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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 CLYDE DAVIS MORRISON II, on behalf
of himself and aggrieved employees,

14 *Plaintiff,*

15 v.

16 BROOKS PEST CONTROL, INC., a
17 California corporation; and DOES 1
through 50, inclusive,

18 *Defendants.*
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Case No.: 23STCV22466

CLASS ACTION

*[Assigned for all purposes to the Hon. David
S. Cunningham III, Dept. SS-11]*

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

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Keledjian; and [Proposed] Order]*

Date: TBD
Time: TBD
Dept.: SS-11

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<u>In re Ampicillin Antitrust Litigation</u> 526 F.Supp. 494 (D. D.C. 1981)	23
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<u>In re Wash. Pub. Power Supply Sys. Sec. Litigation</u> 19 F.3d 1291, 1295-96 (9th Cir. 1994)	22
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	OTHER AUTHORITIES	
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CLYDE DAVIS MORRISON II (hereinafter “Plaintiff” or “Class Representative”)
4 filed this action (“Action”) against Defendant BROOKS PEST CONTROL, INC. (“Defendant”).
5 Plaintiff’s operative First Amended Complaint alleges the following causes of action: (1) Failure
6 to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Provide Rest
7 Periods (Lab. Code §§ 204, 223, 226.7 and 1198); (3) Failure to Pay Hourly Wages and Overtime
8 (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198); (4) Failure to Pay Proper Reporting
9 Time Wages; (5) Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a)); (6)
10 Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); (7) Failure to Indemnify
11 (Lab. Code § 2802); (7) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and (8) Civil
12 Penalties (Lab. Code § 2698, *et seq.*)(“PAGA”).

13 After engaging in substantial investigation and extensive negotiations with the assistance
14 of a respected mediator, the parties agreed to settle all claims alleged in the Action on a class-wide,
15 non-reversionary basis for Five-Hundred and Ten Thousand Dollars and Zero Cents (\$510,000.00),
16 inclusive of all fees and costs. The parties’ Class Action and PAGA Settlement Agreement
17 (“Settlement” or “Settlement Agreement”) defines the class as means “all persons employed by
18 Defendant in California and classified as persons employed by Defendants, collectively or
19 separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt
20 positions in California during the Class Period,” which is September 18, 2019 through December
21 8, 2024 (“Class”). All 487 Class Members will receive a settlement payment unless they opt out of
22 the Settlement.

23 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
24 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
25 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the proposed
26 class action settlement, as embodied in the Settlement Agreement filed concurrently herewith; (2)
27 approving the Notice of Class Action Settlement and Hearing Date for Final Court Approval
28 (“Class Notice”) to be sent to Class Members; and (3) setting a hearing for final approval of the

1 class action settlement.

2 **II. STATUS OF THE LITIGATION**

3 **A. Procedural History**

4 On September 18, 2023, Plaintiff commenced a Class Action by filing a Complaint alleging
5 causes of action against Defendant for: (1) Failure to Provide Meal Periods (Lab. Code §§ 204,
6 223, 226.7, 512 and 1198); (2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and
7 1198); (3) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197,
8 1997.1 and 1198); (4) Failure to Pay Proper Reporting Time Wages; (5) Failure to Provide Accurate
9 Written Wage Statements (Lab. Code §§ 226(a)); (6) Failure to Timely Pay All Final Wages (Lab.
10 Code §§ 201, 202 and 203); (7) Failure to Indemnify (Lab. Code § 2802); and (7) Unfair
11 Competition (Bus. & Prof. Code §§ 17200 *et seq.*). (Declaration of David Keledjian (“Keledjian
12 Decl.”), filed concurrently herewith, ¶ 11).

13 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Morrison gave timely written
14 notice to Defendant and California’s Labor and Workforce Development Agency (“LWDA”) by
15 sending his PAGA Notice on September 18, 2023 (LWDA-CM-982216-23). (*Id.* at ¶ 12, Ex. 2).
16 The LWDA did not express an interest in investigating Plaintiff’s claims within the 65 day period.
17 (*Id.*) Therefore, on January 12, 2024, Plaintiff First Amended Complaint adding a cause of action
18 for penalties under PAGA (“Action” or the “Operative Complaint”). (*Id.*)

19 **B. Investigation**

20 Before filing the lawsuit, Class Counsel investigated and researched the facts and
21 circumstances underlying the pertinent issues and the law applicable thereto. (Keledjian Decl., ¶
22 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as
23 well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting
24 their initial investigation, Class Counsel determined that Plaintiff’s claims were well-suited for
25 class and representative action adjudication owing to what appeared to be a common course of
26 conduct affecting a similarly situated group of employees. (*Id.*)

27 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
28 claims giving rise to the action, including: (1) conducting informal and formal discovery and

1 meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling
2 of time and pay records as well as employment handbooks, Plaintiff's personnel file, relevant
3 policies and other documentation; (3) researching the applicable law and potential defenses; (4)
4 constructing damage models based on interpretations of California law; and (5) reviewing
5 information provided by Defendant at the mediation. (Keledjian Decl., ¶ 14.) The Class enumerated
6 in this action is ascertainable because Class Members may be readily identified by reference to
7 Defendant's records. (*Id.*) Defendant has agreed to share the information from these records with
8 the Settlement Administrator in order to identify and contact Class Members. (*Id.*) There are
9 approximately 487 total Class Members. (*Id.*)

10 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
11 the propriety of class certification. (Keledjian Decl., ¶ 15.) After Class Counsel analyzed the
12 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
13 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
14 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

15 **C. Settlement Efforts**

16 On October 8, 2024, the parties attended mediation with Brandon McKelvey, Esq., a
17 respected and highly experienced mediator in wage and hour class actions. (Keledjian Decl., ¶ 16.)
18 During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including
19 the risks of litigation and the risks to both parties of proceeding with a motion for class certification,
20 as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final
21 pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms
22 set forth in the Settlement Agreement. (Keledjian Decl., Exhibit 1.)

23 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
24 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
25 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
26 consideration the amounts received in other wage and hour class actions, the risks inherent in
27 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement
28 award he or she will receive. (Keledjian Decl., ¶ 17.) Further, and based on the settlement

1 negotiations, which were extensive, and conducted in good faith and at arm's length between
2 attorneys with substantial experience litigating class actions and wage and hour cases, the
3 Settlement Agreement was the product of a non-collusive settlement process in which the parties
4 were forced to make significant compromises in the interest of reaching a full and complete
5 settlement of the lawsuit. (*Id.*)

6 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

7 Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay Five-
8 Hundred and Ten Thousand Dollars and Zero Cents (\$510,000.00) ("Gross Settlement Amount")
9 on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the Class and
10 PAGA Action on behalf of the proposed Class. (Keledjian Decl., ¶ 18; Exh. 1 "Settlement
11 Agreement", §1.22.) The Settlement Agreement defines the "Class" as "all persons employed by
12 Defendant in California and classified as persons employed by Defendants, collectively or
13 separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt
14 positions in California during the Class Period.," which is September 18, 2019, through December
15 8, 2024. (Settlement Agreement, §§1.5 and 1.12.) The "Net Settlement Amount," available for
16 distribution to Class Members, shall be the Gross Settlement Amount, less the Class Counsel Fees
17 Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments,
18 Administration Expenses Payment, Individual PAGA Payments, and LWDA PAGA Payment.
19 (Settlement Agreement, §1.28.) These amounts are detailed as follows:

- 20 • Class Counsel Fees Payment of not more than 33% of the Gross Settlement Amount
21 equal to One-Hundred Seventy Thousand Dollars and Zero Cents (\$170,000.00) and
22 Class Counsel Litigation Expenses Payment of not more than Twenty-Five
23 Thousand Dollars and Zero Cents (\$25,000.00); (Settlement Agreement, §3.4.2);
- 24 • Administration Expenses Payment of not more than Eight-Thousand Dollars and
25 Zero Cents (\$8,000.00); (Settlement Agreement, §3.4.3);
- 26 • Class Representative Service Payment of not more than Five-Thousand Dollars and
27 Zero Cents (\$5,000.00) to Plaintiff; and (Settlement Agreement, §3.4.1);
- 28 • PAGA Penalties in the amount of Twenty-Thousand Dollars and Zero Cents

1 (\$20,000.00) for civil penalties under PAGA, with 75% (\$15,000.00) paid to the
2 LWDA for the LWDA PAGA Payment and 25% (\$5,000.00) paid to Class Members
3 for their Individual PAGA Payments. (Settlement Agreement, §3.4.5.)

4 The “Individual Class Payment” is each Class Member’s share of the Net Settlement
5 Amount and will be calculated and apportioned from the Net Settlement Amount based on the
6 number of Workweeks a Class Member worked during the Class Period. (Settlement Agreement
7 §1.23.) Based upon the total number of Class Members, Plaintiff estimates an average net
8 settlement amount of \$579 per Class Member. (Keledjian Decl., ¶ 48.) The “Individual PAGA
9 Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties
10 calculated according to the number of Pay Periods worked during the PAGA Period. (Settlement
11 Agreement, §1.24.)

12 Defendant will pay its employer-side payroll tax obligations on the Wage Portion of the
13 Individual Class Payments in addition to the Gross Settlement Amount. (Settlement Agreement,
14 §3.3.)

15 Class Members will receive the Class Notice via first class mail (after the Settlement
16 Administrator conducts a national change of address search). (Settlement Agreement, §6.4.2.) Class
17 Members will have an opportunity to dispute the Workweeks and Pay Period information provided
18 in their Class Notice and produce evidence to support their contentions. (Settlement Agreement, §
19 6.6) The Settlement Administrator will make the final determination as to any disputes involving
20 Class Members’ allocation of Workweeks and Pay Periods. (*Id.*)

21 Class Members wishing to opt out from the Settlement Agreement must send a signed
22 written request for exclusion to the Settlement Administrator within 45 days from the initial mailing
23 of the Class Notice. (Settlement Agreement, §6.5.1.) Participating Class Members will also have
24 the opportunity to object to the Settlement Agreement by serving a copy of the objection to the
25 Settlement Administrator within 45 days after the mailing of the Class Notice (*Id.*, §6.7.2.)

26 The parties have also selected Phoenix Class Action Administration Solutions (“Phoenix”)
27 to handle the notice and administration of the Settlement. (Settlement Agreement, § 6.1.) The
28 procedures for mailing notice and processing exclusions and objections as well as distribution of

1 the Net Settlement fund are detailed in the Settlement Agreement. (Settlement Agreement, § 6,
2 *passim*.)

3 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

4 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
5 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
6 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor
7 of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473-75.)
8 The decision to certify a class is a procedural one, and should be based on the allegations in the
9 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
10 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

11 To certify a settlement class, the Court must find the two primary requirements for
12 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
13 defined community of interest in the questions of law and fact involving the parties to be
14 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
15 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

16 **A. There Is A Numerous and Ascertainable Class**

17 Whether a class is ascertainable is determined by examining the class definition, the size of
18 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d at
19 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.)
20 Class members are “ascertainable” where they may be readily identified without unreasonable
21 expense or time. *See Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932 (1981) (finding that
22 “class members are ‘ascertainable’ where they may be readily identified without unreasonable
23 expense or time by reference to official records).

24 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this
25 requirement and the requirement of numerosity is met. Class Members are “all persons employed
26 by Defendant in California and classified as persons employed by Defendants, collectively or
27 separately, and/or any staffing agencies and/or any other third parties in hourly or non-exempt
28 positions in California during the Class Period,” which is September 18, 2019 through December

1 8, 2024. (Settlement Agreement, §§ 1.5 and 1.12) Documents and information exchanged between
2 the parties reflect a class of approximately 487 Class Members. (Settlement Agreement, § 7.) The
3 Class Members have already been identified by reference to Defendant’s payroll and personnel
4 records. (Keledjian Decl., ¶ 65(b).)

5 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

6 **B. There Is A Well-Defined Community of Interest**

7 A community of interest is established by the predominance of common issues of law and
8 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

9 [D]oes not depend upon an identical recovery, and the fact that each
10 member of the class must prove his separate claim to a portion of any
11 recovery by the class is only one factor to be considered ... The mere
12 fact that separate transactions are involved does not of itself preclude
13 a finding of the requisite community of interest so long as every
14 member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiff’s favor whatever questions were common to
the class.

15 *Id.* at 809.

16 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
17 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
18 Class is united in its proof. (Settlement, § 11.1; Keledjian Decl., ¶ 65(e).) Because Plaintiffs has
19 alleged a single scheme, “the relevant proof [does] not vary among class members” and “clearly
20 presents a common question fundamental to all class members.” (*See In Re NASDAQ Market-*
21 *Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-*
22 *Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no
23 hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a
24 common course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
25 inference “eliminates the need for each class member to prove individually the consequences of
26 the defendants’ actions to him or her.” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
27 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

28 This action involves, *inter alia*, a determination about Defendant’s alleged failure to provide

1 meal period and rest periods, failure to pay wages and overtime due to allegedly common and
2 unlawful policies, failure to pay final wages when required, failure to provide accurate paystubs,
3 and largely derivative claims under the Business & Professions Code and PAGA. Plaintiffs contend
4 these practices affected Class Members in the same way. Plaintiffs contend these practices resulted
5 in a failure to compensate employees at termination, and incomplete wages displayed on wage
6 statements. The outcome of litigation on this matter depends upon questions that are common to
7 Class Members. (Keledjian Decl., ¶ 65(e).)

8 **C. The Named Plaintiff's Claims Are Typical**

9 A class representative's claims are typical when they arise from the same event, practice,
10 or course of conduct that gives rise to the claims of other putative class members, and if their claims
11 rest on the same legal theories. The class representative's claims must be "typical" but not
12 necessarily identical to the claims of other class members. It is sufficient that the representative is
13 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
14 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
15 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
16 representative must have identical interests with the class members.") Thus it is not necessary that
17 the class representative should have personally incurred all of the damages suffered by each of the
18 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

19 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
20 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
21 basis and are based on the same legal theories. (Keledjian Decl., ¶ 65(c).) Plaintiff was employed
22 by Defendant during the Class Period, and was subject to the allegedly unlawful wage and hour
23 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is member of the
24 Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether
25 Defendant failed to provide meal and rest periods, etc.) apply to the other Class Members as well.
26 The answer to these questions would determine Defendant's liability to the Class. (*Id.*) Thus, the
27 claims of Plaintiff are typical of the claims of the Class. (*Id.*) Accordingly, the typicality
28 requirement is satisfied.

1 **D. Adequacy of Class Counsel and Class Representatives**

2 Class Counsel are experienced in class actions, have represented their clients zealously and
3 have no conflicts of interest. (Keledjian Decl., ¶¶ 3-9, 65(d).) The Class Representative's interests
4 are aligned with those of Class Members, they have suffered the same injuries as Class Members,
5 and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representative are
6 adequate.

7 **E. Predominance and Superiority**

8 Individual issues do not predominate over those common to the class. (Keledjian Decl.,
9 ¶65(f).) The class action mechanism is superior to individualized actions because Class Members
10 have little incentive to bring claims that are small. (*Id.*)

11 **V. THE TWO-STEP APPROVAL PROCESS**

12 Any settlement of class action litigation must be reviewed and approved by the Court. This
13 is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed
14 review after the notice has been distributed to the class members for their comments or objections.
15 In this regard, the Manual for Complex Litigation (Second) explains:

16 A two-step process is followed when considering class settlements...
17 If the proposed settlement appears to be the product of serious,
18 informed, non-collusive negotiations, has no obvious deficiencies,
19 does not improperly grant preferential treatment to class
20 representative or segments of the class, and falls within the range of
 possible approval, then the court should direct that notice be given to
 the class members of a formal fairness hearing, at which evidence
 may be presented in support of and in opposition to the settlement.

21 (*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class
22 action settlement by the trial court is simply a conditional finding that the settlement appears to be
23 within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County Contractor's*
24 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the
25 preliminary approval of the class action settlement by the trial court is simply a conditional finding
26 that the settlement appears to be within the range of acceptable settlements.

27 Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).)
28 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little

1 as \$0 have been approved. (*See Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589
2 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also
3 approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys ‘R’ Us–Delaware, Inc.*, (C.D.
4 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million
5 settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1
6 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
7 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
8 \$300,000 settlement).)

9 A review of the preliminary approval criteria demonstrates a substantial basis for granting
10 the instant Motion and proceeding to a final settlement approval hearing.

11 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

12 As a matter of public policy, courts both encourage the use of the class action device and
13 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
14 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a
15 failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268,
16 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
17 litigation is concerned.”).)

18 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
19 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
20 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
21 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
22 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly
23 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*,
24 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

25 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
26 several factors that should be analyzed in determining if a class action settlement should be
27 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
28

1 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
2 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
3 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
4 participant; and (8) the reaction of the Class Members to the proposed settlement.

5 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
6 informal discovery before entering into meaningful settlement negotiations in this matter, including
7 a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay
8 records. (Keledjian Decl., ¶¶ 13-17.) This discovery permitted Class Counsel to fairly evaluate the
9 strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
10 experienced in the handling of wage and hour class actions and supports this Settlement. (Keledjian
11 Decl., ¶¶ 3-9.)

12 **A. The Strength of Plaintiff's Case.**

13 Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to
14 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
15 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
16 to timely pay all wages upon termination, and failed to reimburse necessary business expenses in
17 violation of California law. (Keledjian Decl., ¶ 25.)

18 Class Counsel felt confident that the claims in this case would be certified given that
19 Defendant's policies were applicable to all Class Members and unlawful on their face. (Keledjian
20 Decl., ¶¶ 28-56.) Defendant contended, however, that its policies complied with California law and
21 denied Plaintiffs' allegations.

22 **B. The Risks Associated with the Merits.**

23 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
24 Plaintiff contended that Defendant failed to provide compliant, duty-free meal periods to Class
25 Members since they were required remain on the premises during meal breaks, or were denied meal
26 breaks due to heavy workloads. (Keledjian Decl., ¶¶ 26-28.) If Defendant's defenses are proven true
27 and prevail in trial, the likely outcome of this claim would be no recovery for Class Members. (*Id.*)

28 Plaintiffs also contended that Defendant did not provide Class Members with paid 10-

1 minute rest breaks for every four hours or major fraction thereof. (Keledjian Decl., ¶¶ 30-31.)
2 Plaintiff contended that Class Members consistently worked in excess of consecutive four-hour
3 shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-
4 hour shift but were required to work through their rest breaks during their shifts. (*Id.*) Defendant
5 maintained that they did provide a reasonable opportunity for Class Members to take duty-free rest
6 breaks during their shifts and disputed all allegations that rest breaks were not provided. (*Id.*) As
7 these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel
8 applied appropriate discounts to the rest-break claim. (*Id.*)

9 Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members at least minimum
10 wages for all hours worked and proper overtime wages for hours worked in excess of eight hours
11 in a day and 40 hours in a week. (Keledjian Decl., ¶¶ 23-24.) Specifically, Plaintiff alleged Class
12 Members were required to perform pre-shift off the clock work including, but not limited to, having
13 to conduct mandatory vehicle checks and inspections. (*Id.*)

14 Defendant contended that they paid for all reported hours worked. (Keledjian Decl., 24.)
15 Defendant argued that given their written policies and practices, any unrecorded hours are likely
16 subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying
17 this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

18 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

19 In order to establish liability for these penalties, Plaintiffs would first have to establish
20 liability for the underlying claims. Plaintiffs would then have to establish that Defendant's conduct
21 was willful and knowing. (Labor Code §§ 203, 226(e).)

22 With waiting time penalties, there is always the risk that the trier of fact would not have
23 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
24 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
25 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to pay for all
26 hours worked and premiums for non-compliant meal breaks due to the underreporting of hours and
27 off the clock work. Plaintiff contends the Class Members are entitled to these wages and premiums,
28 which they allege were not paid at the time of their termination or resignation. If Plaintiff is

1 successful on his claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant,
2 however, contends it provided employees with the reasonable opportunity to take meal breaks,
3 asked Class Members to confirm the accuracy of their time records, and therefore had good-faith
4 defenses under *Brinker* and its progeny. Defendant likewise contends that it properly paid all hours
5 worked by its employees. Based upon Defendant’s potential success in establishing both that a good
6 faith dispute existed with regard to unpaid wages, and Defendant endeavored in good faith to supply
7 accurate wage statements, Defendant argues the claims for paystub violations and waiting time
8 penalties have little or no value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308,
9 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate
10 Labor Code § 226, even if it is later determined that employer did not properly pay all wages due).
11 As such, there was risk associated with wage statement and waiting time penalties that Class
12 Counsel had to consider. (Keledjian Decl., ¶¶ 33-39.)

13 **D. The Risks Associated with the PAGA Penalties.**

14 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
15 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
16 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
17 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
18 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
19 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
20 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
21 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty
22 amount specified by this part if, based on the facts and circumstances of the particular case, to do
23 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”]); *See*,
24 *e.g.*, *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018),
25 (recognizing court’s ability to reduce PAGA penalties). Courts have held that situations similar to
26 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should lead
27 to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th
28 1112, 1134-1135 (2012) (holding that reduction was justified when employer “attempted to comply

1 with the law”); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS
2 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA penalties more than 80% – from \$2.8
3 million to \$500,000 – when “employees suffered no injury” employers were “not aware” of the
4 violation and “took prompt steps to correct all violations once notified”).

5 Plaintiff discounted potential penalties under this claim given this authority, and for reasons
6 already discussed. The PAGA claims are premised on the same underlying unpaid wages, meal and
7 rest break, wage statement, and waiting time claims, and thus subject to the same disputes and
8 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
9 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
10 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims makes
11 the settlement’s proposed PAGA payment of \$20,000 appropriate. (Keledjian Decl., ¶¶ 42-45.)

12 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

13 Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff
14 and Class Members associated with this litigation was significant. (Keledjian Decl., ¶¶ 49-42.) A
15 class trial would have required the retention of expensive expert witnesses, the accrual of extensive
16 litigation costs, and the parties would have had to spend a substantial amount of time litigating this
17 matter. (*Id.*)

18 Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome
19 at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay
20 for Class Members who will have already waited considerable time for resolution in this matter.

21 **F. The Risk of Maintaining Class Action Status Through Trial.**

22 In class actions, decertification is always a possibility. There is always a risk that a trial of
23 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.
24 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
25 decertification is a real risk that Class Counsel must take into account.

26 **G. The Amount Offered in Settlement.**

27 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
28 collusive, and arms-length negotiations between the parties with an experienced mediator. In order

1 to determine the approximate potential damages which would be owed to each of the Class
2 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
3 Counsel with records for a sampling of Class Members. By analyzing this information, Class
4 Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial. (Keledjian
5 Decl., ¶¶ 13-17.)

6 There are approximately 487 total Class Members. Based on the data provided, Class
7 Counsel estimated the following maximum exposures: unpaid wage claim at **\$288,179.04**, meal
8 period claim at **\$192,119.36**, rest period claim at **\$192,119.36**, wage statement claim at **\$170,110**,
9 waiting time penalties at **\$890,948.16**, reimbursement of business expenses claim at **\$14,610**, and
10 on PAGA at **\$43,690**, for a total maximum exposure of **\$1,400,849.52**. (Keledjian Decl., ¶ 21.)

11 However, taking into account the difficulties of proof, the Defendant's defenses, and other
12 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
13 relief that the class could reasonably expect to be awarded at trial is significantly less than the
14 maximum exposure estimated above. (Keledjian Decl., ¶ 22.)

15 Once Class Counsel was able to determine the maximum potential damages, it was able to
16 determine a fair and reasonable settlement for the Class. (Keledjian Decl., at ¶¶ 23-45) Class
17 Counsel analyzed the likelihood of success on the merits and believed that the Class had a
18 reasonable likelihood of success on the core claims. (*Id.*) However, Defendant disputes this
19 contention, denies all wrongdoing in this matter and are confident they have strong legal and factual
20 defenses to Plaintiff's claims. After taking into account the likelihood of success on each claim and
21 the challenges faced with certifying these claims, Class Counsel determined that the settlement
22 amount of \$510,000.00 was fair and reasonable.

23 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
24 including but not limited to, interviewing Plaintiff on repeated occasions, drafting pleadings,
25 conducting discovery, and meeting and conferring with defense counsel about same; reviewing and
26 analyzing time records and various policies, Plaintiff's personnel files, and other documentation;
27 researching California law; preparing for and attending mediation; and negotiating and finalizing
28 the Settlement Agreement and related documents. (Keledjian Decl., ¶¶ 13-17.)

1 Among those matters considered during the course of settlement negotiations were the
2 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and length
3 of further litigation, including class certification and the appeals process; the present state of the
4 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
5 of a settlement versus the long wait necessitated by any potential judgment in class members' favor;
6 the burdens of proof necessary to establish liability against Defendant; and Defendant's defenses
7 to the action. (Keledjian Decl., *passim*).

8 Class Counsel believes that the settlement is fair and reasonable and serves the best interests
9 of Class Members. Although the recommendations of counsel proposing the class settlement are
10 not conclusive, the Court can properly take the recommendations into account, particularly if
11 counsel has been involved in litigation for some period of time, appear to be competent, and have
12 experience with this type of litigation, and significant discovery has been completed. *See Newberg*,
13 §11.47.

14 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND** 15 **REASONABLE**

16 It is appropriate to provide a relatively modest additional incentive payment to the class
17 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
18 F.Supp. 294.

19 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing
20 and helping to prosecute this class action. Plaintiff spent significant time better apprising himself
21 of his rights, deciding whether remedial action should be taken, how it should be taken, searching
22 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the
23 case and the law. (Keledjian Decl., ¶ 60.) In the end, Plaintiff decided to vindicate not only his own
24 rights but also those of his co-workers by filing a class action lawsuit. (*Id.*)

25 The courage it took to do this should not be underestimated. (Keledjian Decl., ¶ 61.) By
26 suing Defendants and serving as the class representative in this case, Plaintiff contends he increased
27 his risk of retaliation by prospective employers and put his own future employment prospects at
28 risk. (*Id.*) But Plaintiff did not allow his fear of the potential repercussions of being a class

1 representative deter his from acting for the benefit of Class Members. (Keledjian Decl., ¶ 62.) To
2 the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has
3 devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute
4 this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit,
5 Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided
6 Class Counsel with information about Defendant and about the industry generally, reviewed
7 documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in
8 the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed
9 and signed the Settlement Agreement. (*Id.*)

10 In sum, Plaintiff has diligently, adequately, and fairly represented Class Members, and has
11 not placed his interests above any member of the putative class. This sort of payment to a class
12 representative has been a common feature of settlements negotiated by Class Counsel and has been
13 routinely approved by trial courts. (Keledjian Decl., ¶ 63)

14 The Settlement allocates an incentive award in the amount of \$5,000.00 to the Class
15 Representative. (Settlement § 3.4.1.) This amount is a far cry from the \$50,000 of enhancement
16 awards to the two named plaintiffs approved by the trial court in *Clark*. See *Clark Clark v. American*
17 *Residential Services, LLC* (2009) 175 Cal.App.4th at 807. Although Class Counsel appreciate that
18 the Court has a duty to ensure that class representatives are not overcompensated at the expense of
19 the class, modest incentive awards in employment class actions, such as the one here, are necessary
20 not only to compensate class representatives for the time they spend in the case, but also, and more
21 importantly, to encourage aggrieved employees to challenge questionable employment practices
22 notwithstanding the very real consequences they may face.

23 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
24 \$5,000.00 to the Class Representative is fair and reasonable. (Keledjian Decl., ¶ 64)

25 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
26 **CLASS MEMBERS.**

27 Constitutional due process requires that class members be provided with notice sufficient
28 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*

1 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
2 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
3 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
4 convey information regarding the settlement and the class members' rights, entitlements, and
5 obligations; and afford class members the opportunity to present their objections. (*Id.*)

6 The Class Notice meets constitutional standards because it provides all the information a
7 reasonable person would need to make a fully informed decision about the settlement. It will notify
8 all class members of the terms of the settlement, of its effect on their rights, of their options as class
9 members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those
10 options. (Settlement Agreement §§ 6.1-6.8.5.) Moreover, the Class Notice will specifically direct
11 any class members who have questions or concerns to contact the Settlement Administrator or Class
12 Counsel. (Settlement Agreement, Ex. A, the "Notice," § 9.)

13 The standard for determining the adequacy of notice is whether the notice has "a reasonable
14 chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975)
15 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of
16 Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is
17 preferred when possible and dissemination of combined certification/settlement notice is a common
18 and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

19 Here, the Class Notice will be sent via first-class mail to each Class Member. (Settlement
20 Agreement, § 6.4.2.) If any Class Notices are returned undeliverable without a forwarding address,
21 the Settlement Administrator will use the national change of address database and perform a skip
22 trace to locate the Class Member and mail a new Class Notice to him or her at the correct address.
23 (Settlement Agreement, § 6.4.3.) Thus, most, if not all, Class Members will likely receive the Class
24 Notice.

25 Pursuant to controlling authority, the proposed Class Notice and method of distribution fully
26 comport with due process requirements. Therefore, the Court should approve the Class Notice and
27 direct that it be distributed as proposed herein.

28 ///

1 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

2 Non-settling parties and third parties periodically may attempt to object to proposed class
3 action settlements, but the right of non-settling parties to object at the final settlement approval
4 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
5 members have standing to object to a proposed settlement. “Beginning from the unassailable
6 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
7 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
8 (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being filed to
9 obtain a good faith determination, no persons other than class members have standing to object to
10 the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

11 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
12 **REASONABLE AND SHOULD BE APPROVED.**

13 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek
14 an award of fees of no more than One-Hundred and Seventy Thousand Dollars and Zero Cents
15 (\$170,000.00), or one-third of the Gross Settlement Amount, and actual reasonable litigation costs
16 in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
17 (Settlement Agreement, § 3.4.2.) The requested fees are fair compensation for a law firm involved
18 in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent
19 basis. (Keledjian Decl. ¶¶ 57-59.) Defendant will not oppose Class Counsel’s above fees and cost
20 request. (Keledjian Decl. ¶ 57.)

21 California courts routinely look to the federal courts on class action approvals. The Ninth
22 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
23 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
24 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
25 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
26 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts have
27 discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
28 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

1 Several courts have, however, expressed frustration with the “lodestar” approach for
2 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
3 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
4 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
5 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
6 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723 F.Supp.
7 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach to
8 determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
9 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

10 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
11 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
12 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances
13 of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at
14 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with modest hours
15 expended should not be penalized but should be rewarded for considerations of time saved by
16 superior services performed.” (*Id.* at §§ 14-10:14-11.)

17 The attorneys’ fees request provided for in the Settlement Agreement is commensurate with
18 judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater
19 than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities Litigation*
20 (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re*
21 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiff
22 counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust*
23 *Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker*
24 *v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-
25 third (1/3) of recovery achieved).)

26 In wage and hour class actions in particular, California trial courts have customarily
27 approved attorney’s fees consistent with or greater than the percentage of the common fund
28 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC

220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

Here, Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Keledjian Decl., ¶¶ 57-59.) The Court should also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for Class Counsel is reasonable.

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Approve the Settlement Agreement;
2. Approve the Class Notice, attached to the Settlement Agreement as Exhibit A;
3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;
4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;
5. Approve and appoint Emil Davtyan, David Yeremian, David Keledjian, and Kevin Burns of D.Law, Inc., to serve as Class Counsel for settlement purposes;
6. Approve and appoint Phoenix Class Action Administration Solutions as the Settlement Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;
7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

1 8. Order Defendant to disclose to Phoenix Class Action Administration Solutions the Class
2 Data, as provided for in the Settlement Agreement, and any other information required by the
3 Settlement Administrator to effectuate the terms of the Settlement;

4 9. Order that Phoenix Class Action Administration Solutions mail the Class Notices to Class
5 Members; and

6 10. Set a date for the Final Approval Hearing.

7
8 Dated: July 11, 2025

Respectfully submitted,

9 D.LAW, INC.

10
11 By /s/ David Keledjian

12 Emil Davtyan
13 David Yermian
14 David Keledjian
15 Kevin Burns
16 Attorneys for Plaintiffs on behalf of
17 themselves and others similarly situated
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