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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

HARMONY BLOSSOM, individually;
ANGELICA AMARO, individually;
MICHELLE BAKER, individually; LAELA
DUNCAN, individually; INGRID
SARDARIAN, individually; AMY SINGH,
individually; SYDNEY SURRELL, individually;
and on behalf of all others similarly situated,

Plaintiffs,

vs.

WALDORF ASTORIA EMPLOYER, LLC, a
limited liability company; WALDORF
ASTORIA MANAGEMENT, LLC, a limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23STCV27316

CLASS AND REPRESENTATIVE ACTION

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

PRELIMINARY APPROVAL HEARING:

Date: October 29, 2026

Time: 10:30 a.m.

Dept.: 1

Judge: Hon. Theresa M. Traber

Action Filed: November 6, 2023

Trial Date: Not set

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16 *Singh, and Sydney Surrell*

1 **TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on October 29, 2026 at 10:30 a.m. in Department 1 of this
3 Court, located at 312 North Spring Street Los Angeles, California 90012, pursuant to Code of Civil
4 Procedure section 382 and California Rules of Court, rule 3.769 *et seq.*, Plaintiffs Harmony
5 Blossom, Angelica Amaro, Michelle Baker, Laela Duncan, Ingrid Sardarian, Amy Singh, and
6 Sydney Surrell ("Plaintiffs") will, and hereby do, move the Court for an order granting preliminary
7 approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants
8 Waldorf Astoria Employer, LLC and Waldorf Astoria Management, LLC. Specifically, Plaintiffs
9 move the Court for an order:

- 10 1. Granting preliminary approval of the Settlement and Release Agreement;
- 11 2. Certifying the Class, for settlement purposes only;
- 12 3. Approving the Class Notice and plan for its distribution;
- 13 4. Appointing Plaintiffs as Class Representatives, for settlement purposes only;
- 14 5. Appointing Kane Moon and Daniel J. Park of Moon Law Group, PC, Brittany E.
15 Harmssen of Harmssen LaPointe P.C., and Daniel L. Feder of the Law Offices of Daniel
16 Feder as Class Counsel, for settlement purposes only;
- 17 6. Appointing Phoenix as the Settlement Administrator; and
- 18 7. Scheduling a Final Approval Hearing no earlier than 120 days from the date of
19 preliminary approval.

20 The motion will be based upon this notice, the attached memorandum of points and
21 authorities, the supporting declarations and attachments thereto, the records and files in this action,
22 and any other evidence or argument that the Court may properly receive at or before the hearing.

23 Respectfully submitted,

24 Dated: _____ **MOON LAW GROUP, PC**

25 By: _____

26 Kane Moon
27 Daniel J. Park

28 *Attorneys for Plaintiff Harmony Blossom*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
I. INTRODUCTION.....	1
II. SUMMARY OF THE LITIGATION AND SETTLEMENT.....	1
A. Plaintiffs' Claims and Procedural History	1
B. Discovery and Investigation.....	4
C. Settlement Negotiations and Notice of Settlement to the LWDA.....	5
D. Key Terms of the Proposed Settlement	6
III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.....	11
A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation	12
1. The Settlement Is the Product of Discovery, Investigation, Informed and Non-Collusive Arm's-Length Negotiations, and Realistic Claims Analysis	12
2. The Class Settlement Is Fair Considering the Parties' Respective Positions and Significant Risks to Certification and Proof on the Merits	15
3. The PAGA Settlement Is Fair Considering the Parties' Respective Positions and Significant Risks.....	16
4. Plaintiffs' Counsel Have Extensive Experience in Class and PAGA Action Litigation, Which Was Integral to Negotiating the Settlement.....	17
B. The Proposed Attorneys' Fees and Costs Are Reasonable	17
1. Class Counsel Request a Fees Award Based On the "Common Fund" Method	17
2. The Requested Fee Award Is in Line with Typical Cases	18
3. This Matter Involves a "Fee-Shifting" Provision of the Labor Code	19
4. Counsel's Experience, Reputation, and Ability Support the Fees Request	19
C. The Incentive Awards to Plaintiffs Are Reasonable	20

IV.	<i>CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED</i>	21
A.	Legal Standard	21
B.	The Criteria for Class Certification Are Satisfied	22
1.	The Class Is Ascertainable and Numerous	22
2.	There Are Many Common Issues of Law and Fact Which Predominate	23
3.	Plaintiffs' Claims Are Typical of the Claims of the Class	24
4.	Plaintiffs and Their Counsel Meet the Adequacy Requirement	24
5.	A Class Action Is Superior to a Multiplicity of Litigation	25
V.	<i>THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND SATISFIES THE RULES OF COURT</i>	25
VI.	<i>CONCLUSION</i>	26

1 **TABLE OF AUTHORITIES**

2 **FEDERAL CASES**

3 *Leyva v. Medline Industries Inc.* (9th Cir. 2013) 716 F.3d 510..... 25

4 *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438 12

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7 **COURT RULES**

8 California Rules of Court, rule 3.766(e), (f) 25

9 California Rules of Court, rule 3.769(f) 25

10 **TREATISES**

11 Newberg, Newberg on Class Actions (3rd ed. 1992) § 8.39 25

12 Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51 12

13 Newberg, Newberg on Class Actions (3rd ed. 1992) § 14.03 18

14 **STATE CASES**

15 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960..... 26

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17 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105 18

18 *Classen v. Weller* (1983) 145 Cal.App.3d 27 24

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26 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429 22

27 *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434 11

28 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442 24

1	<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862.....	22, 24
2	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	11, 16, 20
3	<i>Neary v. Regents of University of California</i> (1992) 3 Cal.4th 272	11
4	<i>Quinn v. State of California</i> (1975) 15 Cal.3d 162.....	18
5	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal. 3d 462.....	22
6	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	22
7	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	17
8	<i>Stamburgh v. Superior Court</i> (1976) 62 Cal.App.3d 231.....	12, 25
9	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	15
10	<i>Wilner v. Sunset Life Insurance Co.</i> (2000) 78 Cal.App.4th 952	22
11	STATE STATUTES	
12	California Code of Civil Procedure § 382	21
13	California Labor Code § 218.5	19
14	California Labor Code § 226	19
15	California Labor Code § 1194	19
16	California Labor Code §§ 2698, <i>et seq.</i>	16
17	California Labor Code § 2699(k)(1).....	19
18	California Labor Code § 2802(d).....	19

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Harmony Blossom, Angelica Amaro, Michelle Baker, Laela Duncan, Ingrid Sardarian, Amy Singh, and Sydney Surrell ("Plaintiffs") seek preliminary approval of a proposed \$877,562.00 non-reversionary, wage-and-hour class action and PAGA representative settlement (the "Settlement") with Defendants Waldorf Astoria Employer, LLC and Waldorf Astoria Management, LLC ("Defendants") (together with Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to an estimated 730 Class Members who worked an estimated aggregate of 66,605 Workweeks during the Class Period. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, informal discovery, and negotiations between the Parties. The negotiations were at arm's-length and were facilitated through private mediation by an experienced and neutral class and PAGA action mediator, Michael J. Loeb, Esq. Accordingly, Plaintiffs request the Court preliminarily approve the Settlement, certify the proposed Class, approve the proposed Class Notice to Class Members, and set a final approval hearing no earlier than 120 days from the date of preliminary approval.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims and Procedural History

This is a wage-and-hour class and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* ("PAGA"). (Declaration of Kane Moon in Support of Plaintiffs' Motion for Preliminary Approval of Class and Representative Action Settlement ["Moon Decl."], ¶ 2.) Plaintiffs seek to represent a class of all current and former non-exempt employees who worked for Defendants at the Waldorf Astoria Beverly Hills during the Class Period, as set forth in the Settlement. (*Id.*; Ex. 1.) Defendant Waldorf Astoria Management, LLC manages and operates the Waldorf Astoria Beverly Hills, a luxury hotel and resort, and Defendant Waldorf Astoria Employer, LLC is the employing entity for the non-exempt, hourly-paid employees who worked

1 at the hotel. (Moon Decl., ¶ 3.) Defendants employed Plaintiffs and other non-exempt, hourly-paid
2 employees at the Waldorf Astoria Beverly Hills during the Class Period. (*Id.*) Plaintiffs contend
3 that they, and their coworkers, were subjected to the same unlawful labor practices, including a
4 failure to pay wages for all hours worked. (*Id.*)

5 Plaintiffs' claim for unpaid minimum and overtime wages stems from allegations that
6 Defendants failed to compensate Plaintiffs and others for off-the-clock work, that Defendants made
7 unlawful deductions from the Class's wages, and that Defendants took gratuity payments given to
8 Plaintiffs and Class Members without crediting the full amount to Plaintiffs and Class Members.
9 (Moon Decl., ¶ 4.) Plaintiffs' meal and rest period claims are based on allegations that, due to the
10 nature of their work, Class Members' breaks were often short, late, interrupted, or missed
11 altogether, and that Defendants did not pay all premium wages for non-compliant breaks. (*Id.*)
12 Plaintiffs further bring a claim for unreimbursed necessary business expenses based on allegations
13 that Class Members were required to incur work-related expenses, including for personal cellphone
14 use, uniforms and equipment, and parking, without reimbursement. (*Id.*) Plaintiffs also allege that
15 Defendants failed to provide paid sick leave; that Defendants intentionally misclassified Plaintiff
16 Sardarian and other Class Members as independent contractors, such that they did not receive
17 mandatory benefits and fringe benefits offered to Defendants' W-2 employees; that Defendants
18 failed to maintain written commissions records and independent contractor agreements or provide
19 copies of such agreements; that Defendants retaliated against Plaintiffs for their participation in
20 protected activities; and that Defendants failed to timely produce requested payroll records. (*Id.*)
21 Finally, Plaintiffs bring derivative claims for waiting time penalties, wage statement violations,
22 unfair business practices, unjust enrichment, and civil penalties under PAGA. (*Id.*)

23 Because of the foregoing alleged violations, on November 6, 2023, Plaintiff Blossom filed
24 a Class and Representative Action Complaint against Defendants in the Los Angeles Superior
25 Court, entitled *Harmony Blossom v. Waldorf Astoria Employer, LLC, et al.*, Case No.
26 23STCV27316 (the "Blossom Action"), which alleges that Defendants systematically: (1) failed to
27 pay minimum wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods;
28 (4) failed to authorize and permit rest breaks; (5) failed to indemnify necessary business expenses;

(6) failed to timely pay final wages at termination; (7) failed to provide accurate itemized wage statements; and (8) engaged in unfair business practices. (Moon Decl., ¶ 5.) On December 15, 2023, Defendants removed the Blossom Action to the United States District Court for the Central District of California, Case No. 2:23-cv-10510-MCS-PVC, and on February 21, 2024, the District Court granted Plaintiff's motion to remand, returning the Blossom Action to the Los Angeles Superior Court, where it is currently pending. (*Id.*, ¶ 6.)

Pursuant to PAGA, on November 5, 2023, Plaintiff Blossom gave written notice to the California Labor and Workforce Development Agency (the "LWDA") of the alleged Labor Code violations, with service on Defendants, and paid the required filing fee. (Moon Decl., ¶ 7.) Plaintiffs shall submit an amended PAGA notice to the LWDA, which add new allegations and claims included in the Operative Complaint (defined below) which were not previously disclosed to the LWDA. (*Id.* at ¶ 7, Ex. 2.) The applicable notice period has since expired, and the LWDA has not indicated its intent to investigate the alleged violations or intervene in this Action. (*Id.*)

This Settlement also resolves a related action, entitled *Angelica Amaro, et al. v. Waldorf Astoria Management LLC, et al.*, filed on November 27, 2023 in the Los Angeles Superior Court as Case No. 23STCV29009 and thereafter removed to the United States District Court for the Central District of California, Case No. 2:24-cv-00139-MEMF-JC (the "Amaro Action"). (Moon Decl., ¶ 8.) The Amaro Action is brought by Plaintiffs Angelica Amaro, Michelle Baker, Laela Duncan, Ingrid Sardarian, Amy Singh, and Sydney Surrell (the "Amaro Plaintiffs"), who are represented by Harmssen LaPointe P.C. and the Law Offices of Daniel Feder. (*Id.*) The Amaro Plaintiffs' PAGA claims arise from a PAGA notice originally submitted to the LWDA on March 8, 2023 (the "Bolos PAGA Notice") and amended on August 29, 2023 to substitute Plaintiff Amy Singh (the "Singh PAGA Notice"). (*Id.*) As part of the Settlement, the Parties have agreed to consolidate the two Actions for settlement purposes by filing a First Amended Class and Representative Action Complaint in the Blossom Action that adds the Amaro Plaintiffs as additional Class Representatives (the "Operative Complaint"). (*Id.*)

Defendants ardently oppose the merits of these cases and deny Plaintiffs' factual allegations. (Moon Decl., ¶ 9.) Defendants assert they complied with all their compensation

obligations, including compensating Class Members for all off-the-clock work and overtime work, and therefore, Plaintiffs and other Class Members were paid all wages owed. (*Id.*) Defendants argue they did not make any unlawful deductions from Class Members' wages or take any gratuities without credit to Class Members. (*Id.*) Defendants maintain compliance with all their meal and rest period obligations, contending that Plaintiffs and other Class Members were provided the opportunity to take all meal and rest periods to which they were entitled or otherwise voluntarily waived breaks. (*Id.*) Defendants assert they complied with all their reimbursement obligations and properly provided paid sick leave; that they properly classified all of their employees and did not fail to provide any fringe benefits; and that they did not retaliate against any of their employees. (*Id.*) To the extent employees received wage statements that were allegedly inaccurate, Defendants assert employees suffered no actual damage or harm as a result and that any violation was not knowing or intentional. (*Id.*) With respect to Plaintiffs' claim for waiting time penalties, Defendants allege their good-faith belief that they paid all wages precludes the imposition of waiting time penalties, since Plaintiffs cannot prove Defendants' alleged failure to pay all final wages at the time of separation was "willful." (*Id.*) For these reasons, among others, Defendants deny all of Plaintiffs' claims and allegations, further claim they did not engage in any unfair business practices, and deny liability under PAGA. (*Id.*) Defendants also maintain the claims are improper for class treatment, in part due to the individualized and testimony-intensive nature of the wage claims, and further contend that many Class Members and PAGA Group Members entered into arbitration agreements containing class action waivers. (*Id.*)

B. Discovery and Investigation

The Parties agreed to mediate these actions with Michael J. Loeb, Esq., an experienced class and PAGA action mediator. (Moon Decl., ¶ 10.) In preparation for mediation, the Parties agreed to a protocol for an informal exchange of documents and information before mediation. (*Id.*) Prior to mediation, Plaintiffs obtained from Defendants, through informal discovery, the time and payroll data necessary and helpful to evaluate the claims asserted in these actions, and Defendants produced time and pay data for approximately 98.3% of the putative Class. (*Id.*)

1 In preparation for mediation, Plaintiffs' Counsel reviewed and analyzed all the information
2 Defendants provided and retained a statistics expert, Berger Consulting Group, to analyze the data
3 Defendants produced and to prepare a damage analysis prior to mediation. (Moon Decl., ¶ 11.) The
4 data analyzed contained approximately 249,452 shifts worked (representing approximately 99.6%
5 of total shifts worked in the Class Period), which allowed Plaintiffs' expert to prepare an analysis
6 with a high degree of certainty. (*Id.*) In conjunction with their extensive factual investigation,
7 Plaintiffs' Counsel also investigated the applicable law regarding the claims and defenses asserted
8 in the litigation. (*Id.*) Accordingly, Plaintiffs' Counsel were able to evaluate the probability of class
9 certification, success on the merits, and Defendants' maximum and realistic monetary exposure for
10 all claims. (*Id.*) Thus, Plaintiffs' and their Counsel's familiarity with the facts of the case and the
11 legal issues raised by the pleadings allowed them to act intelligently in negotiating the Settlement.
12 (*Id.*)

13 **C. Settlement Negotiations and Notice of Settlement to the LWDA**

14 On July 16, 2024, the Parties participated in a full day of private mediation with Michael J.
15 Loeb, Esq. (Moon Decl., ¶ 12.) The negotiations were at arm's length and, although conducted in
16 a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to
17 explore the potential for a settlement of the dispute, but each side was also prepared to litigate their
18 position through trial and appeal if a settlement had not been reached. (*Id.*) After a full discussion
19 regarding the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses, and with
20 the assistance of the mediator and further negotiations, the Parties reached a resolution, the material
21 terms of which are set out in the Settlement. (*Id.*)

22 Plaintiffs' Counsel submitted to the LWDA a notice of the proposed Settlement, together
23 with a copy of the Settlement Agreement, in compliance with Labor Code section 2699,
24 subdivision (i). (Moon Decl., ¶ 13, Ex. 3.) To date, the LWDA has not indicated any objection to
25 the Settlement. (*Id.*)

26 The Settlement resolves the Blossom Action and the Amaro Action, as well as the Bolos
27 PAGA Notice and the Singh PAGA Notice, on a global basis, and the Parties are not aware of any
28 other pending matter or action asserting claims that will be extinguished or affected by the

Settlement, except that the Settlement expressly excludes, and does not release, the individual claims asserted by Plaintiff Ingrid Sardarian in *Ingrid Sardarian v. Waldorf Astoria Management LLC, et al.*, Los Angeles Superior Court Case No. 24SMCV01858, including her claims for wrongful termination, whistleblower retaliation, and related claims. (Moon Decl., ¶ 14; Settlement, § 5.03.)

D. Key Terms of the Proposed Settlement

The key terms of the Settlement include:

1. Maximum Settlement Amount and Funding: The Maximum Settlement Amount is \$877,562.00, subject to potential increase under an Escalator Clause, and is non-reversionary. (Settlement, § 3.06(a); Moon Decl., ¶ 15.) Defendants will separately pay their employer-side payroll taxes owed on the wage portion of the Individual Settlement Payments. (*Id.*) Defendants shall transfer the Maximum Settlement Amount into a Qualified Settlement Fund maintained by the Settlement Administrator no later than thirty (30) days after the Date of Finality. (Settlement, § 3.06(a).)

2. Escalator Clause: Defendants estimate that there are approximately 66,605 total Workweeks worked by Class Members during the Class Period. (Settlement, § 3.04(f); Moon Decl., ¶ 16.) If the actual number of Workweeks exceeds 66,605 by more than 10% (i.e., exceeds 73,266), then the Maximum Settlement Amount shall increase by \$12.50 for each Workweek in excess of 73,266, or, in the alternative and at Defendants' sole option, the Class Period may be shortened so that the number of Workweeks does not exceed 66,605. (*Id.*)

3. Class Representative Incentive Awards: The Settlement includes Incentive Awards of up to \$36,500.00 in total, payable from the GSA and subject to the Court's approval, to be paid as follows: \$9,500.00 to Plaintiff Blossom, \$3,500.00 to Plaintiff Amaro, \$2,500.00 to Plaintiff Baker, \$2,500.00 to Plaintiff Duncan, \$7,500.00 to Plaintiff Sardarian, \$7,500.00 to Plaintiff Singh, and \$3,500.00 to Plaintiff Surrell, as Class Representatives, in addition to any Individual Settlement Payment and Individual PAGA Payment the Class Representatives are entitled to receive. (Settlement, Art. I & § 3.06(d); Moon Decl., ¶ 17.) This payment is for initiating and providing services in support of the Actions and in exchange for their general release under the

Settlement. (*Id.*) In the event the amount approved by the Court is less than requested, the difference will be retained in the Net Settlement Amount for Participating Class Members. (*Id.*)

4. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment: The Settlement permits a fee application of not more than one-third of the GSA (currently estimated to be \$292,520.67) for reasonable attorneys' fees, plus reimbursement for actual litigation costs not to exceed \$25,000.00, payable to Class Counsel from the GSA. (Settlement, § 3.06(b); Moon Decl., ¶ 18.) In the event the amounts finally approved are less, the difference will be retained in the Net Settlement Amount for Participating Class Members. (*Id.*) To date, Class Counsel have incurred \$20,438.03 in litigation costs. (Moon Decl., ¶ 18, Ex. 4.)

5. Administration Costs Payment: The Settlement provides a Settlement Administration Costs payment to the Settlement Administrator, payable from the GSA, in an amount estimated not to exceed \$11,500.00. (Settlement, Art. I & § 3.06(c); Moon Decl., ¶ 19.) In the event the amount of actual administration costs is less, the difference will be added to the Net Settlement Amount. (*Id.*) The Parties jointly selected Phoenix as the neutral entity to administer this Settlement, subject to Court approval. (Settlement, §§ 3.01, 3.02; Moon Decl., ¶ 19, Ex. 5.)

6. PAGA Group Members; PAGA Penalties; Individual PAGA Payments: "PAGA Group Members," are defined as all current and former non-exempt employees of Defendants who worked at the Waldorf Astoria Beverly Hills at any time during the PAGA Period. (Settlement, Art. I; Moon Decl., ¶ 20.) The "PAGA Period" is March 8, 2022 through October 14, 2024. (*Id.*) The Settlement allocates \$87,756.20 from the GSA for PAGA civil penalties, which will be distributed 75% (\$65,817.15) to the LWDA and 25% (\$21,939.05) to PAGA Group Members. (Settlement, § 3.06(e); Moon Decl., ¶ 20.) The Administrator will calculate each Individual PAGA Payment on a pro rata basis by dividing the PAGA Group Members' 25% share of PAGA penalties by the total number of PAGA Pay Periods worked by all PAGA Group Members during the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA Pay Periods. (Settlement, § 3.06(g); Moon Decl., ¶ 20.)

7. Net Settlement Amount: The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final

1 Approval: the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the
2 Settlement Administration Costs, the Incentive Awards, and the PAGA Settlement Amount.
3 (Settlement, Art. I & § 3.06; Moon Decl., ¶ 21.) The Net Settlement Amount is the remainder,
4 which is to be paid to Class Members as Individual Settlement Payments. (*Id.*) Assuming the
5 maximum amounts requested are approved, the Net Settlement Amount is estimated to be
6 approximately \$424,285.13. (*Id.*)

7 8. Class Members and Class Period: The Class is defined as all current and former non-
8 exempt employees of Defendants who worked at the Waldorf Astoria Beverly Hills during the
9 Class Period, together with Plaintiff Ingrid Sardarian with respect to the period from February 23,
10 2019 through October 14, 2024 during which she performed services at the Kevin B. Salon located
11 at the Waldorf Astoria Beverly Hills Hotel while classified as an independent contractor.
12 (Settlement, Art. I.c; Moon Decl., ¶ 22.) For purposes of Settlement, the " For purposes of
13 Settlement, the "Class Period" means November 6, 2019 through October 14, 2024, except with
14 respect to Plaintiffs Angelica Amaro, Michelle Baker, Laela Duncan, Ingrid Sardarian, Amy Singh,
15 and Sydney Surrell, whose individual release period shall be February 23, 2019 through October 14,
16 2024 to coincide with the initial filing of the Amaro Action. (*Id.* at Artl. 1.g.). It is estimated that
17 there are approximately 730 Class Members. (Moon Decl., ¶ 22.)

18 9. Individual Settlement Payments: Each Individual Settlement Payment is the
19 Participating Class Member's pro rata share of the Net Settlement Amount, calculated by dividing
20 the Net Settlement Amount by the total number of Qualifying Workweeks worked by all Class
21 Members during the Class Period, and multiplying the result by each Participating Class Member's
22 Qualifying Workweeks. (Settlement, § 3.06(f); Moon Decl., ¶ 23.) No claim form is required for a
23 Class Member to receive an Individual Settlement Payment. (*Id.*) The high, low, and average range
24 of payments to Class Members and PAGA Group Members will be calculated by the Administrator
25 following preliminary approval and receipt and processing of the Class List, and will be provided
26 to the Court in a motion for final approval. (*Id.*)

27 10. Tax Allocations: For each Participating Class Member's Individual Settlement
28 Payment, 15% will be allocated to the settlement of wage claims, subject to tax withholding and

1 reported on an IRS Form W-2, and 85% will be allocated to the settlement of claims for interest,
2 penalties, and reimbursement, reported on an IRS Form 1099. (Settlement, § 3.06(f); Moon Decl.,
3 ¶ 24.) Individual PAGA Payments will be allocated 100% to penalties and reported on an IRS
4 Form 1099, and the Incentive Awards will be reported on an IRS Form 1099. (Settlement, §§
5 3.06(d), (g); Moon Decl., ¶ 24.)

6 11. Disbursement and Uncashed Funds: Within ten (10) court days after Defendants fully
7 fund the Qualified Settlement Fund, the Administrator will mail the Individual Settlement
8 Payments, Individual PAGA Payments, the LWDA Payment, the Settlement Administration Costs,
9 the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the
10 Incentive Awards. (Settlement, § 3.06; Moon Decl., ¶ 25.) Class Members will not need to submit
11 any claim form as a condition of receiving individual settlement payments. (*Id.*) Settlement checks
12 will be void 180 days after mailing. (Settlement, § 3.06(i); Moon Decl., ¶ 25.) Funds represented
13 by checks that remain uncashed after the void date will be paid to the Legal Aid Foundation of Los
14 Angeles as the designated cy pres recipient, and funds represented by checks that are returned as
15 undeliverable will, after reasonable efforts including a skip trace, be transmitted to the California
16 Controller's Office Unclaimed Property Division in the name of the Class Member, all in
17 accordance with California Code of Civil Procedure section 384. (*Id.*)

18 12. Released Class Claims by Participating Class Members: All Participating Class
19 Members release the Released Parties from all federal, California state law, and local wage-and-
20 hour claims that were alleged, or reasonably could have been alleged, based on the facts stated in
21 the Operative Complaint filed in the Actions, including claims for unpaid minimum and overtime
22 wages, meal and rest break violations, unreimbursed business expenses, late final pay, wage
23 statement violations, and unfair business practices, for the duration of the Class Period.
24 (Settlement, § 5.01; Moon Decl., ¶ 26.)

25 13. Released PAGA Claims by PAGA Group Members: The State of California and all
26 PAGA Group Members release the Released Parties from all claims for civil penalties under PAGA
27 that were alleged, or reasonably could have been alleged, in the Bolos PAGA Notice, the Singh
28

PAGA Notice, and the Blossom PAGA Notice, as amended, and in the Blossom Action and the Amaro Action, for the duration of the PAGA Period. (Settlement, § 5.02; Moon Decl., ¶ 27.)

14. Plaintiffs' General Release and Waiver of Rights Under California Civil Code Section 1542: In addition to the Released Class Claims, each Class Representative provides a general release of all claims against the Released Parties, subject to the express exclusion of Plaintiff Sardarian's individual claims. (Settlement, § 5.03; Moon Decl., ¶ 28.) For purposes of Plaintiffs' general release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits of section 1542 of the California Civil Code, which reads: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." (Settlement, § 5.04; Moon Decl., ¶ 28.)

15. Released Parties: The Released Parties are Defendants and each of their present, former, and future parent companies, subsidiaries, divisions, related or affiliated companies, predecessors, insurers, hotel ownership entities, shareholders, successors and assigns, and their current and former officers, directors, employees, agents, members, managing entities, joint employers, integrated enterprises, and attorneys. (Settlement, Art. I; Moon Decl., ¶ 30.)

16. Class Notice: No later than thirty (30) days after the Preliminary Approval date, Defendants will provide the Class List to the Settlement Administrator. (Settlement, § 3.03; Moon Decl., ¶ 31.) Within fifteen (15) business days after receiving the Class List, the Administrator will mail the Court-approved Notice Packet, in English and Spanish, to all Class Members via first-class United States mail, after checking addresses against the National Change of Address database. (*Id.*) Any Notice Packet returned as undeliverable will be skip-traced and re-mailed. (*Id.*) Class Members will have forty-five (45) calendar days from the initial mailing to request exclusion from or object to the Settlement. (Settlement, Art. I; Moon Decl., ¶ 31.) The Class Notice sets forth the terms of the Settlement and the estimated dollar amounts of the Individual Settlement Payment and Individual PAGA Payment payable to each Participating Class Member and Aggrieved Employee. (Moon Decl., ¶ 31.)

1 **III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL**

2 The law favors the settlement of lawsuits, particularly in class actions and other complex
3 cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277-81.) To prevent fraud,
4 collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk*
5 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01 [citing authority omitted].) To approve a
6 settlement, the Court must find "the settlement is fair, adequate, and reasonable." (*Id.*) This Court
7 has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434,
8 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: "(1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow
10 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
11 the percentage of objectors is small." (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, Newberg
12 on Class Actions (3rd ed. 1992) § 11.41].)

13 In evaluating a settlement, the trial court considers the following factors: (1) the strength
14 of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3)
15 the risk of maintaining class action status through trial; (4) the settlement amount offered; (5) the
16 extent of discovery completed and the stage of the proceedings; (6) counsel's experience and views;
17 (7) the presence of a governmental participant; and (8) the class members' reaction to the proposed
18 settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) To approve a
19 class action settlement, "the court must satisfy itself that the class settlement is within the 'ballpark'
20 of reasonableness." (*Id.* at p. 133.) The record need not contain an explicit statement of the
21 maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186
22 Cal.App.4th 399, 408-09 [holding that *Kullar* does not require "an explicit statement of the
23 maximum amount the plaintiff class could recover if it prevailed on all its claims," but instead,
24 only an "understanding of the amount that is in controversy and the realistic range of outcomes of
25 the litigation"].)

26 As discussed below, Plaintiffs' Counsel have provided materials and information exceeding
27 the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

28 ///

1 **A. The Settlement Is Fair, Reasonable, Adequate, and the Product of**
2 **Investigation, Litigation, and Negotiation**

3 **1. The Settlement Is the Product of Discovery, Investigation, Informed**
4 **and Non-Collusive Arm's-Length Negotiations, and Realistic Claims**
5 **Analysis**

6 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
7 evidence to the contrary is offered. (Newberg, Newberg on Class Actions (3rd ed. 1992) § 11.51.)
8 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
9 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The
10 fact that the plaintiff might have received more if the case had been fully litigated is no reason not
11 to approve the settlement."].) Thus, there is a presumption here that negotiations were conducted
12 in good faith.

13 Plaintiffs' Counsel have conducted a thorough investigation into the facts of this case.
14 (Moon Decl., ¶ 32.) The Settlement at issue was reached through arm's-length negotiations, private
15 mediation with Michael J. Loeb, Esq., and the assistance of a statistics expert. (*Id.*) Based on
16 Defendants' informal class-wide production, on Plaintiffs' Counsel's independent investigation and
17 evaluation, and on their extensive experience in wage-and-hour litigation, Plaintiffs' Counsel are
18 of the opinion that the proposed Settlement is fair, reasonable, and adequate. (*Id.*)

19 Based on Plaintiffs' Counsel's review of the time and payroll data provided by Defendants,
20 and on Plaintiffs' expert's analysis of that data, Plaintiffs' Counsel evaluated the estimated
21 maximum exposure that Defendants faced. (Moon Decl., ¶ 33.) Based on that review, it is estimated
22 that there are approximately 730 Class Members who collectively worked approximately 66,605
23 Workweeks during the Class Period; that Class Members' weighted average base rate of pay was
24 approximately \$23.38 and their weighted average regular rate of pay was approximately \$26.78;
25 that approximately 284 former employees fall within the three-year statute of limitations ("SOL")
26 period for waiting time penalties; and that approximately 462 employees fall within the one-year
27 SOL period for wage statement penalties, corresponding to approximately 14,294 PAGA Pay
28 Periods. (*Id.*) Plaintiffs' Counsel and Plaintiffs' expert calculated Defendants' estimated maximum

1 potential exposure by claim as follows: approximately \$1,442,642.61 for unpaid off-the-clock
2 wages; \$2,029,103.44 for meal period premiums; \$6,046,722.64 for rest period premiums;
3 \$416,281.25 for unreimbursed business expenses; \$1,186,464.86 for unpaid sick leave;
4 \$4,575,000.00 for misclassification; \$100,000.00 for workers' compensation benefits; \$100,000.00
5 for retaliation; \$6,773,928.32 for unpaid fringe benefits; \$666,060.00 for unlawful deductions;
6 \$13,248,000.00 for unlawful tip sharing; \$1,553,741.28 for waiting time penalties; \$1,406,300.00
7 for wage statement penalties; and \$1,429,400.00 for PAGA penalties, for a total maximum
8 exposure of approximately \$40,973,644.39. (*Id.*)

9 These figures represent Defendants' theoretical maximum exposure and are not a realistic
10 measure of what the Class could expect to recover after trial. (Moon Decl., ¶ 34.) The maximum
11 figures assume, among other things, a 100% violation rate for meal and rest periods, full and
12 stacked statutory and civil penalties, and complete success on certification and the merits, none of
13 which is assured. (*Id.*) In Plaintiffs' Counsel's professional judgment, substantial discounts to the
14 maximum exposure are warranted to account for the significant risks discussed below. (*Id.*) Based
15 on Plaintiffs' Counsel's valuation of the claims, their assessment of Defendants' production and the
16 sample time and pay records of the Class, and Defendants' defenses, Plaintiffs' Counsel believe
17 Defendants' realistic exposure is closer to 5% of the theoretical maximum exposure, or
18 \$2,048,682.22 (\$40,973,644.39 x 5%). (*Id.*) As a result, the \$877,562.00 non-reversionary
19 Maximum Settlement Amount represents approximately 43% of the realistic exposure figure and
20 constitutes a substantial recovery for the Class that is well within the range of reasonableness. (*Id.*)

21 The substantial discounts to the maximum exposure are warranted for each category of
22 claims. Plaintiffs' unpaid wages claim assumes approximately 10 minutes of off-the-clock work
23 per shift, approximately 82.8% of which would have been compensable at the overtime rate, but
24 off-the-clock claims are difficult to try on a class-wide basis because there is often no timekeeping
25 apparatus to prove the claim, and Defendants contend that all time worked was compensated, that
26 employees were not required to work off-the-clock, and that any such time was de minimis. (Moon
27 Decl., ¶ 35.) Plaintiffs' meal period claim is based on approximately 86,788 calculated unique meal
28 break violations, but Defendants contend that many compliant meal breaks were taken and that any

1 violation resulted from Class Members voluntarily choosing to forego or shorten a meal period.
2 (*Id.* at ¶ 36.) Plaintiffs' rest break claim assumes a 100% violation rate for shifts of at least 3.5
3 hours in length, but rest periods need not be recorded and Defendants contend Class Members
4 voluntarily chose to forego some rest breaks. (*Id.* at ¶ 37.) Plaintiffs' unreimbursed business
5 expenses claim estimates \$25 per month per Class Member, but Defendants contend they complied
6 with all reimbursement obligations. (*Id.* at ¶ 38.) The misclassification, workers' compensation
7 benefits, fringe benefits, unlawful deductions, retaliation, and unlawful tip sharing claims each
8 depend on individualized proof and are subject to Defendants' vigorous denials, warranting
9 substantial discounts as well. In addition, Plaintiffs Amaro, Baker, Duncan, Sardarian, Singh, and
10 Surrell signed arbitration agreements with class action waivers that would prevent them from
11 proceeding with their misclassification, workers' compensation benefits, fringe benefits, unlawful
12 deductions, retaliation, and unlawful tip sharing claims on a classwide basis. Plaintiff Blossom,
13 who did not allege any such claims, was the only named plaintiff who did not enter into an
14 arbitration agreement with a class waiver, which is a significant reason the case settled on a
15 classwide basis. (*Id.* at ¶¶ 40-45.) With respect to the derivative claims for waiting time, wage
16 statement, and PAGA penalties, Plaintiffs' Counsel recognize that it would be unrealistic to expect
17 the Court to award the full exposure given the discretionary nature of awarding penalties,
18 Defendants' good-faith and no-harm defenses, the individualized nature of the underlying wage
19 claims, and the Due Process concerns raised by awarding a disproportionate amount of penalties
20 relative to the underlying wage claims. (*Id.* at ¶ 46.)

21 In addition to the merits-based risks, the Settlement resolves a significant threshold risk
22 that many Class Members and PAGA Group Members are bound by arbitration agreements
23 containing class action waivers, which, if enforced, could substantially reduce the size of the Class
24 and the aggregate recovery available through class litigation. (*Id.* at ¶ 47.) The Settlement obtains
25 a global, guaranteed, and non-reversionary recovery notwithstanding that risk. (*Id.*)
26
27
28

1 **2. The Class Settlement Is Fair Considering the Parties' Respective**
2 **Positions and Significant Risks to Certification and Proof on the**
3 **Merits**

4 A settlement is not judged against what a plaintiff might recover had he prevailed at trial,
5 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
6 (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and
7 necessary in the settlement process . . . even if 'the relief afforded by the proposed settlement is
8 substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar
9 to a class settlement because 'the public interest may indeed be served by a voluntary settlement in
10 which each side gives ground in the interest of avoiding litigation."]) [quoting *Air Line Stewards*
11 *v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

12 Here, considering all known facts and circumstances, the risk of significant delay, trial risk,
13 appellate risk, and the defenses Defendants may assert both to certification and on the merits, the
14 Settlement is in the best interest of the Class and the LWDA. (Moon Decl., ¶ 32.) While Plaintiffs
15 are confident in the merits of their claims, a legitimate controversy exists as to each cause of action,
16 and Plaintiffs recognize that proving the amount owed to each Class Member would be an
17 expensive, time-consuming, and uncertain proposition. (*Id.* at ¶ 49.) The Settlement obviates the
18 significant risk that this Court may deny certification of all or some of Plaintiffs' claims. (*Id.* at ¶
19 50.) Plaintiffs' Counsel took into account the risk of not prevailing at trial due to the individualized
20 and testimony-intensive nature of the claims, which could bar manageability of the representative
21 claims or otherwise significantly reduce any recovery. (*Id.*) Even if Plaintiffs were able to pursue
22 their claims on a class-wide basis and obtain certification, continued litigation would be expensive,
23 involving a trial and possible appeals, and would substantially delay and reduce any recovery by
24 the Class. (*Id.*) Although the Parties have engaged in a significant amount of investigation,
25 informal discovery, and class-wide data analysis, they have not completed extensive formal
26 discovery, and the Parties would incur considerably more attorneys' fees and costs through trial.
27 (*Id.*) In sum, this Settlement avoids the risks, burdens, and accompanying expense of further
28 litigation. (*Id.*)

1 The proposed \$877,562.00 Settlement therefore represents a substantial recovery when
2 compared to the reasonably forecasted recovery for the Class. (Moon Decl., ¶ 51.) When
3 considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of
4 proof necessary to establish liability, and the probability of appeal, it is clear the Settlement amount
5 is within the "ballpark" of reasonableness, and that preliminary settlement approval is appropriate.
6 (*Id.*; *Kullar, supra*, 168 Cal.App.4th at p. 133; *see Munoz, supra*, 186 Cal.App.4th at pp. 408-09.)

7 **3. The PAGA Settlement Is Fair Considering the Parties' Respective**
8 **Positions and Significant Risks**

9 With regard to the PAGA claims, the Settlement is a fair and reasonable resolution that
10 satisfies PAGA's dual statutory purposes of deterrence and punishment, on the one hand, and
11 providing PAGA Group Members with genuine and meaningful relief, on the other. (Moon Decl.,
12 ¶ 48; Lab. Code §§ 2698, *et seq.*) As a result of this litigation, Defendants have had to hire legal
13 counsel, engage in class-wide discovery, and participate in mediation. (Moon Decl., ¶ 48.)
14 Defendants will also have to pay civil penalties to the LWDA under the Settlement, assuming final
15 settlement approval is granted. (*Id.*) Not including their own attorneys' fees and costs or the
16 employer's share of payroll taxes, Defendants will pay \$877,562.00 to resolve these matters, of
17 which \$87,756.20 is allocated toward the PAGA claims and will be distributed 75% (\$65,817.15)
18 to the LWDA and 25% (\$21,939.05) to PAGA Group Members, and the release obtained under the
19 Settlement does not preclude PAGA Group Members from pursuing any individual claims they
20 may have against Defendants or the other Released Parties. (*Id.*)

21 Moreover, because the issues here are fairly contested, there is a possibility of the Court
22 not awarding the full PAGA penalties even if Plaintiffs prevailed on the merits, given the largely
23 discretionary nature of awarding PAGA penalties and the Court's authority to reduce penalties
24 where an award would otherwise be unjust, arbitrary and oppressive, or confiscatory. (Moon Decl.,
25 ¶ 48.) In other words, were this matter to go to trial, any award granted would be at the discretion
26 of the Court and subject to a substantial reduction. (*Id.*)

1 **4. Plaintiffs' Counsel Have Extensive Experience in Class and PAGA**
2 **Action Litigation, Which Was Integral to Negotiating the Settlement**

3 The Settlement negotiations were conducted by highly capable counsel with considerable
4 experience and demonstrated competence with litigating wage-and-hour class actions. (Moon
5 Decl., ¶¶ 54-60.) Plaintiffs' Counsel have a strong record of vigorous and effective advocacy for
6 their clients and are experienced in handling complex wage-and-hour class action litigation. (*Id.*)
7 Their experience was helpful in assessing the reasonableness of the Settlement at issue here, and
8 from this experience they concluded that this litigation could not have been settled on better terms
9 than provided under the Settlement. (*Id.* at ¶ 59.) Although Plaintiffs and their counsel were
10 prepared to try the claims alleged in the litigation, they support the proposed Settlement as being
11 in the best interest of the Class based on objective evidence that has been considered and weighed
12 against the risks, expenses, and time consumption to both sides of continued litigation. (*Id.* at ¶¶
13 32, 59.)

14 **B. The Proposed Attorneys' Fees and Costs Are Reasonable**

15 Subject to the Court's approval, the Settlement provides a fee application of not more than
16 one-third of the GSA for Class Counsel's attorneys' fees (currently estimated to be \$292,520.67),
17 plus reimbursement for out-of-pocket litigation costs not to exceed \$25,000.00. (Settlement, §
18 3.06(b); Moon Decl., ¶¶ 18, 61.) These amounts are disclosed to Class Members in the proposed
19 Class Notice and are reasonable. (Moon Decl., ¶ 61.) Pursuant to a joint prosecution and fee-
20 sharing agreement among Class Counsel, and as consented to by Plaintiffs, the fee award will be
21 allocated among the firms serving as Class Counsel. (*Id.*)

22 **1. Class Counsel Request a Fees Award Based On the "Common Fund"**
23 **Method**

24 California courts have long awarded attorneys' fees as a percentage of the benefit created
25 by counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d
26 25.) The California Supreme Court has held, "when a number of persons are entitled in common
27 to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in
28

1 the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees
2 out of the fund." (*Id.* at p. 34.)

3 Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common
4 fund" theory. (Moon Decl., ¶ 61.) The purpose of this approach is to "spread litigation costs
5 proportionately among all the beneficiaries so that the active beneficiary does not bear the entire
6 burden alone." (*Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v.*
7 *State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, "one who expends
8 attorneys' fees in winning a suit which creates a fund from which others derive benefits, may
9 require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.)
10 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California
11 Supreme Court recognized that the common fund doctrine has been applied "consistently in
12 California when an action brought by one party creates a fund in which other persons[] are entitled
13 to share." (*Id.* at pp. 110-11 [pincite omitted].)

14 The California Supreme Court affirmed in *Laffitte v. Robert Half International Inc.* (2016)
15 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the
16 class members, and the trial court in its equitable powers awards class counsel a fee out of that
17 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
18 percentage of the fund created." (*Id.* at p. 503.) This line of legal authority supports a request for
19 attorneys' fees based on the percentage of recovery/common fund method.

20 **2. The Requested Fee Award Is in Line with Typical Cases**

21 According to a leading treatise on class actions: "No general rule can be articulated on what
22 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
23 reasonable fee award from a common fund in order to assure that the fees do not consume a
24 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
25 are not unprecedented." (Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 14.03.) Attorneys'
26 fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty
27 percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van*
28

1 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating that most cases
2 where 30-50% was awarded involved "smaller" settlement funds of under \$10 million].)

3 Here, Class Counsel's fee request for one-third of the GSA is in line with the prevailing
4 guidelines established in California case law and academic literature and is consistent with awards
5 in California. (*Compare* Settlement, § 3.06(b), *with Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
6 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the
7 lodestar method is used, fee awards in class actions average around one-third of the recovery."].)
8 Accordingly, Plaintiffs request the Court preliminarily approve the attorneys' fees as negotiated by
9 the Parties.

10 **3. This Matter Involves a "Fee-Shifting" Provision of the Labor Code**

11 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of
12 reasonable fees and costs of suit for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194,
13 2699(k)(1), 2802(d).) Under these sections, Plaintiffs would be permitted to recover their actual
14 attorneys' fees, even if those fees were larger than the total class recovery at the conclusion of this
15 case. (*Id.*) This Settlement is beneficial in that it limits the risk of continued expenses and
16 consumption of time, energy, and resources facing Defendants while at the same time rewarding
17 Class Counsel for their decision to assume risk by taking on this matter on a contingent basis with
18 no guarantee of recovery. (Moon Decl., ¶¶ 64-65.) In fact, prosecution of this action involved
19 significant financial risk for Class Counsel. (*Id.*) Once Class Counsel undertook this litigation, they
20 committed to pursue it to its conclusion, placing their fiduciary duty to the Class ahead of all other
21 concerns. (*Id.*, ¶ 65.)

22 **4. Counsel's Experience, Reputation, and Ability Support the Fees** 23 **Request**

24 As demonstrated by their past experience in pursuing class actions on behalf of consumers
25 and employees, Class Counsel possess considerable expertise in litigating class actions. (Moon
26 Decl., ¶¶ 54-60.) Class Counsel have been involved as lead counsel or co-counsel in numerous
27 class actions that resulted in millions in recovery. (*Id.*) Their experience in wage-and-hour
28 litigation was integral in evaluating the strengths and weaknesses of the case against Defendants

1 and the reasonableness of the Settlement. (*Id.* at ¶ 59.) Practice in the narrow field of wage-and-
2 hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state
3 and federal) as well as the procedural law of class action litigation. (*Id.* at ¶ 57.) Because it is
4 reasonable to compensate counsel commensurate with their skill, reputation, and experience, the
5 requested fee award is supported here.

6 **C. The Incentive Awards to Plaintiffs Are Reasonable**

7 Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to
8 compensate them for the expense or risk they have incurred in conferring a benefit on other
9 members of the class." (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Courts routinely grant approval
10 of class action settlement agreements containing enhancements for the class representatives, which
11 are necessary to provide incentive to represent the class and are appropriate given the benefit the
12 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
13 2009) 563 F.3d 948, 958-59.) Service awards are particularly important to plaintiffs in wage-and-
14 hour cases because they promote the important public policies underlying the wage-and-hour laws.
15 This strong policy is codified in California Labor Code section 90.5, which provides, "[i]t is the
16 policy of this state to vigorously enforce minimum labor standards in order to ensure employees
17 are not required or permitted to work under substandard unlawful conditions" (Lab. Code §
18 90.5.) Nonetheless, the California Supreme Court has noted that "retaliation against employees for
19 asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes
20 designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this
21 context, class representatives should be rewarded for assuming the risk of retaliation for the sake
22 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

23 Under the Settlement here, subject to the Court's approval, Incentive Awards of up to
24 \$36,500.00 in total will go to Plaintiffs, to be paid as follows: \$9,500.00 to Plaintiff Blossom,
25 \$3,500.00 to Plaintiff Amaro, \$2,500.00 to Plaintiff Baker, \$2,500.00 to Plaintiff Duncan,
26 \$7,500.00 to Plaintiff Sardarian, \$7,500.00 to Plaintiff Singh, and \$3,500.00 to Plaintiff Surrell, as
27 Class Representatives, in addition to any Individual Settlement Payment and Individual PAGA
28 Payment they are entitled to receive. (Settlement, Art. I & § 3.06(d); Moon Decl., ¶ 17.) This

1 payment is for initiating and providing services in support of the Actions and in exchange for their
2 general release under the Settlement. With respect to the varying amounts of the Incentive Awards,
3 the Incentive Awards amounts reflect the varying lengths of employment with Defendant during
4 the Class Period. In addition, Plaintiff Blossom currently remains employed by Defendant, thus
5 subjecting herself to additional risks of retaliation while remaining employed by Defendant, and
6 was the only named representative to have not entered into an arbitration agreement waiving the
7 right to pursue class claims. This fact was a significant reason the case was able to settle on a
8 classwide basis. (Moon Decl., ¶¶ 17, 49.) Throughout this litigation, Plaintiffs cooperated with
9 Class Counsel, provided valuable information regarding their hours worked and duties performed,
10 provided information regarding meal and rest periods taken and missed, participated in decisions
11 concerning the actions, assisted in preparation for mediation, and provided the names and contact
12 information of potential witnesses. (*Id.* at ¶ 46.) Plaintiffs also faced actual risks to their future
13 employment by placing themselves on the public record in an employment lawsuit. (*Id.* at ¶ 47.)
14 The requested awards are fair and reasonable, particularly considering the substantial benefits
15 Plaintiffs generated for all Class Members. (*Id.* at ¶ 49.)

16 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

17 **A. Legal Standard**

18 The proposed Settlement Class is well suited for class certification. The claims all derive
19 from a core set of alleged violations of California's wage and hour laws and regulations. (Moon
20 Decl., ¶¶ 3-4.) For the reasons set forth more fully below, the Class, for purposes of Settlement,
21 satisfies the prerequisites for certification under Code of Civil Procedure section 382. (Code Civ.
22 Proc. § 382.) Section 382 provides that "when the question is one of a common or general interest,
23 of many persons, or when the parties are numerous, and it is impracticable to bring them all before
24 the court, one or more may sue or defend for the benefit of all." (*Id.*) There are two requirements
25 to section 382: "(1) there must be an ascertainable class[]; and (2) there must be a well defined
26 community of interest in the questions of law and fact involved affecting the parties to be
27 represented." (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [internal citations omitted].) To
28 clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil

1 Procedure 23 to explain that the community-of-interest requirement itself embodies three factors:
2 "(1) predominant common questions of law or fact; (2) class representatives with claims or
3 defenses typical of the class; and (3) class representatives who can adequately represent the class."
4 (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

5 California law and policy favor the fullest and most flexible use of the class action device.
6 (*Id.* at pp. 469-73.) Indeed, "Courts long have acknowledged the importance of class actions as a
7 means to prevent a failure of justice in our judicial system" particularly where the rights of
8 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to the
9 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*,
10 29 Cal.3d at pp. 473-75.)

11 **B. The Criteria for Class Certification Are Satisfied**

12 **1. The Class Is Ascertainable and Numerous**

13 When determining whether a class is ascertainable, California courts focus on the following
14 three factors: "(1) the class definition, (2) the size of the class and (3) the means of identifying
15 class members." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Here, Plaintiffs maintain there
16 is an easily ascertainable Class, defined by objective and precise criteria. (Settlement, Art. I.) The
17 proposed Class that Plaintiffs seek to represent is ascertainable because (1) the Class definition is
18 sufficiently precise, (2) the Class consists of approximately 730 individuals, and (3) Class
19 Members can be readily identified by Defendants' records. (*Id.*; Moon Decl., ¶¶ 22, 33.) Because
20 Class Members are identified using specific criteria in the regular business records of Defendants,
21 namely their employment by Defendants at the Waldorf Astoria Beverly Hills, non-exempt
22 classification, and actual work during the Class Period, the Class is ascertainable. (*See Wilner v.*
23 *Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership
24 of product that is the subject of the lawsuit is sufficient to make the class ascertainable].) "The
25 requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action
26 suit is indefinite and has been construed liberally." (*Rose v. City of Hayward* (1981) 126
27 Cal.App.3d 926, 934.) "Where a question is of common interest to 'many' persons, an action may
28 be maintained as a class action even where the parties are numerous and it is in fact practicable to

1 join them all." (*Id.*) "No set number is required as a matter of law for the maintenance of a class
2 action." (*Id.*) "Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a
3 trust in an action for removal of the trustees." (*Id.* [citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
4 574]; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a class of 9 plaintiffs and 35
5 members].) Therefore, numerosity is plainly satisfied.

6 2. **There Are Many Common Issues of Law and Fact Which Predominate**

7 To satisfy the community of interest requirement, a proponent must show (1) common
8 questions of law and fact that predominate over individual issues, (2) class representatives have
9 claims or defenses typical of the class, and (3) class representatives adequately represent the class.
10 (*Dunk, supra*, 48 Cal.App.4th at p. 1806.) This inquiry tests whether proposed classes are
11 sufficiently cohesive to rationally warrant adjudication by representation. (*See, e.g., Clothesrigger,*
12 *Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 611-12.)

13 Here, Plaintiffs' claims satisfy all three requirements. The employment practices at issue
14 include whether Defendants: paid employees all minimum and overtime wages owed, including
15 for alleged off-the-clock work; made unlawful deductions from wages or took gratuities without
16 crediting Class Members; provided employees with and authorized meal and rest periods or paid
17 premiums for non-compliant breaks; reimbursed employees for necessary business expenses;
18 provided paid sick leave; misclassified Class Members as independent contractors and thereby
19 failed to provide fringe benefits and workers' compensation benefits; retaliated against employees
20 for engaging in protected activity; timely paid all final wages at termination; provided accurate
21 itemized wage statements; engaged in unfair business practices; and violated civil penalty
22 provisions recoverable under PAGA. (Moon Decl., ¶¶ 3-5.) Plaintiffs contend the factual and legal
23 issues are the same for all Class Members, and further that all Class Members suffered from and
24 seek redress for the same alleged injuries. (*Id.* at ¶ 3.) Considering Class Members would need to
25 prove the same issues of law and fact to prevail, and their legal remedies are identical, it would be
26 preferable to resolve all claims through a settlement than to force each Class Member to litigate
27 their own individual claims. Thus, the Court should grant conditional class certification for
28

1 settlement purposes because common questions of law and fact predominate over any individual
2 questions within the Class.

3 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

4 The typicality requirement does not focus on the individual characteristics or circumstances
5 of the representative plaintiff compared to those of the remainder of the class, but rather, upon the
6 typicality of the proposed representative's claims as they relate to the defendant's conduct and
7 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["The only requirements are [sic] that
8 common questions of law and fact *predominate* and that the class representative be *similarly*
9 *situated*" vis-a-vis the class.] [emphasis in original].) A representative plaintiff's claims are typical
10 of the class if they arise from the same event, practice, or course of conduct, and if the claims rest
11 on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are current and former
12 employees of Defendants and allege they were subjected to the same policies and practices as other
13 similarly situated employees. (Moon Decl. at ¶ 3.)

14 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

15 The adequacy of representation requirements is met by fulfilling two conditions: (1) a
16 named plaintiff must be represented by counsel qualified to conduct the pending litigation, and (2)
17 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of Am.*
18 (1976) 60 Cal.App.3d 442, 450.)

19 Here, all requirements are met. Plaintiffs retained counsel with extensive experience in
20 prosecuting complex class actions, including similar class actions that previously settled. (Moon
21 Decl., ¶¶ 54-60.) Based on their experience, Plaintiffs' Counsel unquestionably are "qualified,
22 experienced and generally able to conduct the proposed litigation." (*Miller, supra*, 148 Cal.App.3d
23 at p. 874.) In addition, to Class Counsel's knowledge, Plaintiffs and their Counsel have no conflicts
24 of interest with any of the Plaintiffs, other Class Members, or the proposed Administrator. (Moon
25 Decl., ¶ 60.) Plaintiffs' willingness to serve as representatives demonstrates their serious
26 commitment to bringing about the best results possible for the Class. (*Id.* at ¶¶ 46-49.)

1 **5. A Class Action Is Superior to a Multiplicity of Litigation**

2 Finally, in making its class certification decision, the Court must determine that a class
3 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
4 (See *Leyva v. Medline Indus. Inc.* (9th Cir. 2013) 716 F.3d 510, 514-15.) By consolidating many
5 potential individual actions into a single proceeding, this Court's use of the class action device
6 enables it to manage this litigation in a manner that serves the economics of time, effort, and
7 expense for the litigants and the judicial system. (*Id.*) Absent class treatment, similarly situated
8 employees with small, but nevertheless meritorious, claims for damages would, as a practical
9 matter, have no means of redress because of the time, effort, and expense required to prosecute
10 individual actions. (*Id.* at p. 515; *Gentry, supra*, 42 Cal.4th at pp. 457-62.) Moreover, in the context
11 of settlement, the superiority concerns are essentially non-existent. (See generally, e.g.,
12 *Stamburgh, supra*, 62 Cal.App.3d.)

13 **V. THE PROPOSED CLASS NOTICE IS CONSTITUTIONALLY SOUND AND**
14 **SATISFIES THE RULES OF COURT**

15 Class Notice requirements are set forth in the California Rules of Court. (Cal. Rules of
16 Court, rule 3.766(e)-(f), rule 3.769(f).) Here, the proposed Class Notice, in the form attached to
17 the Settlement as Exhibit A, meets all the requirements of the California Rules of Court. The Class
18 Notice summarizes the proceedings to date and the terms and conditions of the proposed Settlement
19 in an informative and coherent manner. (Settlement, § 3.03; Moon Decl., ¶ 31.) It sets forth the
20 estimated dollar amounts of the Individual Settlement Payment and Individual PAGA Payment
21 payable to each Participating Class Member and Aggrieved Employee, and explains the right and
22 procedures to dispute workweeks, opt out, submit written objections, and appear at the Final
23 Approval Hearing. (Moon Decl., ¶ 31.) It makes clear the Settlement does not constitute an
24 admission of liability by Defendants, who deny all liability, and it recognizes that this Court has
25 not ruled on the merits of the action. (Settlement, § 4.01.) Thus, the proposed Class Notice meets
26 all the requirements of California Rule of Court 3.769(f). (Cal. Rules of Court, rule 3.769(f).)

27 The Class Notice also fulfills the requirement of neutrality in class notices. (Newberg,
28 Newberg on Class Actions (3rd ed. 1992) § 8.39.) Accordingly, the Class Notice complies with

1 the standards of fairness, completeness, and neutrality required of a combined settlement-
2 certification class notice.

3 California law vests the Court with broad discretion in fashioning an appropriate notice
4 program. (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960, 970, 973-74.) There is no statutory or due
5 process requirement that all class members receive actual notice, but in this matter, Class Members
6 will receive direct mailed notice, in English and Spanish, which is the best possible form of notice
7 under the circumstances. (Settlement, § 3.03; Moon Decl., ¶ 31.) As the Court of Appeals has
8 explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage
9 of the Class Members" (*Cartt*, 50 Cal.App.3d at p. 974.)

10 **VI. CONCLUSION**

11 For the foregoing reasons, Plaintiffs respectfully request the Court grant this motion, enter
12 the proposed order submitted herewith regarding preliminary approval, and set a final approval
13 hearing no earlier than 120 days from the preliminary approval order.

14
15 Respectfully submitted,

16 Dated:

MOON LAW GROUP, PC

17
18 By: _____

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