

Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff GABRIELA GUERRERO,
individually, and on behalf of other similarly situated employees
and aggrieved employees pursuant to the California
Private Attorneys General Act

[Additional counsel listed on next page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN**

GABRIELA GUERRERO, OSMIN
CHAVARRIA MEJIA, ELMER CHAVARRIA
MEJIA, RAFAEL MENJIVAR
CASTELLANOS, individually, and on behalf of
other similarly situated employees and aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiffs,

vs.

SAR CALIFORNIA HOLDCO INC. DBA
SARKU JAPAN, a California corporation; and
DOES 1 through 25, inclusive,

Defendants.

Case No. BCV-23-104255

Honorable Thomas S. Clark
Department 17

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

Date: March 5, 2026
Time: 8:30 a.m.
Dept.: 17
Address: 1415 Truxton Ave.
Bakersfield, CA 93301

Complaint Filed: December 26, 2023
FAC Filed: November 6, 2025
Trial Date: Not Set

1 **D.LAW, INC.**

2 Emil Davtyan (SBN 299363)

3 emil@d.law

4 David Yeremian (SBN 226337)

5 d.yeremian@d.law

6 Roman Shkodnik (SBN 285152)

7 r.shkodnik@d.law

8 Amanda Fazio (SBN 346350)

9 a.fazio@d.law

10 450 N Brand Blvd Suite 840

11 Glendale, CA 91203

12 Telephone: (818) 962-6465

13 Facsimile: (818) 962-6469

14 Attorneys for Plaintiffs OSMIN CHAVARRIA MEJIA,

15 ELMER CHAVARRIA MEJIA, and RAFAEL MENJIVAR

16 CASTELLANOS on behalf of themselves and others similarly situated

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on March 5, 2026 at 8:30 a.m. in Department 17 of the above-captioned Court located at 1415 Truxtun Avenue, Bakersfield, California 93301, pursuant to California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court, Plaintiffs Gabriela Guerrero, Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos (collectively, “Plaintiffs”) will and hereby do move the Court for an Order granting preliminary approval of the proposed class action and PAGA settlement between Plaintiffs and Defendant SAR California Holdco., Inc. dba Sarku Japan (“Defendant”).

Plaintiffs request that the Court enter an Order:

1. Preliminarily approving the Joint Stipulation and Settlement Agreement to Resolve Class Action and PAGA Claims (“Settlement” or “Settlement Agreement”) attached as Exhibit 4 to the Declaration of Alexandra Rose in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement (“Rose Decl.”);

2. Certifying the Class for Settlement purposes;

3. Appointing Plaintiffs Gabriela Guerrero, Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos as the Class Representatives for Settlement purposes;

4. Appointing Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, and Alexandra Rose of Blackstone Law, APC and Emil Davtyan, David Yeremian, Roman Shkodnik, Enoch J. Kim, and Amanda Fazio of D. Law, Inc as Class Counsel for Settlement purposes;

5. Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached as Exhibit A to the Settlement Agreement, to be mailed to the Class;

6. Approving the opt-out and objection procedures provided in the Settlement Agreement and set forth in the Class Notice;

7. For each Class Member and Aggrieved Employee, directing Defendant to furnish their full name, Social Security Number, last-known address, and number of pay periods worked in a non-exempt position during the Class Period and PAGA Period to the Settlement Administrator within fourteen (14) calendar days after entry of the order granting preliminary approval of the Settlement;

8. Approving the proposed deadlines for the settlement administration process; and

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declaration of Alexandra Rose, the Declaration of Enoch J. Kim, the Declarations of Plaintiffs Gabriela Guerrero, Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos, the Declaration of the Settlement Administrator (Julie Green of CPT Group, Inc.), the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Dated: February 9, 2026

[Handwritten signature]

Dated: February 9, 2026

By: /s/ Enoch J. Kim
Enoch J. Kim
 Attorneys for Plaintiffs Osmin Chavarria Mejia,
 Elmer Chavarria Mejia, and Rafael Menjivar
 Castellanos

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
A.	Class Definition	4
B.	Amount of Settlement.....	4
C.	Allocation and Funding of the Gross Settlement Amount	4
D.	Released Claims	7
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	8
V.	THE SETTLEMENT IS PRESUMED FAIR.....	9
A.	The Settlement Was Reached as a Result of Arm’s-Length Bargaining	9
B.	Sufficient Investigation and Discovery by Experienced Class Counsel	10
C.	The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks.....	10
1.	Class Counsel’s Analysis of the Maximum Available Liability and Damages	11
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	16
A.	An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable.....	16
B.	The Class Shares a Well-Defined Community of Interest	17
C.	A Class Action is Superior to a Multiplicity of Litigation.....	18
VII.	THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE.....	19
VIII.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	19
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS.....	20
X.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D. Cal. 2013)	15
<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980).....	9
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987)	17
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	12
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	12
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018)	15
<i>Castillo v. ADT, LLC</i> , 2017 WL 363108 (E.D. Cal. Jan. 25, 2017)	15
<i>Choate v. Celite Corp.</i> , 215 Cal App. 4th 1460, 1468 (2013)	14
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009)	9
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987)	17
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016).....	15
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967).....	17
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	12
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008).....	15
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015)	19
<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	17
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014)	19
<i>Jaimez v. DAIOHS USA, Inc.</i> , 181 Cal.App.4th 1286 (2010).....	14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	10
<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000)	19
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	18
<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976)	18
<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).....	16
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	19
<i>Naranjo v. Specturm Security Services, Inc.</i> , 40 Cal.App.5th 444 (2019).....	14
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982).....	9

1	<i>Price v. Starbucks Corp.</i> , 192 Cal.App.4th 1136 (2011).....	14
2	<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981)	17
3	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6, 2017)	15
4	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007)	18
5	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006).....	9
6	<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013).....	15
7	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112,1131 (2012)	15
8	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	8, 9, 10
9	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021).....	15

Statutes

11	Code of Civil Procedure Section 382.....	16
12	Labor Code section 203	14

Other Authorities

14	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf	12
----	--	----

Rules

17	Cal. Rules of Court, Rule 3.769(c)	8
18	Cal. Rules of Court, Rule3.769(g)	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Gabriela Guerrero, Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos (collectively, “Plaintiffs”) seek preliminary approval of the Joint Stipulation and Settlement Agreement to Resolve Class Action and PAGA Claims (“Settlement” or “Settlement Agreement”) entered into between Plaintiffs and Defendant SAR California Holdco, Inc. dba Sarku Japan (“Defendant”) (collectively, with Plaintiffs, the “Parties”). (Declaration of Alexandra Rose in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“Rose Decl.”], Exh. 4). The Settlement terms are outlined as follows:

- Class Size: As of the date of the mediation, approximately three hundred thirty-six (336) individuals.
- Gross Settlement Amount: Three Hundred Ninety Thousand Dollars (\$390,000.00).
- Attorneys’ Fees and Costs: Attorneys’ fees of up to thirty-five percent (35%) of the Gross Settlement Amount (\$136,500.00 if the Gross Settlement Amount is \$390,000.00) plus actual litigation costs and expenses not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), to be paid from the Gross Settlement Amount.
- Enhancement Awards: Ten Thousand Dollars (\$10,000.00) each to Plaintiffs (total, \$40,000.00), to be paid from the Gross Settlement Amount.
- Settlement Administration Costs: Not to exceed Ten Thousand Five Hundred Dollars and Zero Cents (\$10,500.00), to be paid from the Gross Settlement Amount.
- PAGA Amount: Thirty Thousand Dollars (\$30,000.00) from the Gross Settlement Amount, 75% of which (\$22,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA”) and the remaining 25% (\$7,500.00) to be paid to the Aggrieved Employees.
- Estimated Net Class Settlement Amount: One Hundred Forty-Eight Thousand Dollars and Zero Cents (\$148,000.00) to be distributed to Participating Class Members.

As set forth herein, the Settlement is the product of informed, arms-length negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court grant preliminary approval of the Settlement, conditionally certify the Class, approve the proposed Notice of Class Action Settlement (“Class Notice”), and set a hearing date for final settlement

1 approval, among other requested relief.

2 II. FACTUAL AND PROCEDURAL BACKGROUND

3 Defendant operates Japanese made-to-order teriyaki and sushi restaurants across California.
4 Plaintiff Gabriela Guerrero was employed by Defendant as an hourly-paid, non-exempt Cashier from
5 approximately September 2018 to approximately March 2019 and approximately July 2021 to
6 approximately January 2023. (Declaration of Gabriela Guerrero in Support of Motion for Preliminary
7 Approval of Class Action and PAGA Settlement [“Guerrero Decl.”], ¶ 2). Plaintiff Osmin Chavarria
8 Mejia was employed by Defendant as an hourly-paid, non-exempt Cook from approximately April 2018
9 to June 2018 and July 2019 to January 2023. Declaration of Osmin Chavarria in Support of Plaintiffs’
10 Motion for Preliminary Approval of Class Action and PAGA Settlement [“O.Mejia Decl.”], ¶ 2).
11 Plaintiff Elmer Chavarria Mejia was employed by Defendant as an hourly-paid, non-exempt Cook from
12 approximately April 2021 to February 2023. (Declaration of Elmer Chavarria Mejia in Support of
13 Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement [“E.Mejia Decl.”], ¶
14 2). Plaintiff Rafael Menjivar Castellanos was employed by Defendant as an hourly-paid, non-exempt
15 Cook from approximately January 2020 to February 2023. (Declarations of Plaintiff Rafael Menjivar
16 Castellanos in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA
17 Settlement [“Menjivar Decl.”], ¶ 2).

18 On October 20, 2023, Plaintiff Gabriela Guerrero provided written notice to the LWDA by online
19 submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3,
20 of the specified provisions of the California Labor Code alleged to have been violated by Defendant.
21 (Rose Decl., ¶ 8 and Exh. 2).

22 On December 26, 2023, Plaintiff Gabriela Guerrero filed a Complaint for Enforcement Action
23 Under the Private Attorneys General Act, Cal. Labor Code §§ 2698 *Et Seq.* in the action entitled *Gabriela*
24 *Guerrero v. SAR California Holdco Inc. dba Sarku Japan*, Kern County Superior Court Case No. BCV-
25 23-104255 (“Action”), thereby commencing a representative action under the Private Attorneys’ General
26 Act (“PAGA”) against Defendant. (*Id.*, ¶ 9).

27 ///

28 ///

1 On January 9, 2024, Plaintiffs Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael
2 Menjivar Castellanos provided written notice to the LWDA by online submission and to Defendant by
3 U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the
4 California Labor Code alleged to have been violated by Defendant. (*Id.*, ¶ 10 and Exh. 3).

5 On January 11, 2024, Plaintiffs Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael
6 Menjivar Castellanos filed a Class Action Complaint in the action entitled *Osmin Chavarria Mejia, et al.*
7 *v. SAR California Holdco Inc. dba Sarku Japan*, Monterey County Superior Court Case No. 24CV000168
8 (“*Mejia Action*”), thereby commencing a putative class action complaint against Defendant. (*Id.*, ¶ 11).

9 On March 6, 2024, Plaintiff Gabriela Guerrero propounded written formal discovery onto
10 Defendant (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment
11 (Set One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for
12 Production of Documents (Set One)), and served a proposed Belaire-West notice. (*Id.*, ¶ 12).

13 On March 14, 2024, Plaintiffs Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael
14 Menjivar Castellanos filed a First Amended Class Action Complaint in the *Mejia Action*, which added a
15 cause of action under PAGA. (*Id.*, ¶ 13).

16 On December 17, 2024, the Parties participated in a formal mediation conducted by Gig Kyriacou,
17 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour
18 matters, and with the assistance of the Mediator’s evaluations, the Parties were able to reach an agreement
19 to resolve this dispute on a class and representative basis. (*Id.*, ¶ 14). The Parties then worked diligently
20 to negotiate and memorialize the terms in a long-form settlement agreement. (*Ibid.*).

21 On November 6, 2025, Plaintiffs filed a First Amended Class and Representative Action
22 Complaint (“Operative Complaint”) in the *Guerrero Action*, which added Plaintiffs Osmin Chavarria
23 Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos as named plaintiffs and added the entirety
24 of the class and PAGA claims from the *Mejia Action*. (*Id.*, ¶ 15). The Operative Complaint alleges
25 thirteen (13) causes of action for violations of the California Labor Code for failure to pay minimum
26 wages, failure to pay overtime wages, failure to provide compliant meal periods and premium payments
27 in lieu thereof, failure to provide compliant rest periods and premium payments in lieu thereof, failure to
28 pay vacation wages, failure to comply with paid sick leave requirements, failure to provide accurate wage

statements, failure to keep required payroll records, failure to produce requested employment records, failure to reimburse necessary business expenses, and failure to timely pay wages upon termination, for violations of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations. (Ibid).

On December 22, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 16 and Exh. 4)

III. THE SETTLEMENT TERMS

A. Class Definition

For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former non-exempt employees who worked for Defendant in the State of California at any time during the Class Period, excluding those individuals who have already released, assigned, or otherwise forfeited the claims asserted in the Action” (“Class” or “Class Member(s)”). (Rose Decl., ¶ 17; Settlement Agreement, ¶ 5). The Class Period is defined as the period from October 22, 2022 through December 31, 2024. (Rose Decl., ¶ 17; Settlement Agreement, ¶ 8). At the time of the mediation, based on information provided by Defendant, it is estimated that there are a total of approximately three hundred thirty-six (336) Class Members. (Rose Decl., ¶ 17).

B. Amount of Settlement

The Parties have agreed to settle the class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of Three Hundred Ninety Thousand Dollars (\$390,000.00), exclusive of employer-side payroll taxes, subject to the escalator provision in Paragraph 50(a)(ii) of the Settlement Agreement. (Rose Decl., ¶ 18; Settlement Agreement, ¶ 16).

C. Allocation and Funding of the Gross Settlement Amount

The Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other allocations. (Rose Decl., ¶ 18; Settlement Agreement, ¶ 16). The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$136,500.00 if the Gross Settlement Amount is \$390,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (3) Settlement Administration Costs, not to exceed Ten Thousand Five Hundred Dollars and Zero Cents

1 (\$10,500.00); (4) Enhancement Awards in the aggregate amount of Forty Thousand Dollars and Zero
2 Cents (\$40,000.00); and (5) PAGA Amount in the amount of Thirty Thousand Dollars and Zero Cents
3 (\$30,000.00). (Rose Decl., ¶ 18; Settlement Agreement, ¶¶ 16 and 51(a-d)). After the above-estimated
4 amounts are deducted from the Gross Settlement Amount, the Net Class Settlement Amount that will be
5 available for Class Members is currently estimated to be One Hundred Forty-Eight Thousand Dollars and
6 Zero Cents (\$148,000.00). (Rose Decl., ¶ 18). Additionally, 25% of the PAGA Amount (“PAGA
7 Payment”), which is \$7,500.00 out of \$30,000.00, will be fully distributed to “all current and former non-
8 exempt employees who worked for Defendant in the State of California at any time during the PAGA
9 Period” (“Aggrieved Employees”). (Rose Decl., ¶ 18; Settlement Agreement, ¶¶ 2 and 23). The “PAGA
10 Period” is defined as the period from October 22, 2022 through December 31, 2024, subject to the
11 escalator provision in Paragraph 50(a)(ii) of the Settlement Agreement. (Rose Decl., ¶ 18; Settlement
12 Agreement, ¶ 25).

13 The Settlement is based on the representation that there were no more than 9,800 pay periods
14 during the period from October 22, 2022, through December 17, 2024. (Rose Decl., ¶ 19; Settlement
15 Agreement, ¶ 50(a)(ii)). If the total number of pay periods during the PAGA Period increases to a figure
16 that is greater than 10,780 (10% above 9,800), Defendant will have the choice of: (a) paying a
17 proportional increase in the PAGA Amount for each additional pay period over 10,780, which will be
18 added to the Gross Settlement Amount; or (b) modifying the end date of the PAGA Period to a date that
19 avoids incurring any pro-rata increase. (Rose Decl., ¶ 19; Settlement Agreement, ¶ 50(a)(ii)).

20 The Net Class Settlement Amount will be distributed and paid to all Class Members who do not
21 timely opt out of the Settlement (“Participating Class Members”) on a *pro rata* basis based on the number
22 of pay periods each Class Member worked for Defendant as a non-exempt employee in California during
23 the Class Period. (Rose Decl., ¶ 20; Settlement Agreement, ¶¶ 26 and 51(e)). The *pro rata* share of the
24 Net Class Settlement Amount that a Class Member may be eligible to receive (“Participating Class
25 Member Payment”) will be calculated by the Settlement Administrator, in accordance with the Settlement
26 Agreement. (Rose Decl., ¶ 20; Settlement Agreement, ¶ 51(e)).

27 ///

28 ///

1 The PAGA Payment will be distributed and paid to all Aggrieved Employees on a *pro rata* basis
2 based on the number of pay periods each Aggrieved Employee worked for Defendant as a non-exempt
3 employee in California during the PAGA Period. (Rose Decl., ¶ 21; Settlement Agreement, ¶¶ 51(d) and
4 51(e)). The *pro rata* share of the PAGA Payment that an Aggrieved Employee may be eligible to receive
5 (“Individual PAGA Payment”) will be calculated by the Settlement Administrator, in accordance with
6 the Settlement Agreement. (Rose Decl., ¶ 21; Settlement Agreement, ¶ 17).

7 Each Participating Class Member Payment will be allocated as twenty percent (20%) wages and
8 eighty percent (80%) statutory penalties. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 53(a)). The portion
9 allocated to wages will be reported on an IRS Form W-2, and the portion allocated to statutory penalties
10 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Rose Decl., ¶ 22;
11 Settlement Agreement, ¶ 53(a)). The Settlement Administrator will withhold the employee’s share of
12 taxes and withholdings with respect to the wages portion of the Participating Class Member Payment,
13 and issue checks to Participating Class Members for their net payment of their Participating Class
14 Member Payment. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 53(a)). The employer’s share of taxes
15 and contributions in connection with the wages portion of Participating Class Member Payments will be
16 paid by Defendant separately and in addition to the Gross Settlement Amount. (Rose Decl., ¶ 22;
17 Settlement Agreement, ¶ 16). Each Individual PAGA Payment will be allocated as one hundred percent
18 (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement
19 Administrator. (Rose Decl., ¶ 22; Settlement Agreement, ¶ 53(a)).

20 The Settlement Agreement is a non-reversionary settlement. (Rose Decl., ¶ 23; Settlement
21 Agreement, ¶ 49). The Net Class Settlement Amount will be fully distributed to Participating Class
22 Members and the PAGA Amount will be fully distributed to the LWDA and Aggrieved Employees, in
23 accordance with the Settlement Agreement. (Rose Decl., ¶ 23; Settlement Agreement, ¶¶ 51(e)(i) and
24 51(e)(ii). No money will be reverted to Defendant. (Rose Decl., ¶ 23; Settlement Agreement, ¶ 49).

25 Each Participating Class Member Payment and Individual PAGA Payment check will be valid
26 and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
27 thereafter, shall be canceled. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 58(e)). Any funds associated
28 with such canceled checks will be distributed by the Settlement Administrator to the Court Appointed

Special Advocates (CASA) of Kern County. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 58(e)). The Parties and their counsel represent that they have no financial interest in CASA. (Rose Decl., ¶ 24; Settlement Agreement, ¶ 58(e)).

D. Released Claims

Upon the Effective Date and full funding of the Gross Settlement Amount and the Employer's Taxes, Plaintiffs and all Participating Class Members shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties from the Class Released Claims that arose during the Class Period. (Settlement Agreement, ¶ 45).

Upon the Effective Date and full funding of the Gross Settlement Amount and the Employer's Taxes, Plaintiffs, as representatives of the State of California, and all Aggrieved Employees (to the extent permitted by law) shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties from the PAGA Released Claims that arose during the PAGA Period. (*Id.*, ¶ 46).

"Class Released Claims" means any and all claims, arising during the Class Period, that have been, or could have been, asserted against Defendant and any of the other Released Parties based on the facts, matters, transactions or occurrences alleged in the Operative Complaint, including, but not limited to, the following claims: failure to pay all wages earned for all hours worked at the correct rate including minimum, regular, and overtime wages; failure to provide meal periods or additional premium pay in lieu thereof at the correct rate; failure to provide rest breaks or additional premium pay in lieu thereof at the correct rate; failure to provide notice of and/or paid sick leave; failure to pay vested vacation time at termination; failure to pay waiting time penalties; failure to reimburse necessary business expenses; failure to timely pay wages upon separation; failure to timely pay wages owed during employment; failure to issue accurate itemized wage statements; failure to maintain accurate payroll records; failure to produce requested employment records; including claims for violations of California Labor Code §§ 201–204, 210, 218.5, 218.6, 221, 223, 226, 226.3, 226.4, 226.7, 227.3, 245–248.6, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2926, and 2927; related violations of the applicable California Wage Orders; and related violations of California Business and Professions Code section 17200, *et seq.* (*Id.*, ¶ 9).

1 “PAGA Released Claims” means all claims for penalties under California Labor Code Section
2 2698, arising during the PAGA Period against the Released Parties that have been, or could have been,
3 asserted based on the facts, matters, transactions, or occurrences alleged in Plaintiffs’ PAGA notices to
4 the LWDA and the Operative Complaint, including, but not limited to, the following claims: failure to
5 pay all wages earned for all hours worked at the correct rate including minimum, regular, and overtime
6 wages; failure to provide meal periods or additional premium pay in lieu thereof at the correct rate; failure
7 to provide rest breaks or additional premium pay in lieu thereof at the correct rate; failure to provide
8 notice of and/or paid sick leave; failure to pay vested vacation time at termination; failure to pay waiting
9 time penalties; failure to reimburse necessary business expenses; failure to timely pay wages upon
10 separation; failure to timely pay wages owed during employment; failure to issue accurate itemized wage
11 statements; failure to maintain accurate payroll records; failure to produce requested employment records;
12 including claims for violations of California Labor Code §§ §§ 201, 201.3, 202–204, 210, 218.5, 218.6,
13 221, 223, 226, 226.3, 226.4, 226.7, 227.3, 245–248.6, 432, 510, 512, 558, 558.1, 1174, 1174.5, 1182.11,
14 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1198.5, 1199, 2698, 2699.5, 2800, 2802, 2926,
15 and 2927; and related violations of the applicable California Wage Orders. (*Id.*, ¶ 24).

16 “Released Parties” means Defendant and its current and former parents, predecessors or
17 successors, holding companies, affiliated entities, owners, shareholders, members, partners, officers,
18 directors, managers, employees, insurers, and agents. (*Id.*, ¶ 29).

19 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

20 The settlement of a class action requires court approval. (*See Dunk v. Ford Motor Co.*, 48 Cal.
21 App. 4th 1794 (1996)). “In general, questions whether a settlement was fair and reasonable, whether
22 notice to the class was adequate, whether certification of the class was proper, and whether the attorney
23 fee award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
24 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds)).

25 The review and approval of a proposed class action settlement involves a two-step process. (*See*
26 *Cal. Rules of Court, Rule 3.769(c)*). First, counsel submits the proposed terms of the settlement and the
27 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the
28 range of a fair settlement to justify providing notice of the proposed settlement to class members. After

1 notice is provided to the class, the Court must conduct a second inquiry into whether the proposed
2 settlement is fair, reasonable, and adequate. (Ibid).

3 The initial evaluation of the settlement at the preliminary approval step “is not a fairness hearing.”
4 (*Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980)).
5 Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only whether the
6 proposed settlement is within the range of possible approval and, as a result, “whether there is any reason
7 to notify the class members of the proposed settlement and to proceed with a fairness hearing.” A
8 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
9 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
10 is experienced in similar litigation; and (4) the percentage of objectors is small. (*See In re Microsoft I-V*
11 *Cases*, 135 Cal. App. 4th 706, 723 (2006)).

12 Preliminary approval does not require a court to make a final determination that the settlement is
13 fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice
14 of the settlement has been given to the class members and they have had an opportunity to object or
15 exclude themselves from the settlement. (*See* Cal. Rules of Court, Rule 3.769(g)). In considering a
16 potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law
17 which underlie the merits of the dispute and need not engage in a trial on the merits. (*See Officers for*
18 *Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982)).

19 **V. THE SETTLEMENT IS PRESUMED FAIR**

20 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

21 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
22 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
23 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
24 were at all times made at arm’s-length and were adversarial. (Rose Decl., ¶ 25). The Settlement was
25 reached following a full day of mediation with a highly respected mediator who has substantial experience
26 mediating wage and hour cases. (Ibid). At all times, Plaintiffs were willing and prepared to litigate this
27 matter through class certification and trial if the Parties had been unable to reach a favorable resolution.
28 (*Id.*, ¶ 46).

1 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

2 Courts typically assess the status of discovery in determining whether a class action settlement
3 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
4 Defendant produced all of the putative class members’ time and pay data, Defendant’s relevant wage and
5 hour policies, and information regarding the total number of putative class members, the number of
6 current versus former employees, the total pay periods worked by the putative class members, and the
7 average rate of pay for the putative class members. (Rose Decl., ¶ 26).

8 This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
9 weaknesses of the claims and potential class-wide damages. (*Id.*, ¶ 27). Based on information exchanged,
10 the Parties extensively briefed issues regarding class certification and liability and provided their analyses
11 to the Mediator who helped the Parties debate the strengths and weakness of their respective positions.
12 (*Id.*, ¶ 28). Additionally, settlement negotiations were conducted by highly capable and experienced
13 counsel. (Rose Decl., ¶¶ 1-7; Declaration of Enoch J. Kim in Support of Plaintiffs’ Motion for
14 Preliminary Approval of Class Action and PAGA Settlement [“Kim Decl.”], ¶¶ 16-21). Accordingly,
15 Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

16 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions**
17 **and Recovery Risks**

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

26 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and
27 factual grounds for defending the Action. Based upon Class Counsel’s experience litigating similar
28 complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification

1 and the merits of the Action absent a settlement.

2 **1. Class Counsel's Analysis of the Maximum Available Liability and Damages**

3 Class Counsel analyzed all available data and estimated Defendant's maximum potential exposure
4 to be approximately \$4,203,492, assuming the litigation was successful at trial on all claims at issue and
5 every employee had a violation for each claim on every shift worked. (Rose Decl., ¶ 29). This maximum
6 potential analysis was then reduced based on the challenges facing the likelihood of obtaining class
7 certification, prevailing at trial, and other attendant risks. (Ibid). This estimate is based off an estimated
8 maximum liability for all claims at issue and the total aggregate workweeks during the relevant time
9 period, less interest, and based on the analysis of the data which was extrapolated out for all class
10 members across the entire putative class period, which included: \$12,485 for meal period violations (less
11 meal period premiums paid); \$1,791,042 for rest period violations at a 100% violation rate (less rest
12 period premiums paid); \$354,034 for unpaid off-the-clock work for 1 hour per workweek of off-the-clock
13 work; \$76,504 for unpaid overtime wages at the required regular rate of pay; \$2,494 for unpaid sick pay
14 at the required regular rate of pay; \$143,670 for unreimbursed business expenses; \$860,663 for waiting
15 time penalties; and \$962,600 for wage statement penalties. (Ibid). Plaintiffs further estimated that
16 Defendant faced an additional exposure of \$980,000 in potential, non-stacked (i.e., one penalty, per
17 employee, per pay period during the PAGA statutory period) PAGA penalties. (Ibid). Thus, Plaintiffs
18 contend that together with the PAGA penalties, Defendant's maximum potential exposure totaled
19 \$5,183,492 in damages. (Ibid).

20 **2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments**

21 While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a
22 recovery existed. First and foremost, Defendant maintained throughout the litigation process that 98%
23 of its non-exempt employees signed enforceable arbitration agreements with a class action waiver, which
24 barred Plaintiffs' class claims altogether. (*Id.*, ¶ 30). This significantly affected the potential size of the
25 putative class, and if Defendant prevailed on this argument, there would be no class damages. (Ibid).
26 Accordingly, the Parties agreed to a settlement utilizing the PAGA Period start date as the start of the
27 proposed Class Period. (Ibid).

28 ///

1 Additionally, Defendant contended that Plaintiffs' claims are not suitable for class certification
2 because individual issues and affirmative defenses would predominate should this case go to trial. (Rose
3 Decl., ¶ 32; *See Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank*
4 *Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)).
5 While Plaintiffs and Class Counsel disagree with Defendant's predictions, they also recognize that there
6 is a significant risk that the Court may deny class certification. (Rose Decl., ¶ 32; *see also, Findings of*
7 *the Study of California Class Action Litigation*, 2000-2006, available at
8 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
9 actions were certified either as part of a settlement or as part of a contested certification motion)).

10 For example, Plaintiffs' meal period claims, which were based on Defendant's alleged failure to
11 provide lawful meal periods, have been increasingly difficult to certify in recent years. (Rose Decl., ¶ 33;
12 *See Brinker*, 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based
13 on allegations that Defendant failed to implement its policies and that its practices failed to allow Class
14 Members to take meal breaks in the manner required under California law. (Rose Decl., ¶ 33; *See Bradley*
15 *v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129, 1150 (2012) (holding that "the lack of a meal/rest break
16 policy and the uniform failure to authorize such breaks are matters of common proof.")). Defendant
17 contended that its policies and practices at all times during the Class Period were lawful. (Rose Decl., ¶
18 33). Indeed, Plaintiffs' analysis revealed only a 1.2% violation rate for purported unique meal period
19 violations. (Ibid). Defendant further argued that the rate of purported meal period violations reflected in
20 the data would require individualized inquiry and that such inquiry would prohibit a class from being
21 certified. (Ibid). Class Counsel also had to consider the risk that the Court would find validity in an
22 individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid).

23 Additionally, a large portion of Defendant's overall liability lies in Plaintiffs' rest period
24 allegations. (*Id.*, ¶ 34). As with the meal period allegations, Defendant contended that it had a lawful
25 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
26 required under California law. (Ibid). Additionally, this claim was even more uncertain given the
27 difficulties associated with proving the alleged rest period violations, as Defendant was not required to
28 record these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were

1 legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages with
2 requisite certainty, which made the estimated value of this claim subject to much challenge. (Ibid).

3 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
4 overtime claims. (*Id.*, ¶ 35). These claims were largely based on Defendant’s unrecorded, off-the-clock
5 work performed by the Class Members. (Ibid). For example, Plaintiffs reported that Plaintiffs and the
6 Class Members were required to provide customer service to customers, such as collecting payments and
7 issuing payments, off-the-clock. (Ibid). However, the individualized nature of why this work was
8 performed and the individualized nature of damages presented substantial concerns regarding the
9 manageability of the case and the risk that the Court could find these issues prevented certification, and
10 the estimated damages for this claim were based on an assumption that all Class Members worked off the
11 clock for at least one hour per week. (Ibid). Additionally, Plaintiffs’ overtime claim was based on unpaid
12 overtime compensation at the required regular rate of pay. (Ibid). However, Defendant alleged that it
13 correctly paid all overtime compensation at the required regular rate of pay. (Ibid).

14 Plaintiffs also contended that Defendant failed to reimburse Plaintiffs and the other Class
15 Members for necessary business-related expenses, such as the purchase of uniforms and nonslip shoes
16 and the usage of personal cell phones and vehicles for work-related purposes. (*Id.*, ¶ 36). Defendant
17 contended that it had a policy and practice of reimbursing employees for necessary business-related
18 expenses. (Ibid). With respect to uniforms, Defendant contended that employees do not incur uniform-
19 related expenses because Defendant provides employees with uniforms and a laundering service at no
20 cost to the employee. (Ibid). Defendant also contended that other items worn by employees (e.g.,
21 undershirts, socks, and non-slip shoes) are “usual and generally usable in the occupation,” and are not
22 reimbursable. (Ibid; *Townley v. BJ’s Restaurants, Inc.*, 37 Cal. App. 5th 179, 185 (2019)). Defendant
23 further contended that, with respect to the alleged expenses for which Plaintiffs and the other Class
24 Members never requested reimbursement from Defendant, it did not know and had no reason to know
25 that alleged business-related expenses had been incurred. (Ibid). Defendant further contended that the
26 reason for why a Class Member undertook certain expenses, while not others, and failed to receive
27 reimbursement for certain expenses while not others, would raise individual issues that could not be
28 certified. (Ibid).

1 There are also substantial risks associated with Plaintiffs' waiting time penalties and wage
2 statement claims. (*Id.*, ¶ 37). First, these claims were derivative of Plaintiffs' claims for unpaid meal
3 period premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages,
4 and if certification was denied on those underlying claims, these derivative claims for penalties would
5 also likely fail. (*Ibid.*). Further, even if Plaintiffs prevailed on their underlying claims, they would still
6 be required to demonstrate that Defendant's violations of California Labor Code section 203 were *willful*
7 violations. (Rose Decl., ¶ 37; *See, e.g., Choate v. Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013)
8 (holding that "an employer's reasonable, good faith belief that wages are not owed may negate a finding
9 of willfulness")). Wage statement claims have also seen varying treatment at the appellate level because
10 such claims have an element of discretion attached to them rather than a pure calculation of damages after
11 liability is proven. (Rose Decl. ¶ 37; *Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with*
12 *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011)). Accordingly, these derivative claims, which
13 comprised a substantial portion of Defendant's estimated liability, were therefore uncertain. (Rose Decl.,
14 ¶ 37).

15 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the
16 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
17 proposition. (*Id.*, ¶ 38). In order to prove liability and damages, Class Counsel will need to request and
18 analyze thousands of pages of documents, obtain the Class Members' contact information, contact them,
19 and obtain their declarations at great expense. (*Ibid.*). Obtaining the cooperation of current employees
20 would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current
21 employer. (*Ibid.*). On the other hand, Defendant would likely be able to obtain the cooperation of its
22 employees. (*Ibid.*). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals
23 would substantially delay any recovery by the Class. (*Ibid.*).

24 Therefore, taking into account how each of the above risks potentially effected Plaintiffs' ability
25 to first obtain class certification, and then prove the underlying violations, plus the cost and delay in
26 recovering the alleged potential damages, Class Counsel discounted Defendant's estimated liability based
27 on the challenges facing their ability to succeed on class certification by 70% to \$1,555,048. (*Id.*, ¶ 39).
28 The merits-based risk factors further reduced Defendant's estimated liability by an additional 70%.

(Ibid). This resulted in an adjusted estimated liability of \$466,514. (Ibid). In light thereof, the settlement amount of \$390,000 is a significant settlement. (Ibid).

Class Counsel also contemplated the risks of proceeding with the PAGA claims and potential liability Defendant could face from these claims as part of the global resolution. (*Id.*, ¶ 40). Existing case law makes PAGA claims subject to the same defenses and risks as Plaintiffs' underlying wage claims. (Rose Decl., ¶ 40; see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because all of Plaintiff's other claims fail as a matter of law, so does her PAGA claim")). Class Counsel also anticipated that even if successful on the merits at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue that it made a good faith attempt to comply with its legal obligations warranting a reduction in penalties. (Rose Decl., ¶ 40).¹ Class Counsel also anticipated Defendant would argue that the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid). Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. (Ibid).

Therefore, after considering this multitude of factors, Plaintiffs and Class Counsel concluded that it was in the best interest of the State of California and the Aggrieved Employees to enter into the Settlement, and to allocate Thirty Thousand Dollars and Zero Cents (\$30,000.00) of the Gross Settlement Amount towards the PAGA claims, which represents approximately 7.69% of the Gross Settlement Amount. (*Id.*, ¶ 41). This percentage of the settlement is well within the range of wage and hour settlements regularly approved in both state and federal court for cases that include both a class and

¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good faith attempts to comply with obligations and minimal violations).

1 PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to
2 resolve PAGA claims, and, indeed, settlements allocations as little as 0.22% of the gross settlement
3 amount have been approved as reasonable by courts. (Ibid). Moreover, the overall relief obtained by the
4 Settlement is significant, not only from a monetary perspective, but also because it fulfills the public
5 policy objectives of PAGA—to promote enforcement of California’s labor laws, provide funds to the
6 state, and deter future non-compliance by the employer. (Ibid).

7 The Settlement is in the best interest of the Class Members, the Aggrieved Employees, and the
8 State of California and is within the accepted range of recoveries for this type of litigation given the
9 inherent risk of litigation, the risk of obtaining and maintaining class certification, and the costs of further
10 litigation. (*Id.*, ¶ 42).

11 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

12 Code of Civil Procedure Section 382 provides that three basic requirements must be met in order
13 to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined
14 community of interest in the question of law or fact affecting the parties to be represented; and (3)
15 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class action
16 is superior to other methods. (*See Dunk*, 48 Cal.App.4th at 1806). Plaintiffs contend that the Action,
17 which is based upon Defendant’s wage and hour policies and practices, satisfies the class certification
18 requirements under California Code of Civil Procedure section 382. Defendant denies Plaintiffs’
19 allegations, but for purposes of the Settlement only, Defendant has stipulated to certification of the Class.

20 A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is 21 Impracticable

22 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
23 the class, and (3) the means of identifying the class members. (*See Miller v. Woods*, 148 Cal.App.3d 862,
24 873 (1983)). In this case, all three considerations strongly favor class certification. Here, the Class is
25 defined as “all current and former non-exempt employees who worked for Defendant in the State of
26 California at any time during the Class Period, excluding those individuals who have already released,
27 assigned, or otherwise forfeited the claims asserted in the Action.” (Rose Decl., ¶ 17; Settlement
28 Agreement, ¶ 5). This provides a clear and definite scope for the proposed class.

1 Next, the Class is sufficiently numerous. There is no magic number that satisfies the numerosity
2 requirement. Courts have certified classes with as few as ten or twenty-eight class members. (*Rose v.*
3 *City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44 Cal. 2d 574 (1995);
4 *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)). Here, as of the date of the mediation, the
5 estimated Class size of three hundred thirty-six (336) individuals meets the numerosity requirement.

6 Finally, the question of whether class members are easily identifiable turns on whether a plaintiff
7 can establish “the existence of an ascertainable class.” (*Daar v. Yellow Cab Co.*, 67 Cal.2d 695 at 706
8 (1967)). The existence of an ascertainable class in this case can be established through Defendant’s
9 payroll records, and the Class definition is sufficiently specific to enable the Parties, Class Members, and
10 the Court to determine the parameters of the Class. (*See Clothesrigger, Inc. v. GTE Corp.*, 191
11 Cal.App.3d 605, 617 (1987)).

12 **B. The Class Shares a Well-Defined Community of Interest**

13 The community of interest requirement embodies three factors: (1) predominant questions of law
14 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
15 who can adequately represent the class. (*Dunk*, 48 Cal.App.4th at 1806). Here, all three requirements
16 are easily satisfied.

17 The commonality criterion requires the existence of common question of law or fact and is
18 generally established with the issues of predominance and typicality. (*See Daar*, 67 Cal.2d 695, 706).
19 What is required is that a common question of fact or law exists which predominates over issues unique
20 to individual plaintiffs. The existence of individual issues or facts—generally present in any case arising
21 from employment—is not a bar to class certification as long as they do not render class litigation
22 unmanageable or predominate over the common issues. (*See B.W.I. Custom Kitchen v. Owens-Illinois,*
23 *Inc.*, 191 Cal.App.3d 1341, 1354 (1987)).

24 Here, Plaintiffs’ claims present common issues of law and fact that predominate and warrant class
25 certification. Plaintiffs allege that Defendant denied compliant meal and rest periods to employees,
26 required employees to perform work off-the-clock, and failed to fully compensate employees for all time
27 actually worked. These policies and practices meant that Defendant allegedly failed to pay minimum and
28 overtime wages, and other related claims. Plaintiffs allege that Defendant’s policies and practices were

1 uniform as to all Class Members. Thus, class treatment is appropriate.

2 To satisfy the typicality requirement, California law does not require that plaintiffs' claims be
3 identical to the other class members. Rather, the test of typicality for a class representative is whether
4 other members have the same or similar injury, whether the action is based on conduct which is not
5 unique to the named plaintiff, and whether other class members have been injured by the same course of
6 conduct. (*See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007)). The typicality requirement
7 for a class representative refers to the nature of the claim or defense of the representative, and not to the
8 specific facts from which it arose or the relief sought. (*See Ibid*).

9 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that
10 Plaintiffs' claims arise out of the same alleged course of conduct giving rise to the claims of the other
11 Class Members. Because Plaintiffs' claims are based upon the same alleged conduct and business
12 practices as those of Class Members, the typicality requirement has been satisfied.

13 Finally, the question of adequacy of representation "depends on whether the plaintiff's attorney
14 is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the
15 interests of the class." (*McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976)). Here, these
16 considerations are satisfied. Class Counsel are well-regarded and are qualified and experienced in
17 employment-related, class-action litigation. (Rose Decl., ¶¶ 1-7; Kim Decl., ¶¶ 16-21). Plaintiffs will
18 vigorously, adequately, and fairly represent the interests of the Class. Plaintiffs have, at all times,
19 throughout the course of the litigation considered the interests of the Class and understood that they must
20 take steps to adequately represent the Class and their interests. (*See generally*, Guerrero Decl., O.Mejia
21 Decl., E.Mejia Decl., and Castellanos Decl.). Because Plaintiffs' claims are typical of other Class
22 Members and are not based on unique circumstances, there is no antagonism between the interests of
23 Plaintiffs and the Class.

24 **C. A Class Action is Superior to a Multiplicity of Litigation**

25 Under the circumstances, proceeding as a class action is a superior means of resolving this dispute,
26 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
27 the only means to deter and redress the alleged violations. (*See Linder v. Thrifty Oil Co.*, 23 Cal.4th 429,
28 434 (2000) (relevant considerations include the probability that each class member will come forward to

1 prove his or her separate claim and whether the class approach would actually serve to deter and redress
2 the alleged wrongdoing)). Further, individual actions arising out of the same operative facts would
3 unduly burden the courts and could result in inconsistent results. Therefore, class action proceedings are
4 superior to individual litigation.

5 **VII. THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE**

6 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation
7 “for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz*
8 *v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010)). Courts routinely grant approval of
9 class action settlement agreements containing enhancements for the class representative, which are
10 necessary to provide incentive to represent the class and are appropriate given the benefit the class
11 representatives help to bring about for the class. (*See In re Online DVD Rental*, 779 F.3d 934, 947-948
12 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments where incentive
13 award made up a mere .17% of the settlement); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL
14 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
15 reasonable”)).

16 Plaintiffs initiated this litigation on behalf of their former co-workers who will now be entitled to
17 receive payment from the Settlement. Plaintiffs invested substantial time and effort into litigation,
18 including their own research, reviewing documents, and extensive discussions with Class Counsel.
19 Further, the requested amount for each of the Plaintiffs is also reasonable given the average award and
20 the benefit gained by other Class Members. For these reasons, Plaintiffs request that Enhancement
21 Awards of Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs (total, \$40,000.00), be
22 preliminarily approved by the Court. (Rose Decl., ¶ 43; *See generally*, Guerrero Decl., O.Mejia Decl.,
23 E.Mejia Decl., and Castellanos Decl.).

24 **VIII. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

25 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions are
26 “not to be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal, Inc.*, 82
27 Cal.App.4th 19, 41 (2000)). California law provides that attorney fee awards should be equivalent to fees
28 paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Id.* at 47). In cases

1 where class members present claims against a common fund and the defendant agrees to a percentage of
2 the fund as part of the settlement, use of the percentage method is appropriate. (*Id.* at 32).

3 Here, the requested attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement
4 Amount (i.e., \$136,500.00 if the Gross Settlement Amount is \$390,000.00) is disclosed to Class Members
5 in the proposed Class Notice. (Settlement Agreement, Exh. A). The requested fee was freely negotiated,
6 is common in the legal marketplace, and is not opposed by Defendant. The Motion for Final Approval
7 will elaborate on the nature of the legal services provided and will also support Class Counsel's request
8 for the reimbursement of actual litigation costs and expenses in an amount not to exceed Twenty-Five
9 Thousand Dollars and Zero Cents (\$25,000.00). (Rose Decl., ¶¶ 44 and 46). The Attorneys' Fees and
10 Costs that are not ultimately approved by the Court shall instead be included in the Net Class Settlement
11 Amount to be distributed to Participating Class Members. (Settlement Agreement, ¶ 51(a)).

12 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS**
13 **MEETS DUE PROCESS REQUIREMENTS**

14 The Parties have jointly drafted the Class Notice, which will be mailed to Class Members. (*Id.*,
15 Exh. A). The Class Notice will include information regarding the nature of the Action, a summary of the
16 terms of the Settlement, the Class definition, information on how to object to and/or opt-out of the
17 Settlement and to dispute pay periods, and the date of the Final Approval Hearing. (*Ibid.*). The Class
18 Notice will list each Participating Class Member's total pay periods worked during the Class Period and
19 their estimated Participating Class Member Payment and each Aggrieved Employee's total pay periods
20 worked during the PAGA Period and their estimated Individual PAGA Payment. (*Ibid.*).

21 Within fourteen (14) calendar days after entry of the preliminary approval order, Defendant will
22 provide a list in a formatted readable Microsoft Office Excel spreadsheet to the Settlement Administrator
23 containing the following information for each Class Member and Aggrieved Employee: full name, Social
24 Security Number, last-known address, and number of pay periods worked in a non-exempt position
25 during the Class Period and PAGA Period (collectively referred to as the "Class List"). (*Id.*, ¶ 54). Within
26 fourteen (14) calendar days after receipt of the Class List from Defendant, the Settlement Administrator
27 will perform a search based on the National Change of Address Database to update and correct any known
28 or identifiable address changes, and will mail a Class Notice in English to all Class Members and

1 Aggrieved Employees via First-Class U.S. Mail, using the most current, known mailing addresses
2 identified by the Settlement Administrator. (Ibid). The Parties have agreed to use CPT Group, Inc. as
3 the Settlement Administrator. (Rose Decl., ¶ 47; Settlement Agreement, ¶ 30).

4 In determining whether to approve a settlement of a class action, a trial court has virtually
5 complete discretion as to the manner of giving notice to class members, and review on appeal is governed
6 by the abuse of discretion standard. (*See In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380
7 (2010)). Here, Class Counsel is not aware of an alternative method of providing notice to the Class which
8 would result in a higher likelihood of actual notice. (Rose Decl., ¶ 48). The original source of the mailing
9 addresses is from Class Members, who provided the information to Defendant. (Ibid).

10 Class Members will have sixty (60) calendar days from the initial mailing of the Class Notice by
11 the Settlement Administrator to submit an Opt-Out Request, written objection, and/or Pay Period Dispute
12 (“Notice Period”). (Settlement Agreement, ¶ 21).

13 Any Class Notice returned to the Settlement Administrator as undeliverable on or before the
14 Notice Period will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto.
15 (*Id.*, ¶ 54(b)). If no forwarding address is provided, the Settlement Administrator will promptly attempt
16 to determine a correct address using a skip-trace or National Changes of Address search, and perform a
17 single re-mailing. (*Id.*, ¶ 54(c)). In the event that a Class Notice is re-mailed to a Class Member, the
18 Notice Period for that Class Member shall be extended fifteen (15) calendar days from the original Notice
19 Period. (*Id.*, 54(b)).

20 Class Members and Aggrieved Employees will have an opportunity to dispute the number of pay
21 periods to which they have been credited, as reflected in their respective Class Notices, by submitting a
22 written dispute (“Pay Period Dispute”) to the Settlement Administrator, by mail, postmarked on or before
23 the Notice Period. (*Id.*, ¶ 55). A Pay Period Dispute must contain the following information: (i) the Class
24 Member’s and/or Aggrieved Employee’s full name, current address, and signature; (ii) the Action name
25 and case number; (iii) the number of pay periods the Class Member and/or Aggrieved Employee
26 maintains is correct; and (iv) documentary evidence sufficient to prove that Defendant’s calculation of
27 the pay periods for the Class Member and/or Aggrieved Employee is incorrect, if any. (Ibid).

28 ///

Any Class Member wishing to opt-out of the Settlement must submit a opt-out request (“Opt-Out Request”) to the Settlement Administrator, by mail, postmarked on or before the Notice Deadline. (*Id.*, ¶ 56). An Opt-Out Request must: (i) contain the Class Member’s full name, current address, and signature; (ii) the Action name and case number; (iii) a written request clearly expressing the Class Member’s desire to be excluded from (or opt out of) the Settlement; and (iv) be returned so that it is postmarked on or before the expiration of the Notice Period. (*Ibid.*). Any Class Members who worked during the PAGA Period and who opts out of the Settlement will still be considered Aggrieved Employees for purposes of the Settlement. (*Ibid.*).

Any Class Member who has not opted out of the Settlement (i.e., Participating Class Members) may object to the Settlement. (*Id.*, ¶ 57). A written objection must contain: (i) the objecting Participating Class Member’s full name, current address, and signature; (ii) the Action name and case number; (iii) a statement of the specific reasons why the objector believes the Settlement Agreement is unfair or objects to the Settlement Agreement; (iv) contain copies of any papers, briefs, or other documents upon which the objection is based; and (v) a statement of whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. (*Ibid.*). Participating Class Members, individually or through counsel, may also present their objection orally at the Final Approval Hearing, regardless of whether they have submitted a written objection. (*Ibid.*).

X. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement and the relief requested herein.

Respectfully submitted,

Dated: February 9, 2026

BLACKSTONE LAW, APC

By:


Alexandra Rose
Attorneys for Plaintiff Gabriela Guerrero
D. LAW, INC.

Dated: February 9, 2026

By:

/s/ Enoch J. Kim
Enoch J. Kim
Attorneys for Plaintiffs Osmin Chavarria Mejia, Elmer Chavarria Mejia, and Rafael Menjivar Castellanos