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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RIVERSIDE HISTORIC COURTHOUSE

LYLE SINCLAIR, on behalf of himself and others similarly situated,

Plaintiff,

vs.

SUNDOWN ENTERTAINMENT GROUP, INC., a California corporation; and Does 1 through 50, inclusive,

Defendants.

Case No.: CVRI2406741

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Hearing Information

Date:	May 7, 2026
Time:	8:30 a.m.
Department:	1
Judge:	Hon. Harold W. Hopp
Reservation ID:	962908480429
Action Filed:	December 9, 2024

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INTRODUCTION

Plaintiff Lyle Sinclair (hereafter, "Plaintiff") respectfully requests for this Court to preliminarily approve the proposed Class Action and PAGA Settlement Agreement (hereafter, "Settlement")[1] between him and defendant Sundown Entertainment Group, Inc. (hereafter, "Defendant"). The Settlement, which was reached at arm's length by experienced counsel assisted by a highly knowledgeable and experienced mediator, is a fair, adequate, and reasonable compromise of disputed wage and hour claims against Defendant. It provides for a $1 million common fund (with no reversion to Defendant) that will be paid to Class Members with no claim form requirement and results in mean Individual Class Payments of ~$3,003.28 (at ~$43.28 per Workweek). In sum, it is an outstanding result on behalf of a Settlement Class of around 202 hourly restaurant employees in a wage and hour case against a one-location employer.

The operative First Amended Complaint alleges claims under the Labor Code (including PAGA)[2] and the Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*) based on Defendant's alleged violations of statutory overtime, meal and rest period, timely wage payment, recordkeeping and written wage statement, and employee indemnification requirements. Based on these alleged violations, Plaintiff asserts that Defendant is liable for a panoply of unpaid wages, statutory penalties, and civil penalties. Defendant denies all liability, and the propriety of class treatment for non-settlement purposes, and asserts a variety of defenses, including that Class Members waived potential Labor Code violations to the maximum extent permissible, that many Class Members waived their rights to class relief through arbitration agreements, and that a large PAGA penalty award would be improper. In view of the substantial risks both sides faced in this case, they agreed to the Settlement.

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[1] The Settlement is attached to the concurrently Declaration of Louis Benowitz in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Benowitz Decl.") as Exhibit 1 (including sub-exhibits).

[2] Whenever the term "PAGA" is used herein, it is used as a shorthand for the Labor Code Private Attorneys General Act of 2004, as amended in 2024 (Lab. Code § 2698 *et seq.*).

As discussed in detail below, this Court should preliminarily approve the Settlement because: (1) the Settlement Class meets all applicable class certification requirements under California law; (2) the Settlement itself is a fair, adequate, and reasonable of disputed claims; and (3) the Notice Packets (and procedures in connection with them) all comport with this Court's rigorous requirements (and constitutional due process). Based on the foregoing, Plaintiff respectfully requests for this Court to preliminarily approve the Settlement and set a hearing on a Motion for Final Approval of Class Action Settlement.

FACTUAL AND PROCEDURAL BACKGROUND

I. THE OPERATIVE PLEADINGS

Plaintiff filed the original Complaint in this action on December 9, 2024 and commenced the PAGA notice procedure on that same date. (Benowitz Decl., ¶¶ 5-6 & Ex. 2 [PAGA Notice].) Defendant filed its Answer on January 13, 2025. (*Id.*, ¶ 7.) Per a stipulation between the parties, Plaintiff then filed the operative First Amended Complaint on June 23, 2025. (*Id.*, ¶ 8.) In the FAC, Plaintiff asserts causes of action for: (1) unfair competition (Bus. & Prof. Code § 17200 *et seq.*); (2) non-provision of meal and rest periods (Lab. Code § 226.7); (3) unpaid minimum and overtime wages (Lab. Code §§ 1194, 1194.2, 1197); (4) failure to indemnify (Lab. Code § 2802); (5) waiting time penalties (Lab. Code § 203); (6) wage statement penalties (Lab. Code § 226); and (7) civil penalties (Lab. Code § 2698 *et seq.*). (Benowitz Decl., ¶ 8.) Defendant's previously filed Answer was deemed responsive to the FAC per the parties' stipulation. (*Id.*, ¶ 9.)

II. INFORMAL DISCOVERY AND DATA SAMPLING

On July 10, 2025, Plaintiff requested that Defendant informally disclose documents and data to enable Plaintiff to prepare for settlement discussions and mediation, including the number of Class Members and PAGA Employees, the number of PAGA Period Paychecks and Workweeks. (Benowitz Decl., ¶ 10.) Plaintiff also requested a reasonable sample of Defendant's time, payroll, and expense records, and related personnel records consisting of approximately 25% of the total data for the Class Period. (*Id.*) Finally, Plaintiff requested Defendant's written policies applicable to the claims at hand and asked Defendant identify any and all comparable claims against it. (*Id.*) On July 15, 2025, Defendant's counsel sent a Dropbox folder containing the foregoing information and documents requested by Plaintiff. (*Id.*, ¶ 11.) In addition, Defendant provided updated data for workweek and paycheck counts after the initial production and before the end of mediation, and allowed Plaintiff to review exemplar arbitration agreements and class member declarations during mediation. (*Id.*, ¶ 12.)

III. MEDIATION

On August 11, 2025, the Parties engaged in private mediation before JJ Johnston of Johnston Mediation. (Benowitz Decl., ¶ 13.) Although the matter did not settle on that date, ultimately the Parties reached an agreement to settle this matter with the mediator's assistance and executed a long-form settlement agreement. (*Id.*; Settlement, ¶¶ 2.1-2.6.)

OVERVIEW OF THE SETTLEMENT

I. SETTLEMENT CLASS AND PAGA EMPLOYEE DEFINITIONS

The Settlement defines the Settlement Class as, "All persons currently or formerly employed by Defendant in California, as non-exempt, hourly paid employees during the Class Period. It shall be an opt-out class." (Settlement, ¶ 1.4.) The Class Period is from December 9, 2020, to August 11, 2025. (*Id.*, ¶ 1.11.) The "PAGA Employees" are all persons currently or formerly employed by Defendant in California, as non-exempt, hourly-paid employees, during the PAGA Period. (*Id.*, ¶ 1.33.) The PAGA Period is the period from December 9, 2023, to August 11, 2025. (*Id.*, ¶ 1.36.)

II. CORE MONETARY TERMS

Settlement Fund: The term "Gross Settlement Amount" ("GSA") means One Million Dollars and Zero Cents ($1,000,000.00) which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. (Settlement, ¶ 1.22.) The GSA will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator's Expenses. (*Id.*, ¶ 1.11.) The remaining amount after these payments is referred to as the "Net Settlement Amount" ("NSA"). (*Id.*, ¶ 1.28.) Defendant's share of payroll taxes will be paid separately from the GSA. (*Id.*, ¶ 3.1.)

Subject to the terms and conditions of this Agreement and final approval by the Court, the Administrator will make and deduct the following payments from the GSA:

To Plaintiff: Class Representative Service Payment to the Class Representative of not more than $5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). (Settlement ¶ 3.2.1.) Defendant will not oppose Plaintiffs request for a Class Representative Service Payment that does not exceed this amount. (*Id.*) As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. (*Id.*) If the Court does not approve the entirety of the application for the Class Representative Service Payments, Plaintiff shall not have the right to revoke the Settlement and it will remain binding and Released Parties shall not be responsible for paying the difference between the amount requested and the amount awarded. (*Id.*) The Administrator will pay the Class Representative Service Payment using IRS Form 1099. (*Id.*) Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment. (*Id.*)

To Class Counsel: A Class Counsel Fees Payment of not more than 33.33%, which is currently estimated to be $333,333.33 and a Class Counsel Litigation Expenses Payment of not more than $20,000.00. (Settlement, ¶ 3.2.2.) Defendant will not oppose requests for these payments provided that they do not exceed these amounts. (*Id.*) Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. (*Id.*) If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. (*Id.*) Released Parties shall have no liability to Class Counsel or any other Plaintiffs Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. (*Id.*) The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. (*Id.*) Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division of sharing of any of these Payments. (*Id.*)

To the Administrator: An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. (Settlement, ¶ 3.2.3.) The estimated Administration Expenses Payment is $6,500.00, which resulted from obtaining bids from multiple reputable and experienced class action claims administrators. (Benowitz Decl., ¶¶ 14-15 & Ex. 3 [Lawrence Decl., ¶ 22 & Ex. B].)

Class Member and PAGA Employee Payments: "Individual Class Payment" means the Participating Class Member's pro rata share of the NSA calculated according to the number of Workweeks worked during the Class Period. (Settlement, ¶ 1.23.) "Individual PAGA Payment" means the PAGA Employee's pro rata share of 35% of the PAGA Penalties calculated according to the number of PAGA Period Paychecks issued during the PAGA Period. (*Id.*, ¶ 1.24.) The Administrator will disburse the entire NSA without asking or requiring Participating Class Members or Class Members to submit any claim as a condition of payment. None of the GSA will revert to Defendant. (*Id.*, ¶ 3.1.)

Tax Treatment of Payments: 20 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). (Settlement, ¶ 3.2.4.1.) The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form by the Administrator. (*Id.*) The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). (*Id.*) The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms by the Administrator. (*Id.*) Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment and PAGA Employees assume full responsibility and liability for any employee taxes owed on their Individual PAGA Payment. (*Id.*)

No Impact on Employee Benefits: The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members or PAGA Employees (such as 401(k) contributions or bonuses) beyond those specified in the Agreement. (Settlement, ¶ 4.4.4.)

Class Workweeks and PAGA Period Paychecks. Based on a review of its records to date, Defendant estimates there are 202 Class Members who collectively worked a total of 14,018 Workweeks, and 102 PAGA Employees who were issued a total of 3,038 of PAGA Period Paychecks. (Settlement, ¶ 4.1.)

Class Data and PAGA Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data and PAGA Data to the Administrator, in the form of a Microsoft Excel spreadsheet, which may be password protected and uploaded to the Administrator's portal. (Settlement, ¶ 4.2.) To protect Class Members' and PAGA Employees' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data and PAGA Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data and PAGA Data to Administrator employees who need access to the Class Data and PAGA Data to effect and perform under this Agreement. (*Id.*) Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data and PAGA Data omitted Class Member or PAGA Employee identifying information and to provide corrected or updated Class Data and/or PAGA Data as soon as reasonably feasible. (*Id.*) Without any extension of the deadline by which Defendant must send the Class Data and PAGA Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data and PAGA Data. (*Id.*)

Funding of GSA: Defendant shall fully fund the GSA and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (Settlement, ¶ 4.3.)

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Timing of Payments: Within 14 days after Defendant funds the GSA, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. (Settlement, ¶ 4.4.) Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. (*Id.*)

Settlement Checks: The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. (Settlement, ¶ 4.4.1.) The Administrator will cancel all checks not cashed by the void date. (*Id.*) The Administrator will send checks for Individual Settlement Payments to all Participating Class Members and Individual PAGA Payments to PAGA Employees (including those for whom Notice Packets were returned as undelivered). (*Id.*) The Administrator will send checks for Individual PAGA Payments to all PAGA Employees including Non-Participating Class Members who qualify as PAGA Employees (including those for whom Notice Packet was returned undelivered). (*Id.*) The Administrator may send Participating Class Members who are also PAGA Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. (*Id.*)

Returned Checks: The Administrator must conduct a Class Member Address Search for all other Class Members and PAGA Employees whose checks are returned undelivered without a USPS forwarding address. (Settlement, ¶ 4.4.2.) Within 7 days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. (*Id.*) The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. (*Id.*) The Administrator shall promptly send a replacement check to any Class

Member or PAGA Employee whose original check was lost or misplaced, requested by the Class Member or PAGA Employee prior to the void date. (*Id.*)

III. RELEASES OF CLAIMS

Release by Participating Class Members Who Are Not PAGA Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims stated in the Operative Complaint and those based solely upon the facts alleged in the Operative Complaint. (Settlement, ¶ 6.2.) Except as set forth in Section 6.3 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (*Id.*)

Release of PAGA Claim: Plaintiff releases the Released Parties from any and all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA and in the Operative Complaint; Plaintiff does not release the claim for wages or damages of any PAGA Employee unless such PAGA Employee is a Participating Class Member. (Settlement, ¶ 6.3.)

Release by the State of California: The State of California is deemed to release the Released Parties from any and all claims for PAGA penalties arising during the PAGA Period that were described in Plaintiff's pre-filing letter to the LWDA and as alleged in the Operative Complaint. (Settlement, ¶ 6.3.)

Release by Plaintiff: Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under Paragraph 6.2 of the Agreement. ("Plaintiff's Release.") (Settlement, ¶ 6.1.) Plaintiff's Release does not extend to any claims or actions to enforce the Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. (*Id.*) Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (*Id.*)

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Civil Code § 1542, which reads:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

(Settlement ¶ 6.1.1.)

IV. NOTICE PROCESS

No later than three (3) business days after receipt of the Class Data and PAGA Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, and Workweeks in the Class Data, and the number of PAGA Employees and PAGA Period Paychecks in the PAGA Data. (Settlement, ¶ 8.4.1.)

Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data and PAGA Data, the Administrator will send to all Class Members identified in the Class Data, and all PAGA Employees identified in the PAGA Data, via first-class United States Postal Service ("USPS") mail, the Notice Packet with Spanish translation, if applicable substantially in the forms attached to the Settlement as Exhibits A, B, C, and D. (Settlement, ¶ 8.4.2.)

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A. Class Notice

The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member/PAGA Employee, and the number of Workweeks and PAGA Period Paychecks (if applicable) used to calculate these amounts. Before mailing Notice Packets, the Administrator shall update Class Member and PAGA Employee addresses using the National Change of Address database. (Settlement, ¶ 8.4.2.)

Not later than 3 business days after the Administrator's receipt of any Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any forwarding address provided by the USPS. (Settlement, ¶ 8.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet to the most current address obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send Notice Packets to Class Members or PAGA Employees whose Notice Packet is returned by the USPS a second time. (*Id.*)

The deadlines for Class Members' written objections, Challenges to Workweeks (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is remailed. (Settlement, ¶ 8.4.4.) The Administrator will inform the Class Member of the extended deadline with the remailed Notice Packet. (*Id.*)

If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received a Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good faith. in an effort to agree on whether to include them as Class Members. (Settlement, ¶ 8.4.5.) If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under the Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever is later. (*Id.*)

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B. Requests for Exclusion

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). (Settlement, ¶ 8.5.1.) A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. (*Id.*) To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate in Settlement form, attached as Exhibit B to the Agreement, may be used for this purpose but is not required. (*Id.*)

The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. (Settlement, ¶ 8.5.2.) The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. (*Id.*) The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. (*Id.*) If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. (*Id.*) The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge. (*Id.*)

Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement. (Settlement, ¶ 8.5.3.)

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Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Non-Participating Class Members are eligible for an Individual PAGA Payment if they are PAGA Employees. (Settlement, ¶ 8.5.4.)

C. Disputes Over Workweeks and PAGA Period Paychecks

Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members or PAGA Employees whose Notice Packet is re-mailed) to challenge the number of Class Workweeks and PAGA Period Paychecks (if any) allocated to the Class Member or PAGA Employee in the Class Notice. (Settlement, ¶ 8.6.) This is also known as a dispute. (*Id.*) A Workweek and Paycheck Dispute form, attached as Exhibit C to the Agreement, may be used for this purpose but is not required. (*Id.*) The Class Member or PAGA Employee may challenge the allocation by communicating with the Administrator via fax, email or mail. (*Id.*) The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA Period Paychecks contained in the Class Notice are correct so long as they are consistent with the Class Data and PAGA Data. (*Id.*) The Administrator's determination of each Class Member's allocation of Workweeks and each PAGA Employee's allocation of PAGA Period Paychecks shall be final and not appealable or otherwise susceptible to challenge. (*Id.*) The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and PAGA Period Paychecks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges. (*Id.*)

D. Objections

Only Participating Class Members may object to the class action components of the Settlement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment. (Settlement ¶ 8.7.1.)

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Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. (Settlement, ¶ 8.7.2.) A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). (*Id.*) The Objection form attached as Exhibit D to the Settlement may be used for this purpose but is not required. (*Id.*)

Non-Participating Class Members have no right to object to any of the class action components of the Settlement. (Settlement, ¶ 8.7.3.)

E. Uncashed Checks

For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member or PAGA Employee thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subd. (b). (Settlement, ¶ 4.4.3.)

ARGUMENT

I. THE SETTLEMENT CLASS MEETS ALL OF THE REQUIREMENTS FOR CERTIFICATION OF A SETTLEMENT CLASS UNDER CODE OF CIVIL PROCEDURE § 382, RULE OF COURT 3.769, AND APPLICABLE CASE LAW.

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest and questions of law and fact common to the class predominate over questions unique to individual members; (3) the representative's claims are typical of the class' claims; and (4) the representative will fairly and adequately represent the class' interests. (See, e.g., *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Moreover, in the settlement context, the Court can use a lesser standard to determine whether certification is appropriate than in the litigation context (as the primary concern is whether a class is sufficiently cohesive for its claims to be collectively settled, whereas trial certification requires that plus a class that can be managed for trial purposes). (See, e.g., *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 (*Dunk*).) All of these requirements are met here.

A. The Settlement Class Is Objectively Ascertainable Because Its Members May Be Readily Identified from Defendant's Company Records.

A class is ascertainable when it may be readily identified without unreasonable expense or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 [citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579].) Counsel maintains that the Settlement Class is ascertainable because its members may be identified by reference to Defendant's records and Defendant has agreed to share the relevant information to facilitate the settlement process. (Benowitz Decl., ¶ 17.) Thus, the Settlement Class is ascertainable.

B. The Settlement Class Has Sufficiently Numerous Members.

The Settlement Class has sufficiently numerous members to render joinder impractical. No set number is required as a matter of law to maintain a class action. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030.) The California Supreme Court has upheld a class of as few as 10 individuals. (See *Bowles v. Superior Court* (1955) 44 Cal.2d 574, 577-578, 587.) Counsel maintains that it would be impracticable to join roughly 202 employees as parties in a single action instead of using a class procedure and, in counsel's experience, no court has ever balked at certifying a class of this size for settlement purposes. (Benowitz Decl., ¶ 18.) Therefore, the Settlement Class meets the numerosity requirement.

C. The Settlement Class Has a Well-Defined Community of Interest.

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326 (*Sav-On*)) It "does not mandate that class members have uniform or identical claims." (*Capitol People First v. Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 692.) Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Id*. [citing *Sav-On*, 34 Cal.4th at p. 333].)

1. Common questions of law and fact predominate.

To justify certification, the class proponent "'must show ... that questions of law or fact common to the class predominate over the questions affecting the individual members ....'" (E.g., *Arenas v. El Torito Restaurants, Inc.* (2010) 183 Cal. App. 4th 723, 732 [citing *Washington Mut. Bank, FA v. Superior Court* (2001) 248 Cal.4th 906, 913].) In light of the more lenient standard for settlement class certification, the Parties agree that for the purposes of the Settlement only, the claims of the Class Members all stem from the same sources.

Here, Plaintiff asserts the entire Settlement Class was subject to the same or similar employment policies, practices, and procedures at Defendant's single restaurant location. (Benowitz Decl., ¶ 19.) The claims all stem from Defendant's alleged policy-driven failures to pay overtime wages, provide meal and rest periods, indemnify employees for expenses, and related failures to timely pay earned wages and provide accurate wage statements. (*Id*.) Counsel contends these all amount to violations of the Labor Code entitling him and the Settlement Class to a combination of restitution of earned wages, statutory penalties, and civil penalties. (*Id.*)

Counsel contends that common questions include, but are not limited to: (1) whether Defendant had a policy or practice of not paying employees for recorded overtime at legal overtime rates; (2) whether Defendant failed to provide employees with all required meal and rest periods; (3) whether Defendant had failed to implement a mechanism for paying premium wages when meal or rest period violations occurred; (4) whether Defendant failed to implement a mechanism for reimbursing employees for cellular telephone expenses; (5) whether Defendant is liable for knowing and intentionally providing inaccurate wage statements, or willfully failing to timely pay earned wages upon termination, as a result of allegedly defective overtime and break policies; and (7) whether Defendant engaged in unfair competition within the meaning of Business and Professions Code § 17200, *et seq*. (Benowitz Decl., ¶ 20.) Counsel contends the answers to these questions are common and resolve liability on Class Members' claims and suffice for commonality purposes in the settlement context. (*Id.*)

2. Plaintiff is typical of the Settlement Class.

The class representative must be similarly situated to the rest of the purported class. (See *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46 [stating "it has never been the law in California that the class representative must have identical interests with the class members. The only requirements are ... that the class representative be similarly situated"]; see also Newberg, § 3:29 [typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class"].) Counsel contends that Plaintiff's claims are typical for the purposes of certifying the Settlement Class. (Benowitz Decl., ¶ 21.) Plaintiff asserts that he, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work and meal and rest periods. (*Id.*) Because counsel contends that Plaintiff was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all Class Members. (*Id.*) Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Settlement Class. (*Id.*)

3. Plaintiff will adequately represent the Settlement Class.

The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.) In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

First, counsel has provided the Court with declarations to show that they are adequate to represent the Settlement Class and that they have significant experience in employment litigation generally, wage and hour and employment-related class action litigation specifically. (Benowitz Decl., ¶¶ 22-31; Bhatia Decl., ¶¶ 1-9.) Counsel also have no conflicts of interest with the Settlement Class. (Benowitz Decl., ¶ 32; Bhatia Decl., ¶ 9.) Thus, Plaintiff's counsel are adequate to serve as Class Counsel.

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Second, counsel contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. (Benowitz Decl., ¶ 34.) Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as well as exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. (*Id.*) Thus, Plaintiff is adequate to serve as settlement class representative.

Accordingly, this Court should find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under Code of Civil Procedure § 382.

D. Class Treatment Is the Superior Means of Adjudication.

Counsel further contends that a class action is also superior to other means adjudicating the issues in this action. (Benowitz Decl., ¶ 35.) The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. (*Id.*) In view of the theoretical alternatives that proposed class members could potentially utilize— representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)— a class action is plainly superior to all of them. (*Id.*) Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

II. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE COMPROMISE OF DISPUTED WAGE AND HOUR CLAIMS.

A. Applicable Legal Standards.

A class action settlement requires court approval. Rule of Court 3.769 provides three steps for approval: (1) preliminary approval after submission of a written motion for preliminary approval, the proposed class settlement, and the proposed class notice; (2) issuance of notice of settlement to class members; and (3) a final settlement approval hearing where class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. The decision to approve or reject a class settlement is committed to the Court's broad discretion. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128 (*Kullar*).) The decision to approve a settlement may be reversed only upon a showing of "clear abuse of discretion." (*Id.*)

B. The Settlement Is Presumptively Fair.

In assessing class action settlement approval, a court evaluates if the settlement process has certain indicia of fairness. A "presumption of fairness exists where (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Kullar*, 168 Cal.App.4th at p. 128 [quoting *Dunk*, 48 Cal.App.4th at p. 1794].)

The Settlement satisfies all of these factors. The Settlement resulted from thorough, arms' length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendant's estimated exposure.

Here, in connection with the mediation, Plaintiff obtained copies of Defendant's applicable policies, a large sampling of pay records, PAGA Period Paychecks, and total Workweeks. (Benowitz Decl., ¶ 36.) Based on this information, counsel prepared detailed exposure estimates in advance of the mediation with an outside consultant's assistance. This analysis showed that Defendant's maximum exposure for restitution and penalties to be approximately $4,716,952.83 (consisting of $212,928.17 in unpaid overtime wages, $253,024.90 in wages for unpaid time, $854,484.42 in meal period premiums, $982,983.78 in rest period premiums, $293,400.00 in wage statement penalties, $433,254.15 for waiting time penalties, $140,080.00 in unreimbursed expenses, and $1,783,800.00 for civil penalties). (*Id.*, ¶¶ 36-47 & Ex. 4) Counsel calculated these amounts based on the number of Workweeks and

PAGA Pay Periods provided by Defendant and an outside consultant's analysis of the sample data. (*Id*.)

Counsel is aware of only two significant awards under the PAGA in contested proceedings, both issued by federal district courts. PAGA penalty awards are often small even for egregious, intentional violations of the Labor Code. (Benowitz Decl., ¶ 48.) For instance, on October 24, 2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only $50.00 (*Shields v. Security Paving Company*, *Inc.*, Los Angeles Superior Court, Case No. BC492828). (Benowitz Decl., ¶ 48.) Further, in *Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529, the Court of Appeal affirmed judgment which provided for a PAGA penalty of only $5 per pay period for meal period violations. (Benowitz Decl., ¶ 48.) A similar result could occur here. (*Id*.)

Plaintiff's initial estimates do not realistically account for the risks outlined below or the risk that a class will not be certified. Thus, a settlement for $1,000,000.00 is fair and reasonable.

C. The Settlement Satisfies the *Kullar* Approval Factors.

The *Kullar* case sets forth several factors a court should consider in determining whether to approve a class settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (*Kullar*, 168 Cal.App.4th at p. 128.) The Settlement satisfies each of these factors.

1. Evaluation of Plaintiff's case versus risks of continued litigation.

a. Risks associated with arbitration agreements and the similar potential for Defendant to seek releases from Class Members.

The arbitration agreements entered into between Defendant and Class Members present major risks to the Settlement Class. (Benowitz Decl., ¶ 52.) While arbitration agreements do not extinguish a plaintiff's ability to bring representative PAGA claims, they do extinguish class claims when enforced. (See, e.g., *Adolph v. Uber* (2023) 14 Cal.5th 1104, 1123-1124 [holding that aggrieved employees do not lose standing to pursue representative PAGA claims where compelled to arbitrate individual PAGA claims]; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 366, 391 [overruling earlier precedent and upholding class waiver while preserving representative PAGA claim].) In turn, arbitration agreements give rise to scenarios where PAGA is the only vehicle for obtaining non-individual relief.

Here, Defendant sought and obtained arbitration agreements from Class Members after the filing of this lawsuit. (Benowitz Decl., ¶ 53.) While Plaintiff himself never signed one, Defendant represented at mediation that employees accounting for the majority of Class Members' Workweeks had. (*Id.*) Counsel reviewed exemplar copies of the arbitration agreement and concluded a very high likelihood that those agreements would be enforced under generally applicable California law on unconscionability. (*Id.*) While this still allowed for the possibility of some certified trial class, the best-case scenario would be a class with fewer than half as many Workweeks along with a representative PAGA claim. (*Id.*) In turn, the arbitration agreements Defendant obtained created a tremendous risk of Plaintiff not being able to recover more a fraction of the wages at issue and some amount of PAGA penalties. (*Id.*)

Similarly, counsel considered the risk that Defendant would obtain release agreements from absent Class Members. (Benowitz Decl., ¶ 54.) At least before class certification, an employer enjoys the right to settle absent Class Members' disputed wage claims individually without counsel in this case having a say about it. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 803.). (Benowitz Decl., ¶ 54.) While counsel believes that this also would have required Defendant to pay some of the wages alleged in this case unconditionally based on the absence of a good faith dispute (namely, the overtime wages based on recorded time), the parties strongly disagree on that issue and there are certainly claims alleged in this case that would have remained subject to good faith dispute. (*Id.*) Given that Defendant still could have paid the recorded the overtime wages of ~$212,928.17 and then sought releases for low dollar amounts, this presented another major risk to the Settlement Class and is reason for discounting from the maximum estimated exposure. (*Id.*) This is especially so given that Defendant still had this weapon in its toolchest even if Plaintiff were able to stop the arbitration agreements from being enforced. (*Id.*)

Therefore, Defendant obtaining post-filing agreements from Class Members of various kinds created the distinct possibility that most of the maximum exposure would never be more than theoretical. (Benowitz Decl., ¶ 55.)

b. Risks associated with meal period claims.

There are risks to Plaintiff's meal period claims. (Benowitz Decl., ¶ 56.) While Defendant's records showed an extremely high instance of employees not clocking out for meal breaks before this lawsuit, an employee does not need to take a meal break so long as it is provided. (*Id.*) Thus, while there was a lot of presumed meal period liability in Defendant's records, Defendant would have submitted large numbers of declarations from employees stating that they never wanted to take meal periods during their shifts and that they would rather keep working. (*Id.*) While Plaintiff contends that defects in Defendant's written policies and procedures, as well as the enormous incidence of employees not clocking out for breaks would have been enough for at least class certification, it still might not have been enough for liability given that employers have the right to submit evidence rebutting presumptive meal period violations under *Donohue v. AMN Services LLC* (2021) 11 Cal.5th 58, 78. (Benowitz Decl., ¶ 56.) Such evidence could be bad for class treatment because it could either show the existence of individualized issues warranting a denial of certification (or later decertification of a certified class). (*Id.*) It could also operate to diminish recoverable damages for a certified class. (*Id.*) While Plaintiff would have attempted to present defective policy documents as a clear-cut case under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1033 and progeny, there is no guarantee that applying the full array of potentially applicable meal period class action precedent from California appellate courts would have yielded such clean results. (Benowitz Decl., ¶ 56.) Thus, the risks associated with meal period warrant discount for settlement purposes.

c. Risks associated with rest period claims.

The rest period claims have all of the same risks as the meal period claims. (Benowitz Decl., ¶ 57.) While Plaintiff would point to facially defective policy documents to support certification and liability, Defendant would present contrary accounts of actual working conditions from various Class Members. (*Id.*) While Plaintiff would attack these declarations for all the usual reasons people attack declarations from current employees (i.e., they are more likely to sign dishonest accounts of their working conditions to appease their employer and keep their jobs), doing so would be expensive, time-consuming, and risky. (*Id.*) In essence, Plaintiff would have needed to take a series of smaller depositions to prove that employees who already said that they do not have claims for all sorts of reasons actually do have claims after being cross-examined about their circumstances. (*Id.*) This would have been expensive and risky—and might have ultimately done nothing of value for Class Members (as these are some of the very people recovering the most in this case). (*Id.*) Moreover, because there are no records of rest periods, proving violations on a class-wide basis effectively hinges on defective written policies taking precedence over anything not put in writing that Class Members claim is their actual reality. (*Id.*; see *Duran v. U.S. Bank National Assn.* (*Duran*) (2014) 59 Cal.4th 1, 31 [explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."].) All things considered, obtaining a certain recovery versus taking the risk that evidence will pan out supports the fairness of the Settlement.

d. Risks associated with minimum wage and overtime claims.

These claims had multiple components: an off-the-clock work component for things such as meetings, preliminary, and post-shift tasks; and an on-the-clock component attributable to paying overtime wages at straight time rates. (Benowitz Decl., ¶ 58.) While the latter gives rise to far fewer risks than the former, the latter was also far more limited in scope. With respect to the off-the-clock time, Defendant contended that Plaintiff was an outlier and most (if not all) employees knew that they were supposed to be paid for said time (and would be on the clock for it). (*Id.*) If true, this would result in individualized issues galore for off-the-clock time, as there was no uniform policy or practice Plaintiff was able to identify with respect to it. These considerations would have been problematic for both certification and liability purposes, in that there would have been individualized issues as to liability, and difficulties in proving liability (as, absent a clearly defective policy or practice, showing actual or constructive knowledge of off-the-clock work becomes more difficult). (*Id.*)

With respect to recorded overtime, the biggest issues were that it was not especially common and that there were plenty of employees who always worked shorter shifts. (Benowitz Decl., ¶ 59.) While it would have presented few problems with respect to class certification or liability, there is a major risk that Defendant would have unconditionally paid any moneys owed for recorded overtime to the employees (it had already paid for the time at straight-time rates) and sought releases under *Chindarah* with respect to every other claim for a nominal additional amount. (*Id.*) Thus, while likely to result in class wide liability, this particular claim may very well have been a vehicle for Defendant to pick off Class Members for much smaller amounts than the Settlement affords. (*Id.*) This risk would have been devastating to the Settlement Class and shows why reaching the Settlement was the best way of managing it.

This is because an employer enjoys the right to settle disputed wage claims individually, without the consent or involvement of counsel, even when a class action lawsuit concerning those same claims has already been filed. (Benowitz Decl., ¶ 60; see *Chindarah*, 171 Cal.App.4th at p. 802.) Thus, Defendant could have launched a "pick off" settlement campaign to pursue individual release agreements from the Class Members, thereby potentially narrowing the size of the Settlement Class – 202 members - until it is no longer numerous enough for class certification. (Benowitz Decl., ¶ 60.) Plaintiff, then, may not have sufficient number of employees to represent. This led to a significant reduction of claim valuation. (*Id.*)

e. Risks associated with failure to indemnify claim.

There is a risk that the Court may consider Plaintiff's claims as to Defendant's alleged failure to indemnify business expenses to be individual in nature and thus decline to certify a class. (Benowitz Decl., ¶ 61.) Plaintiff alleges that Defendant required Plaintiff and the Class Members to use their personal items including cellular phones and would require them to reimburse orders with customer complaints from tips or other personal funds. (*Id.*) Defendant obtained declarations denying the existence of any such practice and, given that there is no realistic way of identifying records of orders Class Members personally reimbursed Defendant for when done in cash, this claim would have been nearly impossible to certify for class treatment.

(*Id.*) As such, there is a risk that the Court may consider Plaintiff's claims to be individual in nature and unfit for class certification outside of the settlement context.

f. Risks associated with statutory penalties claims.

With respect to Labor Code §§ 203 and 226(e) penalties, these claims were wholly derivative of the underlying claims for unpaid wages. (Benowitz Decl., ¶ 62.) Defendant's pay stubs had no violations on their face other than ones arising from alleged failures to pay for time, failures to pay overtime wages on recorded time, and failures to pay meal and rest period premiums. (*Id.*) As the California Supreme Court's most recent decision in *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056 (a case that has made three separate trips to the California Supreme Court over the years) shows, derivative statutory penalties under Labor Code §§ 203 and 226 are highly fact-specific, could yield different liability findings at different points in time based on the state of the law, and are highly uncertain. (Benowitz Decl., ¶ 62.) While Plaintiff asserts that Defendant lacked any good excuse for not paying the various category of wages here, and could meet the scienter requirement, there is enough uncertainty as to whether a small employer who had never been sued in a class action before this case would be held liable for these penalties on a derivative basis. (*Id.*)

g. Risks associated with PAGA claim.

The PAGA not only presents the same risks with respect to liability as the underlying Labor Code violations, but also presents risks unique to PAGA—especially in view of the 2024 amendments to the statute. (Benowitz Decl., ¶ 63.) Here, counsel estimated potential PAGA exposure of ~$1,783,800.00 based on the following assumptions: (1) that each PAGA Employee worked off-the-clock, was denied overtime, and suffered both meal and rest period violations during each PAGA Pay Period during which the employee worked; (2) that the Court would allow for multiple penalties based on the same conduct (i.e., stacking) where not prohibited under amended PAGA; (3) that penalties for employee expense reimbursement would be too individualized to be recoverable; (4) that penalties for late wage payment and pay stub violations would not be recoverable under amended PAGA; (5) that the Court would calculate PAGA penalties based on the default amounts and not the higher amounts for intentional violations; (6)

that the Court would not apply any of the new bases provided for under amended PAGA for reducing penalties based on specific employer actions; and (7) that the Court would not lower the amount of any penalty award in its discretion under the statute. (*Id.*) This set of assumptions highlights the extent of risk associated with this PAGA claim, with a likely best-case scenario being that the Court would award PAGA penalties on a representative basis for at least some of the violations, discount said penalties for a variety of reasons, and deem Plaintiff a prevailing party under PAGA. (*Id.*)

First, there is a significant risk that Plaintiff would be unable to prove that PAGA Employees suffered every alleged violation discussed above during every PAGA Pay Period. (Benowitz Decl., ¶ 64.) For the recorded overtime and meal period claims, the data analyzed showed recorded overtime in 43.55% of Workweeks and 56.2% of all workdays exceeding six hours. (*Id.*) While this leaves open the possibility that there could be overtime and meal period violations during most PAGA Pay Periods (in that violations occurring around half the time could occur at least once during most biweekly pay periods), it creates a likelihood that the raw penalty exposure is less than the calculations estimate. (*Id.*)

This same risk applies to the off-the-clock and rest period claims. (Benowitz Decl., ¶ 65.) For the off-the-clock meeting time claim and the rest period claim, there are no records to prove the violations (aside from data showing that 90.3% of shifts were 3.5 or more hours and required provision of a rest period). (*Id.*) In addition, Defendant would likely be able to present numerous witnesses with contrary testimony. Evaluating that evidence would require a large number of non-party depositions to evaluate the declarants' veracity (which is also true for meal periods and maybe true for recorded overtime). (*Id.*) Thus, there is significant uncertainty as to whether Plaintiff could even establish the raw exposure calculated as a starting point before any other conceivable reduction. (*Id.*)

Second, Plaintiff's calculation methodology uses some degree of "stacking" (i.e., awarding penalties for the violation of different Labor Code provisions based on the exact same conduct. (Benowitz Decl., ¶ 66.) Amended PAGA expressly forbids penalties for failures to pay wages at termination, failures to pay wages during employment, and failures to provide compliant wage statements unless the violations are knowing and intentional. (*Id.*, ¶ 66; Lab. Code § 2699, subd. (i).) While amended PAGA leaves open the possibility of "stacking" outside of these specific scenarios, a court may very well apply the reasoning of this provision beyond its terms and deny stacked penalties. (Benowitz Decl., ¶ 66.) For example, a failure to pay overtime is a violation of Labor Code §§ 510 and 1194, thus making it possible to recover PAGA penalties for violations of both statutes. (Benowitz Decl., ¶ 66.) While two federal district court decisions held that "stacking" PAGA penalties in this fashion may be appropriate to determine the amount in controversy for purposes of removal jurisdiction, counsel is not aware of any California court awarding a plaintiff multiple PAGA penalties for the same violation for the same pay period under different Labor Code provisions. (Benowitz Decl., ¶ 66.) This may be because PAGA does not provide for what many employers characterize as claim splitting and not merely stacking. (*Id.*) In turn, there is a major risk that this Court could reduce the universe of potentially recoverable PAGA penalties on this basis. (*Id.*)

Third, it was highly unlikely that the Court would ever grant more than the default penalty amounts against Defendant. (Benowitz Decl., ¶ 67.) While amended PAGA eliminates the initial/subsequent violation language and allows a first-time violator to be held liable for higher penalty amounts, it sets a very high bar: a judicial determination that "the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive." (*Id.*; Lab. Code § 2699, subd. (f)(2)(B)(ii).) This is the same standard that applies for punitive damages and requires proof of one of the following:

> (1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
>
> (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.
>
> (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

(Benowitz Decl., ¶ 67; Civ. Code § 3294, subd. (c)(1)-(3).)

Considering that Defendant had never been a defendant in a previous wage and hour class or PAGA action, and that it updated its policies and practices in response to this lawsuit with the assistance of highly competent counsel, establishing the requisite scienter would be a major uphill battle. (Benowitz Decl., ¶ 67.) Moreover, even if the Court were to make such findings, there is nothing to stop the Court from still awarding less than even the default amounts as its final determination. (*Id.*)

Fourth, the Court's ample discretion over penalty amounts was a major risk. Critically, PAGA gives courts discretion to award less than the default—let alone maximum—penalty amounts. (Benowitz Decl., ¶ 68; Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award].) As set forth above, Defendant has posed plausible defenses to most of the Labor Code claims underlying Plaintiff's PAGA allegations. (Benowitz Decl., ¶ 68.) Thus, the PAGA claims likewise face significant uncertainty. (*Id.*) There is a risk that the Court would consider even the default amounts confiscatory. (*Id.*) This is particularly so considering Defendant operates a one-location restaurant in the Coachella Valley and recently withstood the COVID-19 pandemic, which limited the operations of all restaurants with indoor dining for nearly an entire year (and denied them a major revenue stream).[3] (*Id.*) This is a major factor because Defendant operates an restaurant that has been open for decades where the restaurant itself is a major part of the customer experience. (*Id.*)

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[3] Courts routinely consider a defendant's financial condition in assessing the reasonableness of a settlement. (E.g., *Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 [the financial condition of defendant predominated in assessing the reasonableness of settlement]; *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 [uncertainty concerning defendant's financial stability "strongly supports the reasonableness of the settlement"].)

Fifth, Plaintiff risked Defendant invoking the generous penalty reduction provisions in amended PAGA to reduce its exposure. (Benowitz Decl., ¶ 69.) These provisions provide for a reduction as high as eighty-five percent (85%)[4] Defendant were able to show it took "all reasonable steps" to be in compliance with the Labor Code before receiving the PAGA Notice or by up to 70%[5] if it took "reasonable steps" within sixty (60) days after receiving notice under PAGA. (*Id.*) Amended PAGA defines "reasonable steps" to include, without limitation, whether the employer did one or more of the following (or took other steps not specifically enumerated):

> Conducted periodic payroll audits and took action in response to the results of the audit, disseminated lawful written policies, trained supervisors on applicable Labor Code and wage order compliance, or took appropriate corrective action with regard to supervisors. Whether the employer's conduct was reasonable shall be evaluated by the totality of the circumstances and take into consideration the size and resources available to the employer, and the nature, severity and duration of the alleged violation.

(Lab. Code, § 2699, subd. (g)(2).)

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[4] Lab. Code. § 2699, subd. (g)(1) states,

> Prior to receiving the notice of violation required by Section 2699.3, or prior to receiving a request for records pursuant to Section 226, 432, or 1198.5 from the aggrieved employee or the employee's counsel, the person alleged to have committed the noticed violation has taken all reasonable steps to be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action pursuant to this part shall not be more than 15 percent of the penalty sought under subdivision (a) or (f).

[5] Lab. Code. § 2699, subd. (h)(1) states,

> If within 60 days after receiving the notice of violation required by Section 2699.3, the person alleged to have committed the noticed violation has taken all reasonable steps to prospectively be in compliance with all provisions identified in the notice, the civil penalty that may be recovered in a civil action under this part shall not be more than 30 percent of the penalty sought under subdivision (a) or (f).

Applying the foregoing standards of amended PAGA, there is some risk that Defendant could show that it took "reasonable steps" to comply with the Labor Code prior to receiving Plaintiff giving notice under PAGA and can most certainly prove taking extensive steps to address alleged deficiencies after receiving notice under PAGA. (Benowitz Decl., ¶ 69.) Since the inception of this action, Defendant has retained highly competent defense counsel and has likely been counseled to take these remedial steps to mitigate PAGA penalty exposures. (*Id.*) Given these risks, including the risk that the Court could allow this kind of reduction even where an employer does not follow the letter of the law under these provisions (as the Court still has discretion over the penalty amounts), a substantial discount from the baseline PAGA exposure was wholly warranted. (*Id.*)

Further, Defendant might have been able to persuade the Court to dismiss some or all aspects of the PAGA claim due to manageability considerations. (Benowitz Decl., ¶ 70.) In *Ortiz v. CVS Caremark Corp*. (N.D. Cal. 2014) 2014 WL 1117614, the court dismissed a PAGA claim because it was unmanageable. (*Id.* at pp. *3–4.) The *Ortiz* court cited the "multitude of individualized assessments" that case would have required in ordering dismissal. (*Id.* at p. *4.) Several other courts have adopted *Ortiz*, and dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved individuals whose claims require individual assessments. (See, e.g., *Litty v. Merrill Lynch & Co*. (C.D. Cal. 2014) 2014 WL 5904904, at p. *3; *Bowers v. First Student, Inc*. (C.D. Cal. 2015) 2015 WL 1862914, at p. *4; see also *Stafford v. Dollar Tree Stores, Inc*., (E.D. Cal. 2014) 2014 WL 6633396, at pp. *2–*4 [bifurcating trial of plaintiff's claim from representative claims: "in light of the number of potential aggrieved employees, judicial economy favors deferring the representative portion of the PAGA claim"]; *Amey v. Cinemark USA Inc.* (N.D. Cal. 2015) 2015 WL 2251504, at p. *16.)

The risk of an unmanageable trial is heightened in a representative PAGA claim because the burden of proof rests with the plaintiff to establish violations of the Labor Code "with respect to each and every individual on whose behalf he seeks to recover civil penalties." (Benowitz Decl., ¶ 70; *Molina v. Dollar Tree Stores, Inc.*, (C.D. Cal. 2013) 2013 U.S. Dist. LEXIS 138642, at pp. *33-34; *Hibbs-Rines v. Seagate Techs, LLC* (N.D. Cal. 2009) 2009 WL 513496, at *4.)

Moreover, in a PAGA case the plaintiff must prove liability with respect to "each and every individual" through representative evidence – but without sacrificing the defendant's due process right to present proof of their affirmative defenses. (E.g., *Elkins v. Superior Court*, (2007) 41 Cal.4th 1337, 1357; *Walmart Stores, Inc. v. Dukes* (2011) 131 S.Ct. 2541, 2561; *Duran*, 59 Cal.4th at pp. 33-34.) Plaintiff is required to establish a violation of the Labor Code with respect to "each and every" one of the approximately 102 PAGA Employees. (Benowitz Decl., ¶ 70.) The Court could find that this is an impossible task and require the PAGA Employees to bring individual claims instead of allow a global claim to proceed. (*Id.*)

Finally, the settlement of PAGA penalties in the sum of $25,000.00, of which 65% ($16,250.00) will be paid to the LWDA and 35% ($8,7500.00) will be distributed to the PAGA Employees, is reasonable and appropriate under the circumstances. (Benowitz Decl., ¶ 71.) The parties negotiated this amount in good faith consistent with counsel's experience in past combined class and PAGA settlements and what other courts have done. (*Id.*; see, e.g., *Chu v. Wells Fargo Investments*, *LLC* (N.D. Cal. 2011) 2011 WL 6724581 [approving PAGA payment of $7,500 to LWDA out of $6.9 million common fund].)[6]

2. Presence of government participant.

As required under Labor Code § 2699, subd. (l)(2), Plaintiff provided notice of this Settlement to the LWDA. (Benowitz Decl., ¶ 72 & Ex. 5 [Upload Confirmation].)

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[6] Several other cases illustrate this same point. (E.g., *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., 2013) 2013 WL 3541217 [approving PAGA payment of $7,500 to LWDA out of $1.25 million common fund settlement]; *Hopson v. Hanesbrands, Inc.* (N.D. Cal. 2008) 2008 WL 3385452, at p. *1 [approving PAGA settlement of 0.3% or $1,500]; see *Nordstrom Com*. Cases (2010) 186 Cal.App.4th 576, 589 [approving class settlement and release that allocated $0 to PAGA claim]. Courts have also approved PAGA components of class action settlements for $20,000 or less. (E.g., *Hicks v. Toys 'R' Us–Delaware, Inc.*, (C.D. Cal. 2014) 2014 WL 4703915, at p. *1 [approving $5,000 PAGA payment in a case involving $4 million settlement] *Franco v. Ruiz Food Prods., Inc.* (E.D. Cal. 2012) 2012 WL 5941801, at p. *14 [approving PAGA penalties of $10,000 as part of $2.5 million settlement]; *Garcia v. Gordon Trucking* (E.D. Cal. 2012) 2012 WL 5364575, at p. *3 [approving PAGA payment of $10,000 as part of $3.7 million settlement].)

3. Reaction of Class Members to the Settlement.

If the Settlement is preliminarily approved, Class Members will be provided with the Class Notice and be given an opportunity to object. The parties' proposed notice fully complies with Rules of Court 3.766(d) and 3.769, subd. (f) and will allow Class Members to make informed responses to the Settlement.

Based on all of these considerations, the Settlement represents a fair, adequate, and reasonable compromise amount for these claims and warrants this Court's approval consistent with its duty to protect absent persons. (See, e.g., *Laguna v. Coverall N. Am., Inc.* (9th Cir. 2014) 762 F.3d 918, 923-926.)

<u>III. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY COMPENSATES CLASS MEMBERS AND PAGA EMPLOYEES BASED ON THE LIKELY EXTENTS OF THEIR POTENTIAL INJURIES.</u>

The Individual Settlement Payments will be paid to each Settlement Class Member based on his or her Workweeks during the Class Period compared to the total number of Workweeks during the entire Class Period. (Settlement, ¶ 1.23.) This method compensates Class Members based on the likely extent of their potential injuries, in that Settlement Class Members who worked for Defendant longer likely would have been subject to more alleged violations. (Benowitz Decl., ¶ 73.) This method is fair, adequate, and reasonable. (*Id.*)

Under the Settlement, each PAGA Employee will receive an Individual PAGA Payment calculated as a *pro rata* distribution of 35% of the PAGA Penalties proportionate to the number of paychecks he or she had with Defendant during the PAGA Period, compared to the total of all paychecks of all PAGA Employees during the PAGA Period, as reflected by Defendant's records. (Settlement, ¶ 1.24.) Defendant represented that there are 14,018 Class Period Workweeks when negotiating the Settlement (*id.*, ¶ 4.1), which yields a value of $43.28 based on the estimated NSA (i.e., $606,666.67/14,018 = $43.28). (Benowitz Decl., ¶ 74.) It is anticipated that the average Individual PAGA Payment will be $85.78 ($8,750.00/102 = $85.78) with each of PAGA Pay Period having an estimated value of $2.88 ($8,750.00/3,038). (*Id.*) Plaintiff's Individual PAGA Payment will be less than many absent PAGA Employees (as many were employed for the entire PAGA Period based on counsel's review of the records produced by Defendant). (*Id.*)

IV. THE PROPOSED ATTORNEY'S FEES AND COSTS ARE FAIR, ADEQUATE, AND REASONABLE.

The Settlement allows for a Class Counsel Fee Payment of $333,333.33 and a Class Counsel Costs Payment of up to $20,000.00 for actual costs, subject to this Court's approval. (Settlement, ¶ 3.2.2.) Defendant will not oppose requests of up to these amounts consistent with the Settlement. (See *id.*, ¶ 8.7.1.) These amounts are reasonable under the circumstances.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41 (*Lealao*).) Indeed, it is well-established that the "experienced trial judge is the best judge of the value of professional services rendered in his court." (E.g, *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (*Laffitte*) [citing *Lealao,* 82 Cal.App.4th at pp. 48-49). The California Supreme Court's has held:

> [T]rial courts have discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.

(*Laffitte*, 1 Cal.5th at p. 506.)

In a variety of class actions, fee awards of around one-third of a common fund have been commonly found to be reasonable. (E.g, *Lafitte*, 1. Cal.5th at pp. 486-487, 506; see, e.g., *In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 [award of 33% of the common fund]; *In re Activision* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 [32.8% of the common fund]; *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494, 498 [45% of settlement fund].) This is consistent with Class Counsel's experiences in wage and hour class action matters as well. (Benowitz Decl., ¶ 75.)

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Here, the amount of fees and costs requested are commensurate with: (1) the risk counsel took in bringing the case against a one-location restaurant; (2) the time, effort and expense counsel invested in this case, (3) the skill and determination shown by counsel in identifying claims and maximizing the recovery, (4) the results counsel achieved, which is a significant recovery for the Settlement Class—especially considering that many wage and hour class actions resolve for considerably less per workweek; (5) the value of counsel achieved for the class, and (6) the other cases counsel turned down to devote time to this matter—including single plaintiff cases where higher percentages of the recovery are allowed for litigated cases without court approval and are paid within around thirty days (instead of requiring counsel to keep significant sums floating during the court approval process). Counsel spoke extensively with Plaintiff, spoke with other employees, obtained records for Plaintiff and absent Class Members, had a significant volume of payroll data analyzed for mediation purposes by an outside consultant, prepared detailed exposure analyses based on that analysis, negotiated a strong settlement in a case against a small employer, prepared settlement-related documents, and prepared this motion in view of this Court's rigorous scrutiny standards for settlement approval. (Benowitz Decl., ¶ 76.) Counsel also anticipates preparing a final approval motion and fielding phone calls about the Settlement from Class Members between now and the Final Approval Hearing. (*Id.*)

Counsel has borne all the risks and costs of litigation and will receive no compensation until after final approval. (Benowitz Decl., ¶ 77.) Counsel used their extensive experience in employment law and wage and hour class actions to obtain a solid recovery for the Settlement Class. (*Id.*) These considerations warrant preliminary approval of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. (*Id.*)

V. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR, ADEQUATE, AND REASONABLE.

Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. (See, e.g., *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to named plaintiffs for their efforts in bringing the case];

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F. Supp. 294 [approving $50,000 enhancement award]. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of $5,000.00. (Settlement, ¶ 3.2.1.) This amount is entirely reasonable given Plaintiff's efforts in this action and the risks he undertook on behalf of the Settlement Class. (Benowitz Decl., ¶¶ 77-78 & Ex. 6 [Sinclair Decl.].) Plaintiff has devoted many hours advancing the interests of the Settlement Class. (Benowitz Decl., ¶¶ 77-78 & Ex. 6 [Sinclair Decl.].) Plaintiff has done this by, among other things, retaining experienced counsel, providing them with information about his work history with Defendant and Defendant's applicable wage and hour policies and practices, monitoring the progress of the case, reviewing case-related documents, participating in mediation, and being actively involved in the settlement process to ensure a fair result for the Settlement Class. (Benowitz Decl., ¶¶ 77-78 & Ex. 6 [Sinclair Decl.].) In doing this, Plaintiff has been exposed to significant risks, including the risk of being ordered to pay Defendant's attorney's fees and costs if this action had been unsuccessful (Benowitz Decl., ¶¶ 77-78 & Ex. 6 [Sinclair Decl.]; Lab. Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement Class show that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. (Benowitz Decl., ¶¶ 77-78 & Ex. 6 [Sinclair Decl.].)

VI. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR, ADEQUATE, AND REASONABLE.

The Administration Expenses Payment is reasonable. Before agreeing to Phoenix Class Action Administration Solutions and its bid of $6,500.00, counsel sought and reviewed bids from three other reputable third-party administrators and chose the lowest bid. (Benowitz Decl., ¶¶ 14-15 & Ex. 3 [Lawrence Decl.].) Thus, the settlement Administration Expenses Payment (and selected administrator) warrant preliminary approval.

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VII. THE PROPOSED NOTICE PACKETS AND RELATED PROCEDURES WARRANT THIS COURT'S APPROVAL.

This Court should approve the proposed plans for giving notice to the Settlement Class and administering the Settlement. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The notice process includes multiple measures to ensure that as many Class Members as practicable receive actual notice of the Settlement and have enough time to exercise their rights. The Settlement requires distribution of the Notice by First Class U.S. mail only (Settlement, ¶ 8.4.2). (Benowitz Decl., ¶ 80.) Although there are current employee Settlement Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Settlement Class Members, who perform all of their work away from a desk, are not in a position to check their emails as regularly as many other types of employees. (*Id.*) As such, distributing the Class Notice by mail alone is fair, adequate, and reasonable. (*Id.*)

With respect to its content, "[The] notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. Los Angeles Fed. Sav. & Loan Assn*. (1975) 48 Cal.App.3d 134, 151-152.) The purpose of the notice in class settlement context is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Id.*) The Class Notice (Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Indeed, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the individual Settlement Class Member's estimated payment. (Benowitz Decl., ¶ 81.) Additionally, the Class Notice will include the individual employee's Workweeks and, if applicable, PAGA Period Paychecks. Accordingly, the Class Notice (and accompanying forms) should be approved. (*Id.*)

CONCLUSION

For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety and adopt the [Proposed] Order submitted concurrently herewith.

Respectfully submitted,
BHATIA LAW FIRM, PC
BENOWITZ LAW CORPORATION

Dated: April 15, 2026

BY Louis Benowitz
LOUIS BENOWITZ
Attorneys for Plaintiff
LYLE SINCLAIR

PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 8605 Santa Monica Boulevard, PMB 79183, West Hollywood, CA 90069.

2. On April 15, 2026, I served the foregoing document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on interested parties as follows:

Wendy Shiff <wshiff@alexislawfirm.com>
Drew Alexis <dalexis@alexislawfirm.com>,
Sunjay Bhatia <sunjay@bhatiafirm.com>

XXXX BY EMAIL I transmitted a PDF version of this document by electronic mail to the party(s) identified above using the email address(es) indicated.

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

EXECUTED on April 15, 2026, at Manhattan Beach, California.

LOUIS BENOWITZ
Declarant