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on behalf of herself and others similarly situated

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

DEBORAH CALLAHAN, an individual on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

GOLDEN DOOR PROPERTIES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00002190-CU-OE-CTL

CLASS ACTION

Assigned for All Purposes To:
Hon. James A. Mangione

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Date: July 18, 2025
Time: 9:10 a.m.
Dept: C-62

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Deborah Callahan (“Plaintiff” or “Class Representative”) filed a class action
4 complaint in the Superior Court of the State of California, San Diego County, Case No. 37-2024-
5 00002190-CU-OE-CTL against Defendant Golden Door Properties, LLC (hereinafter
6 “Defendant”). Plaintiff alleged the following causes of action: (1) Failure to Pay Minimum
7 Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period
8 Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5)
9 Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor
10 Code §204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
11 1174.5; (9) Violation of Labor Code § 221; (10) Failure to Produce Requested Employment
12 Records Under Labor Code §§ 226(b), 1198.5; (11) Failure to Reimburse Necessary Business
13 Expenses § 2802; (12) Violation of Business & Professions Code § 17200 *et seq*; and (13)
14 Penalties under Private Attorney General Act (“PAGA”).

15 Pursuant to the proposed Class Action and PAGA Settlement Agreement (“Settlement” or
16 “Settlement Agreement”), filed concurrently herewith, the class consists of “all persons currently
17 or formerly employed by Defendant in California and classified as a non-exempt, hourly
18 employee who worked for Defendant at any time between January 18, 2020, to February 1,
19 2025.” After engaging in substantial investigation and extensive negotiations with the assistance
20 of a respected third-party neutral Brandon McKelvey, the parties have agreed to settle all claims
21 alleged in the lawsuit on a class-wide non-reversionary basis for Two Hundred and Eleven
22 Thousand Five Hundred Dollars and Zero Cents (\$211,500.00), inclusive of all fees and costs. All
23 267 Class Members shall receive a settlement share unless they opt out.

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

1 hearing for final approval of the class action settlement.

2 **II. STATUS OF THE LITIGATION**

3 **A. Procedural History**

4 On January 18, 2024, Plaintiff filed a class action complaint against Defendant alleging
5 twelve causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
6 Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4)
7 Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6)
8 Violation of Labor Code § 203; (7) Violation of Labor Code §204; (8) Failure to Keep Required
9 Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Violation of Labor Code § 221; (10)
10 Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5; (11)
11 Failure to Reimburse Necessary Business Expenses § 2802; and (12) Violation of Business &
12 Professions Code § 17200 *et seq.* (Declaration of Natalie Haritounian (“Haritounian Decl.”), filed
13 concurrently herewith, ¶ 10).

14 Plaintiff contends that Defendant failed to pay Class Members all wages due and owing,
15 including by requiring off the clock work, failing to provide meal and rest breaks, failing to
16 furnish accurate wage statements, making unlawful deductions, failing to produce requested
17 employment records, failing to timely pay wages including final wages, failing to maintain
18 accurate records, and failing to reimburse necessary business expenses. (Haritounian Decl., ¶ 11.)

19 Simultaneously, on January 18, 2024, Plaintiff submitted a Private Attorneys General Act
20 (“PAGA”) notice letter to the Labor Workforce Development Agency (“LWDA”) and served
21 Defendant. (Haritounian Decl., ¶ 12.) The LWDA did not express an interest in investigating
22 Plaintiff’s claims within the 65 day period. (*Id.*) Therefore, on March 22, 2024, Plaintiff filed a
23 First Amended Complaint adding a cause of action for penalties under the Private Attorneys
24 General Act (“PAGA”). (*Id.*).

25 **B. Investigation**

26 Before filing the lawsuit, Class Counsel investigated and researched the facts and
27 circumstances underlying the pertinent issues and the law applicable thereto. (Haritounian Decl., ¶
28 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as

1 well as preliminary research into the various legal issues involved in the case. (*Id.*) After
2 conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-
3 suited for class and representative action adjudication owing to what appeared to be a common
4 course of conduct affecting a similarly situated group of employees. (*Id.*)

5 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
6 claims giving rise to the action, including: (1) conducting informal discovery and meeting and
7 conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and
8 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
9 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
10 damage models based on interpretations of California law; and (5) reviewing information
11 provided by Defendant at the mediation. (Haritounian Decl., ¶ 14.) The Class enumerated in this
12 action is ascertainable because the Class Members may be readily identified by reference to
13 Defendant's records. (*Id.*) Defendant has agreed to share the information from these records with
14 the Settlement Administrator in order to identify and contact the Class Members. (*Id.*) There are
15 approximately 267 total Class Members. (*Id.*)

16 Defendant, for their part, vigorously contested liability, the amount of claimed damages,
17 and the propriety of class certification. (Haritounian Decl., ¶ 15.) After Class Counsel analyzed
18 the relevant documents and gathered data, Class Counsel believed that this case was appropriate
19 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
20 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

21 **C. Settlement Efforts**

22 On December 3, 2024, the parties mediated this case with Brandon McKelvey, a respected
23 and highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 16.)
24 During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including
25 the risks of litigation and the risks to both parties of proceeding with a motion for class
26 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
27 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
28 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to

1 Haritoonian Decl., “Settlement” or “Settlement Agreement”).

2 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
3 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
4 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
5 consideration the amounts received in other wage and hour class actions, the risks inherent in
6 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
7 settlement award he or she will receive. (Haritoonian Decl., ¶ 16.) Further, and based on the
8 settlement negotiations, which were extensive, and conducted in good faith and at arm’s length
9 between attorneys with substantial experience litigating class actions and wage and hour cases,
10 the Settlement Agreement was the product of a non-collusive settlement process in which the
11 parties were forced to make significant compromises in the interest of reaching a full and
12 complete settlement of the lawsuit. (*Id.*)

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

14 Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay Two
15 Hundred and Eleven Thousand Five Hundred Dollars and Zero Cents (\$211,500.00) (“Gross
16 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
17 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Haritoonian
18 Decl., ¶ 17; Exh. 1, §1.21.) The Settlement Agreement defines the “Class Members” as “all
19 persons currently or formerly employed by Defendant in California and classified as a non-
20 exempt, hourly employee who worked for Defendant at any time between January 18, 2020, to
21 February 1, 2025.” (Haritoonian Decl., ¶ 18; Exh. 1, §1.5; 1.12.) The “Net Settlement Amount,”
22 available for distribution to Class Members, shall be the Gross Settlement Amount, less the
23 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, Settlement
24 Administration Costs, seventy-five percent (75%) of the LWDA Payment, and the Individual
25 PAGA Payments. (Haritoonian Decl., ¶ 19; Exh. 1, §1.27.) These amounts are detailed as follows:

- 26 • not more than Seventy Thousand Five Hundred Dollars and Zero Cents
27 (\$70,500.00) to Class Counsel for attorneys’ fees, and not more than Eighteen
28 Thousand Dollars and Zero Cents (\$18,000.00) to Class Counsel for litigation

costs; (Haritounian Decl., ¶ 19; Exh. 1, §3.2.2);

- not more than Six Thousand Dollars and Zero Cents (\$6,000.00) for the Settlement Administration Costs; (Haritounian Decl., ¶ 19; Exh. 1, §3.2.3);
- not more than Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for a Class Representative Enhancement Payment; and (Haritounian Decl., ¶ 19; Exh. 1, §3.2.1);
- Ten Thousand Dollars and Zero Cents (\$10,000.00) for civil penalties under the PAGA, where 75% (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) will be paid to Aggrieved Employees for their Individual PAGA Payments. (Haritounian Decl., ¶ 19; Exh. 1, §3.2.5.)

The “Individual Class Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Haritounian Decl., ¶ 20; Exh. 1, §1.22.)

Defendant shall pay its corporate payroll tax obligations on the payouts to Class Members in addition to the Gross Settlement Amount. (Haritounian Decl., ¶ 21; Exh. 1, §3.1.)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Haritounian Decl., ¶ 22.) However, taking into account all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement (“Class Notice”). Class Members shall each receive a Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). (Haritounian Decl., ¶ 23; Exh. 1, §7.4.2.) Class Members will have an opportunity to dispute the information provided in their Class Notice and they may produce evidence to support the information is inaccurate. (Haritounian Decl., ¶ 24; Exh. 1, § 7.6; *see also* Class Notice, **Exhibit A** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendant to produce the personnel and payroll files of the Class Member disputing their credited

workweeks in order to resolve the dispute. (Haritonian Decl., ¶ 24; Exh. 1, §7.6.) Class Members wishing to opt-out from the Settlement Agreement must sign and postmark a written request for exclusion to the Settlement Administrator. (Haritonian Decl., ¶ 25; Exh. 1, §7.5.) Class Members will also have the opportunity to object to the Settlement Agreement, by serving a copy of the objection to the Settlement Administrator. (Haritonian Decl., ¶ 25; Exh. 1, §7.7.) The Response Deadline will be sixty (60) calendar days from the initial mailing of the Class Notice. (Exh. 1, §1.42)

The parties have also agreed that Apex Class Action shall handle the notice and settlement administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint Apex Class Action to handle those procedures. The procedures for mailing notice and processing exclusions and objections as well as distribution of the Net Settlement fund is detailed in the Stipulation. (Exh. 1, §7)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

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

A. There Is A Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d

1 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
2 1271.) Class members are “ascertainable” where they may be readily identified without
3 unreasonable expense or time.

4 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this
5 requirement and the requirement of numerosity is met. Class Members are “all persons currently
6 or formerly employed by Defendant in California and classified as a non-exempt, hourly
7 employee who worked for Defendant at any time between January 18, 2020, to February 1,
8 2025.” (Haritounian Decl., ¶ 72(a).) Documents and information exchanged between the parties
9 reflect a class of approximately 267 Class Members. (Haritounian Decl., ¶ 72(a).) The Class
10 Members have already been identified by reference to Defendant’s payroll and personnel records.
11 (Haritounian Decl., ¶ 72(b).)

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

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

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

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

26 *Id.* at 809.

27 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
28 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
Class is united in its proof. (Haritounian Decl., ¶ 72(e).) Because Plaintiff has alleged a single
scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers
Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*

1 Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518.) California courts show “no hesitancy”
2 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
3 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
4 inference “eliminates the need for each class member to prove individually the consequences of
5 the defendants’ actions to him or her.” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
6 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).)

7 This action involves, *inter alia*, a determination about Defendant’s alleged failure to
8 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
9 and unlawful policies, failure to pay final wages when required, failure to provide accurate
10 paystubs, making unlawful deductions, failure to produce requested employment records, and
11 largely derivative claims under the Business & Professions Code and PAGA. Plaintiff contends
12 these practices affected Class Members in the same way. Plaintiff contends these practices
13 resulted in a failure to compensate employees at termination, and incomplete wages displayed on
14 wage statements. The outcome of litigation on this matter depends upon questions that are
15 common to Class Members. (Haritounian Decl., ¶ 72(e).) While Defendant maintained otherwise,
16 these issues will not be decided on the basis of facts peculiar to each Class Member, but rather on
17 the basis of facts common to them all. It is also true that these issues of liability can be
18 determined on a class-wide basis. (*Id.*)

19 C. The Named Plaintiff’s Claims Are Typical

20 A class representative’s claims are typical when they arise from the same event, practice,
21 or course of conduct that gives rise to the claims of other putative class members, and if their
22 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
23 necessarily identical to the claims of other class members. It is sufficient that the representative is
24 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
25 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
26 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
27 representative must have identical interests with the class members.”) Thus it is not necessary that
28 the class representative should have personally incurred all of the damages suffered by each of the

1 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

2 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
3 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
4 basis and are based on the same legal theories. (Haritonian Decl., ¶ 72(c).) Plaintiff was
5 employed by Defendant during the Class Period, and was subject to the allegedly unlawful meal
6 and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
7 member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all
8 wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this
9 was an individual action, applies to the other Class Members as well. The answer to these
10 questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of
11 Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality
12 requirement is satisfied.

13 **D. Adequacy of Class Counsel and Class Representative**

14 Class Counsel are experienced in class actions, have represented their clients zealously
15 and have no conflicts of interest. (Haritonian Decl., ¶¶ 3-9, 72(d).) The Class Representative's
16 interests are aligned with those of the Class Members, she has suffered the same injuries as the
17 Class Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class
18 Representative are adequate.

19 **E. Predominance and Superiority**

20 Individual issues do not predominate over those common to the class. (Haritonian Decl.,
21 ¶71(f-g).) The class action mechanism is superior to individualized actions because Class
22 Members have little incentive to bring claims that are small. (*Id.*)

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

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

28 A two-step process is followed when considering class settlements...

1 If the proposed settlement appears to be the product of serious,
2 informed, non-collusive negotiations, has no obvious deficiencies,
3 does not improperly grant preferential treatment to class
4 representative or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

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

11 Settlements to resolve PAGA claims also require court approval. (Labor Code §
12 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements
13 for as little as \$0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576,
14 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have
15 also approved settlements for \$20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*,
16 (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4
17 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645,
18 at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
19 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
20 \$300,000 settlement).)

21 A review of the preliminary approval criteria demonstrates a substantial basis for granting
22 the instant Motion and proceeding to a full settlement hearing.

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

24 As a matter of public policy, courts both encourage the use of the class action device and
25 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
26 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent
27 a failure of justice in our judicial system."); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d
28 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class

1 action litigation is concerned.”.)

2 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
3 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
4 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
5 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
6 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
7 particularly when settlement has been reached by experienced counsel familiar with the litigation.
8 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
9 1087.)

10 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
11 several factors that should be analyzed in determining if a class action settlement should be
12 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
13 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
14 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
15 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
16 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

17 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
18 informal discovery before entering into meaningful settlement negotiations in this matter,
19 including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s
20 time and pay records. (Haritounian Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to
21 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
22 Counsel is very experienced in the handling of wage and hour class actions and supports this
23 Settlement. (Haritounian Decl., ¶¶ 3-9.)

24 **A. The Strength of Plaintiff’s Case.**

25 Plaintiff alleges that Defendant failed to pay minimum wages and overtime, failed to
26 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
27 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
28 to timely pay all wages upon termination, made unlawful deductions, failed to produce requested

1 employment records, and failed to reimburse necessary business expenses in violation of
2 California law. (Haritounian Decl., ¶ 27.)

3 Class Counsel felt confident that the claims in this case would be certified given that
4 Defendant's policies were applicable to all Class Members and unlawful on their face.
5 (Haritounian Decl., ¶¶ 27-55.) Defendant contended, however, that the policies complied with
6 California law.

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

8 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
9 Plaintiff contends that she and other Class Members were not properly provided meal periods.
10 (Haritounian Decl., ¶¶ 33-36.) Defendant contended that Class Members were given a reasonable
11 opportunity to take their meal periods, and in fact received their meal periods most of the time
12 (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome of this
13 claim would be no recovery for the Class Members. Plaintiff also contended that Defendant did
14 not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
15 thereof. (Haritounian Decl., ¶¶ 37-39.) Class Members consistently worked in excess of
16 consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for
17 each consecutive four hour shift, which they were denied. Class Members were required to work
18 through their rest breaks, and through their entire shifts. Defendant maintained that they did
19 provide the reasonable opportunity for Class Members to take duty-free rest breaks. (*Id.*)
20 Defendant also pointed out that, unlike meal periods, rest breaks need not be recorded and
21 Defendant disputes all allegations that breaks were not received. As these considerations would
22 likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and
23 appropriate discounts to the rest-break claim.

24 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
25 wages for all hours worked, in violation of minimum wage laws. (Haritounian Decl., ¶ 30.)
26 Plaintiff contended that Class Members were not paid all wages they were owed including for all
27 work performed and for all overtime hours worked. (*Id.*) Specifically, at the beginning of Class
28 Members' shift, they were required to arrive to work several minutes in advance of their

1 scheduled start time to pass through a security checkpoint. Passing through the checkpoint also
2 involved screening for COVID-19. Additionally, Class Members' were required to wait in line to
3 clock in before their scheduled shifts and at the end of their lunch periods and were not paid for
4 this time. (*Id.*)

5 Defendant contended that they paid for all reported hours worked, that Class Members
6 were trained to record all hours worked, and that they paid proper minimum wages. (Haritounian
7 Decl., ¶ 31) Defendant also maintained that the allegations regarding failure to pay wages for
8 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
9 Code § 510. Defendant argued that given their written policies and practices, any unrecorded
10 hours were likely subject to individualized inquiry and unlikely to be certified. Given the
11 difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages
12 based on this theory.

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

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

17 With waiting time penalties, there is always the risk that the trier of fact would not have
18 held that Defendant's actions were done "willfully." A good faith belief in a legal defense can
19 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
20 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleged that Defendant failed to pay for all
21 hours worked and premiums for non-compliant meal breaks. Plaintiff contends the Class
22 Members are entitled to these wages and premiums, which she alleges were not paid at the time
23 of their termination or resignation. If Plaintiff is successful on her claims, the penalties pursuant
24 to Labor Code § 203 shall attach. Defendant, however, contends it provided employees with the
25 reasonable opportunity to take meal breaks, asked Class Members to confirm the accuracy of their
26 time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendant
27 likewise contends that it properly paid all hours worked by its employees. Based upon
28 Defendant's potential success in establishing both that a good faith dispute existed with regard to

1 unpaid wages, and Defendant endeavored in good faith to supply accurate wage statements,
2 Defendant argues the claims for paystub violations and waiting time penalties have little or no
3 value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage
4 statements that accurately report wages paid to employees do not violate Labor Code § 226, even
5 if it is later determined that employer did not properly pay all wages due). As such, there was risk
6 associated with wage statement and waiting time penalties that Class Counsel had to consider.
7 (Haritounian Decl., ¶¶ 40-46.)

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

9 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
10 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
11 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
14 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
15 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
16 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
17 penalty amount specified by this part if, based on the facts and circumstances of the particular
18 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
19 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
20 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
21 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
22 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
23 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
24 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
25 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
26 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
27 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
28 all violations once notified”).

1 Plaintiff discounted potential penalties under this claim given this authority, and for other
2 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
3 break, wage statement, and waiting time claims, and thus subject to the same disputes and
4 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
5 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
6 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
7 (Haritounian Decl., ¶¶ 49-52.) The parties also considered that the purpose of PAGA is to
8 “achieve maximum compliance with state labor laws,” and that through the proposed settlement,
9 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
10 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
11 payment of Ten Thousand Dollars and Zero Cents (\$10,000.00) appropriate.

12 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
13 and in the best interest of the Class. (Haritounian Decl., *passim*.)

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

15 Given the risks outlined above, the issues in this case were complex and the risk for
16 Plaintiff and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶
17 56-58.) A class trial would have required the retention of expensive expert witnesses, the accrual
18 of extensive litigation costs, and the parties would have had to spend a substantial amount of
19 time. (*Id.*)

20 Finally, given the complexity and unsettled nature of the issues, it is likely that any
21 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
22 further delay for the Class Members who have already waited years for resolution in this matter.
23 (Haritounian Decl., ¶ 59.)

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

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

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

2 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
3 collusive, and arms-length negotiations between the parties with an experienced mediator. In
4 order to determine the approximate potential damages which would be owed to each of the Class
5 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
6 Counsel with records for a sampling of the class members. By analyzing this information, Class
7 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

8 There are approximately 267 total Class Members. Based on the data provided, Class
9 Counsel estimated the following maximum exposures: unpaid wage claim at \$72,319.00, meal
10 period claim at \$188,740.00, rest period claim at \$188,740.00, wage statement claim at
11 \$185,300.00, waiting time penalties at \$881,054.00, reimbursement of business expenses claim at
12 \$13,350.00, and on PAGA, Plaintiff estimated the maximum exposure at \$464,100.00.
13 (Haritounian Decl., ¶ 28.)

14 However, taking into account the difficulties of proof, Defendant's defenses, and other
15 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
16 relief that the class could reasonably expect to be awarded at trial is significantly less than the
17 maximum exposure. (Haritounian Decl., ¶ 29.)

18 Once Class Counsel was able to determine the maximum potential damages, it was able to
19 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 27-55) Class Counsel analyzed
20 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
21 of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies all
22 wrongdoing in this matter and are confident they have strong legal and factual defenses to
23 Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the
24 claims for unpaid wages and waiting time penalties were not as strong, because various defenses
25 including issues not suitable for class treatment, no detriment to the class members over time, and
26 *de minimis* defenses. Defendant may have had the opportunity to establish that they had a good
27 faith belief that they were complying with the law. (*Id.*) After taking into account the likelihood
28 of success on each claim and the challenges faced with certifying these claims, Class Counsel

1 determined that the settlement amount of Two Hundred and Eleven Thousand Five Hundred
2 Dollars and Zero Cents (\$211,500.00) was fair and reasonable.

3 Under the Settlement, each of the approximately 267 Class Members will receive on
4 average, assuming they worked throughout the class period, \$382.02 after expenses. (Haritounian
5 Decl., ¶ 55) Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class.
6 (*Id.*)

7 To summarize, the Settlement here is fair because it provides a substantial payment to
8 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
9 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
10 allocated to Class Members proportionally based on their Payout Ratio.

11 As detailed at length in the accompanying Declaration of Natalie Haritounian, the
12 settlement is the result of extensive settlement negotiations between the parties, conducted at
13 arm's length, and informed by substantial factual and legal investigations. (Haritounian Decl.,
14 *passim*.) Throughout this case, Class Members have been represented by experienced counsel
15 with many years of experience in employment class action litigation. (Haritounian Decl., ¶¶ 3-9.)

16 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
17 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
18 conducting informal discovery, and meeting and conferring with defense counsel about same;
19 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel
20 file, and other documentation; researching California law; interviewing numerous class members
21 regarding their experiences; preparing for and attending mediation; and negotiating and finalizing
22 the Settlement Agreement and related documents. (Haritounian Decl., ¶¶ 13-14.)

23 Among those matters considered during the course of settlement negotiations were the
24 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
25 length of further litigation, including class certification and the appeals process; the present state
26 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
27 value of a settlement versus the long wait necessitated by any potential judgment in class
28 members' favor; the burdens of proof necessary to establish liability against Defendant; and

1 Defendant's defenses to the action. (Haritounian Decl., *passim*).

2 These factors each indicated that the interests of Class Members are best served by a
3 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
4 The Settlement Agreement confers a substantial benefit on the class of up to Two Hundred and
5 Eleven Thousand Five Hundred Dollars and Zero Cents (\$211,500.00). Moreover, the settlement
6 awards for each Class Member will be tailored to their workweeks during the class period. In
7 addition, Class Counsel secured prospective relief for the class in that Defendant will ensure their
8 policies comply with California law.

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

15 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND** 16 **REASONABLE**

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

20 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
21 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself
22 of her rights, deciding whether remedial action should be taken, how it should be taken, searching
23 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing her
24 case and the law. (Haritounian Decl., ¶ 67) In the end, Plaintiff decided to vindicate not only her
25 own rights but also those of her co-workers by filing a class action lawsuit.

26 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
27 contends they increased the risk of retaliation by prospective employers. (Haritounian Decl., ¶ 68)
28 Plaintiff's lawsuit has now cost Defendant considerable resources, and Plaintiff contends such

1 conduct will not be lost on a prospective employer who has to choose between an applicant who
2 has never sued a prior employer and one who has. (*Id.*) Plaintiff contends this risk is particularly
3 real in the information age, where employers can, more easily than ever, perform background
4 checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

5 But Plaintiff did not allow her fear of the potential repercussions of being a class
6 representative deter her from acting for the benefit of the Class Members. (Haritounian Decl., ¶
7 69) To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*)
8 She has devoted a substantial amount of time to helping Class Counsel effectively develop and
9 prosecute this action at every stage of the litigation. (*Id.*) Both before and after the filing of this
10 lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has
11 provided Class Counsel with information about Defendant and about the industry generally,
12 reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation,
13 participated in the mediation process, monitored the progress of the litigation with Class Counsel,
14 and reviewed and signed the settlement agreement. (*Id.*)

15 Plaintiff spent a significant amount of time with Class Counsel detailing her knowledge of
16 Defendant's practices. (Haritounian Decl., ¶ 70) She has diligently, adequately, and fairly
17 represented Class Members, and has not placed her interests above any member of the putative
18 class. (*Id.*) This sort of payment to a class representative has been a common feature of
19 settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

20 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
21 Five Thousand Dollars and Zero Cents (\$5,000.00) to the Class Representative is fair and
22 reasonable. (Haritounian Decl., ¶ 71)

23 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 24 **CLASS MEMBERS.**

25 Constitutional due process requires that class members be provided with notice sufficient
26 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
27 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
28 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*)

1 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
2 convey information regarding the settlement and the class members' rights, entitlements, and
3 obligations; and afford class members the opportunity to present their objections. (*Id.*)

4 The Class Notice meets constitutional standards because it provides all the information a
5 reasonable person would need to make a fully informed decision about the settlement. It will
6 notify all class members of the terms of the settlement, of its effect on their rights, of their options
7 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
8 exercising those options. (Haritonian Decl., ¶¶ 60-62.) Moreover, the Class Notice will
9 specifically direct any class members who have questions or concerns to contact the Settlement
10 Administrator, Apex Class Action or Class Counsel. (*Id.*)

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

18 Here, the Class Notice will be sent via first-class mail to each class member. (Haritonian
19 Decl., ¶ 60.) If any Class Notices are returned undeliverable without a forwarding address, the
20 Settlement Administrator will use the national change of address database and perform a skip
21 trace to locate the class member and mail a new Class Notice to him or her at the correct address.
22 (*Id.*) Thus, most, if not all, class members will likely receive the Class Notice.

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

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

27 Non-settling parties and third parties periodically may attempt to object to proposed class
28 action settlements, but the right of non-settling parties to object at the final settlement approval

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

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

11 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
12 seek an award of fees of no more than Seventy Thousand Five Hundred Dollars and Zero Cents
13 (\$70,500.00), approximately one-third of the Gross Settlement Amount, and not more than
14 Eighteen Thousand Dollars and Zero Cents (\$18,000.00) in costs. The requested fees are fair
15 compensation for a law firm involved in undertaking complex, risky, expensive, and time-
16 consuming litigation solely on a contingent basis. (Haritounian Decl. ¶¶ 64-66.) Defendant will
17 not oppose Class Counsel’s fees and cost request.

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

26 Several courts have, however, expressed frustration with the “lodestar” approach for
27 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
28 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns

1 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
2 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
3 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
4 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
5 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
6 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

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

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

23 In wage and hour class actions in particular, California trial courts have customarily
24 approved attorney's fees consistent with or greater than the percentage of the common fund
25 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
26 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
27 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
28 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los

1 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
2 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
3 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
4 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
5 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer.)

6 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
7 any compensation until recovery is obtained. (Haritounian Decl., ¶¶ 64-66) The Court should also
8 consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested
9 award for Class Counsel is reasonable.

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

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

- 14 1. Review and approve the Settlement Agreement;
- 15 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
16 A;
- 17 3. Consider and determine that the proposed class action settlement as set forth in the
18 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 19 4. Enter an order conditionally certifying the action as a class action for settlement
20 purposes only and preliminarily approving the proposed class action settlement and the
21 Settlement Agreement;
- 22 5. Approve and appoint Emil Davtyan, David Yeremian, and Natalie Haritounian of
23 D.Law, Inc. to serve as Class Counsel for settlement purposes;
- 24 6. Approve and appoint Apex Class Action as the Settlement Administrator to handle the
25 notice and claims procedures as set forth in the Settlement Agreement;
- 26 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 27 8. Order Defendant to disclose to Apex Class Action the names, last-known addresses,
28 telephone numbers, dates of employment, and social security numbers of class members as set

1 forth in the Settlement Agreement;

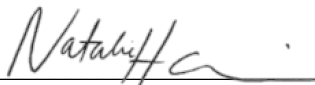
2 9. Order that Apex Class Action mail the Class Notices to class members; and

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

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5 Dated: March 18, 2025

Respectfully submitted,

6 D.LAW, INC.

7
8 By 
9 Natalie Haritonian
10 Attorneys for Plaintiff, DEBORAH
11 CALLAHAN, on behalf of herself and others
12 similarly situated
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