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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF INYO

PHILLIP POWELL and ANGEL
GONZALEZ, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

R & S BEVERAGE COMPANY LP, a
California limited partnership; and DOES 1
through 50, inclusive,

Defendants.

Case No. 24UC70842

Assigned for All Purposes to:
Hon. Stephen Place
Dept: 1

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT,
APPROVAL OF NOTICE TO CLASS
MEMBERS, APPROVAL OF
SETTLEMENT ADMINISTRATOR,
AND SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Phillip Powell (“Powell”) and Angel Gonzalez (“Gonzalez”) (collectively,
4 “Plaintiffs”) seek preliminary approval of a non-reversionary \$277,500.00 Class Action and PAGA
5 Settlement Agreement (“Settlement”) entered into with Defendant R&S Beverage Company LP
6 (“Defendant”) (collectively with Plaintiffs, the “Parties”). The Settlement was reached after an all-day
7 mediation session with an experienced wage and hour mediator. The Settlement satisfies all of the
8 criteria for preliminary approval under California law, and provides substantial relief to the class
9 members while taking into consideration the risks and expenses of further litigation. It was the result of
10 non-collusive, arm’s length, contentious, and informed negotiations between the Parties, who were
11 represented by experienced wage and hour class action counsel.

12 Plaintiffs request an order preliminarily approving the Settlement as fair, adequate, and
13 reasonable; appointing Plaintiffs as the Class Representatives; appointing Plaintiffs’ counsel as Class
14 Counsel; provisionally certifying the Class; approving the Parties’ proposed Notice of Class Action and
15 PAGA Settlement (the “Class Notice”); appointing Apex Class Action LLC (“Apex”) as the Settlement
16 Administrator; and setting a schedule for proceedings with respect to final approval of the Settlement.

17 **II. BACKGROUND**

18 **A. THE COMPLAINT AND PROCEDURAL HISTORY**

19 On June 7, 2024, Powell filed a putative class action complaint in Inyo County Superior Court,
20 titled *Phillip Powell v. R&S Beverage Company*, Case No. 24CU70842, asserting causes of action
21 against Defendant for: (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3) failure
22 to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay
23 wages during employment; (6) failure to timely pay wages owed upon separation from employment; (7)
24 failure to reimburse necessary expenses; (8) knowing and intentional failure to comply with itemized
25 wage statement provisions; and (9) unfair competition (the “Powell Class Action”). (Declaration of
26 Phillip Powell (“Powell Decl.”) ¶ 5) On August 14, 2024, Powell filed a separate, parallel action for
27 civil penalties under the California Private Attorneys General Act (“PAGA”) in the Superior Court of
28 California, County of Inyo (Case No. 24UC71165) (the “Powell PAGA Action”). (Powell Decl. ¶ 6)

On December 9, 2024, Gonzalez filed a putative class action against Defendant in the Superior Court of California, County of San Bernardino, asserting causes of action against Defendant for: (1) failure to provide meal periods in violation of (Labor Code § 226.7, 512 and 558); (2) failure to provide rest periods in violation of (Labor Code §§ 226.7, 512 and 558); (3) failure to pay all wages in violation of (Labor Code §§ 510, 1194, 1194.2); (4) knowing and intentional failure to comply with itemized employee wages statement provisions (Labor Code § 226(a), (e), 1174(d)); (5) failure to timely pay wages due at termination (Labor Code §§ 201-203); (6) failure to timely pay employees in violation of Labor Code § 204(a)(b); (7) failure to reimburse for business expenses in violation of (Labor Code § 2802); (8) violation of Labor Code § 212(a)(2), 213; (9) failure to pay for all hours worked, including overtime hours worked in violation of (Labor Code § 210, 218); (10) violation of business and professions code § 17200; (11) failure to produce personnel file and employment records (Labor Code §§ 226(b), (c), 1198.5); and (12) penalties pursuant to Labor Code Section 2699(f) for violations of Labor Code §§ 226.7, 512, 558, 510, 1194, 1194.2, 1194(a), 226(a), (e), 1174(d), 201-203, 204(a)(b), 2802, 212(a)(2), 213, 210, 218 (the “Gonzalez Action”). (Declaration of Roman Otkupman (“Otkupman Decl.”), ¶ 12)

Prior to filing the Powell PAGA Action, Powell submitted a letter to the California Labor and Workforce Development Agency (“LWDA”) on June 7, 2024, which attached a draft copy of the Powell Class Action Complaint and alleged the same claims and allegations. (Powell Decl. ¶ 4) Similarly, on October 2, 2024, Gonzalez submitted a letter to the LWDA alleging the same claims and allegations. (Otkupman Decl. ¶ 11)

The Parties agreed to mediation for the purpose of exploring whether a settlement could be reached of Plaintiffs’ and the putative class’s claims. (Declaration of Christina M. Lucio (“Lucio Decl.”) ¶ 18) To that end, the Parties exchanged extensive informal discovery for the purpose of mediation, including time and pay records for Plaintiffs and for a representative sample of the Putative Class, and relevant policy documents. (Id.) The Parties participated in a full-day of arm’s-length negotiations aided by experienced employment law mediator Steve Paul on June 9, 2024, which led to a settlement. (Id.) The Parties memorialized in a Memorandum of Understanding (“MOU”), executed on August 25, 2024. (Id.) Subsequently, the Parties negotiated the terms of the long-form settlement agreement and thereafter, the Parties executed the Settlement. The Parties stipulated to the filing of a First Amended

Complaint, effectively consolidating the claims and allegations contained in the Powell Class Action, the Powell PAGA Action, and the Gonzalez Action (collectively the “Actions”) into a single operative complaint for the purpose of effectuating the Settlement in one forum. The First Amended Complaint was filed on April 8, 2026.

B. VALUATION OF PLAINTIFFS’ CLAIMS

Plaintiffs’ claims include that Defendant (1) failed to pay minimum wages; (2) failed to pay overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods; (5) failed to timely pay wages during employment; (6) failed to timely pay wages owed upon separation from employment; (7) failed to reimburse necessary expenses; (8) knowingly and intentionally failed to comply with itemized wage statement provisions; (9) violated unfair competition; (10) failed to comply with Labor Code Sections 212 and 213; and (11) failed to produce personnel file and employment records. Plaintiffs also seek civil penalties under the California Private Attorneys General Act. (Lucio Decl. ¶ 5)

Defendant asserted strong defenses to Plaintiffs’ claims including that it provided sufficient time for Class Members to take meal breaks, that rest periods are not recorded making certification more difficult, that it promulgated lawful policies, that it lawfully paid all overtime and that its incentives were properly factored into the regular rate of pay or did not need to be factored into the regular rate of pay, and that it properly paid for all hours worked. Defendant also contended that to the extent any employee used his or her cellular phone, it was a matter of preference and not Defendant’s requirement because Class Members were provided with all necessary equipment. Further, Defendant contended that Plaintiffs’ penalty claims are not meritorious because Defendant had a good faith belief that its conduct was lawful, and that Plaintiffs would fail on their underlying claims. (Lucio Decl. ¶¶ 6-12)

Plaintiffs estimated Defendant’s maximum liability to be approximately \$3,439,424.80 exclusive of PAGA, and \$3,742,424.80 inclusive of PAGA based on a class size of 210 individuals who worked approximately 15,868 workweeks during the Class Period. In light of the foregoing challenges, however, Plaintiffs calculated Defendant’s realistic, risk-adjusted exposure at approximately \$662,396.92, inclusive of PAGA. Each risk-adjusted claim is separately valued as follows: Unpaid wages due to off-the-clock work, including underpaid overtime: \$17,949.80; Underpaid meal and rest period premiums

1 and sick pay due to improperly calculating the regular rate of pay: \$952.00; Rest period premiums:
2 \$163,210.90; Meal period premiums: \$261,655.10; Wage statement penalties: \$44,437.50; Waiting time
3 penalties: \$53,963.52; Unreimbursed business expenses: \$45,620.50; and PAGA penalties (\$100 per
4 pay period): \$75,750.00. (See, Lucio Decl. ¶ 13.) Thus, the Settlement will provide approximately 42%
5 of Defendant's realistic maximum exposure in immediate relief to the Class Members. (Id. ¶ 16)

6 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

7 The non-reversionary Gross Settlement Amount ("GSA") of \$277,500.00, includes (1) the fees
8 and expenses of the Settlement Administrator, estimated to be up to \$5,790.00; (2) Class Representative
9 Service Awards of up to \$2,500.00 each to Powell and Gonzalez; (3) Class Counsel's fees of up to 33
10 1/3% of the GSA (i.e., \$92,500.00); (4) litigation expenses and costs incurred by Class Counsel of no
11 more than \$16,640.00; and (5) deductions for the PAGA Fund Settlement Amount in the amount of
12 \$15,500.00.¹ (See, Settlement, Section 3.)

13 After all Court-approved deductions from the GSA, the Net Settlement Amount ("NSA") of
14 approximately \$142,070.00 will be distributed on a pro rata basis to the Class Members based on the
15 number of workweeks each Participating Class Member worked during the Class Period. In addition,
16 each Aggrieved Employee's share of the remaining PAGA Fund (25% or \$3,875.00) will be distributed
17 based on the number of individual Aggrieved Employee's total PAGA Pay Periods worked during the
18 PAGA Period. (Settlement, Section 3.2.5.1.) If the Settlement is finally approved with the requested
19 allocations, the average individual class settlement payment per Class Member will be approximately
20 \$676.52² on a net basis and \$1,321.42³ per Class Member on a gross basis. This amount compares very
21 favorably to other class action settlements.⁴

22
23
24 ¹ 75% of the PAGA Fund of \$11,625.00, which will be paid to the LWDA. The remaining 25%, or \$3,875.00, will be paid
pro rata to the Aggrieved Employees.

25 ² \$142,070.00 Net Settlement Amount / 210 Class Members = \$676.52

26 ³ \$277,500.00 Gross Settlement Amount / 210 Class Members = \$1,321.42

27 ⁴ See, *Salguero v. Deliv, Inc.*, Case No. 19STCV32534 (Los Angeles County Superior Court, 2021) (\$635,000.00 class
28 action and PAGA settlement for 3,021 class members with average payment on a gross basis of \$210.20); *Sanderson v. A
Bright Future*, Case No. 34-2019-00252816-CU-OE-GDS (Sacramento County Superior Court, 2020) (\$105,000.00 class
action and PAGA settlement for 471 class members with an average payment on a gross basis of \$222.93); *Ortegon-
Ramirez v. Cedar Fair, L.P.*, Case No. 1-13-CV-254098 (Santa Clara County Superior Court, 2015) (\$4,750,000.00 class
action and PAGA settlement for 31,425 class members with an average payment on a gross basis of \$151.15).

1 Class Members will be provided with notice of the Settlement, its terms, their individual
2 settlement amount, and their right to opt out, object, appear at the fairness hearing or challenge their
3 number of pay periods worked as set out in the Class Notice. (Settlement, Section 7.4). Class Participants
4 shall have 180 days to cash their checks. Any funds associated with checks remaining uncashed after
5 180 days will be sent to the California Controller's Unclaimed Property Fund in the name of the Class
6 Member. (See, Ex. 1, Settlement, Section 4.4.3.)

7 All Individual Settlement Payments will be allocated as follows: (i) fifteen percent (15%) will
8 be allocated as wages for which IRS Forms W-2 will be issued and all applicable withholdings shall be
9 made; and (ii) eighty-five percent (85%) will be allocated as non-wages, for which IRS Forms 1099-
10 MISC will be issued. The portion of all Individual Settlement Payments derived from the PAGA
11 Settlement Amount will be allocated entirely as penalties, for which IRS Forms 1099-MISC will be
12 issued. (Id., Section 3.2.5.2)

13 In exchange for the GSA, Class Members will release the Released Parties from, respectively,
14 the Released Class Claims and Released PAGA Claim. The "Released Parties" are:

15 Defendant and all its present and former parent companies, direct and indirect subsidiaries,
16 affiliates, joint ventures, owners, principals, agents, successors, and related parties and all
17 of their directors, officers, shareholders, members, managers, joint employers, co-
employers, integrated enterprises, representatives, employees, and any individual or entity
which could be liable for any of the Released Class Claims and/or Released PAGA Claims.

18 (Settlement, Section 1.41.) The "Released Class Claims" are:

19 All Participating Class Members, who do not opt out of the Settlement, will be bound by a
20 release of all claims alleged or which reasonably could have been alleged based on the facts
21 alleged in the operative Complaint, which arose during the Class Period, whether known
22 or unknown, including failure to pay minimum wages; failure to pay overtime; failure to
23 provide lawful meal periods; failure to authorize and permit rest periods; failure to timely
24 pay wages during employment; failure to timely pay wages owed upon separation from
25 employment; failure to furnish accurate itemized wage statements; failure to reimburse
26 necessary expenses; unfair competition law; violation of Labor Code §§ 212 and 213; and
27 failure to produce personnel file and employment records, and any other claims whatsoever
28 that were or could have been alleged in this case based upon the facts alleged in the
operative Complaint, including without limitation all related claims for restitution and
other equitable relief under Business and Professions Code § 17200, conversion, liquidated
damages, punitive damages, waiting-time penalties, and Labor Code sections 201, 202,
203, 204, 210, 212, 213, 218, 218.5, 218.6, 221, 222, 223, 226, 226.3, 226.7, 510, 512,
558, 1174, 1194, 1194(a), 1194.2, 1195, 1197, 1197.1, 1198, 2698 *et seq.*, and 2802, and
Code of California Civil Procedure section 1021.5; related California Code of Regulations,
Title 8, Sections 11000 *et seq.*, and all other related claims under local, state and/or federal

1 law that could have been asserted based on the factual allegations in the operative
2 Complaint, and any other related claims and/or penalties. Upon entry of final judgment and
contingent upon payment of the Gross Settlement Amount and employer's side payroll
taxes, the Released Parties shall be entitled to a release from the Released Class Claims.

3 (Settlement, Section 5.1) The "Released PAGA Claims" are:

4 All Aggrieved Employees who were employed by Defendant in California during the
5 PAGA Period shall be deemed to have released all claims against Released Parties under
6 the Private Attorney Generals Act of 2004 ("PAGA") based on the exhaustion letters
7 submitted by the Plaintiffs to the LWDA, which include any claims under PAGA arising
8 out of or related to allegations set forth in the operative complaint, including but not limited
9 to failure to pay minimum wages; failure to pay overtime; failure to provide lawful meal
10 periods; failure to authorize and permit rest periods; failure to timely pay wages during
11 employment; failure to timely pay wages owed upon separation from employment; failure
12 to furnish accurate itemized wage statements; failure to reimburse necessary expenses;
13 unfair competition law; violation of Labor Code §§ 212 and 213; and failure to produce
14 personnel file and employment records, and any other claims whatsoever that were or could
15 have been alleged in this case, including claims predicated upon violations of Labor Code
16 sections 201, 202, 203, 204, 210, 212, 213, 218, 218.5, 218.6, 221, 222, 223, 226, 226.3,
226.7, 510, 512, 558, 1174, 1194, 1194(a), 1194.2, 1195, 1197, 1197.1, 1198, 2698 *et seq.*,
and 2802, and Code of California Civil Procedure section 1021.5; related California Code
of Regulations, Title 8, Sections 11000 *et seq.*, and all other related claims under local,
state and/or federal law that could have reasonably been asserted based on the factual
allegations in the operative complaint, and any other related claims and/or penalties. The
Parties agree that there is no statutory right for any Aggrieved Employee to opt out or
otherwise exclude himself or herself from the PAGA payment and the associated release
of claims and rights under PAGA.

16 (Id. section 5.2)

17 Subject to Court approval, the Parties agree to engage Apex Class Action LLC as the Settlement
18 Administrator. (Ex. 1, Settlement, Section 7.1.)

19 Within twenty-one (21) calendar days following entry of the Preliminary Approval Order,
20 Defendant will provide the Class Data, including the Class Member's name, last-known mailing address,
21 Social Security number, and number of Class Period Workweeks and PAGA Pay Periods in a readable
22 MS Excel spreadsheet. ("Class Data"). The Class Data will be used for settlement notification and
23 settlement administration only and shall not be used for any other purpose. The Settlement Administrator
24 shall provide reasonable and appropriate safeguards for any personally identifiable information ("PII")
25 that it receives from Defendant and promptly provide Defendant with notice if PII is subject to
26 unauthorized access, use, disclosure, modification, or destruction. (Ex. 1, Settlement, Section 4.2.) Prior
27 to mailing, the Settlement Administrator will update Class Member addresses using the National Change
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1 of Address database. Any Class Notice returned to the Settlement Administrator as non-deliverable on
2 or before the Response Deadline will be re-mailed to the forwarding address affixed thereto. If no
3 forwarding address is provided, the Settlement Administrator will promptly attempt to determine the
4 correct address using a Class Member Address Search, and will then perform a single re-mailing. Those
5 Class Members who receive a re-mailed Notice Packet will have an additional fourteen (14) calendar
6 days after the Response Deadline to submit a Request for Exclusion or an Objection to the Settlement.
7 (Ex. 1, Settlement, Section 7.4). The Response Deadline is forty-five (45) days after mailing. (Id.,
8 Section 7.4.4)

9 Using best efforts to perform as soon as possible, and no later than thirty-five (35) days after the
10 Court grants Preliminary Approval, the Settlement Administrator shall mail the Court-approved Class
11 Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
12 addresses identified in the Class Data. (Ex. 1, Settlement, Section 7.4.2.)

13 All Class Members will be mailed a Class Notice containing (i) information regarding the claims;
14 (ii) a summary of the Settlement's principal terms; (iii) the Class definition; (iv) the total number of
15 Workweeks and PAGA Pay Periods (if applicable) each Class Member worked for Defendant during
16 the Class Period and PAGA Period; (v) each Class Member's estimated Individual Class Payment and/or
17 Individual PAGA Payment and the formula for calculating these payments; (vi) the dates which
18 comprise the Class Period and PAGA Period; (vii) instructions on how to submit Requests for Exclusion
19 or Objections; (viii) the Response Deadline; and (ix) the claims to be released. (Ex. 1, Settlement,
20 Sections 1.11, 7.4.; see Ex. 2, "Class Notice") Notice of final judgment shall be posted on the Settlement
21 Administrator's website. Cal. Rules of Court, Rule 3.771(b). The Class Notice will provide the web
22 address for Class Members to access the final judgment. (Lucio Decl., Ex. 2)

23 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE**
24 **LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION**
25 **IS APPROPRIATE**

26 California Rule of Court 3.769(d) provides that the Court may make an order approving
27 certification of a provisional settlement class at the preliminary approval stage. It is well-established that
28 trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a
settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* 9 ("Dunk"), 48 Cal.App.4th

1 1794, 1807 n.19 (1996). The reasons include that no trial is anticipated in a settlement, so the case
2 management issues inherent in determining if the class should be certified need not be confronted; and
3 the trial court’s fairness review of the settlement protects the interests of the absent class members. *Id.*;
4 *see also Officers for Justice v. Civil Serv. Comm’n*, 690 F.2d 615, 633 (1979) (“Th[e] relationship
5 between the certification determination and the merits of the case is further attenuated within the context
6 of the settlement evaluation process [C]ertification issues raised by class action litigation that is
7 resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v.*
8 *Windsor*, 521 U.S. 591, 620 (1987). As discussed below, for the purposes of this settlement only, the
9 Parties ask this Court to provisionally certify the Class under Cal. Civ. Proc. Code § 382.

10 **A. NUMEROSITY AND ASCERTAINABILITY.**

11 Numerosity is met if a proposed class is so large that joinder of all members would be
12 impracticable. *See*, Cal. Code Civ. Proc. § 382. Ascertainability is met if the class members can be
13 identified and given notice of the litigation without unreasonable time or expense. *See Medrazo v. Honda*
14 *of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008); *see also, Sevidal v. Target Corp.*, 189 Cal.App.4th
15 905 (2010). The Class consists of approximately 210 individuals who have been identified through
16 Defendant’s records. (Lucio Decl. ¶ 15) Thus, the class is ascertainable, and large enough that joinder
17 would be impractical.

18 **B. WELL-DEFINED COMMUNITY OF INTEREST.**

19 The community of interest requirement has three elements: “(1) predominant questions of law
20 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
21 who can adequately represent the class.” *Linder v. Thrifty Oil Co.*, 23 Cal.App.4th 429, 435 (2000).

22 **1. Commonality**

23 To justify certification, the class proponent must show that questions of law or fact common to
24 the class predominate over the questions affecting the individual members. *See Arenas v. El Torito*
25 *Rests., Inc.*, 183 Cal.App.4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal.
26 4th 906, 913 (2001)). Plaintiffs were exempt and non-exempt employees who worked in various roles,
27 such as delivery drivers and sales representatives, for Defendant during the relevant time period. They
28 attest that they believe that they were subject to the same common policies as the other Class Members.

(Powell Decl. ¶ 2; Gonzalez Decl. ¶¶ 4, 6) Indeed, Plaintiffs contend that the Class was subject to common meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, sick leave violations, and vacation pay violations, just as they were. Defendant produced evidence which Plaintiffs contend supports a finding of certain common policies, handbooks, and practices. (Lucio Decl., ¶ 25) While Defendant reserves its rights to object that commonality exists in this Action if the litigation were to continue, the Parties agree for the purposes of this Settlement only that Plaintiffs' allegations meet the commonality requirement. (Lucio Decl., ¶ 5)

2. Typicality

Typicality “focuses on whether there exists a relationship between the Plaintiffs’ claims and the claims alleged on behalf of the class.” 4 *Newberg on Class Actions* (“*Newberg*”) § 3:13 (2002). As indicated above, Plaintiffs are members of the Class they seek to represent. Plaintiffs were exempt and non-exempt employees who worked for Defendant throughout its beverage distribution business during the relevant time period. They attest that they believe that they were subject to the same common policies and practices as the other Class Members. (Powell Decl. ¶ 2; Gonzalez Decl. ¶¶ 4, 6) The Parties agree for settlement purposes only that Plaintiffs’ claims regarding Defendant’s meal period, rest period, overtime, minimum wage, final pay, wage statement, reimbursement, labor code sections 212 and 213, personnel file and employment records, and vacation pay policies and practices that are at the core of the lawsuit are typical of the Class. (Lucio Decl. at ¶ 5)

3. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See, Barboza v. West Coast Digital GSM, Inc.*, 179 Cal.App.4th 540, 546 (2009). Specifically, Plaintiffs contend they are adequate to represent the Class because they were employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood their duties as class representatives, have been willing to undergo the risk of litigation, and have no conflicts of interest with the other Class Members. (*See, Powell Decl.; Gonzalez Decl.*)

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiffs allege, and Defendant does not dispute for purposes of this Settlement only,

1 that Plaintiffs and the Class are represented by counsel with extensive experience in wage-and-hour
2 litigation, including class actions. (Lucio Decl. ¶¶ 27-32; Oktupman Decl., ¶¶ 6-8.)

3 4. Superiority

4 Plaintiffs assert that certification of the Class for settlement purposes is superior here because
5 there will be a global resolution of all claims at once, which fosters judicial economy. Class certification
6 is also vastly superior to litigation of numerous individual claims because most of the claims are too
7 small to practically litigate outside of the class context. (Lucio Decl. ¶ 35.)

8 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH**
9 **IS FAIR, ADEQUATE, AND REASONABLE**

10 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL**
11 **UNDER THE CALIFORNIA RULES OF COURT.**

11 The law favors settlement. *Bush v. Superior Court*, 10 Cal.App.4th 1374, 1382 (1992). This is
12 particularly true in class actions where substantial resources can be conserved by avoiding the time, cost,
13 and rigors of litigation. However, a class action may not be settled without the Court’s approval. Cal. R.
14 Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action
15 settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as
16 directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of
17 the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e)-(g).

18 The decision to approve or reject a proposed settlement lies within the Court’s sound discretion.
19 *See, Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). Nevertheless, in considering
20 a potential settlement for approval, a court is not to turn the approval hearing “into a trial or rehearsal
21 for trial on the merits. . . . [or] to reach any ultimate conclusions on the contested issues of fact and law
22 which underlie the merits of the dispute.” *Officers for Justice*, 690 F.2d at 625.

23 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
24 reasonable. *See, Dunk*, 48 Cal. App. 4th at 1801 (setting forth the “fair, adequate, and reasonable”
25 standard) (citing *Officers for Justice*, at 625; *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734,
26 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining
27 that it is “fair, adequate and reasonable,” considering factors such as the “risk, expense, [and]
28 complexity” of continued litigation) (citations omitted). The Court enjoys broad discretion in making

1 its fairness determination, and should consider factors including, but not limited to:

2 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
3 further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the
proceedings, the experience and views of counsel . . . and the reaction of the class
members to the proposed settlement.

5 *Dunk*, 48 Cal.App.4th at 1801.

6 The above factors are not exclusive, “. . . and the court is free to engage in a balancing and
7 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245.
8 However, in doing so, the Court must give “[due] regard to what is otherwise a private consensual
9 agreement between the parties.” *Id.* The inquiry must be limited “to the extent necessary to reach a
10 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
11 between, the negotiating parties.” *Id.* (citation and internal quotation marks omitted).

12 At the preliminary approval stage, the Court need only determine that the settlement falls within
13 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness
14 hearing are worthwhile. *See Newberg* at § 11:25. Indeed, the Court should grant preliminary approval if
15 there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears
16 to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995);
17 *see Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (1) the settlement is reached
18 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
19 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
20 objectors is small.” *Dunk*, 48 Cal.App.4th at 1802 (citing *Newberg* § 11:41). As shown below, the
21 Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

22 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
23 **NEGOTIATIONS AND REFLECTS A FAIR COMPROMISE OF CLAIMS AND RISK FACTORS.**

24 The Settlement was the product of extensive arm’s-length, intensive negotiations through an all-
25 day mediation with Steve Paul serving as the neutral. The Parties thereafter entered into a memorandum
26 of understanding and in the coming months negotiated, prepared and executed the long-form Stipulation
27 of Settlement which they ask the Court to now approve. Though cordial and professional, the settlement
28 negotiation was adversarial and non-collusive in nature. The Settlement reached is the product of

substantial effort by the parties and their counsel. (Lucio Decl. ¶ 18; Otkupman Decl. ¶ 15).

Although Plaintiffs and Class Counsel believed that there was a strong possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. (Lucio Decl., ¶ 18, Otkupman Decl., ¶ 15). The resulting Settlement was based on calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others into account in arriving at the settlement amount of \$277,500.00. (See, Lucio Decl., ¶¶ 18-21)

C. THE EXTENT OF THE PRE-LITIGATION DISCOVERY AND INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT.

The Parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the Settlement. (See Lucio Decl., ¶¶ 18-20) As described above, the Settlement was only reached after an all-day mediation, extensive informal discovery, investigation, research, thorough calculations and risk evaluation, substantial exchanges of documents, a thorough evaluation of a sampling of time and payroll records, and other information relating to the size and scope of the Class, as well as data permitting Plaintiffs to fully understand the nature and scope of the allegations. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130. (Lucio Decl. ¶ 17.)

D. THE RISKS INHERENT IN CONTINUED LITIGATION ARE GREAT.

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should consider "[t]he strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." See *Dunk*, 48 Cal.App.4th at 1801. As described above, Defendant has strong defenses to Plaintiffs' claims, which create a real possibility that the claims might not be certified and/or might fail on the merits. (See, Lucio Decl., ¶¶ 6-13) Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. (Id., ¶ 18) If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class

Members. By contrast, the Settlement will yield a prompt, certain, and substantial recovery for the Class, which also benefits the Parties and the Court. In considering these risks, the choice was overwhelmingly in favor of settlement. (Id.)

E. CLASS COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION.

The view of the attorneys conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) (court must take into account “the experience and view of counsel”).

Class Counsel is experienced in wage-and-hour class actions. (Lucio Decl. ¶¶ 27-32; Otkupman Decl., ¶¶ 6-8) The Parties’ counsel agree that this Settlement is fair and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. (See, generally, Lucio Decl.; Otkupman Decl.) Class Counsel find this Settlement is fair, adequate, and reasonable and in the best interests of Class Members, and should be preliminarily approved. (Id.)

F. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS

In order to determine whether a class settlement is fair, adequate, and reasonable, courts must be provided with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar, supra*, 168 Cal.App.4th at 133. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250. Here, the proposed \$277,500.00 Settlement is an excellent result and achieves a substantial benefit to Class Members. Plaintiffs’ counsel reached the proposed Settlement only after carefully considering the case’s strengths, weaknesses, expense, and complexity. (Lucio Decl., ¶ 19; Otkupman Decl., ¶ 15.)

In light of the claims and defenses, the Parties faced uncertainty that had to be taken into consideration when weighing potential settlement of the claims. Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026. Even if “the relief afforded by the proposed settlement is substantially narrower than it

would be if the suits were to be successfully litigated,” that is no bar to settlement because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* at p. 250 (quoting *Air Line Stewards, Local 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109).

As set forth in the accompanying declaration of Christina M. Lucio, Class Counsel has satisfied the so-called “*Kullar* standard” by providing the Court with a detailed evaluation of the settlement value of the claims that were alleged in this lawsuit. (*See*, Lucio Decl., ¶ 13)

G. THE CLASS NOTICE PLAN CONFORMS TO ALL APPLICABLE STATUTES AND RULES

The Court has wide discretion in approving the means of providing notice, so long as the class representative “provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the Parties’ notice plan is that notice of the Settlement will be disseminated directly to the Class Members by first class mail by the Settlement Administrator within 35 days after the Preliminary Approval date. (*See* Settlement, Section 7.4.2.)

The contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes (1) a detailed explanation of the case, including the basic contentions or denials of the Parties, and the basic terms of the Settlement; (2) a statement that the Court will exclude the member from the Class if the member requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the Class; (4) an explanation that members of the Class can participate in the Settlement by doing nothing; (5) a statement that the Judgment, whether favorable or not, will bind all members who do not request exclusion; and (6) a statement that any member who does not request exclusion may, if the member so desires, object to the Settlement either in writing or by court appearance. (*See* Lucio Decl., Ex. 2.) In addition, the manner of giving notice is in compliance with Cal. R. Ct. 3.766(e) because the Notice (1) is likely to reach a majority of the Class Members; (2) contains the type of relief requested by the Class; (3) details the Individual Settlement Payments for Class Members; (4) is the most cost efficient way of providing notice to the Class; and (5) has no prejudice to the Class because if a Class Member does not receive the notice he/she will still receive his/her Individual Settlement Payment. (*Id.*)

1 **H. THE ATTORNEYS' FEES UNDER THE SETTLEMENT ARE FAIR**

2 Class Counsel is requesting 33 1/3% of the GSA in attorneys' fees, totaling \$92,500.00. (*See*,
3 Lucio Decl. ¶ 14) Fees of up to 35% of the common fund are reasonable for a trial court to award as
4 attorney fees in class action and PAGA settlements. *See Lopez v. Waldorf Astoria Mgmt. LLC*, No.
5 20STCV17212 (Los Angeles County Superior Court, 2023) (Approving 35% of the gross settlement
6 amount in a class action and PAGA settlement); *Salguero v. Deliv, Inc.*, No. 20STCV17212 (Los
7 Angeles County Superior Court, 2021) (Same); *Minniear v. Burke Williams*, No. 20STCV02154 (Los
8 Angeles County Superior Court, 2023) (Same). There are two primary methods of determining a
9 reasonable attorney fee in class action litigation, the percentage method and the lodestar method. *Laffitte*
10 *v. Robert Half International, Inc.* 1 Cal.5th 480, 489 (2016). Attorneys' fees of 33 1/3% of the common
11 fund are reasonable and should be preliminarily approved here, however, given the extensive and
12 excellent work invested by Class Counsel in the litigation of this matter, only a small multiplier will be
13 required under the lodestar cross check, further justifying the fee award.

14 **I. THE CLASS REPRESENTATIVES' SERVICE AWARD IS FAIR AND APPROPRIATE**

15 The Settlement provides for Class Representative Service Awards of \$2,500.00 each to Powell
16 and Gonzalez. (Lucio Decl., ¶¶ 14) The proposed awards are reasonable given the time and effort that
17 Plaintiffs devoted to this case, including making themselves available for an all-day mediation session
18 and having their depositions taken. (*Id.*; Powell Decl. ¶ 11; Gonzalez Decl. ¶ 7) At no time did the
19 Plaintiffs have a guarantee of any personal benefit as a result of this case. (*Id.*) They assumed significant
20 risk in bringing this action, including potential liability for Defendant's costs. (*Id.*) The proposed award
21 is similar to service awards typically in employment class actions. *See, e.g. Sanchez v. Brink's, Inc.*, No.
22 21STCV11887 (Los Angeles County Superior Court, 2023) (approving \$10,000 service award to each
23 class representative on \$2.6 million gross settlement); *Stevenson v. Payless Water Heaters & Plumbing*,
24 No. 21STCV42057 (Los Angeles County Superior Court, 2023) (approving \$10,000 service award to
25 class representative on \$510,000 gross settlement).

26 **VI. THE COURT SHOULD APPOINT APEX CLASS ACTION LLC AS SETTLEMENT**
27 **ADMINISTRATOR**

28 The parties propose that the Court appoint Apex Class Action LLC to serve as the Settlement

1 Administrator. (See, Settlement, Section 1.2.) Apex Class Action LLC is experienced in administering
2 class action settlements, and has estimated its fees for this settlement to not exceed \$5,790. (Id. Section
3 3.2.3.) If the actual settlement administration expenses are less than \$5,790, the difference will be added
4 to the NSA and distributed to the Class.

5 **VII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

6 The last step in the approval process is the final approval hearing, wherein Plaintiffs will offer
7 arguments in support of the Settlement, and Class Members or their counsel may be heard in support of
8 or in opposition to the Settlement. The Parties propose that the Court schedule a hearing for final
9 approval of the Settlement, including Plaintiffs' request for attorneys' fees, costs, and the service award,
10 at the earliest available date at least 150 days after preliminary approval.

11 **VIII. CONCLUSION**

12 For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion
13 for preliminary approval of the Class Action and PAGA Settlement.

14
15 Respectfully submitted,

16 **EMPLAW, LLP**

17 Dated: April 30, 2026

18 By: /s/ Nicholas Schieffelin
19 Christina M. Lucio, Esq.
20 Mitchell J. Murray, Esq.
21 Nicholas Schieffelin, Esq.

22 **OTKUPMAN LAW FIRM, A LAW CORPORATION**

23 Dated: April 30, 2026

24 By: /s/ Roman Otkupman
25 Roman Otkupman, Esq.
26 Nidah Farishta, Esq.

27 *Attorneys for Plaintiffs and the Putative Class*
28