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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

RIGOBERTO TECALIZ, individually and on
behalf of others similarly situated and on behalf
of other aggrieved employees,

Plaintiff,

vs.

NATIONAL RESTAURANT INC. DBA
BLACK BEAR DINER, a California
corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 37-2023-00046906-CU-OE-CTL

Honorable Matthew C. Braner
Department C-60

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

Date: August 15, 2025
Time: 9:00 a.m.
Dept: C-60

Complaint Filed: October 27, 2023
FAC Filed: November 27, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **August 15, 2025 at 9:00 a.m.** in Department C-60 of
3 the above-captioned Court located at 330 West Broadway, San Diego, California 92101, pursuant to
4 California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and
5 California Labor Code section 2699(1), Rigoberto Tecaliz (“Plaintiff”) will and hereby does move the
6 Court for an Order granting final approval of the proposed class action and Labor Code Private
7 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement
8 between Plaintiff and Defendant National Restaurant Inc. dba Black Bear Diner (“Defendant”).

9 Plaintiff requests that the Court enter an Order:

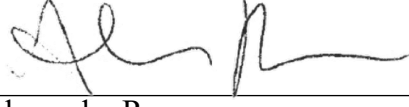
- 10 1. Granting final approval of the class action and PAGA settlement; and
11 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
12 forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement (“Settlement
13 Agreement” or “Settlement”)

14 This Motion is made pursuant to California Rules of Court, Rule 3.769, which requires
15 approval by the Court of a class action settlement. This Motion is based on the following
16 Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel
17 (Miriam L. Schimmel and Alexandra Rose), the Class Representative (Rigoberto Tecaliz), and the
18 Settlement Administrator (Nathalie Hernandez on behalf of ILYM Group, Inc.), the pleadings and
19 other records on file with the Court in this matter, and such evidence or oral argument as may be
20 presented at the hearing on this Motion.

21 Respectfully submitted,

22 Dated: July 24, 2025

BLACKSTONE LAW, APC

23
24 By: 

Alexandra Rose
Attorneys for Plaintiff Rigoberto Tecaliz
and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rigoberto Tecaliz (“Plaintiff” or “Class Representative”) seeks final approval of the
4 class action settlement reached with Defendant National Restaurant Inc. dba Black Bear Diner
5 (“Defendant”). Subject to Court approval, Plaintiff and Defendant (together, the “Parties”) have
6 settled the Released Class Claims and Released PAGA Claims as defined in the Joint Stipulation of
7 Class Action and PAGA Settlement (“Settlement Agreement” or “Settlement”) for a total amount of
8 Six Hundred Thirty-Nine Thousand Dollars and Zero Cents (\$639,000.00) (“Gross Settlement
9 Amount”). (See Declaration of Alexandra Rose in Support of Plaintiff’s Motion for Final Approval
10 of Class Action and PAGA Settlement [“Rose Decl.”], ¶ 10, Exh. 1).

11 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
12 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State
13 of California at any time during the Class Period (or if any such person is incompetent, deceased, or
14 unavailable due to military service, the person’s legal representative or successor in interest evidenced
15 by reasonable verification)” (“Class” or “Class Members”). (Settlement Agreement, ¶ 6.b.; Rose
16 Decl., ¶ 8). The “Class Period” is defined as the period from October 27, 2019, through November
17 25, 2024. (Settlement Agreement, ¶ 6.f; Rose Decl., ¶ 8). The “Settlement Class Members” consist
18 of all Class Members who did not submit a timely and valid Request for Exclusion. (Settlement
19 Agreement, ¶ 6.mm; Rose Decl., ¶ 8). The “PAGA Employees” consist of “all current and former
20 hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any
21 time during the PAGA Period (or if any such person is incompetent, deceased, or unavailable due to
22 military service, the person’s legal representative or successor in interest evidenced by reasonable
23 verification).” (Settlement Agreement, ¶ 6.y; Rose Decl., ¶ 8). The “PAGA Period” is defined as the
24 period from September 18, 2022 through November 25, 2024. (Settlement Agreement, ¶ 6.aa; Rose
25 Decl., ¶ 8).

26 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
27 approval under California law because it is fair, adequate, and reasonable. (Rose Decl., Exh. 1; See
28 also, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor*

1 *Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement confirms
2 that final settlement approval is appropriate. *There have been no objections to and no requests to opt-*
3 *out from* the Class Settlement. (Declaration of Nathalie Hernandez of ILYM Group, Inc., Regarding
4 Notice and Settlement Administration [“Hernandez Decl.”], ¶¶ 11 and 12).

5 Because the Settlement achieves outstanding results for the Settlement Class Members, the
6 PAGA Employees, and the State of California, Plaintiff respectfully requests, on behalf of the Class
7 and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and
8 reasonable, and enter judgment in accordance with the Settlement’s terms.

9 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

10 Defendant operates a Black Bear Diner franchise in El Cajon, California. Plaintiff was
11 employed by Defendant as an hourly-paid, non-exempt Server’s Assistant/Busboy from
12 approximately May 2021 to approximately July 2023. (Declaration of Plaintiff Rigoberto Tecaliz in
13 Support of Motion for Final Approval of Class Action and PAGA Settlement [“Tecaliz Decl.”], ¶ 2).

14 On September 18, 2023, Plaintiff provided written notice to the California Labor and
15 Workforce Development Agency (“LWDA”) by online submission and to Defendant by U.S. Certified
16 Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California
17 Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Rose Decl., ¶ 2).

18 On October 27, 2023, Plaintiff filed a Class Action Complaint for Damages in the action
19 entitled *Rigoberto Tecaliz v. National Restaurant Inc. dba Black Bear Diner*, San Diego County
20 Superior Court Case No. 37-2023-00046906-CU-OE-CTL (“Action”), thereby commencing a
21 putative class action against Defendant. (*Id.*, ¶ 3).

22 On November 27, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages
23 and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et
24 Seq (“Operative Complaint”) in the Action. (*Id.*, ¶ 4). The Operative Complaint alleges ten (10)
25 causes of action for violations of the California Labor Code for failure to pay minimum wages, failure
26 to pay overtime wages, failure to provide compliant meal periods and premium payments in lieu
27 thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to
28 timely pay wages during employment, failure to provide accurate wage statements, failure to timely

1 pay wages upon termination, and failure to reimburse necessary business expenses, for violations of
2 California Business & Professions Code Section 17200, *et seq.* based on the aforementioned
3 California Labor Code violations, and for civil penalties under the Private Attorneys General Act of
4 2004 pursuant to California Labor Code Section 2698 *et seq.* (“PAGA”) based on the aforementioned
5 California Labor Code violations. (Ibid).

6 On September 26, 2024, the Parties participated in a formal mediation conducted by Hon. Carl
7 J. West (Ret.) (“Mediator”), a neutral and respected mediator with extensive experience in complex
8 wage and hour matters, and with the assistance of the Mediator’s evaluations, the Parties were able to
9 reach an agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 5). The Parties
10 then worked diligently to negotiate and memorialize the terms in a long form settlement agreement.
11 (Ibid).

12 On March 25, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 6 and Exh. 1).

13 On March 26, 2025, Plaintiff filed a Motion for Preliminary Approval of Class Action and
14 PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents. (*Id.*, ¶ 7). On
15 April 18, 2025, the Court entered the Order Granting Preliminary Approval of Class Action and PAGA
16 Settlement (“Preliminary Approval Order”), thereby preliminary approving the terms of the Settlement
17 Agreement, the Notice of Class Action Settlement (“Class Notice”), and the proposed administration
18 procedures and associated deadlines. (*Id.*, ¶ 7 and Exh. 2).

19 The Parties agree that the Class described herein may be certified for settlement purposes only.
20 If for any reason the Settlement is not approved, the certification will have no force or effect and will
21 immediately be revoked. The Parties further agree that certification for purposes of approving the
22 Settlement Agreement is in no way an admission that class certification is proper under the more
23 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
24 purposes only will not be admissible for any purpose in this or any other proceeding.

25 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

26 The Parties have agreed to settle the Class and PAGA claims at issue in the Operative
27 Complaint for a non-reversionary Gross Settlement Amount of Six Hundred Thirty-Nine Thousand
28 Dollars and Zero Cents (\$639,000.00), which is exclusive of employer-side payroll taxes. (Settlement

1 Agreement, ¶ 6.q; Rose Decl., ¶ 10). The Gross Settlement Amount includes: (1) Attorneys' fees in
2 the amount of one-third (1/3) of the Gross Settlement Amount, equaling Two Hundred Thirteen
3 Thousand Dollars and Zero Cents (\$213,000.00); (2) Attorneys' actual litigation costs and expenses,
4 in the amount of Fifteen Thousand Four Hundred Ninety-Four Dollars and Six Cents (\$15,494.06);
5 (3) Settlement Administration Costs in the amount Seven Thousand Four Hundred Fifty Dollars and
6 Zero Cents (\$7,450.00); (4) Enhancement Payment in the amount of Ten Thousand Dollars and Zero
7 Cents (\$10,000.00); and (5) PAGA Amount in the amount of Thirty Thousand Dollars and Zero Cents
8 (\$30,000.00). (Settlement Agreement, ¶¶ 6.q, 9, 10, 11, and 12; Rose Decl., ¶ 10). After the above
9 Court-approved amounts are deducted from the Gross Settlement Amount, the Settlement Class
10 Members will share in a Net Settlement Amount of approximately Three Hundred Sixty-Three
11 Thousand Fifty-Five Dollars and Ninety-Four Cents (\$363,055.94). (Settlement Agreement, ¶ 6.v;
12 Rose Decl., ¶ 10).

13 The Settlement does not require Settlement Class Members to submit claims as a prerequisite
14 to receiving their *pro rata* share of the Net Settlement Amount that a Class Member may be eligible
15 to receive under the Class Settlement ("Individual Settlement Share") nor does it require PAGA
16 Employees to submit claims as a prerequisite to receiving their *pro rata* share of twenty-five percent
17 (25%) of the PAGA Amount ("Individual PAGA Payment"). (Settlement Agreement, ¶¶ 6.r and 6.t;
18 Rose Decl., ¶ 11). Individual Settlement Shares are calculated by the Settlement Administrator by
19 dividing the Net Settlement Amount by the total number of weeks each Settlement Class Member
20 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class
21 Period ("Workweeks") and multiplying the result by each Settlement Class Member's Workweeks
22 worked during the Class Period. (Settlement Agreement, ¶¶ 6.nn and 14.b; Rose Decl., ¶ 11).
23 Individual PAGA Payments are calculated by the Settlement Administrator by dividing the amount of
24 the PAGA Employees' 25% share of PAGA Amount (\$7,500.00) by the total number of pay periods
25 each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in
26 California during the PAGA Period ("PAGA Pay Periods") and multiplying the result by each PAGA
27 Employee's PAGA Pay Periods worked during the PAGA Period. (Settlement Agreement, ¶ 6.cc and
28 15; Rose Decl., ¶ 11)

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Settlement Agreement, ¶ 16; Rose Decl., ¶ 13). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 16; Rose Decl., ¶ 13). The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Settlement Agreement, ¶¶ 6.s and 16; Rose Decl., ¶ 13). Defendant will separately pay any and all employer payroll taxes owed on the wages portion of the Individual Settlement Shares. (Settlement Agreement, ¶ 16; Rose Decl., ¶ 13). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 16; Rose Decl., ¶ 13).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Settlement Agreement, ¶ 34; Rose Decl., ¶ 14). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee. (Settlement Agreement, ¶ 34; Rose Decl., ¶ 14).

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all claims and causes of action which were alleged in the Operative Complaint or which reasonably could have been alleged based on the factual allegations and legal theories in the Operative Complaint, arising during the Class Period, which specifically includes claims for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203,

204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the applicable Industrial Welfare Commission Wage Order, and California Business and Professions Code sections 17200, *et seq.* (collectively, “Released Class Claims”). (Settlement Agreement, ¶¶ 6.ff and 35). By virtue of this release, any claims under the FLSA that are predicated on the Released Class Claims are subject to res judicata pursuant to applicable law including but not limited to *Rangel v. PLS Check Cashers of California Inc.* (*Id.*, ¶ 6.ff).

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims and causes of action for civil penalties under the California Private Attorneys General Act of 2004 that were alleged in the Operative Complaint or reasonably could have been alleged based on the facts and legal theories contained in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order (collectively, “Released PAGA Claims”). (*Id.*, ¶¶ 6.gg & 36).

- In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Class Settlement shall nonetheless receive a payment for the amount of each such individual’s estimated share of the PAGA Employees’ portion of the PAGA Amount and shall have released the Released PAGA Claims. (*Id.*, ¶ 6.gg).

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1 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff,
2 individually and on his own behalf, will be deemed to have fully, finally, and forever released, settled,
3 compromised, relinquished, and discharged the Released Parties from any and all claims of any kind
4 or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which
5 Plaintiff, at any time of execution of the Settlement Agreement, had or claimed to have or may have
6 related to Plaintiff's employment with Defendant. (*Id.*, ¶ 37). It is agreed that this is a general release
7 and is to be broadly construed as a release of all claims related to Plaintiff's employment with
8 Defendant, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a
9 release of any claims that cannot be released hereunder by law, including claims for unemployment
10 insurance, disability, social security, and workers' compensation (except for claims pursuant to Labor
11 Code Sections 132a and 4553). (*Ibid*). Plaintiff understands and expressly agrees that the Settlement
12 Agreement extends to claims that he has against Defendant, of whatever nature and kind, known or
13 unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or
14 attributable to an incident or event, occurring in whole or in part, on or before the execution of the
15 Settlement Agreement. (*Ibid*). Any and all rights granted under any state or federal law or regulation
16 limiting the effect of the Settlement Agreement, including the provisions of Section 1542 of the
17 California Civil Code, ARE HEREBY EXPRESSLY WAIVED. (*Ibid*). Section 1542 of the
18 California Civil Code reads as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
22 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
23 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
24 PARTY.
25 (*Ibid*).

26 The "Released Parties" means Defendant, and its past and present direct and/or indirect
27 officers, directors, members, managers, exempt employees, agents, representatives, attorneys,
28 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
divisions, predecessors, successors, assigns, and joint venturers. (*Id.*, ¶ 6.hh).

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1 **IV. THE SETTLEMENT ADMINISTRATION PROCESS**

2 ILYM Group, Inc. (“ILYM” or “Settlement Administrator”) has taken all necessary steps to
3 effectuate the notice and settlement administration process, as set forth in the Preliminary Approval
4 Order.

5 On April 18, 2025, ILYM received the Court approved text for the Class Notice from Class
6 Counsel. (Hernandez Decl., ¶ 4).

7 On May 20, 2025, ILYM received the Class List. (*Id.*, ¶ 5). The Class Data was uploaded to
8 ILYM’s database and checked for duplicates and other possible discrepancies. (*Ibid*). The Class Data
9 contained 365 individuals identified as Class Members who worked 13,619 Workweeks during the
10 Class Period and 187 individuals identified as PAGA Employees who worked 3,343 PAGA Pay
11 Periods during the PAGA Period. (*Id.*, ¶¶ 5, 14, and 16).

12 As part of the preparation for mailing, all 365 names and addresses contained in the Class List
13 were then processed against the National Change of Address (“NCOA”) database, maintained by the
14 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses
15 of the Class Members before mailing of the Class Notice. (*Id.*, ¶ 6). The NCOA contains requested
16 change of addresses filed with the USPS. (*Ibid*). To the extent that an updated address was found in
17 the NCOA database, the updated address was used for the mailing of the Class Notice. (*Ibid*). To the
18 extent that no updated address was found in the NCOA database, the original address provided by
19 Defendant’s counsel was used for the mailing of the Class Notice. (*Ibid*).

20 On June 4, 2025, the Class Notice was mailed, via U.S. First Class Mail, to all 365 individuals
21 contained in the Class List. (*Id.*, ¶ 7). 103 Class Notices were returned to ILYM as undeliverable.
22 (*Id.*, ¶ 8). ILYM performed a computerized skip trace on the 103 returned Class Notice that did not
23 have a forwarding address in an effort to obtain an updated address for the purpose of re-mailing the
24 Class Notice. (*Ibid*). As a result of this skip trace, 53 updated addresses were obtained and the Class
25 Notice was promptly re-mailed to those Class Members, via U.S First Class Mail. (*Ibid*). A total of
26 50 Class Notices were re-mailed as a result of ILYM’s skip tracing efforts. (*Ibid*). A total of 50 Class
27 Notices have been deemed undeliverable as no updated address was found, notwithstanding the skip
28 tracing. (*Ibid*).

1 Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the
2 Class Notice to submit a Request for Exclusion, Notice of Objection, and/or Dispute (“Response
3 Deadline”). (Settlement Agreement, ¶ 6.jj). The Response Deadline was July 19, 2025. (Hernandez
4 Decl., ¶¶ 11-13). The Settlement Administrator did not receive any Requests for Exclusion, Notice of
5 Objections, and/or Disputes. (*Id.*, ¶¶ 11-13).

6 The estimated average gross Individual Settlement Share is \$982.33, the estimated highest
7 gross Individual Settlement Share is \$6,739.76, and the estimated lowest gross Individual Settlement
8 Share is \$26.33; the estimated average Individual PAGA Payment is \$40.11, the estimated highest
9 Individual PAGA Payment is \$130.12, and the estimated lowest Individual PAGA Payment is \$2.24.
10 (*Id.*, ¶¶ 15 and 16).¹

11 **V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA**

12 On March 26, 2025, Class Counsel submitted a copy of the Settlement Agreement to the
13 LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2).
14 (Rose Decl., ¶ 15). The LWDA has not objected or otherwise responded to the submissions. (*Ibid.*).

15 **VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

16 **A. The Legal Standard for Final Approval**

17 Before granting final approval of a class action settlement, the Court must review the
18 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
19 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
20 strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
21 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
22 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
23 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
24 [“The list of factors is not exhaustive and should be tailored to each case”]; *Officers for Justice v. Civil*
25 *Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
26 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and

27
28 ¹ The actual average, highest, and lowest Individual Settlement Shares will be larger than the amounts stated in the Hernandez Decl. because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and expenses in an amount that is less than \$20,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., \$4,505.94 will be part of the Net Settlement Amount).

1 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
2 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
3 *Dunk*, 48 Cal.App.4th at 1802). “The settlement or fairness hearing is not to be turned into a trial or
4 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
5 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
6 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
7 settlements.” (*Officers for Justice, supra*, 688 F.2d at 625).

8 **B. The Settlement Should be Finally Approved**

9 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
10 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
11 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
12 were at all times made at arm’s-length and were adversarial. (Rose Decl., ¶ 16). The Parties engaged
13 in extensive informal discovery prior to reaching a settlement. (*Id.*, ¶ 17).

14 **C. The Settlement is Fair and Reasonable**

15 Courts typically assess the status of discovery in determining whether a class action settlement
16 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
17 Defendant produced all of the putative class members’ time and pay data. (Rose Decl., ¶ 17). This
18 allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
19 weaknesses of the claims and the potential class-wide damages. (*Ibid*). Plaintiff’s investigation was
20 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996)
21 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
22 130 (“*Dunk/Kullar*”).

23 Based on the information exchanged, the Parties extensively briefed issues regarding class
24 certification and liability and provided their analyses to the Mediator who helped the Parties debate
25 the strengths and weakness of their respective positions. (Rose Decl., ¶ 18). At all times, Plaintiff
26 was willing and prepared to litigate this matter through class certification and trial if the Parties had
27 been unable to reach a favorable resolution. (*Ibid*). Additionally, settlement negotiations were
28 conducted by highly capable and experienced counsel. (*Ibid*). Class Counsel are respected members

1 of the California State Bar with strong records of vigorous and effective advocacy and are experienced
2 in handling complex wage and hour class action litigation. (Rose Decl., ¶ 18; Declaration of Miriam
3 L. Schimmel in Support of Motion for Attorneys' Fees and Costs, Enhancement Payment, and
4 Settlement Administration Costs, ¶ 6). Accordingly, Class Counsel had sufficient information and
5 experience to act intelligently in negotiating the Settlement.

6 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
7 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
8 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
9 must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status through trial, the amount offered in
11 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
12 views of counsel, the presence of a governmental participant, and the reaction of the class members to
13 the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

14 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal
15 and factual grounds for defending the Action. Based upon Class Counsel's experience litigating
16 similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class
17 certification and the merits of the Action absent a settlement.

18 Class Counsel is aware of Defendant's defenses and arguments and have also taken into
19 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
20 inherent in such litigation, including those involved in class and/or representative adjudication. (Rose
21 Decl., ¶ 20). Plaintiff further recognizes the burdens of proof necessary to establish liability for the
22 claims asserted in the Action, Defendant's defenses, and the difficulties in establishing entitlement to
23 monetary recovery. (*Ibid*). Plaintiff has also considered the Parties' settlement discussions, as well
24 as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and
25 employment matters. (*Ibid*).

26 Defendant denied and continues to deny any liability and wrongdoing of any kind associated
27 with the claims alleged in the Action, and further denies that class certification is appropriate for any
28 purpose other than the Settlement. (*Id.*, ¶ 21). Defendant believes that it would ultimately prevail in

1 the Action. (Ibid). Defendant proffered defenses to both certification and to the merits of Plaintiff's
2 claims. (Ibid). Defendant contended that Plaintiff's claims are not suitable for class certification
3 because individual issues would predominate should this case go to trial. (Ibid). As with all class
4 actions, these complex cases raise difficult management and proof issues and, accordingly, there is a
5 significant risk that the Court may deny class certification. (Ibid).

6 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
7 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
8 uncertain proposition. (*Id.*, ¶ 22). In order to prove liability and damages, Class Counsel would need
9 to request and analyze thousands of pages of documents, obtain the Class Members' contact
10 information, contact them, and obtain declarations at great expense. (Ibid). Obtaining the cooperation
11 of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit
12 against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the
13 cooperation of its employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and
14 trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

15 In light of the Parties' respective legal positions and the risks of continued litigation, the Gross
16 Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable.
17 (*Id.*, ¶ 23).

18 **VII. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

19 California law vests the Court with broad discretion in fashioning an appropriate notice
20 program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
21 74). To protect the rights of absent class members, the parties must provide class members with the
22 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
23 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
24 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
25 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
26 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
27 the action and afford them an opportunity to present their objections"])). The content and method of
28 the notice should be designed to apprise the class members of the terms of the proposed settlement

1 and of the class members' rights regarding the settlement. (*See Mullane, supra*, 339 U.S. at 314;
2 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
3 F. Supp. 364, 378).

4 The Class Notice approved by the Court met these requirements: it identified the Parties and
5 described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution
6 of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payment to
7 Plaintiff, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees
8 and Costs to Class Counsel. (Rose Decl., ¶ 24; *see also* Hernandez Decl., Exh. A thereto). The Class
9 Notice described the proposed Settlement with enough specificity to allow each Class Member to
10 make an informed choice whether to accept and participate in it. (*Ibid*). It also explained how and
11 when Class Members may object to or opt out of the Class Settlement. (*Ibid*). Finally, the Class
12 Notice provided the date for the hearing on final approval of the Settlement and informed Class
13 Members how to obtain additional information about the Settlement. (*Ibid*).

14 **VIII. CONCLUSION**

15 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
16 Motion for Final Approval of Class Action and PAGA Settlement.

17 Respectfully submitted,

18 Dated: July 24, 2025

BLACKSTONE LAW, APC

19
20 By: 

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and the Class