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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

David Harris, an individual; Khaleehan
Curtis, an individual; Marisol Olivera, an
individual; and Fabiola Delgado, an
individual, individually and on behalf of all
similarly situated and aggrieved employees of
Defendants in the State of California,

Plaintiffs,

vs.

Colony Palms, LLC, a California limited
liability company, and DOES 1 through 10,
inclusive

Defendants.

Case No. CVPS2400946

**PLAINTIFF FABIOLA DELGADO'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF HER
MOTION TO APPROVE (1) PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AND (2) CLASS ACTION
SETTLEMENT**

Date: December 10, 2026
Time: 8:30 A.M.
Dept: 1
Judge: Hon. Harold Hopp

Complaint Filed:

Cases

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Kullar v. Foot Locker Retail, Inc. 168 Cal.App.4th 116 (2008),	11
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Lealao v Beneficial Cal., Inc., 82 Cal.App.4th 19 (2000)	15
Linder v. Thrifty Oil Co., 23 Cal.4th 429 (2000)	13
Marshall v. Holiday Magic, 550 F.2d 1173 (9th Cir. 1977)	16
Mendez v. Tween Brands, Inc., 2010 WL 2650571 (E.D. Cal. June 30, 2010)	7
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1	<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> , 2010 WL 1340777 (N.D. Cal. Apr. 2, 2010)	7
2	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d	
3	615 (9th Cir. 1982).....	9
4	<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926 (1981)	13
5	<i>Ruch v. AM Retail Grp., Inc.</i> , 2016 WL 5462451 (N.D. Cal. Sept. 28, 2016)	6
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26	California Labor Code section 2699	4, 8
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1 Plaintiff Fabiola Delgado (“Plaintiff” or “Class Representative”) respectfully submits the
2 following Memorandum of Points and Authorities in support of her Motion to Approve the *Joint*
3 *Stipulation of PAGA and Class Action Settlement, and Release* filed concurrently herewith
4 (“Settlement Agreement”) between Plaintiff, in a representative capacity, and Colony Palms, LLC
5 (“Defendant”) (collectively “Parties”).
6

7 **I. Introduction**

8 Plaintiff and Defendant (collectively, the “Parties”) have agreed to settle this PAGA and
9 Class Action for a Gross Settlement Amount of \$150,000, the administration of which is to be
10 handled by a neutral administrator, Phoenix Class Action Administration Solutions
11 (“Administrator”), based on a settlement period of February 14, 2023, through February 3, 2026
12 (“Settlement Period”). Plaintiff also seeks to provisionally certify the following Class for
13 settlement purposes, which Defendant does not oppose for settlement purposes only:

14 All current and former employees of Colony Palms in the State of California who
15 worked in any non-exempt position during any pay period between February 14,
16 2023, and February 3, 2026.

17 Employees who worked for Colony Palms within the Settlement Period who do not submit
18 a timely and valid Request for Exclusion from the Class Settlement (“Participating Class
19 Member”) will participate in the Class Settlement. Payments to Participating Class Members will
20 be distributed on a *pro rata* basis based upon the number of Pay Periods during which a Class
21 Member worked for Defendant during the Settlement Period. Settlement Agreement § 4.d.v.

22 Employees who worked for Colony Palms within the Settlement Period (“Aggrieved
23 Employees”) will participate in the PAGA Settlement. Employees cannot opt out of the PAGA
24 Settlement. Payments to Aggrieved Employees will be distributed on a *pro rata* basis based upon
25 the number of Pay Periods during which an Aggrieved Employee worked for Defendant during
26 the Settlement Period. Settlement Agreement § 4.d.vi.

27 The Settlement, upon final approval by the Court and funding of the Gross Settlement
28 Amount, will operate to resolve the Released Class Claims of Plaintiff and Participating Class
29 Members and the Released PAGA Claims of the State of California. The Released Class Claims
30 are limited to the claims pleaded in, or arising out of the facts pleaded in, the Operative Complaint,
31 and the Released PAGA Claims are limited to claims for PAGA penalties arising out of the facts
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1 stated in the Operative Complaint and the PAGA Notice during the PAGA Period. As fully set
2 forth below, the instant settlement is fair and reasonable due to the disputed strength of the PAGA
3 claim, the range of outcomes in the litigation, the risk, expense, and complexity of further
4 litigation, the scope of the release, and the experience and views of counsel and the mediator. The
5 Settlement was reached through informed, arm's-length bargaining between experienced
6 attorneys, with the assistance of a skilled mediator with substantial wage-and-hour experience. As
7 such, Plaintiff respectfully requests that this Court grant approval of the Class and the Settlement
8 Agreement.

9 10 **II. BACKGROUND**

11 On February 14, 2024, Plaintiff David Harris filed a complaint in the Superior Court of
12 California, County of Riverside against Colony Palms alleging individual labor code violations,
13 seeking actual, statutory, liquidated, and special damages. *Harris et al. v. Colony Palms*, Case
14 Number CVPS2400946. Declaration of Waddy Stephenson, ESQ, filed concurrently herewith
15 (hereinafter, "Stephenson Decl."), ¶ 4.

16 On October 28, 2024, Plaintiff David Harris amended that complaint, adding named
17 Plaintiffs Marisol Olivera, Fabiola Delgado, and Khaleehan Curtis, each of whom alleged
18 individual claims against Colony Palms, and also added the PAGA Claims and the Class Action
19 Claims for (1) failure to pay minimum wage in violation of Labor Code §§ 1194, 1197, 1198; (2)
20 failure to pay overtime wage in violation of Labor Code §§ 510, 1194, 1198; (3) failure to provide
21 meal and rest periods in violation of Labor Code §§ 226.7, 512, 1198; (4) failure to reimburse
22 employee for necessary expenditures in violation of Labor Code § 2802; (5) failure to furnish
23 timely and accurate wage statements in violation of Labor Code § 226; (6) failure to timely pay
24 wages in violation of Labor Code § 204; and (7) failure to pay all wages due upon discharge in
25 violation of Labor Code §§ 201, 202. This first amended complaint is the operative complaint in
26 this action (the "Operative Complaint"). Stephenson Decl. ¶ 5.

27 Colony Palms denies the allegations in the Operative Complaint, denies any failure to
28 comply with the laws identified in the Operative Complaint, and denies any liability for the causes
29 of action alleged. Stephenson Decl. ¶ 6.

30 Pursuant to Labor Code section 2699.3, subd.(a) , Plaintiffs gave timely written notice to
31 Colony Palms and the California Labor and Workforce Development Agency ("LWDA") by
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submitting the PAGA Notice through the LWDA’s online filing system and serving it on Colony Palms by certified mail on February 14, 2024. More than 65 calendar days elapsed, and the LWDA did not provide notice of its intent to investigate. Because the PAGA Notice was submitted before June 19, 2024, the pre-amendment version of PAGA governs this action, including the 75%/25% allocation of civil penalties. Stephenson Decl. ¶ 7, Exhibit 1.

On February 3, 2026, the Parties participated in mediation presided over by Kevin Barnes. Although the Parties did not reach a Settlement at mediation, they ultimately reached a settlement through the mediator in subsequent negotiations. Stephenson Decl. ¶ 9.

On August 31, 2026, Fabiola Delgado¹, in her representative capacity, and Colony Palms, LLC (“Defendant”), entered into the Agreement, subject to this Court’s approval, to settle the Private Attorney General Act (“PAGA”) and class action claims in the above-captioned matter on behalf of herself and approximately 254 other employees for \$150,000, the terms of which are detailed in the Settlement Agreement. Stephenson Decl. ¶ 10.

Of this amount, \$50,000 is allocated to the PAGA claims (the “PAGA Action Settlement Amount”) and \$100,000 is allocated to the class action claims (the “Class Action Settlement Amount”). These amounts are based on an estimated 7,131 Pay Periods and will be increased by \$7.00 and \$14.00, respectively, for each Pay Period in excess of 7,131. Settlement Agreement §§ 4.a-4.c, 5.a. The Settlement is non-reversionary; no portion of the Gross Settlement Amount will revert to Defendant. If the Court awards less than the amounts requested for fees, litigation expenses, administration, or the service payment, the difference is added to the Net Settlement Amount and distributed to Employees. Id. §§ 4.d.i-4.d.iii. The Gross Settlement Amount shall be distributed as follows:

Gross Settlement	\$150,000
Attorney’s Fees	(\$50,000)
Litigation Expenses	(\$5,000)
Administration Fees	(\$7,500)

¹ Plaintiffs David Harris, Khaleehan Curtis, and Marisol Olivera individually settled with Defendant and will not participate in the class action award and no longer act in a representative capacity.

Incentive Award	(\$10,000)
Net Settlement	<u>\$77,500</u>
Net PAGA Settlement	\$25,833
PAGA Penalties to LWDA	\$19,375
Net PAGA Penalties to Employees	<u>\$6,458</u>
Net Class Action Settlement Amount	\$51,667

Stephenson Decl. ¶ 11.

Plaintiff and Plaintiff's Counsel are of the opinion that the settlement is fair, reasonable, and adequate and in the best interests of Plaintiff, Class Action Employees, and the PAGA Employees in light of all known facts and circumstances and the risks inherent in litigation. Declaration of John K. Landay filed concurrently herewith (hereinafter, "Landay Decl."), ¶¶ 10-12. The Settlement considers all relevant factors, including the risks, expense, and complexity of further litigation. *Id.*

III. DISCUSSION

A. This Court should approve the Parties' Agreement with respect to the PAGA Settlement

1. A Court Is to Review and Approve a PAGA Settlement

Labor Code section 2699 requires a court to "review and approve any settlement of any civil action filed pursuant to [PAGA]." Labor Code § 2699(1)(2). In any PAGA claim, a court has the discretion to award a lesser amount than the maximum civil penalty based on the facts and circumstances of the case, or if the result would be unjust, arbitrary and oppressive, or confiscatory. Labor Code § 2699(e)(2).

As explained in *Arias v. Superior Court*, 46 Cal.4th 969, 980-988 (2009), parties are not obligated to follow class action procedural rules to obtain settlement approval in PAGA cases. This is because an individual PAGA claimant does not enforce his or her own rights or his or her own damages. *Id.*; *Amalgamated Transit Union, Local 176, AFL-CIO v. Superior Court*, 46 Cal.4th 993, 1003 (2009). In fact, PAGA does not create property rights or any other substantive

rights. *Amalgamated Transit Union*, 46 Cal.4th at 1003. Rather, a PAGA claim is a statutory grant of authority for individual employees who have allegedly suffered from Labor Code violations to pursue civil penalties on behalf of the LWDA. A PAGA claimant brings a claim as a relator would in a *qui tam* action. *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 382 (2014); *see also Arias*, 46 Cal.4th at 975. The LWDA is always the real party in interest in the suit. *Iskanian*, 59 Cal.4th at 382, citing *In re Marriage of Biddle*, 52 Cal. App. 4th 396, 399 (1997).

In short, a PAGA action is “not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*...” who is the real party in interest. *Iskanian*, 59 Cal.4th at 381. A PAGA plaintiff’s recovery is “thus an incentive to perform a service to the state, not restitution for wrongs done to members of the class.” *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014). The Court’s review is limited to determining whether the settlement achieves the PAGA’s objectives. Importantly, the California Labor Code does not provide specific factors a Court must consider when reviewing a PAGA settlement.

2. The Settlement Represents a Fair and Reasonable Compromise of Disputed PAGA Claims.

The parties reached the Settlement after extensive arm’s-length negotiations, including a half-day mediation and about a year of settlement negotiations with an experienced mediator, and considered all relevant factors, both present and potential. Landay Decl. ¶¶ 8-12. Plaintiff and Plaintiff’s counsel believe that the settlement amount is fair, reasonable, and adequate given the inherent risk of litigation, and believe the Settlement is in the best interests of Plaintiff, the aggrieved employees, and the State of California. *Id.* While maintaining its denial of all wrongdoing, Defendant wishes to resolve the matter amicably and without further litigation. As such, Plaintiffs respectfully request that the Court find this Settlement and agreed-upon PAGA penalty payment fair and reasonable, and warranting approval.

As set forth in the accompanying Declaration of Waddy Stephenson, Plaintiff’s Counsel has estimated the total maximum amount of PAGA penalties at approximately \$2,224,710. Stephenson Decl. ¶ 22. This estimated value of the PAGA claims is premised on an inflated “everything goes right” scenario. However, recovering such large civil penalties is remote, particularly given the relative strength of Defendants’ defenses. Landay Decl. ¶¶ 8-12. In addition,

1 the amount of PAGA penalties would be subject to the Court's discretion to reduce the award in
2 whole or in part, which further supports a reduction of the potential PAGA penalties. Likewise,
3 this amount assumes that the Court would stack the PAGA Penalties and award the maximum
4 amount of \$100 per pay period for an initial violation, and \$200 per pay period for each subsequent
5 violation. *Id.* However, Defendant will contend that for Plaintiff to recover for a "subsequent
6 violation," an employer must have notice that it has violated the Labor Code. *Amaral v. Cintas*
7 *Corp. No. 2*, 163 Cal.App.4th 1157, 1207–09 (2008); *see also Trang v. Turbine Engine*
8 *Components Technologies Corp.*, 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held
9 that employers are not subject to heightened penalties for subsequent violations unless and until a
10 court or commissioner notifies the employer that it is in violation of the Labor Code");
11 *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 2009 WL
12 2448430 (S.D. Cal. 2009) (finding that California law imposes the "subsequent violation penalty"
13 only after an employer has been notified its conduct violates the Labor Code).

14 15 16 **3. The Settlement Is Fair and Reasonable Considering the Significant Risks and** 17 **Expense of Further Litigation**

18 Although Plaintiff maintains that its representative PAGA claims on behalf of other
19 aggrieved employees have merit, it understands these claims are potentially vulnerable to defenses
20 Defendant may raise. As set forth in Class Counsel's declaration, there are several reasons why
21 Plaintiff's counsel believes a reduction from the maximum potential recovery is justified in this
22 case. Considering the significant risks, the settlement amount of \$50,000, which represents 2.2%
23 of the maximum *potential* penalties and approximately \$7.00 per pay period, is a strong result. It
24 sits at or above the range that California and federal courts routinely approve, which runs from
25 roughly 0.2% to 2.2% of maximum potential penalties. Courts frequently approve PAGA awards
26 between 0.2% and 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal.
27 App. 5th 504 (2018) (awarding PAGA penalties of only 0.2% of the maximum, or \$5 per pay
28 period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016)
29 (settlement allocating \$10,000 to PAGA penalties where potential value was over \$5.2 million,
30 resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017
31 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of \$5,000 PAGA penalty
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1 from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL
2 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when
3 measured against the total overall settlement [of \$345,000] and the possible weaknesses in
4 Plaintiffs' case,” or 2.2 percent); *see also Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19
5 (C.D. Cal. Feb. 16, 2017) (\$10,000 as PAGA penalties found reasonable); *Franco v. Ruiz Food*
6 *Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (approving PAGA penalties of
7 \$10,000 and noting that amount was in line with settlement approval of PAGA awards in other
8 cases.); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001, at *14 (E.D. Cal. June 11, 2012)
9 (\$7,500 to LWDA reasonable).

10 These PAGA penalties conform to the courts’ reasoning that “[t]he remedy sought in a
11 PAGA suit consists of civil penalties, not individual or class damages” (*Mendez v. Tween Brands,*
12 *Inc.*, 2010 WL 2650571, at *4 (E.D. Cal. June 30, 2010)), and in PAGA “[u]nlike class actions,
13 these civil penalties are not to compensate unnamed employees because the action is
14 fundamentally a law enforcement action.” *See Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010
15 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010).

17 **4. The Court’s Ability to Reduce the Maximum Potential Civil Penalties** 18 **Further Justifies the Parties’ PAGA Settlement**

19 Defendant may further argue that any civil penalties should be reduced under the discretion
20 of the Court as unjust, arbitrary, and oppressive or confiscatory. *See Amaral, supra*, 163
21 Cal.App.4th at 1213 (“A court can only exercise its discretion to award lesser penalties based on
22 the enumerated considerations.”) Given the potential for the Court to reduce any potential recovery
23 under these circumstances further supports a reduction of the maximum potential PAGA penalties,
24 as agreed to by the parties in the Settlement Agreement. *See Carrington v. Starbucks Corp., supra*,
25 30 Cal. App. 5th at 527-28 (affirming the award of PAGA penalties of only \$5 per pay period
26 despite finding Starbucks was liable for meal break violations on a representative basis.)

27 As such, the LWDA will receive \$19,375.00, and the PAGA Employees will receive
28 \$6,458 from the Net Settlement Amount on a pro rata basis. The portion of each PAGA
29 Employee’s share of the Net Settlement Amount will be treated as non-wage income and reported
30 by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and
31 applicable governmental authorities.

1 As noted, the Net Settlement Amount will fund the Individual PAGA Payments.
2 Approximately 254 Aggrieved Employees will share in this fund and will receive an average
3 payment of \$25.43. The Settlement Agreement provides a fair and equitable way to allocate this
4 fund based on the number of Pay Periods each PAGA Employee worked for Defendants during
5 the applicable period.

6 The California Supreme Court has explained that a judgment in “a representative action
7 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
8 2004...is binding not only on the named employee plaintiff but also on government agencies and
9 any aggrieved employee not a party to the proceeding”. *Arias*, 46 Cal.4th at 985-986. Here, the
10 release in the Settlement Agreement narrowly binds the named Plaintiff, the State of California,
11 and the PAGA Employees for “all claims for PAGA penalties that were alleged, or reasonably
12 could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and
13 the PAGA Notice. This release only applies to claims for PAGA penalties during the PAGA
14 Period.”

15 **5. Plaintiff Has Submitted the Proposed Settlement to the LWDA**

16 In 2016, PAGA was amended to require the Court to “review and approve any settlement
17 of any civil action filed pursuant to this part.” Labor Code § 2699(1)(2). The amendment also
18 required that the “proposed settlement shall be submitted to the agency at the same time that it is
19 submitted to the court.” *Id.* As such, the Settlement Agreement was submitted to the LWDA in
20 accordance with this Section. Stephenson Decl. ¶ 8.

21 **B. This Court should preliminarily approve the Parties’ Agreement with respect to** 22 **the Class Action Settlement**

23 A class action settlement requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th
24 1794, 1800 (1996); Cal. Rules of Court, rule 3.769; see also Cal. Code Civ. Proc. § 382. Courts
25 review class action settlements in a two-step process: (1) an earlier conditional review by the court;
26 and (2) a later detailed review after the period during which notice is distributed to class members
27 for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed.
28 2002). Preliminary approval of a settlement does not require a court to make a final determination
29 that the settlement is fair, reasonable, and adequate. Rather, the court makes that decision only at
30 the final approval stage. Cal. Rules of Court, rule 3.769(g). In considering a potential class
31 settlement, a court need not reach ultimate conclusions on the issues of fact and law underlying
32

the dispute or engage in a trial on the merits. *See City of Detroit v. Grinnell Corporation*, 495 F.2d 448, 456 (2d Cir. 1974); *Officers for Justice v. Civil Service Commission of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court’s discretion. *Newberg*, § 11.25. The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). Furthermore, courts give “proper deference to the private consensual decision of the parties.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) [citation omitted]. The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

1. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties have actively litigated the class action claims since their commencement on October 28, 2024. Landay Decl., ¶¶ 7-12. Both sides investigated the veracity, strength, and scope of the claim throughout the cases, and Class Counsel was actively preparing the matter for class certification. *Id.* Class Counsel conducted significant investigation and informal discovery regarding the facts of the cases, including and not limited to, the exchange, review, and analysis

1 of a large volume of documents and data from the Defendant. *Id.* The volume of data and
2 documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiffs'
3 employment records, a detailed sampling of Class Members' time and pay data, for the putative
4 class, earning statements, internal memoranda, and Defendant's operations and employment
5 practices, forms, procedures, and policies, among other information and documents. *Id.* Class
6 Counsel had the opportunity to interview Plaintiffs to gather facts and to identify potential
7 witnesses. *Id.*

8 The Parties engaged in extensive settlement negotiations and participated in a half-day
9 mediation on February 3, 2026, conducted by attorney Kevin Barnes, a well-respected mediator
10 experienced in mediating complex labor and employment matters. Landay Decl., ¶¶ 7-12.
11 Although the Parties did not settle the class action claims at mediation, ongoing discussions with
12 the mediator led to this settlement. *Id.* Before and during the mediation and settlement negotiations,
13 the Parties exchanged extensive information and discussed their evaluations of the cases and
14 various aspects of the cases, including but not limited to the risks and delays of further litigation,
15 including the risks of proceeding with class certification and/or representative adjudication. *Id.* In
16 reaching the Settlement Agreement, Plaintiff's Counsel considered the specific difficulties and
17 risks of this particular litigation, the most significant being: (a) where an employee works no more
18 than six hours, the meal period may be waived by the mutual consent of the employer and
19 employee, and (b) waiting time penalties for violations of Labor Code §§ 201, 202 require the
20 conduct to be willful. *Id.*

21 During all settlement discussions, the Parties conducted their negotiations at arm's length
22 in an adversarial position. Arriving at a settlement that was acceptable to both Parties was not easy.
23 Both sides felt strongly about their ability to prevail at certification and at trial. After conducting
24 investigations, informal discovery, extensive settlement negotiations, and with the aid of the
25 mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given
26 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides
27 that would attend further litigation. Landay Decl., ¶¶ 7-12.

28 **2. The Settlement Is Fair, Reasonable, and Adequate**

29 The Settlement represents a fair, adequate, and reasonable resolution of the matter. The
30 Settlement was calculated using the information and data uncovered during litigation, case
31 investigation, and the informal exchange of information. Landay Decl., ¶¶ 7-12. The Settlement
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1 accounts for the potential risks and rewards inherent in any case and, in particular, in the matter at
2 issue. *Id.* Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement
3 represents a fair, reasonable, and adequate recovery for the Class Members. *Id.*

4 Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses
5 Payment, Class Representative Service Payment, PAGA Penalties, and Administration Expenses
6 Payment are approved by the Court and paid in the full amounts provided for by the Settlement,
7 the Settlement provides for a Net Settlement Amount currently estimated at \$77,500, of which
8 \$51,667 constitutes the Net Class Action Settlement Amount. The entire Net Class Action
9 Settlement Amount will be paid out to Participating Class Members in accordance with the
10 Settlement Agreement; none of it reverts to Defendant. Each Participating Class Member's
11 Individual Class Payment will be calculated by dividing the Net Class Action Settlement Amount
12 by the total number of Pay Periods worked by all Participating Class Members during the
13 Settlement Period, and multiplying the result by that Participating Class Member's Pay Periods.
14 Settlement Agreement § 4.d.v. Under the Settlement Agreement, 80% of each Individual Class
15 Action Payment is allocated to penalties and interest, and 20% to wages, and each Individual
16 PAGA Payment is allocated entirely to penalties. *Id.* §§ 4.d.v-4.d.vi. "An allocation formula need
17 only have a reasonable, rational basis [to warrant approval], particularly if recommended by
18 experienced and competent class counsel." *In re American Bank Note Holographics, Inc.,*
19 *Securities Litigation*, 127 F.Supp.2d 418, 429-30 (S.D.N.Y. 2001). Here, the allocation reasonably
20 reflects the number of Pay Periods Defendant actually worked during the relevant period and
21 should be approved.

22 Pursuant to *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Parties
23 conducted extensive formal and informal discovery and exchanged a large volume of documents,
24 data, and information prior to mediation. The information that Class Counsel obtained from
25 Plaintiff, Defendant, and other sources allowed Class Counsel to develop valuation models to
26 evaluate the potential value and merit of the claims, and perform a complete evaluation of
27 Defendant's defenses thereto. As outlined in the Declaration of Waddy Stephenson, Class Counsel
28 performed an extensive analysis of each claim pursuant to *Kullar* prior to entering into the
29 Settlement. Stephenson Decl. ¶¶ 14-25. Class Counsel's maximum valuation of the class claims is
30 \$1,267,118, consisting of \$77,818 in unpaid wages for interrupted meal breaks, \$77,818 in
31 liquidated damages for those unpaid wages, \$279,248 in meal-period premiums, \$405,729 in
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1 statutory damages for inaccurate wage statements under Labor Code section 226, and \$426,505 in
2 waiting time penalties under Labor Code section 203. *Id.* ¶ 22. The \$100,000 Class Action
3 Settlement Amount represents approximately 7.9 percent of this amount. That discount is
4 warranted because:

- 5 a. The unpaid wages and liquidated damages for unpaid wages are based on the
6 allegation that every single meal period provided was interrupted; the employees
7 were entitled to be paid for the meal period.
- 8 b. Defendant's timekeeping system tracked employees' hours and automated payment
9 of premium wages when an employee worked over six hours without a meal break.
10 Almost every alleged violation is thus a fifth-hour meal-break violation in which
11 the employee can waive the meal break.
- 12 c. Statutory damages for inaccurate wage statements and waiting time penalties
13 require willful or intentional conduct. Given the nature of the claim, there is a good-
14 faith defense that Defendant can assert.
15

16 In light of the foregoing considerations, Class Counsel believes that the Settlement as a
17 whole is fair, reasonable, and adequate, and is in the best interest of the Class Members. Although
18 the recommendations of Class Counsel are not conclusive, the Court can properly take the
19 recommendations into account, particularly if Class Counsel appear to be competent and have
20 experience with this type of litigation, and the investigation has been completed, as is the case
21 here. (*Newberg*, §11.47.) Accordingly, the Court should grant preliminary approval of the
22 Settlement.

23 **3. Class Certification is Appropriate**

24 The requisites for establishing class certification are met, and the Parties have stipulated to
25 conditional certification of the Class for settlement purposes only. California Code of Civil
26 Procedure Section 382 "authorizes class actions when the question is one of a common or general
27 interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them
28 all before the court." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004).
29 California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class
30 and [2] a well-defined community of interest among class members." *Linder v. Thrifty Oil Co.*, 23
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Cal.4th 429, 435 (2000); *see also Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1021 (2012).

a. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal.App.4th 908, 914 (2001). “A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank*, 81 Cal.App.4th 816, 828 (2000). The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.*, *supra*, 23 Cal.4th at 435; *see also Rose v. City of Hayward*, 126 Cal.App.3d 926, 934-35 (1981) (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 254 individuals, which is sufficiently numerous. Further, all Class Members can and will be identified by Defendant to the Administrator through a review of Defendant’s employment records regarding hourly-paid or non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

b. The Class Member Share a Well-Defined Community of Interest.

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the class; and (3) Class Representative who can adequately represent the class.” *Sav-On*, *supra*, 34 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*.” *Capitol People First v. Dep’t of Developmental Services*, 155 Cal.App.4th 676, 692 (2007) (emphasis in original). Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate.” *Id.* (citing *Sav On*, 34 Cal.4th at 333).

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Landay Decl. ¶¶ 13-14. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Settlement Period, including payroll and

1 recordkeeping practices. *Id.* As a result, Plaintiff claims that all of the Class Members were
2 uniformly not paid all compensation due to them from Defendant during the time period at issue.
3 *Id.* Plaintiff maintains that the outcome of this litigation would be determined by Defendant's
4 alleged uniform operations and employment policies and procedures that applied across its hourly-
5 paid or non-exempt employees who worked in California during the Settlement Period. *Id.*

6 As a member of the Class who were subject to these same policies, practices, and
7 procedures, Plaintiff's claims are typical of the Class. Landay Decl. ¶¶ 13-14. Moreover, Plaintiff
8 has no interests adverse to the Class. *Id.* Plaintiff has taken steps to initiate and maintain the action
9 and to ensure that it comes to a fair and reasonable resolution. *Id.* Accordingly, the proposed Class
10 shares a community of interest, and the Court should certify the Class for settlement purposes only.

11 **C. Appointment of Class Counsel and Allocation for Class Counsel Fees Payment**
12 **and Class Counsel Litigation Expenses.**

13 Class Counsel has litigated the matters for over two years and has been actively preparing
14 the matter for class certification. Landay Decl. ¶¶ 7-9. The ongoing work has been extensive,
15 demanding, and ultimately successful in achieving a substantial settlement resolution. *Id.* Class
16 Counsel reviewed a large volume of documents and data and also interviewed and obtained
17 information from Plaintiffs, researched applicable law, undertook damages/valuation calculations,
18 and met and conferred with Defendant's counsel regarding the pleadings and the production of
19 documents and data prior to mediation. *Id.* Counsel for the Parties also undertook extensive
20 settlement discussions, including participation in mediation. *Id.*

21 Class Counsel is experienced in wage-and-hour representative actions. The Settlement
22 establishes a Gross Settlement Amount of \$150,000, and provides for Class Counsel to apply to
23 the Court for attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement
24 Amount (i.e., \$50,000 if the Gross Settlement Amount remains \$150,000) and reimbursement of
25 actual costs and expenses in an amount up to \$5,000.00. The attorneys' fees provided for by the
26 Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating
27 the cases, (2) the extensive time, effort and expense that Class Counsel dedicated to the cases, (3)
28 the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has
29 achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved
30 for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases
31 that Class Counsel had to turn down in order to devote its time and efforts to the matters. The
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1 proposed Class Notice provides Class Members that an award of the Class Counsel Fees Payment
2 and Class Counsel Litigation Expenses Payment will be sought, and the amount allocated toward
3 the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment by the
4 Settlement. Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
5 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v*
6 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the “experienced
7 trial judge is the best judge of the value of professional services rendered in his court.” *Ketchum*
8 *v. Moses*, 24 Cal.4th 1122, 1132 (2001). California law provides that attorney fee awards should
9 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
10 incurred. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 503 (2016) (citing *Lealao*, 82
11 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can
12 be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
13 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
14 litigation.” *Id.* at 50.

15 The California Supreme Court has confirmed the propriety of calculating and awarding
16 attorneys’ fees as a percentage of a settlement that has, by litigation, been preserved or recovered
17 for the benefit of others. *Laffitte, supra*, 1 Cal.5th 480 at 486, 506. The Court has taken the position
18 that while “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,”
19 “they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
20 reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survive in
21 California.” *Id.* (internal quotation marks omitted). Class Counsel has borne all litigation risks and
22 costs and will not receive any compensation until recovery is obtained. To date, Class Counsel has
23 expended approximately 150 hours on this matter at hourly rates. Class Counsel will provide
24 extensive evidence as to the time worked, litigation efforts, and further argument at the time of
25 filing Plaintiff’s Motion for Final Approval of the Settlement and application for the Class Counsel
26 Fees Payment and Class Counsel Litigation Expenses Payment at the Final Approval Hearing.
27 Considering the work performed and the risks incurred, the attorneys’ fees provided for by the
28 Settlement are well within the range of reasonableness for preliminary approval.

29 California statutory authority and case law vests the Court with broad discretion in
30 fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court*, 50
31 Cal.App.3d 960, 973-74 (1975). A class notice is adequate if it “present[s] a fair recital of the
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1 subject matter and proposed terms” of the Settlement. *Mendoza v. United States*, 623 F.2d 1338
2 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).
3 “Sufficient information about the case should be provided to enable class members to make an
4 informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th
5 ed. 2004). The proposed Class Notice describes the Settlement, the deadlines and procedures to
6 submit an Objection to the Class Settlement, submit a Request for Exclusion from the Class
7 Settlement, and/or dispute regarding Pay Periods, and the date and time set for the Final Approval
8 Hearing. The proposed Class Notice summarizes the proceedings to date and the terms and
9 conditions of the Settlement in an informative and coherent manner. The proposed Class Notice
10 recognizes that the Court has not yet granted final approval of the settlement. The proposed Class
11 Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their
12 Individual Class Payment and if applicable, their Individual PAGA Payment is calculated and the
13 number of Pay Periods credited to them. The proposed Class Notice fulfills the requirement of
14 neutrality in notice procedure. *Newberg*, at § 8.39. Thus, the proposed Class Notice satisfies all
15 due process requirements and complies with the standards of fairness, completeness, and
16 neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312;
17 see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed
18 Class Notice.

19 **4. THE PROPOSED CLASS NOTICE IS ADEQUATE**

20 California statutory authority and case law vest the Court with broad discretion in
21 fashioning appropriate class notice. (See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court*,
22 *supra*, at 973-74.) A class notice is adequate if it “present[s] a fair recital of the subject matter and
23 proposed terms” of the Settlement. *Mendoza v. United States*, *supra*, at 1351 (quoting *Marshall v.*
24 *Holiday Magic*, *supra*, at 1177).

25 “Sufficient information about the case should be provided to enable class members to make an
26 informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th
27 ed. 2004). The proposed Class Notice describes the Settlement, the deadlines and procedures to
28 submit an Objection to the Class Settlement, submit a Request for Exclusion from the Class
29 Settlement, and/or dispute regarding Pay Periods, and the date and time set for the Final Approval
30 Hearing. The proposed Class Notice summarizes the proceedings to date and the terms and
31 conditions of the Settlement in an informative and coherent manner. The proposed Class Notice

1 recognizes that the Court has not yet granted final approval of the settlement. The proposed Class
2 Notice also apprises the Class Members of, inter alia, how their Individual Class Payment is
3 calculated and the number Pay Periods credited to them. The proposed Class Notice fulfills the
4 neutrality requirement in the notice procedure. (Newberg, at § 8.39.)

5 Thus, the proposed Class Notice satisfies all due process requirements and complies with
6 the standards of fairness, completeness, and neutrality. (Fed. R. Civ. P. 23(c)(2) and 23(e);
7 Newberg, §§ 8.21, 8.39; Manual, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960.)

8 Accordingly, the Court should approve the proposed Class Notice.

9 **D. Settlement Administration**

10 The Parties have agreed that Phoenix Class Action Administration Solutions will
11 administer the PAGA and Class Action Settlement. Plaintiff's counsel has received a quote for this
12 administration in the amount of not to exceed \$7,500. Stephenson Decl., ¶ 27. Pursuant to the
13 Settlement Agreement,

- 14 a. The Administrator shall send the Class Notice (Stephenson Decl. ¶ 23, Exhibit 3) to all
15 Class Members.
- 16 b. After funding of the Gross Settlement Amount from Defendant is received, but in no
17 event sooner than the expiration of the Class Notice Response Deadline, the
18 Administrator will mail checks for all Individual PAGA Payments, Individual Class
19 Action Payments (collectively, the "Individual Payments"), the LWDA PAGA
20 Payment, the Administration Expenses Payment, the Counsel Expenses Payment, and
21 Plaintiff's Incentive Award. Disbursement of the Counsel Litigation Expenses Payment
22 shall not precede disbursement of Individual Payments.
- 23 c. The Administrator will issue checks for the Individual Payments and send them to the
24 Employees via First Class U.S. Mail, postage prepaid. The face of each check shall
25 prominently state the date (not less than 180 days after the mailing date) when the check
26 will be voided.
- 27 d. The Administrator will cancel all checks not cashed by the void date. Before mailing
28 any checks, the Settlement Administrator must update the recipients' mailing addresses
29 using the National Change of Address Database. Additionally, before sending the
30 Employee's Individual Settlement Checks, the Administrator must conduct a skip trace
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- 1 through Accurant or substantially similar software. Along with the Individual
2 Payments, the settlement administrator will mail a brief letter explaining the settlement.
- 3 e. The Administrator must conduct an Employee Address Search for all Employees whose
4 checks are returned undelivered and who do not have a USPS forwarding address.
5 Within 7 days of receiving a returned check, the Administrator must remail the check
6 to the USPS forwarding address provided or to an address ascertained through the
7 Employee Address Search. The Administrator need not take further steps to deliver
8 checks to Employees whose re-mailed checks are returned as undelivered. The
9 Administrator shall promptly send a replacement check to any Employee whose
10 original check was lost or misplaced, upon the Employee's request prior to the void
11 date.
- 12 f. For any Employee whose Individual Payment check is uncashed and canceled after the
13 void date, the Administrator shall transmit the funds represented by such checks to the
14 California Controller's Unclaimed Property Fund in the name of the Employee.

15 Accordingly, Plaintiff respectfully requests that the Court appoint Phoenix Class Action
16 Administration Solutions as the Administrator and direct the mailing of the Class Notice to the
17 Class Members.

18 **E. Class Representative Service Payment**

19 Plaintiff respectfully requests that the Court appoint her as the Class Representative and
20 preliminarily approve the Class Representative Service Payment in an amount up to \$10,000. It is
21 within the Court's discretion to award payment to a Class Representative for their efforts and work.
22 *Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (C.D. Cal. 1995). The factors that courts
23 may consider in determining whether to make a Class Representative Service Payment include:
24 (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the
25 notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time
26 and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal
27 benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. (*Id.*)

28 The Class Representative Service Payment is fair and appropriate. As set forth in her
29 declaration filed concurrently herewith, Plaintiff spent approximately twenty-one (21) hours on
30 this matter, including producing relevant documents and past employment records, participating
31 in interviews with Class Counsel, and providing the facts and evidence necessary to attempt to
32

1 prove the allegations. Plaintiff also assumed the risk of an adverse costs award. Plaintiff was
2 available whenever Class Counsel needed her and actively tried to obtain and provide information
3 that would facilitate the pursuit of the class and PAGA claims. Accordingly, it is appropriate and
4 just for Plaintiff to receive \$10,000.00 for her services on behalf of the Class, Aggrieved
5 Employees, and the State of California, in addition to her Individual Class Payment.

6
7 **IV. CONCLUSION**

8 For the foregoing reasons, Plaintiff requests that the Court approve the Parties' Settlement
9 Agreement. As fully set forth herein, the Settlement is fair and reasonable due to the disputed
10 strength of the PAGA claim, the range of outcomes in the litigation, the risk, expense, and
11 complexity of further litigation, the scope of the release, and the experience and views of counsel
12 and the mediator.

13
14
15 Dated:

By: _____

John K. Landay
Landay Roberts LLP
Attorneys for Plaintiffs David Harris,
Khaleehan Curtis, Marisol Olivera, and
Fabiola Delgado

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