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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN - STOCKTON

YAZMEN HAWTHORNE, individually, and as a representative of other aggrieved employees, Plaintiff, vs. LAS CASUELAS RESTAURANTS, INC, a California Corporation, and DOES 1 through 10, inclusive, Defendants.	Case No.: STK-CV-UOE-2024-16273 *Honorable Blanca Banuelos* **CLASS ACTION** **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** PROPOSED DATES: November 4, 2025; November 5, 2025; November 13, 2025; November 14, 2025; November 18, 2025; November 20, 2025; November 21, 2025; Time: 9:00 a.m. Dept.: 10B Action Filed: 11/20/2024

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks preliminary approval of a $478,225 class action settlement that provides monetary relief for approximately 814 Class Members. There are approximately 35,215 workweeks in the Class Period and 15,532 pay periods in the PAGA Period. The key terms of the "Class Action ("PAGA") Settlement Agreement and Release of Claims"[1] are as follows:

Settlement Class Members: "All current and former non-exempt, hourly-paid employees who worked for the Defendants during the period commencing June 10, 2020 to March 21, 2025 ("the Class Period") the Class Period.

(1) A Gross Fund Value of $478,225 that includes:

(a) The Net Settlement Amount (i.e., the Gross Fund Value minus Attorneys' Fees and Costs, payroll (employee only) taxes, the Claims Administration Fee, the LWDA Payment, and the Class Representative Service Award).

(b) $157,814 in Attorneys' Fees (33.3 percent of the Gross Fund) and up to a maximum of $25,000 in actual costs to Class Counsel.

(c) Up to a maximum of $11,500 as a "capped fee" to the Claims Administrator, Phoenix Class Action Administrative Solutions, except upon a showing of good cause.

(e) $30,000 PAGA payment pursuant to Private Attorneys General Act (75% of which, or $22,500, goes to the LWDA, and the remaining 25%, or $7,500, going to the Net Fund). The PAGA Aggrieved Employees are: "class members working for the Defendants as non-exempt, hourly-paid employees during the PAGA period (May 3, 2023 to March 25, 2025) in the State of California."

(e) $7,500 as Service Award to the class representative.

[1] Hereinafter, "Settlement Agreement" or "Settlement." Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

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The Settlement, which is non-reversionary, is fair, reasonable, and adequate—and meets approval under California law. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Plaintiff Filed a Putative Class Action Alleging Labor Code Violations

On June 10, 2024, Plaintiff commenced this Action by filing a Complaint alleging individual claims for sexual harassment, gender discrimination, failure to prevent harassment and discrimination, constructive discharge in violation of public policy, failure to provide proper meal periods, failure to provide proper rest periods, failure to provide proper wage statements and failure to timely pay wages upon termination. On December 2, 2024, a First Amended Complaint ("FAC") was filed additionally alleging violations under the Private Attorney General Act ("PAGA"), pending before the court *Yazmen Hawthorne v. Las Casuelas Restaurants, Inc.*, Superior Court Case No. STK-CV-UOE-2024-0006868 (the "PAGA Action"). On November 20, 2024, a Class Action Complaint was filed and pending before the court as *Yazmen Hawthorne v. Las Casuelas Restaurants, Inc., a California Corporation and Memo's Cocina & Tequila Bar, Inc.,* San Joaquin County Superior Court Case No. STK-CV-UOE-2024-0016273 (the "Class Action"). The Class Action contains causes of action against THE RESTAURANTS for (1) Unpaid Overtime; (2) Unpaid Minimum Wages; (3) Meal Period Violations; (4) Rest Period Violations; (5) Waiting Time Penalties under Labor Code Section 203; (6) Wage Statement Penalties; and (7) Unfair Business Practices. On January 17, 2025, a Joint Stipulation and Order to Consolidate Actions ("Stipulation") was filed by both Parties, the lead case is now the PAGA Action (the "Operative Complaint."). (Buchsbaum Decl. ¶9).

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This is a wage and hour class action arising out of plaintiff's former employment as a busser and hostess at the Las Casuelas Restaurant in Mantec, California. The class consists of non-exempt employees who worked at a number of Las Casuelas Restaurants in the Central Valley, including Modesto (2 locations), Ripon and Turlock.[2] The Defendants indicate that there are approximately 814 class members.

The parties shared the services of a data analysis firm to review a statistically significant percentage of the class members' time and corresponding time records to assess exposure. It is clear from the time records that the Defendant used rounding practices to pay its workers. That is, the employees were not paid based on their actual punch times, which were entered electronically, but rather were paid approximately what they were owed—rounded up or down to some fraction of an hour.

In California, the practice of rounding is on very shaky footing. At one time there was some support for neutral rounding, meaning that the rounding system worked both in favor of the employer and employee in roughly equal parts. However, over the last several years, even the concept of neutral rounding appears on its last legs. First, the California Supreme Court in ***Troester v. Starbucks*** (2018) 5 Cal.5th 829, held that the federal "de minimis rule" did not apply in California, which has a policy of requiring compensation for all work performed, even if "off the clock" work may have only amounted to a few minutes.

A few years later, in ***Donohue v. AMN Services, LLC*** (2021) 11 Cal.5th 58, the Court held that "employers cannot engage in the practice of rounding time punches, that is, adjusting the hours that an employee actually worked to the nearest preset time increment—in the meal period context." While the issue of rounding the start and stop times of the workday was not before the court in ***Donohue***, and was not explicitly ruled upon, any employer who continued to round after ***Donohue*** was taking a substantial risk.

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[2] Memo's Cocina & Tequila Bar, which is a related entity with an upscale location locations in Turlock is also a Defendant

Following these two Supreme Court decisions, a Home Depot employee filed a lawsuit contending that the company's general rounding practices were unlawful. In ***Camp v. Home Depot USA*** (2022) 84 Cal.App.5th 638, the Court seemed to nail the coffin on rounding:

"Under the guidance and direction of *Troester* and *Donohue* which we must follow as an intermediate court, if an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked."

The California Supreme Court has now granted review in ***Camp***, presumably to provide final clarity on the issue of rounding in California. As a result, there was a layer of uncertainty overhanging the case, which both parties had to factor in to assess risk.

That said, the analysis conducted on the time records did not even show neutral rounding practices. The sampled records, extrapolated to the class, determined that there were 1620 underpaid hours as a result of rounding, but only 214 overpaid hours. That is, the rounding heavily favored the employer, resulting in employees, on a fairly routine basis, not being paid for all their work. The expert determined that, including interest, there was approximately $27,800 in unpaid wages. There were ancillary claims related to the unpaid wages, such as PAGA penalties and waiting time penalties, which lead to much larger overall exposure.

1. <u>Paystub Violations</u>

One of the issues created by not paying employees based on their clocked hours, but rather through approximations of their working hours, is that the hours that end up on employee paystubs are consistently, modestly wrong. This is a problem, because Labor Code §226(a) states the following:

"An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an ***accurate itemized statement*** in writing showing (1) gross wages earned, (2) ***total hours worked*** by the employee. . ."

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Here, the paystubs show manifestly inaccurate information about the number of hours the employee worked during the pay period. The paystubs are relatively accurate—but what good is relative accuracy if you are an employee and want to make sure you are being paid for ***all*** your time. Indeed, even the few employees who were *overpaid* received inaccurate paystubs.

The expert determined that approximately 441 employees were impacted during the statutory period for a wage statement claim, and that the cumulative penalty amounted to $1,401,315.

That said, a claim under Labor Code §226 requires "knowing and intentional" violations of the statute, and given some of the uncertainty surrounding rounding in California, this was likely going to be a difficult claim to prove. We viewed the settlement value of this claim, given the attendant risk, of being no more than $140,000.

2. <u>Unpaid Overtime</u>

The analysis also found an overtime problem. It appears that the Defendant was compensating some employees on a 4/10 workweek, without having an approved alternative workweek schedule. The expert found $58,594 in unpaid overtime, plus $10,046 as interest, or a total of $68,640 in liability.

3. **<u>Meal Period Claim</u>**

The meal periods were another problem for the Defendant. These restaurants are busy and the workers were not always allowed to just abandon their area of the restaurant and leave the premises to go for a 30 minute walk or to have lunch elsewhere. The analysis showed that there were many late first meal periods (after the 5-hour mark), amounting to $106,699 in damages. However, the bigger issue has to do with shifts between 5 and 6 hours where the meal period was missed entirely. That results in potential exposure of $1,342,570. Had the shift been under 6 hours, it was possible to have the employees sign a meal period waiver, but we have no reason to believe waivers exist—although perhaps they have been adopted recently. Even if there were waivers, there are many shifts over 6 hours with no meal periods recorded, amounting to $496,354 in unpaid premiums. Finally, there is approximately $150,000 in additional exposure related to the second meal period and short meal periods.

However, proving when meal periods were deprived rather than just skipped voluntarily was a serious challenge to class certification, as it risked raising many individualized inquiries. Moreover, it was likely going to be very difficult for class members to identify which shifts they may have skipped meals voluntarily and which were due to a lack of opportunity. Given this uncertainty, we viewed the value of the meal period claim as approximately $100,000.

4. Rest Period Claim

The Defendant had an unusual practice related to rest periods. The records reveal that the Defendant had employees clocking in and out for rest periods. One can speculate that this was seen as desirable, because when an employee took a long rest period, such as 18 minutes, a total of 8 minutes was deducted from the employee's working hours. Had there been no recording of the rest break, the employee would have been compensated for the duration of the rest period, even if the rest period might have extended a bit beyond the statutorily required 10 minutes.

The dilemma this presents, however, is that many of the shifts show no rest period at all. Indeed, the total exposure for missed rest periods is $1,317,947. In the course of our informal discovery, we have been presented with an Employee Handbook, dated August of 2024, but nothing preceding this. The absence of a Handbook during most of the statutory period may well have been the source of many of these issues. The rules regarding rest periods, in particular, are somewhat complicated and generally not well understood by employees, particularly young workers in a restaurant environment.

That said, ordinarily rest periods are not clocked for non-exempt employees, and there was some evidence of inconsistent practices between the restaurants. Many of the workers took rest breaks but did not clock out, and sorting out when that happened and when a rest break was deprived was, like the meal period claim, a serious threat to class certification, as it was likely to raise complicated and individualized inquiries. As a result, we valued the rest period claim at approximately $50,000.

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5. Waiting Time Penalties

The various underpayments—rounding related, overtime, unpaid rest premiums, unpaid meal premiums—all potentially trigger a waiting time penalty under Labor Code §203. Based on an average wage of just over $15 per hour, and an average shift of 5.8 hours, the cumulative waiting time penalty for approximately 500 former employees amounts to $1,401,315. However, all of the triggers for the waiting time penalty claim were associated with a potential good faith defense, so we valued it at only $50,000.

6. PAGA Penalties

All of these various issues trigger PAGA penalties. The total PAGA penalty exposure is $4,031,300, but that involves stacking penalties for various violations. However, even if you remove stacking, the PAGA penalty for 451 employees impacted by the wage statement violations amounts to $1,467,800 all by itself. However, we viewed the likelihood of the Court using its discretion to reduce these penalties, particularly if statutory penalties on the same violation were already provided, as substantial. The settlement value of the PAGA claim was approximately 10% of the gross exposure, or $145,000.

7. **Overall Assessment of Settlement Value**

While the gross theoretical exposure on all these claims amounted to several million dollars, once liability and certification risks were factored into the equation, plus the Defendant's limited resources as a small restaurant chain, the settlement amount of $478,225 was very reasonable.

B. Plaintiffs' Counsel Thoroughly Investigated the Factual and Legal Issues

Plaintiff's Counsel thoroughly investigated and researched the Class claims, as well as the representative PAGA claims, and their theories of liability, their defenses, and the developing body of law before the Settlement. The comprehensive investigation included the exchange of documents and statistical information with Defendant, as well as interviews with Plaintiff and several witnesses regarding the pay practices at issue. Plaintiff's Counsel also obtained a statistically significant sampling of class pay data. There were also numerous discussions with Defense Counsel regarding the merits and potential legal defenses.

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(Buchsbaum Decl. ¶30) Plaintiff received, among other things, the following information: (1) data and documents relevant to Class-wide liability ("Class Data") in support of our investigation and evaluation of Class claims; (2) employee handbooks, procedure manuals, and operations manuals addressing Defendant's wage and hour practices, e.g., (i) timekeeping and payroll policies, (ii) meal and rest periods records, (iii) wage statements; (3) employee time and payroll records. (Buchsbaum Decl. ¶30)

Using the data supplied by Defendants for mediation and Plaintiff's Counsel's own investigation, Plaintiff's Counsel also determined: (i) the approximate average hourly rate of pay for Class Members; (ii) the total number of former and current employees in the Class Period; (iii) the total number of Class Members in the PAGA period; and (iv) the total number of workweeks and pay periods worked by all Class Members during the Class and PAGA Periods. (Buchsbaum Decl. ¶31)

The receipt and analysis of the Class Data was sufficient for the Parties to make an informed decision about the strengths and weaknesses of Plaintiff's theories of liability, Defendant's affirmative defenses, Class-wide damages, and benefits of Settlement. (Buchsbaum Decl. ¶32)

Further, and continuing its due diligence, Plaintiff's Counsel (1) determined Plaintiff's suitability to serve as Class representative, through interviews, background investigations, and analyses of her employment files and related records; (2) researched wage-and-hour class actions involving similar claims; (3) engaged in the discovery process; (4) obtained and analyzed Defendant's wage-and-hour policies and procedures; (5) obtained and analyzed hundreds of time and corresponding payroll records to assess potential damages; (6) researched the latest case law bearing on the theories of liability; (7) researched settlements in similar cases; (8) analyzed the value of Plaintiffs' claims; (9) negotiated the terms of the Settlement; (10) finalized the Settlement Agreement; (11) helped to finalize the Notice of Class Action Settlement; and (12) drafted preliminary approval papers. (Buchsbaum Decl. ¶32)

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C. The Parties Settled After Statistical Sampling

The Parties agreed to informal settlement discussion that involved a voluntary production of a statistically statistical sample of the class members. The Parties further hired a highly qualified mediator, Michael Young, who mediates wage and hour disputes throughout the State. At all times the Parties' negotiations were adversarial and non-collusive. (Buchsbaum Decl. ¶33).

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Settlement Class

The proposed Settlement Class Members consist of: "All current and former non-exempt, hourly-paid employees who worked for the Defendant during the Class Period. The Class Period means the period from May 1, 2021 to the date of preliminary approval of the settlement.

[Settlement Agreement, at ¶1.4]

2. Settlement Consideration

Plaintiff and Defendants have agreed to fully resolve the class and representative claims for $478,225 The Gross Fund Value includes: (1) settlement payments to participating Class Members ("Net Settlement Amount"); (2) attorneys' fees of $157,814 (1/3 of the gross amount); actual litigation costs up to $25,000; (3) Claims Administration Fee capped fee at $11,500; (4) LWDA Payment of $30,000 (with $22,500 going to the LWDA, and the remainder, $7,500, back into the Net Fund); (5) Class Representative Service Award of $7,500 to the class representative.

The distribution of the Net Settlement Amount to Class Members is straightforward: Each Class Member's share of the settlement will be proportional to the total number of workweeks he or she worked during the Class Period. The distribution of the PAGA portion works the same way, based proportionally on the number of pay periods during the PAGA

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period. [See Settlement Agreement, ¶12]

Given that there are approximately 814 Class Members, the average net recovery will be approximately $311.92. This average net recovery is on par or higher than other wage and hour class action settlements approved by California state and federal courts. (Buchsbaum Decl. ¶28) *See*, *e.g.*, *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of approximately $20.).

3. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiffs and Class Members will agree to release the Released Claims. [See Settlement Agreement, at ¶7.1] The class representative will also agree to an additional general release of his individual claims as part of the consideration for her enhancement as the class representative. [¶7.4]

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by

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the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement"). The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. Rule 3.769(c). The motion must also identify any agreement concerning the payment of attorneys' fees. Rule 3.769(b).

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. Rule 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. Rule 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg"). Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-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." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is

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especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation").

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) ("*Cellphone Termination Fee Cases II*") . The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* .

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2. Plaintiffs' Counsel Conducted A Thorough Investigation of the Factual and Legal Issues

As set forth in greater detail above, based on our analysis of documents produced by Defendant (including time and payroll records, and policies and procedures manuals) and information provided during interviews, Plaintiff's Counsel was able to realistically assess the value of the class claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Buchsbaum Decl. ¶39)

By engaging in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can state with confidence that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members. (Buchsbaum Decl. ¶40)

As noted in this brief, Plaintiff undertook substantial efforts to investigate and analyze class liability, including through a random sampling of pay records. The realistic settlement value of the case was, in our view, between $400,000 and $600,000. The full exposure had to be discounted, however, due to considerable liability and certification risks, as well as the resources of the Defendants, who even at the settlement number that was reached require a period of time to make the payments. See ¶9.3 (Buchsbaum Decl. ¶41)

At the end of the day, given the legal uncertainties regarding litigation, the evidentiary challenges with the meal and rest period claims, the risk that some of these issues could not be certified, and the fact that liability was disputed, we viewed a settlement of $478,225 as being a very reasonable compromise, and in line with the discount related to these risks, even though the theoretical exposure was considerably higher. (Buchsbaum Decl. ¶42)

3. The Settlement Was Reached through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

The Parties engaged in a non-collusive, open settlement dialogue that included the voluntary disclosure of a statistically sampling of pay and time records. The parties then hired a well- regarded mediator, Michael Young, who has extensive experience mediating high exposure wage and hour class actions. The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff's Counsel regularly litigates wage and hour class actions and has reached numerous class action and representative settlements. The Defendant's lawyers are also sophisticated, experienced class action lawyers. (Buchsbaum Decl., at ¶43.)

4. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiffs' Claims and the Risks and Expense of Litigation

Of the many factors that courts consider in deciding whether to approve a class action settlement, "[t]he most important factor is the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186

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Cal. App. 4th 399, 407-8 (2010).

Plaintiff was cautiously optimistic about the chances of prevailing on the class claims, as well as the additional representative PAGA claims. Nevertheless, we recognized that had the litigation continued, we may have encountered significant legal, practical, and factual hurdles that could have prevented the Class from obtaining any recovery, including failure to certify a class. (Buchsbaum, Decl. ¶44)

The time and effort—not to mention the uncertainty—that would be expended to pursue further litigation may easily eclipse the amount that is recoverable. For example, if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, and there may have been less available for Class Members. Plaintiff and his counsel would have had to devote considerable time and resources towards trial and the difficult and complicated issues of proof. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc*., 244 F.3d 1152, 1163 (9th Cir. 2001) (explaining that "[i]f plaintiffs cannot proceed as a class, some—perhaps most—will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover."). (Buchsbaum Decl. ¶45).

In short, given the substantial risks in litigating this action, and the uncertainty of success, the Settlement represents a reasonable compromise of Plaintiff's claims, and ensures that Class Members receive a fair and adequate recovery. (Buchsbaum Decl. ¶46)

B. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the

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judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).[3]

The Parties have jointly drafted the Notice of Class Action Settlement, which fairly and neutrally informs Class Members of their rights and remedies in this action. We have determined that a Spanish Translation is necessary based on the composition of the workforce. The proposed Class Notice will be mailed to all Class Members by First Class mail and will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, and the time period within which to opt out, or to object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. (*See* Notice of Proposed Class Action Settlement).

If the mail is undeliverable and there is no forwarding address, the Claims Administrator will verify the addresses produced by Defendant for each Class Member using a "skip trace," including the National Change of Address Database. *Id.* In the event Class Notices are returned as undeliverable, the Claims Administrator will attempt to locate a current address. This method was negotiated by the Parties to maximize the Class Member response rate while ensuring cost effective administration of the Settlement. In the past, similar notice methods to Plaintiffs class members have resulted in strong response rates.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. *See* Rules 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must "fairly apprise the class

[3] Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

members of the terms of the proposed compromise and of the options open to dissenting class members.")

C. The Proposed PAGA Settlement Is Reasonable

Pursuant to the Settlement Agreement, $30,000 from the Class Settlement Amount will be allocated to the resolution of Plaintiffs' PAGA claims, of which 75% ($22,500) will be paid directly to the LWDA, and the remaining 25% ($7,500) will be paid to Participating Class Members. This result was reached after good-faith negotiation between the parties. Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see*, *e.g.*, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

D. The Proposed Class Representative Enhancement Payment Is Reasonable

Named Plaintiff is eligible for a payment that reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1393; *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). "Incentive awards are fairly typical in class action cases. Such awards are discretionary and are intended to compensate class representatives for work done on behalf of the class . . .." *Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., Newberg on Class Actions § 11:38 (4th ed. 2008)). These payments work both as an inducement to participate in the suit and as compensation for time spent in litigation activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (describe the service award as an ***incentive*** to the class representatives).

The Parties have negotiated an enhancement payment for the class representative in the amount of $7,500 for her efforts in bringing the original action, serving as private attorney general under PAGA, assisting counsel with informal discovery, regularly conferring with counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and that it provides adequate relief for the Settlement Class. He is also signing a general release.

These enhancement payments are fair and reasonable compensation for Plaintiff's services to the Class. Modest payments to named plaintiffs for their services as class representatives are customary and generally approved. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995).

Courts have recognized that employees face a particular set of challenges when bringing class action suits. Current employees risk retaliation or, less explicitly, greater difficulties in the workplace as a result of bringing suit. *See Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at *20 (S.D.N.Y. Oct. 28, 2011) ("Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members."). Both current and current employees also place their future employment prospects in peril by becoming class representatives, as "the fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person." *Id.* at *4. It is common for employers to screen employee candidates to determine whether they have ever filed suit, and that employee candidates who might be branded "litigious" are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates.[4] By bringing this action against an

[4] The companies that provide these services actually promote themselves by touting their ability to identify and weed out potentially litigious employee candidates:

- "Our value-added partner uses sophisticated technology to ensure the officers and managers of our clients can significantly reduce the likelihood of hiring litigious and untrustworthy employees by providing the information needed to make critical hiring decisions. We specifically help you avoid the traps, pitfalls and legal issues that plague many companies today." *Sentric, Inc.*, http://www.sentric.net/solutions/workforce-management/ancillary-products/pre-employment-screening;
- "In today's litigious culture, employers simply cannot afford to hire employees who will put their company at risk." *Back Track Screening*, http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf;

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employer, Plaintiff has assumed considerable reputational risk that may impact his ability to find employment in the near and distant future. Long after this action is forgotten by Class Members, these Class Representatives will have to endure the risk of being branded "litigious" by prospective employers, and may have employment applications rejected on that basis alone.

Finally, Named Plaintiff also released her personal damages as part of the Cal. Civ. Code § 1542 general release he executed, which is considerably broader than the separate, narrower release required of the Settlement Class. Named Plaintiff's execution of a general release—entailing an additional detriment for Named Plaintiff that does not apply to other Class Members—further supports his request for an enhancement award. *See Schaffer v. Litton Loan Servicing, LP*, No. 05-07673-MMM, 2012 U.S. Dist. LEXIS 189830, *64 (C.D. Cal. Nov. 13, 2012) ("[C]lass representatives released their actual damages claims as part of the Settlement. This ["personal benefit"] factor, therefore, weighs in favor of approving the incentive awards.").

For all these reasons, the request enhancement payment to Named Plaintiff is reasonable and should be awarded.

E. The Negotiated Attorneys' Fees and Costs Are Reasonable

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar

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- "Background screening has become a necessity in today's litigious society. An employer, who bases their hiring decisions based solely on instinct, may very well open the door to extremely expensive lawsuits. Bad decision making from the start can cause huge budgetary impacts upon your company and also destroy the reputation of all those involved." *Quest Background Services – The Screening Specialists*, http://www.questbackgrounds.com/pre-employment_screening.htm;
- "In today's litigious culture, you simply cannot afford to hire employees who will put your company at risk." *Credit Technologies, Inc.*, http://www.credittechnologies.com/Employment_Screening.asp.

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method is used, fee awards in class actions average around one-third of the recovery."). Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).

At final approval, Plaintiffs will seek Court-approval of attorneys' fees and costs of $157,814 (or one-third of the Class Settlement Amount) and up to $25,000 respectively.

There is a fee splitting agreement between Buchsbaum & Haag, LLP and the Hardin Law Firm, which was approved by the class representative by written consent.

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F. California Law Authorizes Provisional Certification for Settlement Purposes The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On*, 34 Cal. 4th at 326. Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

G. The Proposed Settlement Class is Ascertainable and There is a Well-Defined Community of Interest Among Class Members

Whether a class is "ascertainable" within the meaning of Section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Lee v. Dynamex*, 166 Cal. App. 4th 1325, 1334 (2008). Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

> The "ultimate question" the element of predominance presents is 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."

Brinker, 53 Cal. 4th at 1021-1022 (citations omitted).

The proposed Settlement Class consists of approximately 814 individuals, making joinder of all Class Members impracticable. Further, because all Class Members are either current or former employees of Defendant, the class is readily ascertainable from Defendants' regular business records. (Buchsbaum Decl. ¶54)

The California statutes relating to each of Plaintiffs' claims apply with equal force and effect to all Class Members. Factually, Plaintiff claims that Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. (Buchsbaum Decl. ¶55)

Named Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Named Plaintiff's interests are entirely coextensive with the interests of the Class. Named Plaintiff was allegedly injured by the same Company-wide practices to which the proposed Settlement Class was subject and seeks the

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same relief. Named Plaintiff has already demonstrated her ability to advocate for the interests of the Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to ensure that it is fair. (Buchsbaum Decl. ¶56)

Additionally, Plaintiffs are represented by competent counsel who has extensive experience in litigating wage and hour class action cases. See Buchsbaum Dec., at §¶1-8. Plaintiffs' Counsel have successfully briefed, argued, certified, and gained court settlement approval of the same class-wide causes of action that are at issue in this case. Plaintiff's Counsel's wage and hour class action expertise establishes they are well qualified to represent the interests of this Class. (Buchsbaum Decl. ¶57)

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. (Buchsbaum Decl. ¶58)

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III. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminarily approval, Plaintiff requests that the Court preliminarily approve the settlement.

Respectfully Submitted,

Dated: September 9, 2025

LAW OFFICES OF BUCHSBAUM & HAAG,
A Limited Liability Partnership

By: ______________________________
Brent Buchsbaum, Attorney for Plaintiffs

PROOF OF SERVICE

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 100 Oceangate, Suite 1200, Long Beach, California 90802.

On September 17, 2025, I served the foregoing document described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

The true copies thereof were enclosed and addressed as follows:

Defense Counsel for Las Casuelas Restaurants, Inc.
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___ **BY U.S. MAIL**: By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the U.S. Postal Service in Long Beach, California, in a sealed envelope with postage fully prepaid.

___ **BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___ **BY PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s). (C.C.P. Section 1011)

___ **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at the fax number(s) listed above. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

XX **BY E-MAIL OR ELECTRONIC TRANSMISSION**: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from ***valeries@buchsbaumhaag.com*** to the person(s) at the e-mail address(es) listed above.

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

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed, September 17, 2025, at Long Beach, California.

Valerie Siguenza

VALERIE SIGUENZA, Declarant

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