not prevailing, should be compared with the amount of the proposed
19 settlement."); *Boyd v. Bechtel Corp.* (N.D. Cal.1979) 485 F. Supp. 610, 616-17.

20 This was complex litigation involving claims for unpaid overtime under California Labor
21 Code. In just the first 5 months of this litigation, the parties spent a significant amount of time
22 briefing the Motion for Remand before the parties could even begin to discuss discovery.
23 Plaintiffs also would not have been able to certify a class of CLs because all of the CLs signed
24 arbitration agreements which contained class and collective action waivers. Therefore, Plaintiffs
25 and all other CLs would be required to pursue their claims individually, which would result in
26 tens of thousands of dollars in attorneys' fees for *each* arbitration for discovery and motion
27 practice to prepare each matter for final hearing. This would be in addition to the cost the
28 Defendant would incur to pay an arbitrator by the hour. This case is also risky for Plaintiffs in

that it could have resulted in a defense verdict after parties spent a significant amount of time and money on discovery and final hearing.

If this case did not settle, the parties would undoubtedly face at least another year of litigating individual arbitrations, and ultimately final hearings. Despite these challenges, Plaintiffs' Counsel took this matter on a contingency basis with no guarantee of repayment and was able to obtain this strong settlement on behalf of a class of CLs at this relatively early juncture, as opposed to litigating multiple individual arbitrations which would multiply the expenses associated with the claims. The risk in continued litigation is extremely high. Thus, it is Counsel's informed opinion that benefits of this settlement outweigh the risk and that settlement at this juncture is in the best interests of the class.

D. The Amount Offered in Settlement

Based on the pre-mediation data that Defendant provided, assuming the CLs worked 1 uncompensated hour in 90% of the work weeks, their damages were estimated to be:

Cause of Action	Exposure
Unpaid Overtime	\$ 439,541.65
Wage Statement Penalties	\$ 172,250.00
Waiting Time Penalties	\$ 428,574.05
Total Meal Break Damages	\$ 879,083.29
Total Rest Break Damages	\$ 879,083.29
PAGA Initial and Subsequent	\$ 604,200.00
GRAND TOTAL	\$ 3,402,732.27

The average net recovery here of \$3,620.28 per Class Member compares favorably to other cases and is a strong result supporting approval. *Adelman, et. al. v. Starbucks Corp.*, Case No. 3:20-cv-01178-JD, ECF No. 130 (N.D. Cal. Sept. 19, 2023) (\$157.50 per Class Member); *Schmidt v. Vision Service Plan*, Case No. 2:20-cv-02400-KJN, ECF No. 57 (E.D. Cal. July 5, 2022) (\$1,202 per class member); *Amaraut v. Sprint/United Management Company*, Case No. 3:19-cv-00411, ECF No. 189-1 (S.D. Cal. January 8, 2021) (\$507.00 per class member). While it is always true that a larger settlement amount was theoretically possible, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citations and internal quotation marks

omitted). The net recovery represents a recovery of \$42.52 per work week. Given the estimated total exposure and the risks that Plaintiffs would face in attempting to win on all arguments, the \$675,000.00 settlement amount is a strong recovery.

E. Extent of Discovery Completed

The parties conducted sufficient discovery to make an informed decision regarding the settlement. The parties had the CL job description, arbitration forms signed by the CLs, compensation information for the CLs, the data reflecting the number of CLs employed during the relevant period, and the number of weeks and pay periods they were employed. Plaintiffs encouraged other CLs to participate and assisted counsel in interviewing class members. Plaintiffs also obtained information relating to the staffing of Defendant's locations. All of this information allowed Plaintiffs to make an informed decision about the potential exposure, and the litigation risks going forward. (Decl. of Jones, ¶ 17).

Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. *Hammon v. Barry* (DDC 1990) 752 F.Supp. 1087; *Steinberg v. Carey* (NY 1979) 470 F.Supp. 471; *In re Armored Car Anti - Trust Litigation* (ND GA 1979) 472 F. Supp. 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571.

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly if they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. In this case, Plaintiffs and the Class Members are represented by competent and experienced counsel. Plaintiffs' counsel recommends the proposed settlement as fair, adequate and reasonable to the class members and in their best interests. (Decl. of Jones, ¶¶ 17-18).

VI. THE PROPOSED CLASS NOTICE IS THE BEST NOTICE PRACTICABLE

Class Notice will contain an estimated individual settlement payment for each Class Member, the number of weeks during which they were employed as CLs in California during the relevant period. and information as to how to opt-out of, or object to, the settlement. The parties

1 have agreed, subject to Court approval, to have the Settlement Administrator mail notice *via* first
2 class mail, postage prepaid, to the last-known addresses of the class members as updated through
3 the U.S. Postal Service's NCOA database. This method meets the requirements of due process.
4 *Overton v. Hat World, Inc.* (E.D. Cal. 2012 2012 U.S. Dist. LEXIS 144116 at *5 (noting that
5 individual notice to class members' last known address meets the requirements of due process).
6 Returned mail with forwarding addresses will be re-mailed, while returned mail without
7 forwarding addresses will be skip traced to get an updated address and then re-mailed.
8 Accordingly, the proposed notice plan satisfies due process.

9 **VII. CONCLUSION**

10 In light of the foregoing, Plaintiffs respectfully request that the Court grant the motion for
11 preliminary approval of the class action settlement and certify the proposed class.

12
13 DATED: November 8, 2024

14
15 
16 By: Edward J. Wynne