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9 *and Mimi Lee, individually and on behalf*
10 *of all others similarly situated*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN MATEO

13
14 NORMA SANTIZO and MIMI LEE,
15 individually and on behalf of all others
similarly situated,

16 Plaintiffs,

17 vs.

18 NEAL'S COFFEE SHOP, INC., a California
19 corporation; SUNIL PRASAD, an individual,
and DOES 1 through 20, inclusive,

20 Defendants.
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Case No. 24-CIV-03380
Assigned for All Purposes to
Honorable Nicole S. Healy, Dept. 28

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

Date: August 13, 2025
Time: 2:00 p.m.
Place: Dept. 28
Judge: Honorable Nicole S. Healy

Complaint Filed: June 17, 2024
Trial Date: None Set

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1 **I. INTRODUCTION**

2 Plaintiffs Norma Santizo and Mimi Lee (“Plaintiffs”) seek preliminary approval of a
3 \$1.175 million class action settlement (“Settlement”). The Settlement obtains relief on behalf of
4 seventy-one (71) current and former non-exempt employees—Servers, Bussers/Dishwashers, and
5 Cooks—who have been employed by Defendants Neal’s Coffee Shop and/or Sunil Prasad
6 (“Defendants”) from June 3, 2020, until March 14, 2025.

7 On June 3, 2024, Plaintiffs sued on behalf of Defendants’ hourly employees for failure to
8 pay minimum wages; failure to pay overtime wages; failure to provide meal and rest breaks;
9 failure to provide accurate wage statements; failure to reimburse business expenses; waiting time
10 penalties; unfair business practices; PAGA violations; and related penalties, interest, and
11 attorney’s fees and costs. The average class member payout (after payment of class counsel fees
12 and expenses, PAGA penalties, settlement administration costs, and Plaintiffs’ service payments)
13 should be approximately \$9,900. Defendants contend they are not liable for the claims alleged
14 by Plaintiffs in this Action. The Parties expeditiously reached this Settlement after investigation
15 and informal discovery, through which Plaintiffs obtained Defendants’ written policies, detailed
16 timekeeping data, and schedule and payroll information for the class members. The Parties
17 reached a settlement agreement after a full-day mediation on January 17, 2025, and the settlement
18 was memorialized in a Memorandum of Understanding and subsequently in the Joint Stipulation.
19 (Declaration of Michelle G. Lee ISO Preliminary Approval (“Lee Decl.”), Exhs. B and C.)

20 The Settlement is fair, reasonable, and confers a substantial benefit to the Class.
21 Accordingly, Plaintiffs request that the Court grant preliminary approval of the Settlement,
22 approve the proposed Class Action Settlement Notice, and set a hearing date for final settlement
23 approval.

24 **II. CASE BACKGROUND**

25 **A. Factual Background & Legal Claims/Defenses.**

26 Defendant Sunil Prasad owns and operates Defendant Neal’s Coffee Shop, a corporation
27 with two restaurants located in San Mateo and Burlingame. The restaurant is advertised as an
28

1 “old-fashioned diner.” (Lee Decl., ¶19.)

2 Named Plaintiff Norma Santizo is a current employee who has worked as a Server at both
3 restaurant locations since approximately 2001. (Declaration of Norma Santizo ISO Preliminary
4 Approval (“Santizo Decl.”), ¶4.) Named Plaintiff Mimi Lee was employed by Defendants as a
5 Server at both restaurant locations from approximately 2004 through April 2024. (Mimi Lee
6 Declaration ISO Preliminary Approval (“Mimi Lee Decl.”), ¶3.)

7 This Class Action is filed on behalf of seventy-one (71) current and former employees
8 who worked for Defendants in California in hourly, non-exempt positions of Servers,
9 Bussers/Dishwashers, or Cooks at one or more of Defendants’ two locations. Plaintiffs allege
10 these employees were denied earned wages as Defendants regularly required employees to work
11 off-the-clock, failed to pay proper overtime wages, failed to pay for all time worked, failed to
12 properly provide meal and rest breaks, failed to reimburse business expenses, and provided
13 inadequate employee payroll records. Defendants deny these allegations.

14 Plaintiffs commenced the instant action on June 3, 2024, alleging nine causes of action:
15 (1) Failure to Pay Minimum Wages in violation of California Labor Code §§ 218.6, 1194,
16 1194.2, and 1197, IWC Wage Order No. 5, and San Mateo and Burlingame Minimum Wage
17 Ordinances; (2) Failure to Pay Overtime Wages in violation of California Labor Code §§ 510,
18 1194 and IWC Wage Order No. 5; (3) Failure to Provide Meal Periods in violation of Labor Code
19 §§ 226.7 and 512 and IWC Wage Order No. 5; (4) Failure to Provide or Permit Rest Breaks in
20 violation of Labor Code § 226.7 and IWC Wage Order No. 5; (5) Failure to Provide Accurate and
21 Itemized Wage Statements in violation of Labor Code§ 226; (6) Failure to Reimburse Business
22 Expenses in violation of Labor Code§§ 2800, 2802; (7) Violation of Waiting Time Penalties,
23 Labor Code §§ 201, 202, 203; (8) Violation of Business and Professions Code§ 17200, *et seq.*;
24 and (9) Violation of Labor Code § 2698 *et seq.* (“PAGA”). As to the PAGA claim, Plaintiffs
25 provided written notice to the Labor & Workforce Development Agency (“LWDA”) of the legal
26 claims and theories of this case on June 3, 2024, and received no notice after 60 days that the
27 LWDA intended to investigate the allegations.

1 As part of Class Counsel's pre-filing investigation, counsel gathered and reviewed time
2 records, schedules, and pay stubs provided by Plaintiffs Santizo and Lee, as well as other putative
3 class members, and interviewed employees in various positions regarding Defendants' practices
4 related to timekeeping, pay, meal and rest breaks, unreimbursed business expenses, and related
5 wage and hour violations.

6 After filing the complaint, the Parties agreed to mediate on the condition that Defendants
7 provide certain categories of documents, including data regarding time entries, pay stubs,
8 employee policies, and certain information regarding Defendants' financial situation. Defendants
9 produced Excel files of audited and unaudited time entry records, schedules, and pay records as
10 to the two locations (San Mateo and Burlingame), employee handbooks in English and Spanish
11 and other miscellaneous policies, and a redacted putative class list. Plaintiffs engaged an
12 experienced damages consultant to review Defendants' payroll records and calculate damages.
13 (Lee Decl., ¶16.)

14 On January 17, 2025, the Parties engaged in a full-day, arms-length mediation with
15 private mediator Jeffery Owensby of Signature Resolution. (*Id.*, ¶17.) With the assistance of the
16 Mediator, the Parties were able to come to a settlement of the claims in the Action, subject to the
17 Court's approval. The settlement was memorialized in a Memorandum of Understanding and,
18 subsequently, the Joint Stipulation. (*Id.*, Exhs. B and C.)

19 **III. SETTLEMENT TERMS**

20 The following is a summary of the principal terms of the Settlement:

21 **A. The Maximum Settlement Amount, Attorney's Fees, Costs, and** 22 **Representative Awards.**

23 The non-reversionary Maximum Settlement Amount (also "Maximum Payment") of
24 \$1,175,000 includes: (1) the fees and expenses of the Settlement Administrator, estimated to be
25 up to \$12,000; (2) Plaintiffs' service award of \$10,000 for Ms. Santizo and \$7,500 for Ms. Lee;
26 (3) attorney's fees of up to one-third of the Maximum Payment, calculated as \$391,666.66;
27 (4) litigation expenses and costs incurred by Plaintiffs' counsel of no more than \$30,000.00
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(exclusive of the Settlement Administrator costs); and (5) deductions for PAGA penalties in the amount of \$21,170, including \$15,877.50 to the California LWDA and \$5,292.50 to Defendants' PAGA-eligible employees, as defined by the Joint Stipulation of Class Action Settlement. (Lee Decl., Exh. B [Agreement], at ¶ 9.) In addition to the Maximum Settlement Amount, Defendants will pay their share of employer payroll taxes on the settlement payments apportioned as wages. (*Ibid.*)

B. Net Funds Available to Class Participants.

After all Court-approved deductions from the non-reversionary Maximum Settlement Amount, it is estimated that the resulting "Net Settlement Amount" of \$702,663.34 will be distributed on a "checks cashed" basis. In addition, another \$5,292.50—the PAGA Payment—will be distributed to those Class Members who are PAGA-Eligible Employees. The portion of the Net Settlement Amount payable to the Class Members will be divided and distributed to eligible class members who do not submit a valid and timely election not to participate. The portion of the Net Settlement Amount payable to the Class Members will be based on the ratio of each individual class member's estimated alleged unpaid straight time wages, overtime wages, meal and rest break premiums, Labor Code 226 penalties, waiting time penalties, and pre-judgment interest, relative to the total for all Participating Class Members. (*Id.*, ¶14.) Plaintiffs' expert Damages Consultant will provide these calculations to the Settlement Administrator, with review by Defense Counsel. (*Id.*, ¶¶14, 17.) The distribution will be made in accordance with the schedule described below. (*Id.*, ¶21.)

Defendants will fund the Maximum Settlement Account in three phases and subject to an Acceleration Clause in the event of breach, as set forth in the Agreement. (*Id.*, ¶¶18-19.):

1. Phase One: No later than thirty (30) days after the Effective Date,¹ Defendants shall transmit to the Settlement Administrator the lump sum of \$587,500, plus Defendants' share of payroll taxes;

¹ "Effective Date" is the date on which the Settlement becomes "Final," which means the latest date on which the following events have occurred: (i) the Superior Court has granted Final Approval and entered its Final Judgment approving the Settlement, without material

2. Phase Two: no later than 180 days after the Effective Date, Defendants shall transmit to the Settlement Administrator the lump sum of \$293,750, plus Defendants' share of payroll taxes, which the Settlement Administrator will hold in escrow and distribute after receipt of Defendants' final payment pursuant to Phase Three;

3. Phase Three: no later than 350 days after the Effective Date, Defendants shall transmit to the Settlement Administrator the lump sum of \$293,750, plus Defendants' share of payroll taxes.

Within fifteen (15) calendar days after Defendants fund the Maximum Settlement Amount, during which time the Settlement Administrator will have provided the Parties with an opportunity to review and approve the Settlement Administrator's proposed payment calculations, the Settlement Administrator will commence distribution in two Phases (Agreement, ¶21):

1. Phase One Distribution: Out of the initial \$587,500 lump sum payment, the Settlement Administrator will distribute these funds as follows:

First, disburse the PAGA penalty payments in full to the LWDA and to the PAGA-Eligible Employees;

Second, disburse the remaining \$566,330.00 *pro rata* to the percentage of the total due to each group entitled to a share of the Maximum Settlement Amount in Phase One Distribution according to the below:

(1) Individual Class Payments (pro rata share= 0.606939)	\$343,728.03
(2) Settlement Administrator (pro rata share= 0.010454)	\$5,920.70
(3) Incentive Award to Plaintiff Santizo (pro rata share= 0.008712)	\$4,933.92
(4) Incentive Award to Plaintiff Lee (pro rata share= 0.006534)	\$3,700.44
(5) Class Counsel Fees and Cost Reimbursement (pro rata share= 0.36736)	\$208,046.90

modification, if there are no objections, or (ii) if there are any objections, the day after the deadline for filing a notice of appeal from the Final Judgment has passed without a timely appeal having been filed; or (iii) if a timely appeal from the Final Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (*Id.*, Exh. C at ¶2.P.)

1 2. Phase Two Distribution: The \$587,500 from Defendants' funding in Phase Two and
2 Three shall be paid using the pro rata percentage shares as set forth above (to be
3 adjusted as necessary based on actual costs, expenses, and fees awarded by the Court).

4 The Parties agreed to two distributions to the Class in order to reduce settlement
5 administration costs and maximize payment to the Class. (Lee Decl., ¶30.)

6 As the Maximum Payment is non-reversionary, no unclaimed amounts will revert to
7 Defendants. To the extent any eligible Class Members submit elections not to participate, the
8 amounts that would otherwise be paid to them under the Settlement will be redistributed to the
9 other Class Members. To the extent that the Court does not approve the full requested attorney's
10 fees, litigation costs, Class Representative Service Award, or Settlement Administration Costs,
11 the Net Settlement Amount will increase accordingly, by the difference between the requested
12 amounts and the amounts awarded by the Court.

13 There will not be a claims process. The members of the Settlement Class will not be
14 required to submit a claim in order to receive a settlement payment. Class Members will be
15 provided with notice of the Settlement, its terms, their estimated individual settlement amount,
16 and their right to opt out, object, or appear at the fairness hearing, as set out in the class notice,
17 and will receive their settlement share without having to submit a claim form.

18 Should any of the payments remain uncashed 180 days after the mailing date, the
19 Settlement Administrator will void any uncashed checks and the total amount of uncashed
20 settlement checks will be paid to *cy pres* recipient Legal Aid at Work, a non-profit organization
21 that furthers the general purposes of the underlying causes of action. (*Id.*, ¶33 and Exh. C
22 [Agreement] at ¶24.)

23 If this Settlement is not finally approved by the Court in full, or is terminated, rescinded,
24 canceled or fails to become effective for any reason, or if the Effective Date does not occur, then
25 no portion of the Maximum Settlement Amount shall be paid.

26 **C. The Allocation Formula.**

27 The allocation formula is set forth in the Settlement Agreement and is intended to
28

1 compensate each Class Member based upon a reasonable estimate of their individualized
2 damages. (Lee Decl., Exh. C [Agreement], ¶14.) First, Plaintiffs' expert Damages Consultant
3 will determine the Net Settlement Amount, estimated as \$702,663.34, by deducting the Class
4 Counsel Award of fees and costs, the Class Representative Service Awards, the PAGA Payments,
5 and the Settlement Administration Costs from the Maximum Settlement Amount. Plaintiffs'
6 Damages Consultant will then calculate each Participating Class Member's Individual Class
7 Payment as follows: (1) for each Participating Class Member, Plaintiffs' Damages Consultant
8 will use the class data based on Defendants' timekeeping, scheduling, and payroll records to
9 calculate the ratio of the individual's estimated alleged unpaid straight time wages, overtime
10 wages, meal and rest break premiums, Labor Code 226 penalties, waiting time penalties, and pre-
11 judgment interest relative to the total for all Participating Class Members, and (2) multiply this
12 ratio by the Net Settlement Amount. For example, assume there were \$1,500,000.00 total
13 estimated damages and penalties for all Participating Class Members. If one Participating Class
14 Member's estimated damages was \$15,000, he or she would have a payment ratio of 0.01. If the
15 Net Settlement Amount were \$700,000, his or her proportionate settlement share of that amount
16 would be \$7,000.00. The Settlement Administrator will distribute the Individual Class Payments
17 to the Participating Class Members from the Net Settlement Amount based on calculations
18 provided by Plaintiffs' Damages Consultant and as reviewed by Defense Counsel. (*Ibid.*)

19 **D. Release.**

20 **1. Class Release and Release by PAGA-Eligible Employees**

21 The Class release is appropriately limited to the facts alleged in the complaint and limited
22 in time to the Class Period. Effective on the date when Defendants fully fund the entire
23 Maximum Settlement Amount and fund all employer-side payroll taxes, all Participating Class
24 Members will release Defendants from any claims that arise out of or are reasonably related to
25 the factual allegations that were alleged or could have been alleged in Plaintiffs' Complaint, from
26 June 3, 2020, through March 14, 2025. (*Id.*, ¶ 27.)

27 Plaintiffs and all of the PAGA-Eligible Employees, regardless of whether they choose to
28

1 exclude themselves from the Class Settlement, shall release Defendants from any and all claims,
2 rights, demands, liabilities, and causes of action arising from June 3, 2023, through March 14,
3 2025, arising out of the California Private Attorneys General Act of 2004, Labor Code §§2698 et
4 seq., based on any of the underlying claims and factual allegations in the complaint. (*Id.*, ¶ 28.)
5 The PAGA Payment to the PAGA-Eligible Employees shall be proportionate to the number of
6 workweeks in which each PAGA-Eligible Employee has been employed during the PAGA
7 Period as compared to the total number of workweeks worked by all of the PAGA-Eligible
8 Employees during the PAGA Period. The payments to all PAGA-Eligible Employees will be
9 made regardless of whether any of them have opted out of the class Settlement.

10 **2. General Release by Named Plaintiffs**

11 In addition to the Class release, Plaintiffs will execute a general release of all known and
12 unknown claims they may have against Defendants arising prior to March 14, 2025, including a
13 waiver under Civil Code section 1542. (*Id.*, ¶ 29.)

14 **E. Class Notice and Administration.**

15 Subject to the approval of the Court, the Parties have jointly agreed to appoint Simpluris
16 to serve as the Settlement Administrator to perform the notice and other settlement administration
17 functions necessary for the Parties to fulfill their settlement obligations including identifying the
18 Class Members and ensuring that their addresses are updated and mailing out the Class Notices.
19 Simpluris is a reputable claims administrator with over 15 years of experience in class action
20 settlement administration. Plaintiffs' Counsel has verified that Simpluris agrees to perform all
21 duties specified in the Agreement. (Lee Decl., ¶ 29.)

22 The Settlement Administrator shall establish a settlement fund that meets the
23 requirements of a Qualified Settlement Fund ("QSF") under U.S. Treasury Regulation section
24 468B-1 and shall have and use its own Employer Identification Number for purposes of
25 calculating payroll tax withholdings and providing reports to state and federal tax authorities.
26 The Parties agree the Settlement Administrator's duties include but are not limited to: identifying
27 Class Members and their addresses and distributing and responding to inquiries about the Notice
28

1 of Proposed Class Action Settlement (“Class Notice”); maintaining and monitoring an email
2 address and toll-free telephone number to receive and respond to Class Member communications;
3 determining the validity of all written Requests for Exclusion from the Settlement; resolving
4 issues related to Individual Settlement Calculations; calculating the Individual Settlement Shares
5 in collaboration with Counsel for Parties and Plaintiffs’ Damages Consultant; providing weekly
6 progress and status reports; preparing declarations required by the Court and suitable for filing in
7 the Court (including a declaration provided at least 14 days before Plaintiffs are required to file
8 their Motion for Final Approval of the Settlement and a final report and compliance declaration
9 following the disbursement of all payments required by this Agreement); issuing the Individual
10 Settlement Share checks and distributing them to Participating Class Members; and issuing
11 checks to Class Counsel for attorney’s fees and costs and the Class Representative Payments to
12 the named Plaintiffs. (Lee Decl., Exh. C [Agreement], ¶¶ 33-44.)

13 **1. Notice Process.**

14 Within twenty (20) calendar days after the Court grants preliminary approval of the
15 Settlement, Defendants will securely provide the Settlement Administrator with the Class Data,
16 including the names, last known addresses and telephone numbers, and social security numbers
17 of the Class Members. Additionally, within fifteen (15) calendar days after the Court grants
18 preliminary approval of the Settlement, Defendants will securely provide the Settlement
19 Administrator and Plaintiffs’ Damages Consultant with the Class Records regarding Class
20 Members’ dates of employment, timekeeping records, work schedules, and pay data. Within
21 fifteen (15) calendar days after receiving the Class Records from Defendants, Plaintiffs’
22 Damages Consultant will provide the calculations for Individual Class Payments and Individual
23 PAGA Payments to Class Counsel and Defense Counsel. Within five (5) calendar days after
24 receiving these calculations, Class Counsel and Defense Counsel shall approve the calculations.
25 After receiving this approval, Plaintiffs’ Damages Consultant will provide the calculations for
26 Individual Class Payments and Individual PAGA Payments to the Settlement Administrator. (*Id.*,
27 ¶17.)
28

1 Within fifteen (15) calendar days after receiving the Individual Class Payments and
2 Individual PAGA Payments calculations from Plaintiffs' Damages Consultant, the Settlement
3 Administrator shall mail notice of the Settlement (copies of the Court-Approved "Class Notice")
4 to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall
5 exercise its best judgment to determine the current mailing address for each Class Member. In
6 the events of returned or non-deliverable notices, the Settlement Administrator shall make
7 reasonable efforts to locate Class Members and re-send the Class Notices. (*Id.*, ¶¶ 35-36.)

8 Pending Court approval, the Parties propose that Class Members may dispute the number
9 of eligible Compensable Workweeks or hourly rates set forth in the Notice by submitting a
10 written and signed statement to the Settlement Administrator within the 45-day Response
11 Deadline. At that point, the Settlement Administrator, in consultation with Class Counsel,
12 Plaintiffs' Damages Consultant, and Defense Counsel, shall make the final decision. A non-
13 Class Member may follow the same procedure to assert they should have been included as a
14 member of the Class. (*Id.*, ¶38.)

15 Pending Court approval, Parties propose that Class Members may object to the settlement
16 by submitting a written and signed objection to the Settlement within the 45-day Response
17 Deadline which includes his or her name and identifying information and any evidence upon
18 which the objection is based. Class Members may appear at the Final Approval Hearing in
19 person or through counsel, with or without having submitted a written objection. The Court will
20 rule on any Objections to the Settlement at the Final Approval Hearing. An objection may be
21 withdrawn at any time. The Settlement Administrator shall provide objections, if any, to Class
22 Counsel and Defense Counsel, and shall also attach any objections to its declaration of due
23 diligence, which is to be filed with the Court prior to the Final Approval Hearing. Any
24 Participating Class Member who files an objection remains eligible to receive monetary
25 compensation from the Settlement. At no time shall any of the Parties, Class Counsel, or
26 Defense Counsel seek to solicit or otherwise encourage or discourage Class Members from
27 submitting a Notice of Objection or filing an appeal from the Final Order and Judgment. (*Id.*,
28

¶39.)

Pending Court approval, Parties propose that Class Members may exclude themselves from the settlement by submitting a written and signed request to the Settlement Administrator within the 45-day Response Deadline, clearly communicating the Class Member wishes to be excluded from the Settlement. The Request for Exclusion should include identifying information and will be accepted by the Settlement Administrator if the Administrator can reasonably ascertain the identity of the person as a Class Member, after which the individual will be referred to as a Non-Participating Class Member. Class Members who submit a Request for Exclusion are ineligible to object to the Settlement. Non-Participating Class Members are not entitled to receive an Individual Class Payment under the Settlement, will not be bound by the Settlement's terms and conditions, and will not release any of the Class Members' Released claims. Non-Participating Class Members who are PAGA-Eligible Employees will still receive Individual PAGA Payments and are precluded from bringing PAGA Released Claims that are released by Plaintiff and the State of California. (*Id.* at ¶¶28, 40.)

2. The Class Notice.

The proposed form of Class Notice will be provided to each Class Member. (Lee Decl., Exh. D.) The Notice plainly provides all relevant information about the Settlement and complies with CRC Rule 3.766 as it includes, *inter alia*:

- The nature of the action and the Settlement, including the Maximum Settlement Payment;
- The amount of fees sought, the amount of costs sought, the service award sought for the named Plaintiffs and the Settlement Administration costs;
- An easily understood statement alerting the Class Members that, unless they opt out of the Class Settlement, the Class Member is releasing and waiving all Released Claims against Released Parties;
- The Class Member's rights, options, and instructions on how to participate in the settlement by doing nothing, how to exclude themselves from the settlement, how

to challenge their individual settlement information, and the scope of the released claims.

- The estimated individualized Class Payment for the Class Member, as determined by Plaintiffs' Damages Consultant using Defendants' timekeeping, scheduling, and payroll records, based upon the estimated alleged unpaid overtime hours, meal and rest break premiums, off-the-clock work, off-the-clock time, Labor Code 226 penalties, and waiting time penalties during the Class Period.

F. Tax Treatment.

As reflected in the Settlement Agreement, the Parties agree that 20% of the settlement amounts paid to the Class Members will be treated as payments in settlement of wage claims, subject to W-2 reporting, with applicable tax deductions and payroll withholdings taken from this portion of the payments. (Lee Decl., Exh. C [Agreement], ¶ 16.) Defendants will pay their portion of payroll taxes, in addition to the Maximum Settlement Payment.

The remaining 80% of the settlement payments to the Class Members will be treated as payments in settlement of claims for penalties and interest sought in the instant action. (*Ibid.*)

The Parties agree that 100% of the settlement payments to PAGA-Eligible Employees will be treated as payments in settlement of claims for penalties sought in the instant action. The non-wage portions of the Individual Settlement Awards and the entirety of the PAGA Payments will be allocated as non-wage penalties and interest, and will be reported to the taxing authorities by means of an IRS Form 1099. (*Ibid.*)

IV. LEGAL ANALYSIS

A. Certification Of The Settlement Class Is Appropriate.

Plaintiffs seek certification pursuant to California Rule of Court 3.769(d) of a provisional settlement class, defined as:

All current and former non-exempt employees who have been employed by Defendants since June 3, 2020, through March 14, 2025.²

² Along with the motion for final approval, Class Counsel will file under seal the final Class list of individual names of Class members who have not opted out.

1 The Settlement Class should be certified for purposes of settlement because (1) the
2 Settlement Class is ascertainable and sufficiently numerous; (2) there exists a well-defined
3 community of interest for the Class; and (3) a class action is a superior method of adjudication
4 for this settlement case.³ Cal. Code Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.* (2012) 53
5 Cal. 4th 1004, 1021; *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435.

6 **1. The Proposed Class is Ascertainable and Sufficiently Numerous.**

7 **a. The Class is Ascertainable.**

8 A class is ascertainable when its members may be readily identified by reference to
9 official records. *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121, 146, *disapproved of*
10 *on other grounds* by *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955; *Rose v. City of*
11 *Hayward* (1981) 126 Cal. App. 3d 926, 92, *disapproved of on other grounds* by *Noel v. Thrifty*
12 *Payless, Inc.* (2019) 7 Cal.5th 955. Settlement Class Members may be easily ascertained in this
13 case by using Defendants' payroll and employment records to identify all hourly employees who
14 worked for Defendants during the class period; indeed, a list of each individual has already been
15 identified through Defendants' records. (Lee Decl., ¶28.)

16 **b. The Class is Sufficiently Numerous.**

17 The numerosity requirement is satisfied because the Settlement Class is of such a size that
18 is "it is impracticable to bring them all before the court." Cal. Code Civ. Proc. § 382. No set
19 number is required by law, but courts generally presume the numerosity requirement is satisfied
20 when the class exceeds forty members. *See, e.g., Rose*, 126 Cal. App. 3d at 934 (finding
21 numerosity requirement satisfied with class of 42). The class satisfies the "numerosity"
22 requirement because there are approximately seventy-one (71) members; this far exceeds the
23 presumptive forty-member threshold, and joinder of all class members would be impracticable.
24 *See, e.g., Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934 (holding that a class of 42
25 members is sufficiently numerous), *disapproved of on other grounds* by *Noel v. Thrifty Payless*,

26
27 ³ Defendants have stipulated to class certification for purposes of settlement only and
28 reserve their right to oppose class certification should this Settlement not become final. (Lee
Decl., Exh. C [Agreement], ¶¶ 5-8.)

1 *Inc.* (2019) 7 Cal.5th 955.

2 **2. There Is a Well-Defined Community of Interest.**

3 A well-defined community of interest exists when there are “(1) predominant common
4 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
5 (3) class representatives who can adequately represent the class.” *Fireside Bank v. Super. Ct.*
6 (2006) 40 Cal. 4th 1069, 1089.

7 **a. Common Questions Predominate in This Class.**

8 Common questions predominate where the legal theory of recovery “is, as an analytical
9 matter, likely to prove amenable to class treatment,” such that the resolution of claims “in a
10 single class proceeding would be both desirable and feasible.” *Brinker*, 53 Cal. 4th at 1021-22
11 (quoting *Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal. 4th 319, 327). A legal challenge
12 to an employer’s uniform policy is “eminently suited for class treatment.” *Id.*, at 1033.

13 This case involves numerous common factual and legal issues, including but not limited
14 to: whether Class Members were denied pay for all hours worked; whether Defendants failed to
15 pay overtime premium wages for all overtime hours worked; whether Defendants failed to
16 provide compliant meal and rest periods under Labor Code sections 226.7 and 512; whether
17 Defendants failed to furnish accurate, itemized wage statements to all Class Members in
18 accordance with Labor Code Section 226; and whether Defendants are liable to the Class
19 Members for derivative waiting time penalties pursuant to Labor Code section 203. These issues
20 are common to the entire class, as all employees, regardless of position, were required to follow
21 common policies and procedures regarding clocking in and out, meal and rest breaks, expenses,
22 etc. Namely, the issues are predicated on Defendants’ uniform employment policies such as their
23 uniform timekeeping and payroll policies and practices.

24 **b. The Named Plaintiffs’ Claims Are Typical of the Class.**

25 Plaintiffs’ claims are typical of those of the rest of the class. Where the named
26 plaintiff(s)’s injuries are of the same nature as other class members and arise from the same
27 general course of conduct, the typicality requirement is satisfied. *See, e.g., Seastrom v. Neways*,
28

1 *Inc.* (2007) 149 Cal. App. 4th 1496, 1502. Here, like the class allegations, Plaintiffs allege that
2 Defendants did not pay them earned wages for all time worked, including overtime and regular
3 hours, that they were required to work off-the-clock, that they were not provided proper meal and
4 rest breaks, and that their time records were falsified. Therefore, both the class and the Named
5 Plaintiffs allege the same claims; the Named Plaintiffs' claims are typical of those of the Class
6 Members, and their interests are aligned with the interests of the Class. *Seastrom*, 149 Cal. App.
7 4th at 1502; *see Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508 (purpose of the
8 typicality requirement is to ensure that interest of named plaintiff aligns with interests of the
9 class).

10 **c. The Named Plaintiffs and Their Counsel Will Fairly and**
11 **Adequately Represent the Class.**

12 The adequacy requirement serves to ensure there are not conflicts of interest between
13 named plaintiffs and class members that go to the "very subject matter of the litigation." *J.P.*
14 *Morgan & Co., Inc. v. Super. Ct.* (2003) 113 Cal. App. 4th 195, 212 (quoting *Richmond v. Dart*
15 *Indus., Inc.* (1981) 29 Cal. 3d 462, 470). A named plaintiff is an adequate class representative so
16 long as the named plaintiff's claim is not "inconsistent with the claims of other members of the
17 class," and the named plaintiff's attorneys are qualified to conduct the litigation. *Ibid.*; *McGhee*
18 *v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450.

19 Here, the Named Plaintiffs are adequate representatives because they have no known
20 conflicts of interest with the Class and because their claims are consistent with the claims of other
21 Class Members. Plaintiffs' Counsel are adequate because they are skilled and experienced in
22 wage and hour class action litigation and have been appointed as Class Counsel in numerous
23 wage and hour class actions. (Lee Decl. ¶¶ 3-14, 25; Declaration of John T. Mullan ISO Motion
24 for Preliminary Approval ("Mullan Decl.").)

25 **3. A Class Action is Superior to Other Available Methods.**

26 Class treatment is superior to individual adjudication of class members' claims when it
27 eliminates the possibility of repetitious litigation and "provides small claimants with a method of
28 obtaining redress for claims which would otherwise be too small to warrant individual litigation."

1 *Richmond*, 29 Cal. 3d at 469 (internal quotation marks and citation omitted). In keeping with
2 this, each Class Member's claim in this case is relatively small, yet each would consume
3 substantial judicial resources if litigated to trial, considering lengthy discovery of employee
4 records, individual employees' hours calculations, individual testimony, and other factors. *See*
5 *Bufile v. Dollar Fin. Group, Inc.* (2008) 162 Cal. App. 4th 1193, 1208. The prosecution of
6 separate actions would also create a risk of inconsistent rulings, which might be contrary to the
7 interests of other class members who are not parties to the adjudications and may substantially
8 impede their ability to adequately protect their interests. It would therefore be inefficient to
9 resolve these claims in separate trials.

10 Courts do not apply as much scrutiny to the superiority factor when class certification is
11 sought for settlement purposes (compared to ongoing litigation), because the case will not
12 proceed to trial, thereby avoiding case management issues related to trial. *Luckey v. Super.*
13 *Ct.* (2014) 228 Cal. App. 4th 81, 94; *Global Minerals & Metals Corp. v. Super. Ct.* (2003) 113
14 Cal. App. 4th 836, 859. In any event, class treatment of this case for settlement purposes is
15 eminently manageable. Individual variation in the quantity of damages incurred can be managed
16 by awarding claims based upon the formula described in the Agreement and investigating Class
17 Members' hours. *See Sav-on Drug Stores*, 34 Cal. 4th at 334 ("Individual issues do not
18 render class certification inappropriate so long as such issues may effectively be managed.").

19 **B. Preliminary Approval of the Class Action Settlement.**

20 **1. Class Action Settlements are Subject to Judicial Review and Approval.**

21 California law favors settlements. *See, e.g., Bush v. Superior Court* (1992), 10 Cal. App.
22 4th 1374, 1382. Axiomatically, class action litigation consumes substantial time and resources,
23 by the parties and the Court alike. Nonetheless, a class action may not be settled without the
24 Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for
25 court approval of a class action settlement: (1) the Court preliminarily approves the settlement;
26 (2) Class Members receive notice as directed by the Court; and (3) the Court conducts a final
27 approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c),
28

1 (e)-(g).

2 Superior Courts have discretion to approve or reject a proposed class action settlement.
3 *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234-35, *disapproved of on*
4 *other grounds by Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. Nonetheless, it
5 is well-established that the Court may not convert the approval hearing “into a trial or rehearsal
6 for trial on the merits [...] [or] to reach any ultimate conclusions on the contested issues of fact
7 and law which underlie the merits of the dispute.” *Officers for Justice v. Civil Serv. Comm’n* (9th
8 Cir. 1982) 690 F.2d 615, 625.

9 Ultimately, the Court must determine whether the settlement is fair, adequate, and
10 reasonable. *See Dunk v. Ford Motor Co.* 9 (1996) 48 Cal. App. 4th 1794, 1801 (describing the
11 “fair, adequate, and reasonable” standard) (citing *Officers for Justice, supra*, 690 F.2d at 625);
12 *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43 (providing that a trial
13 court must approve a class settlement only after determining it is “fair, adequate and
14 reasonable,” considering factors such as the “risk, expense, [and] complexity” of continued
15 litigation) (citations omitted). The Court has broad discretion in determining fairness, but should
16 consider the following:

17 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
18 further litigation, the risk of maintaining class action status through trial, the amount
19 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.

20 *Dunk, supra*, 48 Cal. App. 4th at 1801. These factors are not exclusive; the Court is “free to
21 engage in a balancing and weighing of factors depending on the circumstances of each case.”
22 *Wershba, supra*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give “[due]
23 regard to what is otherwise a private consensual agreement between the parties.” *Ibid.* The
24 inquiry must be limited “to the extent necessary to reach a reasoned judgment that the agreement
25 is not the product of fraud or overreaching by, or collusion between, the negotiating parties.”
26 *Ibid.* (citation and internal quotation marks omitted).

27 At this preliminary approval stage, the Court need only determine that the settlement falls
28

1 within the “range of possible judicial approval.” *See* Herbert B. Newberg & Alba Conte,
2 Newberg on Class Actions § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary
3 approval if there are no “grounds to doubt its fairness or other obvious deficiencies [...] and [the
4 settlement] appears to fall within the range of possible approval.” Manual For Complex
5 Litigation (Third) § 30.41 (1995); *see Dunk, supra*, 48 Cal. App. 4th at 1802. A “presumption of
6 fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
7 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
8 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
9 *supra*, 48 Cal. App. 4th at 1802 (citing Newberg § 11:41). The instant class settlement falls well
10 within the range of approval because there are no grounds to doubt its fairness.

11 **2. The Settlement is the Result of Serious, Informed, Non-Collusive**
12 **Negotiations and the Amount Reflects a Fair Compromise of Claims**
13 **and Risk Factors.**

14 The settlement was the product of extensive arm’s length, intensive negotiations between
15 Parties and subsequently at a mediation facilitated by Jeffery Owensby of Signature Resolution,
16 who has been a well-respected mediator for over a decade after previously working for 37 years
17 as an employment and labor attorney, including as a partner of four law firms. (Lee Decl. at
18 ¶17.) The settlement negotiations, though professional, were adversarial and non-collusive. The
19 settlement reached is the product of substantial effort by the Parties and their counsel. (*Ibid.*)

20 Although Plaintiffs and their counsel believe that the underlying substantive claims are
21 strong, they recognized the potential risk, expense, and complexity posed by potentially
22 protracted litigation, which may result in unfavorable decisions on class certification, summary
23 judgment at trial, summary judgment on the damages awarded, and/or on an appeal that may take
24 several more years to litigate—as well as the large straightforward costs of any such litigation.
25 (*Id.*, ¶18.) In particular, Plaintiffs took into consideration the risk of, *inter alia*, class
26 certification. (*See*, e.g., Lee Decl., Exh. B [MOU], ¶3: “It is Defendants’ position that if the
27 Parties were to litigate the Lawsuit, class certification would be inappropriate because individual
28 issues predominate, among other reasons.”) Additionally, Plaintiffs recognize that their claims

1 faced substantial risk on the merits, including the burden of proof regarding Defendants' pay
2 practices and the difficulties in establishing damages, penalties, restitution, and other relief—
3 especially considering that many relevant records are incomplete. Plaintiffs also took into
4 account Defendants' finite financial resources as a mom-and-pop company operating only two
5 restaurant locations. (*Id.*, ¶19.) For instance, Defendants' limited resources factored into the
6 Parties' agreement that Defendants will fund the Settlement in installments. *See Covillo v.*
7 *Specialty's Cafe* (N.D. Cal., Oct. 25, 2013) No. C-11-00594 DMR, 2013 WL 5781574, at *2
8 (settlement approved where defendant would pay two installments over the course of one year),
9 *Alabsi v. Savoya, LLC* (N.D. Cal., Feb. 6, 2020) No. 18-CV-06510-KAW, 2020 WL 587429, at
10 *1 (settlement approved where defendant would pay three installments over a period of 18
11 months). Meanwhile, Defendants concluded that further defense of these claims would be long
12 and expensive.

13 The resulting Settlement was therefore based on calculations, risk assessment, and non-
14 collusive negotiation; it takes the risks identified above and others into account in arriving at the
15 settlement amounts totaling \$1,175,000. (Lee Decl. at ¶¶17-21.) Class Members will receive
16 significant gross settlement shares on average of approximately \$9,900. Class Counsel
17 estimated the total damages, interest, and penalties, including PAGA penalties, to be around
18 \$2.4 million. The Settlement therefore represents recovery of nearly 49%, a high proportion of
19 the damages suffered by the Class. Further, the Individual Settlement Awards will be
20 calculated on an individualized, *pro rata* basis, to provide a more individualized calculation of
21 damages than is the norm for similar class actions. This Settlement is an excellent result for
22 Class Members given the significant risks they would face if the litigation continued, including
23 the risk that the claims would not be certified, the risk on the merits, and the risk to recovery of
24 significant damages from Defendants.

25 ///

26 ///

27 ///

28

1 **3. The PAGA Allocation is Fair.**

2 The portion of the settlement amount allocated to PAGA claims—\$21,170 or
3 approximately 1.8% of the Total Class Action Settlement Amount—is also well within the range
4 of possible approval and reflects the total recoverable PAGA penalties relative to the total
5 recoverable damages and penalties in the case. In this case, the main driver of damages was
6 Class members’ unpaid straight and overtime wages and meal and rest period premiums. (Lee
7 Decl., ¶26.) Moreover, the PAGA class was relatively small given the size of the employer and
8 limited PAGA period, resulting in low PAGA penalties compared to the non-PAGA damages and
9 penalties. (*Ibid.*)

10 Even if Plaintiffs prevailed on the underlying PAGA claims, a court may reduce an award
11 of PAGA penalties when it would be “unjust, arbitrary and oppressive, or confiscatory” to
12 impose the full amount. Labor Code § 2699(e)(2); *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.
13 Supp. 3d 1030, 1037; *see also York v. Starbucks Corp.* (C.D. Cal. Nov. 1, 2012) No. 8 Civ. 7919,
14 2012 WL 10890355, at *10 (“PAGA’s section 2699(e)(2) provides the Court with the ability to
15 fashion an appropriate penalty in this case that will not offend notions of due process.”).
16 Moreover, the PAGA allocation is higher than what courts have approved in other similarly sized
17 wage and hour class action settlements. *See, e.g., Cruz v. Sky Chefs, Inc.* (N.D. Cal. Dec. 19,
18 2014) No. C-12-2705, 2014 WL 7247065, at *3 (approving PAGA allocation of 0.57% of \$1.75
19 million settlement).

20 Finally, simultaneously with this submission, Plaintiff has provided the Settlement
21 Agreement to the LWDA, which will have the opportunity to provide any feedback or concerns
22 in advance of the Final Approval Hearing. (Lee Decl., ¶31.)

23 **4. The Extent of Pretrial Discovery and Investigation Was Sufficient to**
24 **Permit Preliminary Approval of the Settlement.**

25 Class Counsel thoroughly investigated and evaluated the factual and legal strengths and
26 weaknesses of this case before reaching the settlement. (*Id.*, ¶21.) Prior to mediation, Plaintiffs’
27 counsel conducted interviews with class members in different positions and collected documents
28

1 from the Named Plaintiffs and other employees, including schedules, pay stubs, and time records.
2 (*Ibid.*) The Parties engaged in extensive fact discovery and exchanged document productions,
3 including but not limited to the prospective class list, payroll data, employee handbooks,
4 scheduling data, and audited and unaudited timekeeping and payroll records. In fact, mediation
5 was contingent on Defendants' provision of these documents. The Parties reached settlement
6 through the mediation only after many months of investigation and fact discovery. (*Ibid.*)

7 **5. The Risks Inherent in Continued Litigation Are Great.**

8 The proposed settlement confers a substantial benefit on Class Members, while further
9 litigation would create significant risks and cause additional expense and delay. As noted,
10 Defendants have expressly articulated their position that class certification might be defeated
11 through motion practice. (*See e.g.*, Lee Decl., Exh. B [MOU] at ¶3: "It is Defendants' position
12 that if the Parties were to litigate the Lawsuit, class certification would be inappropriate because
13 individual issues predominate, among other reasons.") If settlement were not achieved,
14 continued litigation of the claims—including complex motion practice regarding class
15 certification—would take a substantial amount of time and possibly confer no benefit on Class
16 Members. (Lee Decl., ¶18.) By contrast, the Settlement will yield a prompt, certain, and
17 substantial recovery for the Class, which also benefits the Parties and the Court. (*Ibid.*) *See*
18 *Bayat v. Bank of the West* (N.D. Cal. Apr. 15, 2015) No. C-13-2376, 2015 WL 1744342, at *4
19 ("Absent settlement, the costs and complexity of this case will certainly increase as motions to
20 dismiss, summary judgment motions, and class certification motions (along with associated
21 discovery) will need to be litigated."). The risks militate strongly in favor of settlement. (Lee
22 Decl., ¶18.)

23 **6. Class Counsel are Experienced in Wage and Hour Litigation.**

24 The litigation attorneys' perspective on settlement is entitled to significant weight in the
25 Court's decision to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980)
26 87 F.R.D. 15, 18, *aff'd*, 661 F.2d 939 (9th Cir. 1981); *Kullar v. Foot Locker Retail, Inc.* (2008)
27 168 Cal. App. 4th 116, 128 (court must take into account "the experience and views of counsel").
28

1 Here, Plaintiffs' Counsel are experienced in wage and hour class action litigation. (Lee Decl.
2 ¶¶ 3-14, 25; Mullan Decl.) Plaintiffs' counsel agree that this settlement is fair and reasonable in
3 light of the nature of the claims, realistic risk adjusted value of damages, complexities of the
4 case, current legal authorities, and uncertainties of class certification and litigation. (Lee Decl.,
5 ¶¶ 18-21.) Given these risks, this settlement is fair, adequate, and reasonable and in the best
6 interests of Class Members and should be preliminarily approved.

7 **7. The Class Notice Plan Conforms to All Applicable Statutes and Rules.**

8 Constitutional due process requires that notice to class members provides sufficient
9 information to make an informed decision to accept or object to a proposed settlement and an
10 opportunity to be heard in the proceedings. *See Mullane v. Cent. Hanover Bank & Trust Co.*
11 (1950) 339 U.S. 306, 314; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 251-
12 52, *disapproved of on other grounds in Hernandez*, 4 Cal. 5th 260. The proposed Notice satisfies
13 these requirements.

14 The proposed Notice informs Class Members of (1) the material terms of the settlement,
15 (2) the exact definition of the Settlement Class, (3) the language and scope of the Release, (4) the
16 proposed fees and costs of Plaintiffs' Counsel and settlement administration, (5) the proposed
17 Class Representative Enhancement Awards to the named Plaintiffs; (6) how Class Members may
18 opt out of or object to the Settlement; (7) details about the court hearing on settlement approval
19 and the opportunity to object; and (8) how Class Members can obtain additional information,
20 including documents related to the settlement. (Lee Decl., Exh. D.) The Notice also informs
21 Class Members that the Final Approval Hearing may be continued to a different date or time or
22 changed to a different location without further notice to Class Members, and that Class Members
23 may contact Class Counsel to inquire about the date, time, and location of the Final Approval
24 Hearing. The proposed Notice also contains information about the allocation formula for
25 Individual Settlement Awards and the tax treatment of the Individual Settlement Awards. (*Ibid.*)

26 The content of the proposed Notice also complies with Rule of Court 3.766(d) in that it
27 contains a brief explanation of the case, including the basic contentions of the Parties, detailed
28

1 information about how to exclude oneself from the Settlement Class, a statement that the
2 settlement will bind all members who do not timely opt out, and a statement that Class Members
3 who do not opt out may enter an appearance through counsel. (*Ibid.*)

4 The procedure for distributing the Notice also meets the requirement that it have “a
5 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Super. Ct.*
6 (1975) 50 Cal. App. 3d 960, 974; *see also Wershba*, 91 Cal. App. 4th at 251. The Notice will be
7 sent via U.S. mail to the last known address of each Class Member, and the Settlement
8 Administrator shall attempt to obtain the correct address for each Class Member whose Notice is
9 returned as undeliverable, including using skip tracing. (Lee Decl., ¶24 and Exh. C [Agreement],
10 ¶36.) If the Settlement Administrator is unable to locate Class Members whose Notices are
11 returned as undeliverable, Plaintiff’s Counsel will also make attempts to locate such Class
12 Members. (Lee Decl., ¶24.)

13 **8. The Attorney’s Fees and Litigation Costs Per the Settlement Are Fair.**

14 At the Final Approval Hearing, Plaintiffs’ counsel will seek reasonable attorney’s fees
15 from the Maximum Settlement Payment in an amount of up to one-third of the Maximum
16 Settlement Payment (calculated as \$391,666.66). (Lee Decl., Exh. C [Agreement] at ¶ 10.) The
17 California Supreme Court has held that fees of up to 1/3 (33.33%) of the common fund are a
18 reasonable percentage for a trial court to award as attorney fees in a class action where a common
19 fund was generated as a result of the case. *Laffitte v. Robert Half International* (2016) 1 Cal. 5th
20 480, 506 (“We therefore agree with the Court of Appeal below that ‘[t]he percentage of fund
21 method survives in California class action cases, and the trial court did not abuse its discretion in
22 using it, in part, to approve the fee request [of 1/3 of the common fund] in this class action’”); *see*
23 *also* Mullan Decl. ¶¶5-22 (setting forth attorneys’ fees and awards in various class actions
24 litigated by Class Counsel). The California Supreme Court further clarified that trial courts
25 “have discretion to conduct a lode-star cross check on a percentage fee, as the court did here; they
26 also retain the discretion to forgo a lodestar cross check and use other means to evaluate the
27 reasonableness of a requested percentage fee.” *Laffitte*, 1 Cal. 5th 480, 506. Class Counsel will
28

1 further address the justifications for their fee request after preliminary approval is granted when
2 they files their motion for final approval of the settlement, including attorney's fees.

3 Additionally, Plaintiffs' Counsel will seek reimbursement from the Total Class Action
4 Settlement Amount of their reasonable and actual litigation costs and expenses up to \$30,000.

5 **9. The Class Representatives' Service Awards Are Fair and Appropriate.**

6 Plaintiffs request a service award payment of \$10,000 to Plaintiff/Class Representative
7 Norma Santizo and \$7,500 to Plaintiff/Class Representative Mimi Lee. (Lee Decl., Exh. C
8 [Agreement], ¶11.) A service (or incentive) fee award to a named class representative must be
9 supported by evidence that quantifies the time and effort expended by the individual and a
10 reasoned explanation of financial or other risks undertaken by the class representative. *See Clark*
11 *v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; *see also Cellphone*
12 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 ("Criteria courts may consider in
13 determining whether to make an incentive award include: (1) the risk to the class representative
14 in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties
15 encountered by the class representative; (3) the amount of time and effort spent by the class
16 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)
17 enjoyed by the class representative as a result of the litigation. (cleaned up and citations
18 omitted.)").

19 Ms. Santizo's award of \$10,000 should be preliminarily approved due to the significant
20 risks she undertook in serving as class representative while still employed with Defendants,
21 potentially jeopardizing her employment. (Santizo Decl., ¶10.) As class representative,
22 Ms. Santizo initially contacted Plaintiff's counsel and explained the wage and hour violations.
23 (*Id.* at ¶6). She spent many weeks gathering documents, including paystubs and time keeping
24 information, for herself and from other class members. She also informed her co-workers about
25 the case and put counsel in touch with class members for interviews. (*Id.*, at ¶¶5-9.) The
26 \$10,000 service award is also consistent with case authorities demonstrating that the payment is
27 within the range of service awards typically awarded to class representatives in similar class
28

actions. *See, e.g., Bond v. Ferguson Ent., Inc.* (E.D. Cal. June 30, 2011) No. 1:09-cv-1662 OWW MJS, 2011 WL 2648879 at *14-15 (approving \$11,250 service award to each of the two class representatives in a meal break class action); *Ross v. US Bank Nat'l Ass'n* (N.D. Cal. Sept. 29, 2010) No. C07-02951, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 493 (approving service awards in the amount of \$12,000 each); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D. Cal. Apr. 22, 2010) No. CV081365, 2010 WL 1687832, at *17 n.8 (“Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of \$20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class.”).

Meanwhile, Ms. Lee’s award of \$7,500 is appropriate considering the amount of work and risk she took on as a former employee. (Mimi Lee Decl., ¶¶4-11.) As the amount reflects, the award acknowledges the amount of time and effort she contributed on behalf of the class, and also acknowledges that as a former employee, she experienced less personal and financial risk than Ms. Santizo.

In the instant matter, a service payment to the Named Plaintiffs is justified based on the services they rendered on behalf of the Class, and the release they are agreeing to in the Settlement, which is broader than those of other Class Members. (Lee Decl., Exh. C [Agreement], ¶29; Santizo Decl., ¶15; Mimi Lee Decl., ¶13.) This enhancement is reasonable in view of the time and effort spent, and the risks undertaken, by the named Plaintiffs who shouldered the burdens of representing the class by themselves.

10. The Court Should Appoint Simpluris as Settlement Administrator.

The Parties propose Simpluris as the Settlement Administrator. Class Counsel sought bids from six well-known settlement administrators and determined that Simpluris was both cost-effective and capable. (Lee Decl., ¶29). In order to minimize settlement administration costs, the Parties agreed to mail out to the Class two distributions of the settlement funds. (*Id.*, ¶30.) Given Simpluris’ experience in similar cases and over 15 years of expertise, Plaintiffs request approval of the Settlement Administrator and its fee, not to exceed \$12,000. (*Id.*, ¶29.)

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V. **CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that the Court grant their motion for preliminary approval of this class action settlement.

DATED: July 22, 2025

Respectfully submitted,

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