

Larry W. Lee (State Bar No. 228175)  
Kristen M. Agnew (State Bar No. 247656)  
Max W. Gavron (State Bar No. 291697)  
Kwanporn “Mai” Tulyathan (State Bar No. 316704)

**DIVERSITY LAW GROUP, P.C.**

515 S. Figueroa Street, Suite 1250  
Los Angeles, CA 90071  
(213) 488-6555  
(213) 488-6554 facsimile  
lwlee@diversitylaw.com  
kagnew@diversitylaw.com  
mgavron@diversitylaw.com  
ktulyathan@diversitylaw.com

William L. Marder (State Bar No. 170131)  
bill@polarislawgroup.com

**Polaris Law Group**

501 San Benito Street, Suite 200  
Hollister, CA 95023  
(831) 531-4214  
(831) 634-0333 facsimile

Attorneys for Plaintiff and the Class

*Additional Counsel on Next Page*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

DONNA BRADLEY, as an individual and  
on behalf of all others similarly situated,

Plaintiff,

vs.

APARTMENT MANAGEMENT  
CONSULTANTS, L.L.C., a limited  
liability company; and DOES 1 through  
50, inclusive,

Defendants.

Case No.: 24CV002090

**PLAINTIFFS’ MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND PAGA ACTION  
SETTLEMENT, CONDITIONAL  
CERTIFICATION, APPROVAL OF CLASS  
NOTICE, SETTING OF FINAL APPROVAL  
HEARING DATE**

Date: October 16, 2026

Time: 8:30 a.m.

Judge: Hon. Ian A. Rivamonte

Dept.: 14

1 **DAVID YEREMIAN & ASSOCIATES, INC.**

David Yeremian (State Bar No. 226337)  
2 Natalie Haritonian (State Bar No. 324318)  
3 535 N. Brand Blvd., Suite 705  
Glendale, California 91203  
4 Telephone: (818) 230-8380  
Facsimile: (818) 230-0308  
5

6 **UNITED EMPLOYEES LAW GROUP, PC**

Walter Haines (State Bar No. 71075)  
7 5500 Bolsa Ave., Suite 201  
Huntington Beach, CA 92649  
8 Telephone: (310) 652-2242  
9

9 **MARA LAW FIRM, PC**

10 David Mara, Esq. (State Bar No. 230498)  
Jill Vecchi, Esq. (State Bar No. 299333)  
11 3160 Camino Del Rio South, Suite 207  
San Diego, California 92108  
12 Telephone: (619) 234-2833  
13 Facsimile: (619) 234-4048  
14

14 **MOLTENI EMPLOYMENT LAW**

Cristina Molteni, Esq. (State Bar No. 244715)  
15 100 Pine Street, Suite 1250  
16 San Francisco, California 94111  
17

17 **THE BYRNE LAW GROUP**

Adrian Byrne, Esq. (State Bar No. 304020)  
18 8605 Santa Monica Boulevard, Suite 48497  
19 West Hollywood, California 90069  
20

Attorneys for Plaintiffs the Class  
21  
22  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

|      |                                                                                                                |    |
|------|----------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                                                             | 1  |
| II.  | BACKGROUND .....                                                                                               | 2  |
| a.   | The Bradley Actions .....                                                                                      | 2  |
| b.   | The Nikaido Actions .....                                                                                      | 3  |
| c.   | The Hormigas Action .....                                                                                      | 4  |
| III. | INVESTIGATION AND LITIGATION HISTORY .....                                                                     | 4  |
| a.   | Discovery and Investigation .....                                                                              | 4  |
| b.   | The Parties Agreed to Attend Mediation .....                                                                   | 5  |
| c.   | The Parties' Staunchly Conflicting Positions .....                                                             | 5  |
| i.   | Meal and Rest Periods .....                                                                                    | 5  |
| ii.  | Unpaid Wages .....                                                                                             | 6  |
| iii. | Business Reimbursements .....                                                                                  | 7  |
| iv.  | Waiting Time Penalties .....                                                                                   | 8  |
| v.   | Derivative Wage Statements .....                                                                               | 9  |
| vi.  | PAGA Penalties .....                                                                                           | 9  |
| IV.  | TERMS OF THE PROPOSED SETTLEMENT .....                                                                         | 10 |
| a.   | Deductions from the Settlement .....                                                                           | 10 |
| b.   | Calculation of Settlement Payments to Class Members .....                                                      | 11 |
| c.   | Notice to the Class .....                                                                                      | 11 |
| d.   | Distribution of Funds .....                                                                                    | 12 |
| e.   | Release of Claims .....                                                                                        | 12 |
| V.   | ARGUMENT .....                                                                                                 | 13 |
| a.   | Class Action Settlements Are Subject to Court Review and Approval Under the<br>California Rules of Court ..... | 13 |
| b.   | The Settlement is Fair, Reasonable, and Adequate .....                                                         | 14 |
| i.   | The Settlement was Reached as a Result of Arm's-Length Negotiations .....                                      | 14 |
| ii.  | The Settlement is the Result of Thorough Investigation and Discovery .....                                     | 15 |

|   |                                                                                         |    |
|---|-----------------------------------------------------------------------------------------|----|
| 1 | iii. Counsel for Both Parties are Experienced in Similar Litigation .....               | 15 |
| 2 | iv. The Proposed Settlement is a Reasonable Compromise of Claims.....                   | 16 |
| 3 | 1. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs’ Case and |    |
| 4 | the Risks and Costs of Further Litigation.....                                          | 16 |
| 5 | 2. Potential Exposure on Plaintiffs’ Claims .....                                       | 17 |
| 6 | 3. The Settlement Amount of \$1,735,000 is Reasonable .....                             | 20 |
| 7 | c. Provisional Certification Should be Granted.....                                     | 20 |
| 8 | d. Notice to the Class Complies with California Rule of Court 3.769(f) .....            | 21 |
| 9 | VI. CONCLUSION .....                                                                    | 21 |

TABLE OF AUTHORITIES

Cases

|                                                               |            |
|---------------------------------------------------------------|------------|
| <i>Aguilar v. Cintas Corp. No. 2</i>                          |            |
| (2006) 144 Cal. App. 4th 121 .....                            | 17         |
| <i>Amaral v. Cintas Corp. No. 2</i>                           |            |
| (2008) 163 Cal.App.4th 1157 .....                             | 9          |
| <i>Augustus v. ABM Security Services, Inc.</i>                |            |
| (2016) 2 Cal.5th 257 .....                                    | 5          |
| <i>Avila v. Cold Spring Granite Co.</i>                       |            |
| (E.D. Cal. Jan. 12, 2018) 2018 U.S. Dist. LEXIS 6142 *1 ..... | 10         |
| <i>Beef Industry Antitrust Litigation</i>                     |            |
| (5th Cir. 1979) 607 F. 2d 167 .....                           | 14         |
| <i>Boyd v. Bechtel Corp.</i>                                  |            |
| (N.D. Cal. 1979) 485 F. Supp. 610.....                        | 15         |
| <i>Brinker Restaurant Corp. v. Superior Court</i>             |            |
| (2012) 53 Cal.4th 1004.....                                   | 5, 7       |
| <i>Cochran v. Schwan’s Home Service, Inc.</i>                 |            |
| (2014) 228 Cal.App.4th 1137 .....                             | 7          |
| <i>Dunbar v. Albertson’s Inc.</i>                             |            |
| (2006) 141 Cal. App. 4th 1422 .....                           | 17         |
| <i>Dunk v. Ford Motor Co.</i>                                 |            |
| (1996) 48 Cal.App.4th 1794 .....                              | 14, 15, 21 |
| <i>Duran v. U.S. Bank National Assn.</i>                      |            |
| (2014) 59 Cal.4th 1 .....                                     | 10         |
| <i>Gattuso v. Harte-Hanks Shoppers, Inc.</i>                  |            |
| (2015) 169 P.3d 889 .....                                     | 7          |
| <i>Glob. Minerals &amp; Metals Corp. v. Superior Court</i>    |            |
| (2013) 113 Cal.App.4th 836 .....                              | 21         |

|    |                                                                     |    |
|----|---------------------------------------------------------------------|----|
| 1  | <i>Green v. Obledo</i>                                              |    |
| 2  | (1981) 29 Cal.3d 126 .....                                          | 14 |
| 3  | <i>Hanlon v. Chrysler Corp.</i>                                     |    |
| 4  | (9th Cir. 1998) 150 F.3d 1011 .....                                 | 21 |
| 5  | <i>Harris v. Superior Court</i>                                     |    |
| 6  | (2007) 154 Cal. App. 4th 164.....                                   | 17 |
| 7  | <i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i> |    |
| 8  | (1981) 452 U.S. 905 .....                                           | 14 |
| 9  | <i>Kullar v. Foot Locker Retail, Inc.</i>                           |    |
| 10 | (2008) 168 Cal.App.4th 116.....                                     | 16 |
| 11 | <i>Maldonado v. Epsilon Plastics, Inc.</i>                          |    |
| 12 | (2018) 22 Cal.App.5th 1308.....                                     | 9  |
| 13 | <i>Mendiola v. CPS Security Solutions, Inc.</i>                     |    |
| 14 | (2015) 60 Cal.4th 833 .....                                         | 6  |
| 15 | <i>Morillion v. Royal Packing Co.</i>                               |    |
| 16 | (2000) 22 Cal.4th 575 .....                                         | 6  |
| 17 | <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>           |    |
| 18 | (2010) 186 Cal.App.4th 399 .....                                    | 16 |
| 19 | <i>Powell v. Walmart Inc.</i>                                       |    |
| 20 | (S.D. Cal., 2021) 2021 WL 369550 *1.....                            | 8  |
| 21 | <i>Rebney v. Wells Fargo Bank</i>                                   |    |
| 22 | (1990) 220 Cal.App.3d 1117 .....                                    | 20 |
| 23 | <i>Sav-On v. Superior Court</i>                                     |    |
| 24 | (2004) 34 Cal.4th 319.....                                          | 17 |
| 25 | <i>Tech-Bilt v. Woodward-Clyde &amp; Associates</i>                 |    |
| 26 | (1985) 38 Cal.3d 488 .....                                          | 16 |
| 27 | <i>Vasquez v. Superior Court</i>                                    |    |
| 28 | (1971) 4 Cal.3d 800 .....                                           | 13 |

|    |                                         |        |
|----|-----------------------------------------|--------|
| 1  | <i>Walsh v. IKON Solutions, Inc.</i>    |        |
| 2  | (2007) 148 Cal. App. 4th 1440 .....     | 17     |
| 3  | <i>Wershba v. Apple Computers, Inc.</i> |        |
| 4  | (2001) 91 Cal.App.4th 2 .....           | 20, 21 |
| 5  |                                         |        |
| 6  |                                         |        |
| 7  |                                         |        |
| 8  |                                         |        |
| 9  |                                         |        |
| 10 |                                         |        |
| 11 |                                         |        |
| 12 |                                         |        |
| 13 |                                         |        |
| 14 |                                         |        |
| 15 |                                         |        |
| 16 |                                         |        |
| 17 |                                         |        |
| 18 |                                         |        |
| 19 |                                         |        |
| 20 |                                         |        |
| 21 |                                         |        |
| 22 |                                         |        |
| 23 |                                         |        |
| 24 |                                         |        |
| 25 |                                         |        |
| 26 |                                         |        |
| 27 |                                         |        |
| 28 |                                         |        |

1       **I. INTRODUCTION**

2           Plaintiffs Donna Bradley, Marylourdes Hormigas, Joe Castro, and Kevin Nikaido  
3 (hereinafter “Plaintiffs”), on behalf of themselves and the approximately 1,975 Class Members,  
4 respectfully request that this Court preliminarily approve the Joint Stipulation and Settlement  
5 Agreement (hereinafter “Agreement”<sup>1</sup>) entered into between Plaintiffs and Defendant Apartment  
6 Management Consultants, L.L.C. (hereinafter “Defendant” or “AMC”) (hereinafter Plaintiffs and  
7 Defendant are collectively referred to as the “Parties”). The Parties’ Agreement seeks to resolve  
8 claims raised against Defendant in this matter in exchange for a non-reversionary \$1,735,000  
9 Gross Settlement Amount. The proposed Class is comprised of all hourly, non-exempt employees  
10 who were employed by Defendant at any time during the Class Period within the State of  
11 California.<sup>2</sup> The Class Period is March 19, 2020, to December 31, 2025.<sup>3</sup> It is requested that the  
12 Court grant preliminary approval as, when analyzing the strengths and vulnerabilities of the claims  
13 and Defendant’s potential liability exposure, this proposed settlement of \$1,735,000 is within the  
14 range of reasonableness. This settlement is estimated to pay Class Members an average payment  
15 of approximately \$452.16.<sup>4</sup> The proposed Agreement satisfies all the criteria for preliminary  
16 approval under Rule 3.769 of the California Rules of Court.

17           As the following sections show, Class Counsel are convinced that the proposed settlement  
18 is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues  
19 presented in this action. The length and risks of trial and perils of litigation that affect the value of  
20 the claims were all carefully weighed. The defenses asserted by Defendant, the uncertainty of class  
21 certification, the difficulties of complex litigation, the lengthy process of establishing specific  
22 damages and various possible delays and appeals, were also carefully considered by Class Counsel  
23 in arriving at the proposed settlement. The settlement is fair, reasonable, and adequate.  
24 Accordingly, Plaintiffs seek: (1) preliminary approval of the terms contained in the Agreement;  
25 (2) provisional certification of the Class; (3) appointment of Plaintiffs as Class Representatives;  
26

27 <sup>1</sup> The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Dec.”) as Exhibit 1. Exhibit 1  
28 herein refers to the Parties’ Agreement.

<sup>2</sup> Exhibit 1 ¶ 1.8.

<sup>3</sup> Exhibit 1 ¶ 1.11.

<sup>4</sup> The Net Settlement Amount is approximately \$893,016.67. \$893,016.67 divided by 1,975 class members = \$452.35.

(4) appointment of David Yeremian & Associates, Inc.; D.Law, Inc.; United Employees Law Group, Inc.; Mara Law Firm, P.C.; Byrne Law Group; Molteni Employment Law; Polaris Law Group, LLP; and Diversity Law Group, P.C. as Class Counsel; (5) approval of the Parties' Court Approved Notice of Class Action and PAGA Settlement and Release and Hearing Date for Final Court Approval<sup>5</sup> (referred to herein as the "Class Notice" or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for final approval of February 19, 2027.

## **II. BACKGROUND**

Defendant is an apartment management company that manages apartment complexes throughout the state of California. Defendant employs hourly, non-exempt employees, such as Plaintiffs, to work at the complexes they manage.

### ***a. The Bradley Actions***

On May 10, 2024, Plaintiff Bradley sent written notice to the LWDA and Defendant of Defendant's alleged violation of Labor Code in accordance with the Private Attorneys General Act of 2004 ("PAGA"). (*See* Declaration of Kristen M. Agnew ("Agnew Dec.") ¶ 3, Exhibit 1).

On May 21, 2024, Plaintiff Bradley filed a class action complaint against Defendant alleging causes of action for: (1) failure to pay all wages due at the time of termination of employment; (2) failure to issue accurate and itemized wage statements; and (3) failure to pay all sick wages at employees' regular rate of pay. (*See* Agnew Dec. ¶ 4).

On July 22, 2024, Plaintiff Bradley filed a separate PAGA representative action complaint against Defendant alleging causes of action pursuant to the PAGA for: (1) failure to pay all wages due at the time of termination of employment; (2) failure to issue accurate and itemized wage statements; and (3) failure to pay all sick wages at employees' regular rate of pay. (*See* Agnew Dec. ¶ 5).

As part of the Parties' settlement, the Parties stipulated to allow Plaintiff Bradley leave to file a First Amended Complaint that added Plaintiffs Marylourdes Hormigas, Joe Castro, and Kevin Nikaido into Plaintiff Bradley's action along with their additional claims and counsel. Plaintiff Bradley filed her First Amended Complaint on August 24, 2026.

---

<sup>5</sup> The Class Notice is attached to the Agreement as Exhibit A.

1                   ***b. The Nikaido Actions***

2                   On March 6, 2024, Plaintiff Nikaido sent written notice to the LWDA and Defendant of  
3 Defendant's alleged violation of Labor Code in accordance with the PAGA. (Mara Dec. ¶ 11).

4                   On March 19, 2024, Plaintiff Nikaido filed a class action complaint against Defendant in  
5 the Contra Costa County Superior Court alleging the following causes of action: (1) Failure to Pay  
6 All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal  
7 Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a Compliant Sick  
8 Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply with Itemized  
9 Employee Wage Statement Provisions; (7) Failure to Pay All Wages Due at the Time of  
10 Termination of Employment; and (8) Violation of California's Unfair Competition Law ("UCL"),  
11 Business and Professions Code sections 17200, et seq. (Mara Dec. ¶ 12).

12                  On June 12, 2024, Nikaido filed a separate PAGA representative action complaint against  
13 Defendant alleging the following causes of action pursuant to the PAGA: (1) Failure to Pay All  
14 Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods;  
15 (4) Failure to Provide Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized  
16 Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of  
17 Termination of Employment; and (7) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy  
18 and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available. (Mara Dec.  
19 ¶ 13).

20                  On September 11, 2024, the Court granted a stipulation to consolidate the Plaintiff  
21 Nikaido's class and PAGA actions. (Mara Dec. ¶ 14).

22                  On August 26, 2024, Plaintiff Nikaido and Defendant attended a mediation with mediator  
23 Jill Sperber. The mediation did not result in an agreement to resolve Plaintiff Nikaido's class action  
24 and PAGA claims against Defendant. (Mara Dec. ¶ 15).

25                  On March 17, 2025, Defendant filed a motion to dismiss Plaintiff Nikaido's class and  
26 PAGA claims, compel Plaintiff Nikaido's individual claims to arbitration, and stay litigation,  
27 which the Court denied. Defendant sought appellate review of this decision. Due to the Parties'  
28 settlement, on April 16, 2026, the Court of Appeal for the First Appellate District dismissed

Defendant’s appeal and remitted the case to the superior court. (Mara Dec. ¶ 16).

***c. The Hormigas Action***

On April 14, 2020, Plaintiff Hormigas sent written notice to the LWDA and Defendant of Defendant’s alleged violation of Labor Code in accordance with the PAGA. (Declaration of Enoch J. Kim (“Kim Dec.”) ¶ 3).

On June 22, 2020, Plaintiff Hormigas filed a Class and PAGA representative action complaint against Defendant in Solano County Superior Court. On January 26, 2022, Plaintiff Hormigas submitted an amended notice to the LWDA, adding Plaintiff Castro as a PAGA representative. On March 1, 2022, Plaintiffs Hormigas and Castro filed a first amended complaint against Defendant alleging causes of action pursuant to the PAGA for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime; (3) Meal Period Liability; (4) Rest Break Liability; (5) Failure to Provide Accurate Wage Statements; (6) Unlawful Deductions; (7) Waiting Time Penalties; (8) Failure to Reimburse Necessary Business Expenditures; and (9) Violation of the UCL, Business & Professions Code sections 17200, et seq. (Kim Dec. ¶ 4).

On January 27, 2022, the *Hormigas* action was amended to include Plaintiff Joe Castro as a class representative. (Kim Dec. ¶ 5).

On November 10, 2022, Defendant moved to compel the *Hormigas* matter to arbitration and dismiss all PAGA claims. On March 3, 2023 Defendant’s motion was granted. Plaintiffs Hormigas and Castro appealed the court’s order. The appellate court reversed the trial court’s ruling and reinstated Plaintiff Hormigas and Castro’s representative claims under PAGA. (Kim Dec. ¶ 6).

On January 31, 2022, Plaintiffs Hormigas, Castro, and Defendant attended mediation with mediator Steve Rottman, which was unsuccessful. On August 25, 2025, Plaintiffs Hormigas, Castro, and Defendant attended a second mediation with mediator Lonnie Giamela, which was also unsuccessful. (Kim Dec. ¶ 7).

**III. INVESTIGATION AND LITIGATION HISTORY**

**a. Discovery and Investigation**

The Parties conducted significant investigation and discovery of the facts and law both

1 before and after this action was filed. Through formal and informal discovery, Defendant produced  
2 thousands of pages of documents. These included relevant policy documents that covered  
3 employees' employment with Defendant, such as employee handbooks and safety manuals.  
4 Included within these documents were Defendant's wage and hour policies, including its meal and  
5 rest period policies. Defendant also produced time and wage records for Class Members, which  
6 Plaintiffs had an expert analyze. From this discovery, Plaintiffs and their Counsel were able to  
7 analyze Defendant's liability and prepare a realistic damage model. (Mara Dec. ¶ 17).

8 **b. The Parties Agreed to Attend Mediation**

9 The Parties attended a global mediation with mediator Daniel Turner on October 15, 2025.  
10 As a result of this mediation, on November 3, 2025, Daniel Turner issued a global mediator's  
11 proposal to resolve Plaintiffs' actions, which was ultimately accepted by all Parties on November  
12 7, 2025. The Parties then met and conferred over all the terms of the settlement and finalized their  
13 settlement in the Parties' Agreement. The Parties seek preliminary approval of the Agreement in  
14 the instant motion. (Mara Dec. ¶ 18).

15 **c. The Parties' Staunchly Conflicting Positions**

16 **i. Meal and Rest Periods**

17 Plaintiffs contend that employees are not provided with lawful meal and rest periods.  
18 Employers have an obligation to provide employees with thirty (30) minute meal periods and ten  
19 (10) minute rest periods. An employer "satisfies this obligation [to provide meal periods] if it  
20 relieves its employees of all duty, relinquishes control over their activities and permits them a  
21 reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or  
22 discourage them from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th  
23 1004, 1040. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California  
24 Supreme Court ruled that the standards applicable to providing meal periods the Court articulated  
25 a few years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were  
26 equally applicable to the rest period context. (Mara Dec. ¶ 19).

27 Plaintiffs contend that employees are not provided with lawful meal and rest periods.  
28 Plaintiffs contend that employees must always answer their phones or walkie talkies when

1 Defendant, prospective tenants, or current tenants call them. This includes when they are on meal  
2 and rest periods. In addition, Plaintiffs assert that employees always must be available should an  
3 emergency arise, including during meal and rest period time. (Mara Dec. ¶ 20).

4 Defendant disputes these claims and contends it provided employees with lawful meal and  
5 rest periods. Defendant asserts that its employee handbooks contain lawful meal and rest period  
6 policies and therefore Plaintiffs will have no way of showing anything more than anecdotal  
7 evidence that Defendant fails to provide meal and rest periods. Defendant further contends that in  
8 practice, throughout the class period, employees were permitted to take duty-free and  
9 uninterrupted meal and rest periods within the timeframes outlined by California law. Defendant  
10 asserts that employees have wide discretion over when and how to take meal and rest periods, so  
11 long as they are legally compliant. Defendant contends that if litigation were to continue, it would  
12 provide declarations from a substantial part of the workforce attesting to the fact that they received  
13 lawful meal and rest periods that were uninterrupted and duty-free. Defendant contends Plaintiffs’  
14 case is predicated on the opinions and individualized experiences of a small minority of the class,  
15 rather than class-wide proof of denying meal and rest periods. The only class-wide proof,  
16 Defendant argues, supports Defendant by showing it has lawfully dispensed with its duty to adopt  
17 lawful policy expressions for providing meal and rest periods. (Mara Dec. ¶ 21).

## 18 **ii. Unpaid Wages**

19 Employees must be paid for all “hours worked,” as that phrase is defined in the Wage  
20 Order and interpreted by California courts. Hours worked is defined in Wage Order 5-2001 —the  
21 Wage Order that governs the class members in this case- as “the time during which an employee  
22 is subject to the control of an employer, and includes all the time the employee is suffered or  
23 permitted to work, whether or not required to do so.” Wage Order 5-2001, Subd. 2(L); *see also*  
24 *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833. Under this standard, “it is only  
25 necessary that the worker be subject to the control of the employer in order to be entitled to  
26 compensation.” *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584. (Mara Dec. ¶ 22).

27 Here, Plaintiffs contend that Defendants fail to pay employees for all hours worked.  
28 Plaintiffs allege that employees were not permitted to record more than eight (8) hours of work

1 per day. Plaintiffs contend that employees, however, would have to work additional hours doing  
2 work related tasks such as tending to and resolving tenant issues, drafting leases, finishing  
3 interviews with potential tenants and communicating with vendors. Plaintiffs assert that because  
4 Defendants do not permit employees to record these hours, Defendants do not pay employees for  
5 these hours. (Mara Dec. ¶ 23).

6 Defendants contend that they inform employees that all hours must be recorded and that  
7 they do not limit employees to recording only eight (8) hours per day. Defendants assert that they  
8 have a policy that prohibits off the clock work. Defendants contend that they pay employees for  
9 all hours worked, including hours worked over eight (8) in a day. Defendants assert that if litigation  
10 were to continue, the Court would have to ask each employee whether they recorded hours in  
11 excess of eight (8) in a day and, if not, why they did not record all of their hours worked.  
12 Defendants contend that doing so would create individualized issues that would defeat class  
13 certification. As in *Brinker*, where the California Supreme Court ruled that off-the-clock work  
14 cannot be found without evidence the employer knew or should have known the work was taking  
15 place, Defendant argues here that it's strict policies commanding employees to log all hours and  
16 forbidding them to work off the clock means that it could not have known any off-the-clock work  
17 was occurring and the claim would thereby be defeated entirely. (Mara Dec. ¶ 24).

### 18 **iii. Business Reimbursements**

19 Plaintiffs contend that employees are not reimbursed for all business expenses. Under  
20 Labor Code § 2802, the employer must “indemnify its employees for expenses they necessarily  
21 incur in the discharge of their duties...” *Gattuso v. Harte-Hanks Shoppers, Inc.* (2015) 169 P.3d  
22 889. In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140, it was held  
23 that § 2802 requires employers to always reimburse employees who are required to use personal  
24 cell phones for work-related calls for a reasonable percentage of their cell phone bills. Plaintiffs  
25 contend that employees are not reimbursed for all business expenses. Plaintiffs contend that  
26 Defendant requires employees to use their personnel cell phones for business purposes, such as  
27 after-hours emergencies. (Mara Dec. ¶ 25).

28 Defendant asserts that employers must only reimburse an employee for “necessary

1 expenditures.” Defendant asserts that there is not a necessity to use a personal cell phone where  
2 the employer provides other means of communication and the employee opts instead to use their  
3 personal cell phone out of convenience or preference. Defendant contends that it provides all  
4 employees access to desk phones via the on-site office and supplies walkie-talkies for use while  
5 working. Moreover, Defendant asserts that for employees whose job duties require frequent cell  
6 phone use, Defendant issues cell-phone reimbursements. Additionally, Defendant asserts that if  
7 any employee believes they have incurred a necessary business-related expense from using their  
8 personal cell phone for work purposes, they are instructed to submit a reimbursement request and  
9 Defendant will reimburse the employee for this expense. (Mara Dec. ¶ 26).

#### 10 **iv. Waiting Time Penalties**

11 Plaintiffs also pursued claims for failure to pay all wages owed at the termination of  
12 employment (“waiting time penalties”). Plaintiffs allege that AMC underpaid sick pay wages to  
13 non-exempt employees who earned non-discretionary incentive compensation, including without  
14 limitation, commission pay. Specifically, whenever AMC paid sick time pursuant to Labor Code  
15 section 246, it calculated sick pay at the employee’s base hourly rate rather than at the “regular  
16 rate of pay,” which would include all forms of non-discretionary incentive wages. *See Powell v.*  
17 *Walmart Inc.*, 2021 WL 369550, at \*2 (S.D. Cal., 2021) (“The rate of sick pay is calculated by  
18 dividing the employee’s total wages (not including overtime premium pay) by the employee’s total  
19 hours worked in the full pay periods of the prior 90 days of employment”). As a result, employees  
20 were underpaid for sick time, and AMC failed to timely pay all wages due upon separation of  
21 employment, in violation of Labor Code sections 201, 202, and 203. *See* Section III-c-v, *infra*.  
22 Although Plaintiffs believe these claims have substantial merit, continued litigation presents  
23 meaningful legal and factual risks. To recover under Labor Code section 203, Plaintiffs would also  
24 be required to establish that AMC’s failure to pay all final wages was willful. (Mara Dec. ¶ 27).

25 In addition, this claim is derivative of Plaintiffs’ meal period, rest period, and unpaid wages  
26 claims and subject to the same risks as those claims. (Mara Dec. ¶ 28).

27 Defendants Plaintiffs would have to prove Defendants “willfully” failed to pay employees  
28 the appropriate wages due upon separation of employment. “A willful failure to pay wages within

1 the meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages  
2 to an employee when those wages are due. However, a good faith dispute that any wages are due  
3 will preclude imposition of waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 §  
4 13520. “A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense,  
5 based in law or fact, which would preclude any recovery on the part of the employee. The fact that  
6 a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.”  
7 *Id.* (Mara Dec. ¶ 29).

8 Defendants contend that any failure to pay wages at the time of termination was not willful.  
9 Defendants argue that it would not be liable for waiting time penalties because a “good faith  
10 dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v.*  
11 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. (Mara Dec. ¶ 30).

#### 12 **v. Derivative Wage Statements**

13 Plaintiffs also pursued claims for failure to provide accurate itemized wage statements.  
14 This claim is derivative of Plaintiffs’ meal period, rest period, and unpaid wages claims. Should  
15 these claims fail, this claim would also fail. Defendants contend that even if Plaintiffs were  
16 successful in their meal and rest period and unpaid wages claims, Defendants also argue that  
17 Plaintiffs’ meal period, rest period, and unpaid wages claims cannot form the basis of their wage  
18 statement claim. Defendants rely on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22  
19 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor  
20 Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay  
21 received even if the pay is later determined to be inaccurate. (Mara Dec. ¶ 31).

#### 22 **vi. PAGA Penalties**

23 Plaintiffs also seek PAGA penalties for the claims outlined above. PAGA allows the  
24 private enforcement of certain California Labor Code sections relating to wage and hour violations.  
25 The statute of limitations for PAGA violations goes back one year. Because Plaintiffs’ PAGA  
26 claims are based on the same alleged unlawful conduct as their class claims, Plaintiffs’ PAGA  
27 claims are subject to the same risks on the merits as Plaintiffs’ class claims. (Mara Dec. ¶ 32).

28 In addition, Defendants maintain that Plaintiffs’ PAGA claims face manageability

1 concerns consistent with the class certification challenges. Specifically, Defendants have due  
2 process rights which would not permit Plaintiffs to attempt to generalize violations from disparate  
3 anecdotal evidence. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1. (Mara Dec. ¶ 33).

4 In addition, the Court may reduce any PAGA penalties awarded under Section 2699,  
5 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to the  
6 Aggrieved Employees – assuming liability is proven as to each of Plaintiffs’ claims – is higher in  
7 this case where these same individuals may also be receiving money for the same unlawful conduct  
8 under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No.  
9 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 \*17 (“Because the PAGA penalties  
10 sought are at least partially duplicative of penalties granted by the underlying Labor Code  
11 violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has  
12 discretion in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code §  
13 2699(e)(2), Plaintiffs recognize that the potential PAGA penalties are highly uncertain.”). As such,  
14 the Court may likely reduce any PAGA penalty amount awarded to the Aggrieved Employees.  
15 (Mara Dec. ¶ 34).

#### 16 **IV. TERMS OF THE PROPOSED SETTLEMENT**

##### 17 **a. Deductions from the Settlement**

18 The Parties have agreed that this action be settled and compromised for the non-  
19 reversionary total sum of \$1,735,000 (“Gross Settlement Amount” or “GSA”), which includes,  
20 subject to Court approval: (a) attorneys’ fees of up to \$578,333.33 (one-third of the GSA); (b)  
21 actual litigation expenses estimated not to exceed \$55,000; (c) Enhancement Payments to the  
22 named class representatives in a sum not to exceed \$10,000 each (\$40,000 total); (d) settlement  
23 administration fees and expenses to CPT Group, Inc. (“CPT”), estimated not to exceed  
24 approximately \$18,650; and (e) \$150,000 allocated to Plaintiff’s claims under the PAGA. Of this  
25 payment, 75%, or \$112,500 will be provided to the LWDA, and 25%, or \$37,500, will be available  
26 for distribution to PAGA Employees.<sup>6</sup>

27  
28 <sup>6</sup> PAGA Employees are all hourly, non-exempt employees who were employed by Defendant at any time during the  
PAGA Period within the State of California. (Exhibit 1 ¶ 1.33). The PAGA Period is April 14, 2019, to February 8,  
2020 and from April 18, 2025, to December 31, 2025. (Exhibit 1 ¶ 1.36).

1                   **b. Calculation of Settlement Payments to Class Members**

2           After all Court-approved deductions from the GSA, it is estimated that \$893,016.67 (“Net  
3 Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement  
4 payment, will be distributed to Participating Class Members.<sup>7</sup> Subject to the terms and conditions  
5 of the settlement, Participating Class Members will receive a pro-rated share of the Net Settlement  
6 Amount based upon the number of workweeks they worked for Defendant during the Class Period.  
7 (Exhibit ¶ 3.6.1). This payment will be allocated as 20% wages and 80% penalties and interest  
8 (Exhibit 1 ¶ 3.6.2). In addition, PAGA Employees will receive a pro-rated share of the PAGA  
9 Payment based on the number of pay periods they worked in California while employed by  
10 Defendants during the PAGA Period. (Exhibit 1 ¶ 3.7.1). This payment will be treated as 100%  
11 penalties. (Exhibit 1 ¶ 3.7.2).

12                   **c. Notice to the Class**

13           Within ten (10) calendar days after entry of the Preliminary Approval Order, Defendant  
14 shall deliver to the Settlement Administrator an electronic database, which will list the Class Data  
15 and PAGA Data. (Exhibit 1 ¶ 1.7). Within ten (10) calendar days after receipt of the Class and  
16 PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class  
17 Notice to all identified Class Members and PAGA Employees using the mailing address  
18 information provided by Defendants and the results of the search of the National Change of  
19 Address Database on all Class Members and Aggrieved Employees. (Exhibit 1 ¶ 4.5.3).

20           After notices are mailed, Class Members will have forty-five (45) days to respond to the  
21 settlement (this is referred to as the “Response Deadline”). (Exhibit 1 ¶ 1.44). The Response  
22 Deadline for Class Members with remailed Class Notices will be extended by fifteen (15) days  
23 (this is referred to as the “Extended Response Deadline”). (Exhibit 1 ¶ 1.19). Class Members may  
24 respond to the settlement by requesting to be excluded from it or objecting to it. (Exhibit 1 ¶¶ 4.6-  
25 4.7). Class Members can also file a dispute as to the number of workweeks attributed to them.  
26 (Exhibit 1 ¶ 4.9).

27  
28  

---

7 Participating Class Members are all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 ¶ 1.37).

1                   **d. Distribution of Funds**

2           Defendant shall wire or otherwise provide to the Settlement Administrator the Gross  
3 Settlement Amount no later than thirty (30) calendar days after the Effective Date. (Exhibit 1  
4 ¶ 1.37). Within ten (10) calendar days after Defendant tenders the Gross Settlement Amount to the  
5 Settlement Administrator, the Settlement Administrator shall disburse the settlement funds.  
6 (Exhibit 1 ¶ 5.3).

7           Participating Class Members and PAGA Employees must cash or deposit their Individual  
8 Settlement Share checks within one hundred and eighty (180) calendar days after the checks are  
9 mailed to them. All funds associated with the Individual Class Payment and/or Individual PAGA  
10 Payment checks returned as undeliverable and funds associated with those checks remaining  
11 uncashed shall be tendered to the California Controller's Office Unclaimed Property Fund, in the  
12 name of the Participating Class Member and/or PAGA Employee. In such event, the Participating  
13 Class Member or PAGA Employee who did not cash their check shall nevertheless remain bound  
14 by the Settlement. (Exhibit 1 ¶¶ 5.6-5.8).

15                   **e. Release of Claims**

16           In exchange for a portion of the Net Settlement Amount, Participating Class Members will  
17 agree to the following release:

18           All Participating Class Members will release and discharge Defendant and the  
19 Released Parties from any and all claims that were pled in the Amended Complaint,  
20 or reasonably could have been pled based on the factual allegations in the Amended  
21 Complaint, for failure to pay minimum, regular, overtime, double time, or reporting  
22 time wages and other compensation; failure to timely pay wages during  
23 employment; failure to timely pay wages at termination of employment; failure to  
24 provide accurate and itemized wage statements; failure to maintain accurate  
25 records; failure to reimburse necessary business expenses; failure to provide meal  
26 periods or meal premiums in lieu thereof; failure to provide rest breaks or rest  
27 premiums in lieu thereof; failure to provide paid sick leave and/or pay sick pay;  
28 failure to provide notice of paid sick time and accrual; unlawful deductions from  
wages; and violation of California's unfair competition law ("UCL") under  
California Business and Professions Code sections 17200, et seq., including  
violations of Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221,  
222, 223, 224, 226, 226.3, 226.7, 233, 234, 245, 246, 246.5, 247.5, 510, 512, 515,  
558, 1174, 1174.5, 1175, 1185, 1194, 1194.2, 1197, et seq., 1197.1, 1198, 1199,  
2800, 2802, 2926, and 2927; all applicable Industrial Welfare Commission  
("IWC") Wage Orders; California Code of Regulations, Title 8, sections 11000 et

1 seq., 11040, 11050, and 3395; and any other claims for damages and statutory  
2 penalties recoverable based on the facts and claims alleged, or those that could have  
3 been alleged, in the Amended Complaint for violations of the California Labor  
4 Code, California Business and Professions Code, and applicable IWC Wage  
5 Orders. The Released Class Claims shall be for the Class Period.  
6 (Exhibit 1 ¶ 1.40).

7 In addition, in exchange for a portion of the PAGA Payment, all PAGA Employees will  
8 agree to the following release:

9 All PAGA Employees will release and discharge Defendant and the Released  
10 Parties from any and all claims for civil penalties under the California Labor Code  
11 and the PAGA that were pled in the Amended Complaint or Plaintiffs' PAGA  
12 notices, or reasonably could have been pled based on the factual allegations in the  
13 Amended Complaint and Plaintiffs' PAGA notices, for failure to pay minimum,  
14 regular, overtime, double time, or reporting time wages and other compensation;  
15 failure to timely pay wages during employment; failure to timely pay wages at  
16 termination of employment; failure to provide accurate and itemized wage  
17 statements; failure to maintain accurate records; failure to reimburse necessary  
18 business expenses; failure to provide meal periods or meal premiums in lieu  
19 thereof; failure to provide rest breaks or rest premiums in lieu thereof; failure to  
20 provide paid sick leave and/or pay sick pay; failure to provide notice of paid sick  
21 time and accrual; unlawful deductions from wages; and violation of the UCL under  
22 California Business and Professions Code sections 17200, et seq., including  
23 violations of Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 221,  
24 222, 223, 224, 226, 226.3, 226.7, 233, 234, 245, 246, 246.5, 247.5, 510, 512, 515,  
25 558, 1174, 1174.5, 1175, 1185, 1194, et seq., 1194.1, 1194.2, 1197, et seq., 1197.1,  
26 1197.5, 1198, 1199, 2800, 2802, 2926, and 2927; all applicable IWC Wage Orders;  
27 California Code of Regulations, Title 8, sections 11000 et seq., 11040, 11050, and  
28 3395; and any other claims for civil penalties recoverable based on the facts and  
claims alleged, or those that could have been alleged, in the Amended Complaint  
and Plaintiffs' PAGA notices for violations of the California Labor Code,  
California Business and Professions Code, and applicable IWC Wage Orders. The  
Released PAGA Claims shall be for the PAGA Period.

(Exhibit 1 ¶ 1.41).

In addition, Plaintiffs have agreed to a general release of their claims. (Exhibit 1 ¶ 6.3).

## V. ARGUMENT

### a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court

Rule 3.769 requires court approval for class action settlements.<sup>8</sup> “Before final approval, the

<sup>8</sup> The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of  
2 Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of  
3 class settlements. Courts act within their discretion in approving settlements that are fair, not  
4 collusive, and take into account “all the normal perils of litigation as well as the additional  
5 uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir.  
6 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price*  
7 *Investigators Ass’n* (1981) 452 U.S. 905.

8 **b. The Settlement is Fair, Reasonable, and Adequate**

9 In deciding whether to approve a proposed class action settlement under Code of Civil  
10 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.”  
11 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is  
12 **presumed** fair under the following circumstances: (1) the parties reached settlement after arm’s-  
13 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court  
14 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
15 objectors is small. *Id.* at 1802. As the following shows, all of these elements –with the exception  
16 of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing  
17 on the fairness of the proposed settlement are present here and the Court’s grant of preliminary  
18 approval is therefore requested.

19 **i. The Settlement was Reached as a Result of Arm’s-Length Negotiations**

20 The settlement was reached as a result of arm’s-length negotiations. Though cordial and  
21 professional, the settlement negotiations have been, at all times, adversarial and non-collusive in  
22 nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s-  
23 length settlement negotiations until the settlement was reached. The terms of the settlement are  
24 memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as  
25 Exhibit 1. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks  
26 of litigation and understand the benefit of the Class receiving significant settlement funds  
27 immediately as opposed to risking continued litigation in achieving class certification, preparing  
28 for and conducting a trial, and/or an appeal that may take several more years to litigate.

1                   **ii. The Settlement is the Result of Thorough Investigation and Discovery**

2           The Parties thoroughly investigated and evaluated the factual strengths and weaknesses  
3 before reaching the proposed settlement, and engaged in sufficient investigation, research and  
4 discovery to support the settlement. The settlement was only possible following investigation,  
5 discovery, and evaluation of Defendants’ policies and procedures, as well as the data produced for  
6 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of  
7 liability and potential damages. This litigation has reached the stage where “the Parties certainly  
8 have a clear view of the strengths and weaknesses of their cases” sufficient to support the  
9 settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

10                   **iii. Counsel for Both Parties are Experienced in Similar Litigation**

11           Both Plaintiffs’ Counsel and Defendants’ Counsel are particularly experienced in wage and  
12 hour employment law and class actions. Plaintiffs’ Counsel has significant experience in litigating  
13 meal period, rest period, unpaid wages, waiting time penalty, and wage statement claims. (Mara  
14 Dec. ¶¶ 2-10; Agnew Dec. ¶¶ 14-21; Kim Dec. ¶¶ 10-17, Declaration of Larry W. Lee (“Lee  
15 Dec.”) ¶¶ 4-6; Declaration of William Marder (“Marder Dec.”) ¶¶ 4-12; Declaration of David  
16 Yeremian (“Yeremian Dec.”) ¶ 2-7; Declaration of Cristina Molteni (“Molteni Dec.”) ¶¶ 2-5;  
17 Declaration of Adrian Byrne (“Byrne Dec.”) ¶¶ 4-6; Declaration of Walter Haines (“Haines Dec.”)  
18 ¶¶ 3-6). Plaintiffs’ Counsel has prosecuted numerous wage and hour class action cases on behalf  
19 of employees for California Labor Code violations and thus are experienced and qualified to  
20 evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to  
21 evaluate the viability of the defenses. This experience instructed Plaintiffs’ Counsel on the risks  
22 and uncertainties of further litigation and guided their determination to endorse the proposed  
23 settlement.<sup>9</sup> Defendant’s Counsel practices labor and employment law and have represented  
24 numerous employers in similar types of claims. Accordingly, both Parties’ Counsel are  
25 experienced in wage and hour employment law and class actions.

26   ///

27 \_\_\_\_\_  
28 <sup>9</sup> The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the final approval motion.

1                                    **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

2            An understanding of the amount in controversy is an important factor in determining  
3 whether the settlement “of the class members’ claims is reasonable in light of the strengths and  
4 weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail,*  
5 *Inc.* (2008) 168 Cal.App.4th 116, 129; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los*  
6 *Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength  
7 of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

8            In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to  
9 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for  
10 that of the attorneys.” *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit  
11 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,  
12 provided there is a record which allows “an understanding of the amount that is in controversy and  
13 the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409. Put differently,  
14 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure §  
15 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of  
16 reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde &*  
17 *Associates* (1985) 38 Cal.3d 488, 499-500. As the following subsections show, the Parties’  
18 investigation and discovery revealed many reasons to discount claims and agree to this settlement.

19                                    **1. The Settlement is Fair and Reasonable Based on the Strengths**  
20                                    **of Plaintiffs’ Case and the Risks and Costs of Further Litigation**

21            The proposed settlement was only possible following significant discovery, motion work,  
22 and an evaluation of Defendant’s relevant policies and procedures, as well as the data that  
23 Defendant produced for the putative class as referenced above. This permitted Class Counsel to  
24 engage in a comprehensive analysis of liability and potential damages. The discovery conducted  
25 allowed Plaintiffs to evaluate the strengths and weaknesses of their theories of liability. As  
26 explained herein, Defendant maintains that the discovery produced demonstrates that it would  
27 succeed at both in denying class certification and on the merits.

28            Although, Plaintiffs believe this case is suitable for certification on the claimed bases that  
there are company-wide policies that Plaintiffs contend violate California law and uniformly affect

1 the Class Members, Defendant's counterarguments raise uncertainties with respect to both class  
2 certification and success on the merits. As the California Supreme Court ruled in *Sav-On v.*  
3 *Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's  
4 sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to  
5 certification of wage and hour claims.<sup>10</sup> While remaining confident in the strengths of their claims,  
6 all of these factors led Plaintiffs to discount the following potential damage exposure.

## 7 **2. Potential Exposure on Plaintiffs' Claims**

8 The settlement encompasses approximately 830,437 shifts. Employees earned  
9 approximately \$25.61 per hour on average. (Mara Dec. ¶ 35).

10 Plaintiffs allege that Defendant failed to provide employees with rest periods in accordance  
11 with California law. Plaintiffs contend that employees are not relieved of all work duties during  
12 rest periods. If Plaintiffs were to prevail on this claim, Plaintiffs and the Class Members would be  
13 entitled to the following potential damages: \$20,792,912 (811,906 shifts over 3.5 hours x \$25.61  
14 = \$20,792,912). (Mara Dec. ¶ 36).

15 In addition, Plaintiffs allege that Defendant failed to provide employees with duty-free  
16 meal periods in accordance with California law. If Plaintiffs were to prevail on this claim, Plaintiffs  
17 and the Class Members would be entitled to the following potential damages: \$20,204,779  
18 (788,941 shifts over 5 hours x \$25.61 = \$20,204,779.). (Mara Dec. ¶ 37).

19 As the above shows, however, these numbers had to be massively compromised in light of  
20 the defenses outlined above that, if successful, would result in the Plaintiffs taking nothing on these  
21 claims. Plaintiffs are relying on a practice case, where the Defendant counters that it's classwide  
22 policies clearly and correctly communicate its meal and rest period policies. Defendant has ample  
23 legal support to show that Plaintiffs claims could be defeated entirely and Plaintiffs would thus  
24 take nothing at the certification phase or, if it progressed beyond certification, at summary  
25 judgment because its policies track the legal requirements in California. To realistically bring these

---

26  
27 <sup>10</sup> See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming  
28 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)  
(not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148  
Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006)  
144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422  
(affirming denial of certification).

1 claims into a meaningful settlement position at mediation, Plaintiffs had to substantially discount  
2 the above exposure model. Accordingly, Plaintiffs evaluated the realistic maximum exposure for  
3 these claims in light of Defendant's defenses to be approximately 10% of the above totals, or  
4 \$4,099,769. (Mara Dec. ¶ 38).

5 Further, Plaintiffs allege that Defendant failed to pay all wages owed to employees.  
6 Plaintiffs allege that employees were only permitted to record eight (8) hours of work per shift but  
7 worked hours in excess of this. Plaintiffs believe that employees are owed approximately one hour  
8 of pay per workweek. If Plaintiffs were to prevail on this claim, Plaintiffs and Class Members  
9 would be entitled to the following potential damages: \$6,415,294 (166,978 workweeks x \$38.42  
10 overtime rate = \$6,415,294.). (Mara Dec. ¶ 39).

11 As explained above, however, Defendant has strict policies for time reporting and  
12 prohibiting off-the-clock work. Thus, Defendant has a strong position under *Brinker* that it had no  
13 way of knowing any work would have been occurring off-the-clock. As with the meal and rest  
14 claims, to communicate a realistic and meaningful settlement position at mediation, this claim had  
15 to be massively discounted. Plaintiffs therefore evaluated the realistic exposure to be about 5% of  
16 the above total, or \$320,746. (Mara Dec. ¶ 40).

17 Plaintiffs further contend that Defendant requires employees to use their personal cell  
18 phones for work related purposes and fails to reimburse employees for this use. If Plaintiffs were  
19 to prevail on this claim, Plaintiff and the Class Members would be entitled to the following  
20 potential damages: \$1,108,140 (55,407 months x \$20 per month = \$2,216,280). (Mara Dec. ¶ 41).

21 Defendant contends that employees are not required to use their personal cell phones for  
22 business purposes as it provides employees with access to desk phones via the on-site office and  
23 supplies walkie-talkies for use while working. Moreover, Defendant asserts that for employees  
24 whose job duties require frequent cell phone use, Defendant issues cell-phone reimbursements.  
25 Accordingly, simply because employees use their cell phones for work does not transform such  
26 use into a business expense that must be compensated. Plaintiffs had to sizably reduce the exposure  
27 here to account for this defense that, if successful, would wipe out the claims. Thus, Plaintiffs  
28 measured the realistic exposure for this for meaningful mediation discussions to be approximately

1 5% of the above exposure, or \$110,814. (Mara Dec. ¶ 42).

2 If Plaintiffs were to prevail on their meal period, rest period, or unpaid wages claims,  
3 Plaintiffs may be entitled to inaccurate wage statements. If Plaintiffs were to prevail on this claim,  
4 the damages would be \$3,212,000 (803 employees in statute of limitations x \$4,000 maximum  
5 penalty = \$3,212,000). (Mara Dec. ¶ 43).

6 Plaintiffs also contend that Defendant failed to pay all wages owed at the termination of  
7 employment, including sick pay wages. Plaintiffs calculate the potential exposure under their  
8 waiting time penalties cause of action as \$4,453,066 (966 former employees x 30 days x 6 hours  
9 x \$25.61 per hour = \$4,453,066.). (Mara Dec. ¶ 44).

10 For waiting time penalties and wage statement claims, the risk of losing is compounded by  
11 two critical elements. One, the wage statement claim is entirely derivative of and dependent on the  
12 success of the underlying claims for wages and meal and rest period premiums. Two, the failure  
13 to itemize the claimed wages and meal/rest period premiums and to pay all wages at termination  
14 must be deemed knowing and intentional and willful. The above has laid out the incredible risk  
15 associated with the meal and rest period/wage claims. With such formidable defenses comes a  
16 greater likelihood that, even if Plaintiffs were successful, there would be no finding of a knowing  
17 and intentional violation or a willfulness to withhold legally owed wages. Accordingly, Plaintiffs  
18 realistic exposure for these claims at mediation had to reflect the more attenuated likelihood of  
19 success on them. Plaintiffs therefore discounted the above waiting time exposure for purposes of  
20 a mediation damage model by 97%, or \$229,951. (Mara Dec. ¶ 45).

21 Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain  
22 California Labor Code sections relating to wage and hour violations. The statute of limitations for  
23 PAGA violations go back one year. The potential damages under Plaintiffs' PAGA claim is  
24 \$46,005,600.<sup>11</sup> (Mara Dec. ¶ 46). Defendant contends that Plaintiffs would not be allowed to  
25 "stack" PAGA penalties. If the Court were to agree with this and only award one PAGA penalty  
26 per pay period, Defendant's exposure would be \$9,181,800.<sup>12</sup> (Mara Dec. ¶ 47).

27  
28 <sup>11</sup> [91,818 pay periods x 5 violations (meal periods, rest periods, unpaid wages, wage statements, business  
reimbursements) x \$100 = \$45,909,000] + [966 x 1 violation (waiting time penalties) x \$100 = 96,600]  
<sup>12</sup> 91,818 pay periods x 100 = \$9,181,800

1 As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class  
2 claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs' class  
3 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,  
4 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs  
5 and the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims – is  
6 higher in this case where these same individuals may also be receiving money for the same  
7 unlawful conduct under the class claims. As such, the Court may reduce any PAGA penalty  
8 amount awarded to Plaintiff and the PAGA Members. Thus, to meaningfully mediate and explore  
9 settlement, Plaintiffs valued the PAGA at approximately 5% of the above exposure, or \$459,090.

### 10 **3. The Settlement Amount of \$1,735,000 is Reasonable**

11 Based on the risks and attendant reduced values above, Plaintiff's realistic exposure at  
12 mediation for all claims was \$5,220,370. The Gross Settlement Amount of \$1,735,000 – with an  
13 average settlement share amount estimated at \$452.16 – reflects a third of that realistic maximum  
14 exposure model, which renders the settlement fair and reasonable. (Mara Dec. ¶ 48).

15 It should be noted that a settlement is not judged solely against what might have been  
16 recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the  
17 damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91  
18 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139;  
19 “Compromise is inherent and necessary in the settlement process...even if the relief afforded by  
20 the proposed settlement is substantially narrower than it would be if the suits were to be  
21 successfully litigated, this is no bar to a class settlement because the public interest may indeed be  
22 served by a voluntary settlement in which each side gives ground in the interest of avoiding  
23 litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688  
24 F.2d 615, 628.

### 25 **c. Provisional Certification Should be Granted**

26 A class action is appropriate when the class is ascertainable and there is “a well defined  
27 community of interest in the questions of law and fact involved affecting the parties to be  
28 represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil

1 Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal  
2 Rule of Civil Procedure: numerosity, typicality of the class representatives' claims, adequacy of  
3 representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also*  
4 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a  
5 court must certify a class for settlement purposes if a class has not already been certified, "it is  
6 well established that trial courts should use different standards to determine the propriety of a  
7 settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of  
8 scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013)  
9 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn.  
10 19. Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these  
11 elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

12 **d. Notice to the Class Complies with California Rule of Court 3.769(f)**

13 The proposed Class Notice meets all of the requirements of California Rule of Court  
14 3.769(f). The proposed Class Notice advises the class of their rights to participate in the settlement,  
15 how to and when to object to or request exclusion from the settlement, and the date, time, and  
16 location of the final approval hearing.

17 **VI. CONCLUSION**

18 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the Class  
19 and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be  
20 granted final approval. Under the applicable class action criteria and guidelines, the proposed  
21 settlement should be preliminarily approved by the Court, the class should be conditionally  
22 certified for purposes of settlement only, and the Class Notice should be approved. Plaintiffs also  
23 respectfully request the Court set a final approval hearing date.

24 **MARA LAW FIRM, PC**

25 Date: September 21, 2026

26 Signed: \_\_\_\_\_



27 David Mara, Esq.

28 Jill Vecchi, Esq.

Attorneys for Plaintiffs and the Class