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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

YADIRA RODRIGUEZ ROMAN and DONALD CLEVENGER, as individuals and on behalf of all employees similarly situated, Plaintiffs, v. TC CALIFORNIA HOSPITALITY LLC, a California Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	Case No.: 37-2024-00010785-CU-OE-CTL [Assigned for all purposes to Hon. Richard S. Whitney, Department C-68] <u>CLASS AND PAGA REPRESENTATIVE ACTION</u> **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: January 9, 2026 Time: 10:30 a.m. Courtroom: Dept. C-68 Judge: Hon. Richard S. Whitney Action Filed: March 7, 2024 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on January 9, 2026, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department C-68 of the above-captioned Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiffs YADIRA RODRIGUEZ ROMAN and DONALD CLEVENGER ("Plaintiffs") will and hereby do move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;

2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT ("Settlement" or "Agreement");

3. Appointing counsel for Plaintiffs, Tunyan Law, APC, Majarian Law Group, APC and Crosner Legal, PC, as Class Counsel;

4. Appointing Plaintiffs as the Class Representatives;

5. Ruling that Settlement Class Members who did not timely submit requests for exclusion from the settlement as set forth in the Agreement have released their claims against Defendants and the other releasees as set forth in the Agreement;

6. Ruling that Settlement Class Members who did not timely object to the settlement pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any appeal of the Court's Order;

7. Awarding the sums requested in the Motion;

8. Entering a Final Judgment; and,

9. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

Good cause exists to grant this Motion because:

1. The Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;

2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiffs;

3. Plaintiffs and Class Counsel are adequate to represent the Class;

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Plaintiffs' counsel, Plaintiffs and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: December 11, 2025

TUNYAN LAW, APC

By: ______________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff YADIRA RODRIGUEZ ROMAN

Dated: December 11, 2025

MAJARIAN LAW GROUP, APC

By: ______________________

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Dated: December 11, 2025

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By: ______________________

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA DEISIONAL AUTHORITY

FEDERAL DECISIONAL AUTHORITY

STATUTES

RULES

OTHER AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs YADIRA RODRIGUEZ ROMAN and DONALD CLEVENGER ("Plaintiffs") respectfully request that this Court finally approve the proposed class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT ("Settlement", "Settlement Agreement" or "Agreement") with Defendant TC CALIFORNIA HOSPITALITY LLC ("Defendant"). The CLASS ACTION AND PAGA SETTLEMENT AGREEMENT used by the Parties is based upon the model agreement template made available by the Los Angeles Superior Court.

After informal discovery, the exchange of documents, and an arm's-length mediation session with an experienced mediator Steven Rottman, Esq., Plaintiffs and Defendant (collectively referred to herein as the "Parties") reached a proposed class and PAGA representation action settlement with a gross settlement amount ("GSA") of **$667,095.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **1,340** members. The Parties originally reached a settlement with a GSA of $**650,000.00** for approximately **1,269** Class Members. However, after providing the updated class data by Defendant, the number of Class Members during the Class Period was increased to 1,340, and the total workweeks from the estimated 59,394 as of the mediation date of February 18, 2025 to 66,834 workweeks as of May 18, 2025, i.e. Class Period end date. As a result of the updated class data and in compliance with Paragraph 8 of the Settlement Agreement, the GSA was increased to **$667,095.00**. Plaintiffs believe that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in this case.

Plaintiffs now submit this Motion for Final Approval of Class and PAGA Representative Action Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan ["Tunyan Decl."], **Exhibit 1** thereto).

II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER PRELIMINARY APPROVAL

Plaintiffs and Defendant have fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, Phoenix Class Action Administration Solutions ("Phoenix), sent individual Notices to 1,340 Class Members on October 6, 2025. (Declaration of Mayra Gonzalez ["Gonzalez

Decl."], ¶5.) Of the Notices that were mailed, 8 were returned after mailing. (Gonzalez Decl., ¶ 6) Skip tracing found new addresses for 7 Class Members. 7 Notices were remailed with updated address. (Gonzalez Decl., ¶6) Ultimately, 1 Notice was considered undeliverable. (Gonzalez Decl., ¶ 7.) One Class Member requested to be excluded from the Settlement, and no Class Members objected or disputed Workweeks in writing. (Gonzalez Decl., ¶¶8-10.) Since one class member requested to be excluded from class settlement, there are 1, 339 Participating Class Members. (Gonzalez Decl., ¶ 11.)

PAYMENTS: For 1,339 Participating Class Members, the average gross payment per Class Member is $498.2. The Net Class Settlement Amount (excluding PAGA Settlement allocation to PAGA Employees) is estimated to be at least **$**328,798.32, resulting in an average net class individual payment per Class Member of $245.56, before any tax withholdings. (Gonzalez Decl., ¶¶13-14.) The highest net class individual settlement payment is estimated to be $1,338.14 (Gonzalez Decl., ¶ 14.) For the Court's convenience, below is a summary of the key provisions of the Settlement. For the Court's convenience, below is a summary of the key provisions of the Settlement.

III. <u>THE MAJOR TERMS OF SETTLEMENT</u>

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 12.1);
- <u>Class or Class Members</u>: All current and former non-exempt employees of Defendant TC California Hospitality LLC and CoralTree Hospitality Group LLC, which was named as a defendant by Plaintiff Donald Clevenger in his initial complaint, who worked for Defendant California Hospitality LLC and CoralTree Hospitality Group LLC (or either of them) in Town & Country Resort in San Diego, California during the Class Period (Settlement, ¶ 1.4.) "Participating Class Members" are those Class Members who do not submit valid and timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 1.8, 1.34);
- <u>Class Period</u>: The period from March 7, 2020 through May 18, 2025. (Settlement, ¶¶ 1.11, 8.)
- <u>Settlement Amount</u>: Defendant will pay a maximum of **$667,095.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross**

payment per Class Member of approximately **$498.**2 (Settlement, ¶ 1.21);

- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than ten (10) days after the Effective Date. (Settlement, ¶ 4.3)
- Class Size: **1,339** individuals who worked **66,834** workweeks during Class Period. (Settlement, ¶ 4.1, 8);
- PAGA Group Size: **930** individuals, who worked **20,992** pay periods during PAGA period (Settlement, ¶ 4.1);
- PAGA Period: The period from March 7, 2023 through May 18, 2025. (Settlement, ¶¶ 1.30, 8);
- Escalator Clause: Based on its records, Defendant estimates that, as of February 18, 2025, the number of Workweeks worked by 1,269 Class Members in Town & Country Resort in San Diego during the Class Period is estimated to be 59,394. The parties stipulate to a 10% escalation of the estimated 59,394 workweeks without any increase to the Gross Settlement Amount. If the number of actual Workweeks during the Class Period exceeds 10% of the estimated Workweeks (i.e., exceeds 65,334 workweeks), Defendant shall either choose to cut off the workweeks as of the date the increase reaches 10% or increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of Workweeks in excess of 65,334. For example, if there is a 1% increase over 10% then the Gross Settlement Amount increases by 1%. (the "Escalator Clause"). (Settlement, ¶ 8); ***The Escalator Clause was triggered as the total workweeks' count was 66,898, and the GSA was increased from $650,000.00 to $667,095.00 pursuant to Paragraph 8 of Settlement.***
- *Kullar/Munoz* Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Lilit Tunyan, at Paragraph 17;
- No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the Declaration of Lilit Tunyan, at Paragraphs 34-40;

- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release specified claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.38, 5.2);
- PAGA Release: PAGA Employees will release the PAGA claims set forth in this action, that were identified in the Second Amended Complaint and Plaintiffs' LWDA Notice Letters, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.39, 5.3);
- Release Effective Date: The Release is not active until Defendant tenders all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, Service Payments to Plaintiffs, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Class Settlement Amount (excluding PAGA settlement allocation to PAGA employees) is estimated to be at least **$328,798.32**, resulting in an average **gross** payment per Class Member of **$498.2** and net payment per Class Member of at least **$245.56** before any tax withholdings. (Settlement, ¶ 3);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2);
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Class Action Administration Solutions, and the Parties estimated that the costs of administration should not reasonably exceed $25,000.00. Phoenix Class Action Administration Solutions' low bid for settlement administration

services in the amount of **$14,500.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3);

- Class Data for Administration: The Settlement Administrator will receive the Class List within 21 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will be issued in English and Spanish (Settlement, ¶ 1.10);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
- PAGA Allocation: From the GSA, **$50,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), specifically twenty-five (25%), or **$12,500.00** will be allocated to the PAGA Employees and seventy-five percent (75%), or **$37,500.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.33, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Declaration of Lilit Tunyan;
- Enhancement/Service Payments to Plaintiffs: Defendant will not oppose the application for Class Representative Service Payments of up to **$10,000.00** for each Plaintiff (total of **$20,000.00**), to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($222,365.00**), and actual costs, in an amount not to exceed **$32,000.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
- Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);

- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller's Unclaimed Property Fund (Settlement, ¶ 4.4.3);
- Judgment Notice: Settlement Agreement, Class Notice and Judgment will be posted on the Settlement Administrator's website after entry (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Tunyan Decl., ¶¶ 13-14 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiffs' Claims

On March 7, 2024, Plaintiff Yadira Rodriguez Roman filed a wage and hour class action alleging the following claims against Defendant TC California Hospitality LLC: (1) failure to provide meal periods (Lab. Code §§ 204, 226.7, 512 and 1198 and Wage Order); (2) failure to provide rest periods (Lab. Code §§ 204, 226.7 and 1198 and Wage Order); (3) failure to pay all hourly wages (Lab. Code §§ 210, 510, 1194, 1194.2, 1197, 1997.1 and 1198); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) failure to indemnify necessary business expenses (Lab. Code § 2802); (6) failure to timely pay all wages and final wages (Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On May 13, 2024, Plaintiff Yadira Rodriguez Roman filed her First Amended Complaint adding the PAGA cause of action. (Tunyan Decl., ¶ 3.)

On June 12, 2024, Plaintiff Donald Clevenger filed a wage and hour class action alleging the following claims against Defendants TC California Hospitality LLC and CoralTree Hospitality Group LLC: (1) failure to provide meal periods (Lab. Code §§ 204, 226.7, 512 and 1198 and Wage Order); (2) failure to provide rest periods (Lab. Code §§ 204, 226.7 and 1198 and Wage Order); (3) failure to pay all hourly, minimum, and overtime wages (Lab. Code §§ 210, 218, 218.5, 222-224, 510, 1194, 1194.2, 1197, 1997.1 and 1198); (4) failure to maintain and provide accurate itemized wage statements (Lab. Code §§ 226(a) and 1174); (5) making unlawful paycheck deductions and failure to indemnify necessary business expenses (Lab. Code §§ 221 and 2802); (6) failure to timely pay all wages and final wages

(Lab. Code §§ 201, 202, 203, 204 and 210); (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On August 22, 2024, Plaintiff Donald Clevenger filed another action pleading the PAGA cause of action seeking civil penalties for the same Labor Code violations pleaded in his class action. (Tunyan Decl., ¶ 4.)

On February 18, 2025, the Parties participated in mediation with the mediator Steven Rottman, Esq. where they were able to achieve a global settlement, which also involved the matters of *Donald Clevenger v. TC California Hospitality LLC*, pending in San Diego Superior Court, Case Nos. 37-2024-00027619-CU-OE-CTL (Class) and 24CU007296C (PAGA). Therefore, on May 7, 2025, the Parties filed a joint stipulation for leave to file Plaintiff's Second Amended Complaint in this action to add Plaintiff Donald Clevenger and all his claims to this action. On May 14, 2025, this Court granted the Parties' joint stipulation, and Plaintiff Yadira Rodriguez Roman filed her Second Amended Complaint adding Plaintiff Donald Clevenger to this action. The Second Amended Complaint is the operative complaint in this action (the "Operative Complaint.") (Tunyan Decl., ¶ 5.)

Pursuant to Labor Code § 2699.3(a), Plaintiffs gave timely written notice to Defendant and the LWDA by sending the PAGA Notice. (Tunyan Decl., ¶ 7.)

B. <u>Pre-Settlement Data Production and Analysis</u>

The Parties have conducted informal discovery and investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of informal data and discoverable information in preparation for the settlement negotiations. (Tunyan Decl., ¶ 8.) The Parties have analyzed payroll and other data pertaining to Plaintiffs and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks, a sample size time and pay records and average rate of hourly pay, wage and hour policies. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to engaging in settlement negotiations. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Tunyan Decl., ¶ 9.)

C. Settlement

On February 18, 2025, the Parties mediated before a mediator Steve Rottman, Esq. who is a highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl., ¶ 10.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation considering Defendant's defenses. The Parties have been able to reach a settlement at the mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then signed a long form settlement agreement. (*Id*.)

Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. Plaintiffs and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class. (Tunyan Decl., ¶11.)

Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Tunyan Decl., ¶ 12.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id*.) If this Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

> All current and former non-exempt employees of Defendant TC California Hospitality LLC and CoralTree Hospitality Group LLC, which was named as a defendant by Plaintiff Donald Clevenger in his initial complaint, who worked for Defendant California Hospitality LLC and CoralTree Hospitality Group LLC (or either of them) in Town & Country Resort in San Diego, California during the Class Period (the "Class Period" is from March 7, 2020 through May 18, 2025.) "Participating Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ ¶ 1.8, 1.11, 1.34.)

The PAGA Group Members are defined as follows:

All current and former non-exempt employees of Defendant TC California Hospitality LLC, and CoralTree Hospitality Group LLC, which was named as a defendant by Plaintiff Donald Clevenger in his initial complaint, who worked for Defendant California Hospitality LLC and CoralTree Hospitality Group LLC (or either of them) in Town & Country Resort in San Diego, California during the PAGA Period (the "PAGA Period" is March 7, 2023 through May 18, 2025.) PAGA Group Members cannot opt out of the settlement of the PAGA claim. (Settlement, ¶ 5.3.)

VI. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement *only*, Defendant stipulated to conditional certification. (Settlement ¶ 12.1.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). In ruling on certification, a trial court's task is to determine "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Id*. Thus, "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions . . . ."*See, e.g., id*.

"[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the non-representative class members," that concern is "protected by the trial court's fairness review of the settlement." *Dunk*, 48 Cal. App. 4th at 1807 n.19.

Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289; *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) ("the use of the tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), cert. denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation and an approved procedure which ought to be followed in this case. *See* Newberg on Class Actions (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; Manual for Complex Litigation, 2d (1993) § 30.45.

In view of these standards, **as discussed more thoroughly as part of the preliminary approval motion already granted by the Court,** the Settlement Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. <u>The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendant's Potential Liability Exposure and the Risks of Continued Litigation</u>

California courts favor settlement. *See, e.g.*, *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks final *approval* and entering of Judgment.

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g*., *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Relevant factors in making this determination, include, but are not limited to:

> [T]he 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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 9-12.) With respect to the claims at issue in this case, Plaintiffs obtained employees' pay and time data from Defendant and then carefully reviewed that information. Counsel for Plaintiffs also examined relevant policies.

Based on the totality of that review, Plaintiffs estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiffs' counsel conducted were sufficient to provide them with enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court to do the same. *See, e.g.*, *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had Plaintiffs prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*, *quoting Air Line Stewards & Stewardesses Ass'n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiffs would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*

US Bank Nat'l Ass'n, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii) the risk that Defendant's meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties awarded under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii) the risk that appellate litigation could ensue; and (viii) the risk that violation rate estimates would prove much lower than expected. (Tunyan Decl., ¶ 18.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 15-18.) The settlement amount is, of course, a compromise figure. (Tunyan Decl. ¶ 19.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the **1,339** members of the Class, the average ***gross*** recovery is at least **$498.2** per class member, and the estimated average ***net*** recovery for each Class Member is approximately **$245.56** (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement</u> than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiffs have concluded that the Gross Settlement Amount of <u>**$667,095.00**</u> is about **77.8%** of the **$857,673.64** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Tunyan Decl., ¶ 20.) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The risk-adjusted value of each claim, on a claim-by-claim basis, is as follows:

- The reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$1,056,025.32**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiffs' counsel to be approximately **$211,205.06**, assuming certification probability of 40% and merits success at 30%.
- The reasonably estimated exposure for rest break violations over the class period was calculated at **$1,056,025.32**, but with chances of certification and proof of liability (40% and 30% respectively) for a risk-adjusted exposure of **$126,723.04**.
- The reasonably estimated exposure for meal break violations over the class period was calculated at **$1,056,025.32** with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **$211,205.06**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **$86,847.00** and **$174,869.86**, respectively, on maximum exposures of **$1,447,450.00** and **$2,914,497.60** with chances of certification and liability risks (30% and 20% respectively).
- The reasonably estimated exposure for unreimbursed expenses was calculated at **$296,970.00**, with chances of certification and liability risks (40% and 30% respectively) resulting in a risk-adjusted exposure of **$35,636.00**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **$730,323.64**, excluding PAGA.
- PAGA penalties were calculated as having a maximum realistic exposure of **$849,000.00**, but a risk adjusted value of **$127,350.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 20.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 21.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (*Id*.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html; *see also, Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Tunyan Decl., ¶ 21.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id*.) This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶ 19.)

5. The Proposed Service Payments to Plaintiffs Are Fair, Adequate, and Reasonable and Warrant Final Approval.

The proposed Service Payments to Plaintiffs are intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named Plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named Plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a $50,000 enhancement award). Plaintiffs contributed time to the prosecution of this matter, including assistance prior to the settlement negotiations and during settlement negotiations with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Rodiguez Decl., ¶¶ 4-21; Clevenger Decl., ¶¶ 5-9; Tunyan Decl., ¶ 38.) The enhancement also recognizes the considerable risks Plaintiffs undertook on behalf of the Class as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued a former employer, making future employment prospects uncertain and general release of all claims beyond wage-and-hour claims released in this action.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Final Approval.

a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for attorneys' fees as a percentage of the settlement fund is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes*

Air West, Inc., 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal. 3d 162, 167 (1975) ("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, *ante; Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p. 516)—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016).[1] Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiff's counsel based upon the percentage of the fund methodology.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff's counsels' experience in these types of cases. Here, Plaintiff's attorneys request attorneys' fees of up to $222,365.00 (one-third of the GSA), and costs of $31,431.68, which includes payment for filing fees and other standard expenses. (Tunyan Decl., ¶¶ 33-37.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *final approval*.

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[1] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

b) Class Counsel Is Entitled to Attorneys' Fees and Costs under the California Labor Code and California's Private Attorney General Statute

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys' fees and costs under the Labor Code.

Class Counsel is also entitled to a fee under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

The Action resulted in the enforcement of an important right affecting the public interest, as Plaintiff sought to enforce Class Members' rights to recover statutory wages arising from Defendants' failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

The Action also conferred a significant benefit on a class of persons who worked for Defendant during the Class Period and were, according to allegations, not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See*

*Ryan v. California Interscholastic Fede*ration, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter.").

c) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc*., 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's billed lodestar exceeds **$191,595.00** which is based on approximately 279.8 *billed* hours from three firms representing Plaintiffs and the class (not including final estimated hours) at the attorneys' customary hourly rates. (Tunyan Decl., ¶¶ 33-36, Wendell Decl. ¶12, Majarian Decl. ¶¶ 9-10.) The actual lodestar is estimated to be **$194,595.00**. (Tunyan Decl., ¶ 36.) Application of a small positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of the Settlement, and the skill displayed by Class Counsel. Thus, the request for $222,365.00 in attorneys' fees, which is **1.1** times the final estimated lodestar, is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.").

Here, Class Counsel expended a prudent amount of time litigating the case to achieve the excellent result on behalf of the class. (Tunyan Decl. ¶¶ 31-37.)

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Tunyan Decl. ¶¶ 23-29.) A number of courts, including this Court, have approved Class Counsel's hourly rates which are consistent with her practice area, legal market. (Tunyan Decl. ¶ 29.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

(3) Application of a Positive Multiplier Would Be Appropriate

The lodestar may be adjusted by applying a multiplier. *See Serrano*, 20 Cal. 3d at 49. In California, "[m]ultipliers can range from ***two to four or even higher***" and are routinely applied in the range requested by Class Counsel. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App. 4th at 66 (upholding ***2.5 multiplier***); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465 (1984) (affirming a fee award that included a ***12.0 multiplier***); Some factors a trial court considers when determining whether to apply a multiplier are: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is "to entice competent counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Soc. v. County of San Bernardino*, 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small "chill the private enforcement essential to the vindication of many rights…." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 53 (2000).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal. 4th at 1132-1133. As the court noted, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id*. at 1133 (citations omitted). Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of settlement, and the skill displayed by Class Counsel. Here, a modest multiplier of ---- is required to align the final estimated lodestar with the requested fee. Class Counsel have been litigating this case before receiving any reimbursement, expending resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent basis, and in the process assumed considerable risk. (Tunyan Decl. ¶ 30.)

Class Counsel's efficiency and skill in bringing the case to an early resolution should not be used to justify refusal to award the requested fees. As the court explained in *Lealao*:

> [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an extraordinarily high value on settlement … it would seem counsel should be rewarded, not punished, for helping to achieve that goal….

Lealao, 82 Cal. App. 4th at 52 (citations omitted).

Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit conferred on the class and State as a result of the Settlement, and the skill displayed by Class Counsel, application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests that the Court award Class Counsel the requested fees of **$222,365.00** under the common fund theory with a lodestar cross-check or, alternatively, based on Class Counsel's lodestar with application of a modest multiplier based upon the agreed-upon cap on fees.

d) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed $32,000.00. To date, Tunyan Law, APC and Crosner Legal, PC have already incurred actual costs in the amount of at least $31,431.68 which include future final approval motion filing, notice of entry of judgment and final report filing fees. (Tunyan Decl., ¶ 37., Wendell Decl., ¶ 14) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of $31,431.68 which is less than the capped amount. (Tunyan Decl., ¶ 37.).

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Phoenix Class Action Administration Solutions, which has been selected due to its competitive bid, estimates that administration can be performed for **$14,500.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$14,500.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Tunyan Decl., ¶ 39.)

8. The PAGA Allocation is Reasonable

The ultimate decision as to the amount of PAGA penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the Defendant employer and other employers, an objective of PAGA."); *see also Viceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.")

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz* said:

> [W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents " ' " 'fraud, collusion or unfairness' " ' " (Dunk, supra, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the Plaintiffs's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.
>
> Given PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA's purposes and policies. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker Hughes, a GE Co., LLC, supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis 134582 at *10–*11; see *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the Legislature required court approval of private settlements of Proposition 65 actions brought to vindicate the public interest, court must evaluate the resulting consent decree to determine if it is "just" and "serves the public interest"].) We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws. (*See Williams*, *supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought to remediate present violations and deter future ones"]; *Arias*, *supra*, 46 Cal.4th at p. 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment state enforcement efforts to achieve maximum compliance with labor laws].) The trial court below used this standard.

Moniz, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs' discussion of the adequacy of the settlement generally. Using class settlements as a source of analogous settlement review standards, to assess the fairness, adequacy, and reasonableness of a settlement, the court should also consider the expense, complexity and likely duration of further litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future litigation as it pertained to Plaintiffs' PAGA claims was to some extent an unknown. However, what is certain is that to adequately establish the foundational violations that would support a substantial penalty award, tremendous time and expense would be invested. To adequately establish that aggrieved employees experience the alleged violations, and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be expensive and time-consuming. *Second*, substantial risk that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And formulating such a survey would have been important, since frequency of violations would need to be established before any penalties could be recovered. At least as to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major factor in assessing liability. In sum, the evidence collected to date leads Plaintiffs to conclude that, direct testimony would have been required from as many of the roughly 930 aggrieved employees as could be obtained, which would be, at best, very difficult. Proof of this sort gives rise to a manageability argument that could substantially reduce the size of the aggrieved employee group.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. Class members benefit from payments intended to offset the harm of alleged violations of wage and hour requirements. The allocation of a major portion of settlement funds to class members also deters future violations, since, from the perspective of an employer, where settlement funds go is less significant than the fact that settlement funds are issuing at all. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of state labor laws, balanced against the competing factors of uncertainty of proof and other risks.

A final note on the analysis discussion in *Moniz* is appropriate. *Moniz* was concerned with the standard applied to a standalone PAGA action, not a settlement in which money was allocated between class and PAGA claims. Here, the adequacy of the settlement as a whole impacts the factors approved of by *Moniz*. It would be misleading to examine only the PAGA portion of the settlement without asking how this Settlement as a whole is consistent with the purposes of PAGA. Second, the discussion of "fairness" to those impacted by the settlement in *Moniz* does not play a role in this matter. In *Moniz,* the Court found the record lacked any support for the disparate allocation of PAGA penalties between different types of employees: "[T]he settlement's allocation of shares of civil penalties to Colleagues that are fifteen times greater than the shares allocated to Associates does not seem to have been justified below and may be contrary to PAGA's purposes." *Moniz*, 72 Cal. App. 5th at 87. Here, PAGA penalties are allocated by pay period, irrespective of job classification, an equitable method of allocation.

In addition, there is no evidence that a court or a commissioner had informed Defendant that any conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC,* 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 941 (N.D. Cal. 2016). Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, the efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. This is a very significant risk factor.

Finally, the PAGA allocation is fair. The LWDA is receiving **$37,500.00**. The Class is receiving, net, an estimated $341,298.32 for the releases for eight theories of recovery (including the $12,500.00 as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to roughly **11%** of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rules of Court, Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

Respectfully submitted,

Dated: December 11, 2025 **TUNYAN LAW, APC**

By: ______________________

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Artur Tunyan

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Dated: December 11, 2025 **MAJARIAN LAW GROUP, APC**

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285, Glendale, California 91203.

On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

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[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 11, 2025, at Glendale, California.

Natalia Zevallos — Natalia Zevallos
Name — Signature