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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

BRITNEY CLARKE and DOMINIQUE  
BOWIE, individuals, and on behalf of other  
members of the general public similarly  
situated;

Plaintiff,

vs.

ST ANNES MATERNITY HOME, an  
unknown business entity; ST. ANNE'S  
MATERNITY HOME, an unknown  
business entity; ST. ANNE'S  
FOUNDATION, a California corporation;  
ST. ANNE'S FAMILY SERVICES, a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 22STCV14674

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

Hearing Date: February 7, 2024

Hearing Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Department: 1

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## I. INTRODUCTION

Plaintiffs Britney Clarke and Dominique Bowie (“Plaintiffs”) respectfully submit this memorandum in support of the motion for preliminary approval of the Class Action and PAGA Settlement in the lawsuit *Britney Clarke and Dominique Bowie v. St Annes Maternity Home; St. Anne’s Maternity Home; St. Anne’s Foundation; and St. Anne’s Family Services*, Case No 22STCV14674 (the “Action”). Plaintiffs seek entry of an order: (1) preliminarily approving the proposed settlement of the Action with Defendants St. Anne’s Foundation and St. Anne’s Family Services f/k/a St Anne’s Maternity Home and erroneously sued as St. Annes Maternity Home (“Defendants”); (2) approving the form and method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final approval hearing date to consider Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’ fees and litigation expenses.

The Parties have reached a full settlement of the Action, which is embodied in the Class Action and PAGA Settlement Agreement (the “Agreement”). A copy of the executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. As discussed in detail below, the settlement is fair, reasonable, and adequate. Plaintiffs request that this Court grant preliminary approval of the Agreement, and enter the proposed order submitted herewith.

## II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount to be paid by Defendants is One Million One Hundred and Fifty Thousand Dollars (\$1,150,000). The Gross Settlement Amount consists of the following elements: (1) the Individual Class Payments to Participating Class Members, (2) Class Counsel Fees Payment, (3) Class Counsel Litigation Expenses Payment, (4) Class Representative Payment to Plaintiffs, (5) PAGA Penalties, and (6) Administration Expenses Payment. (Agreement at § 1.23.) (Decl. Zakay at ¶ 12.) The Gross Settlement Amount does not include Defendants’ share of employer payroll taxes, which Defendants shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at § 3.1.) (Decl. Zakay at ¶ 13.)

1 After Final Approval and the Judgment becoming final (the “Effective Date”), Defendants  
2 will fund the Gross Settlement Amount in one lump sum payment within thirty (30) days (the  
3 “Funding Date”). (Agreement at § 4.3.) Within fourteen (14) days after the Funding Date, the  
4 Settlement Administrator will pay: all Individual Class Payments, all Individual PAGA Payments,  
5 the LWDA Payment, the Settlement Administration Fees, Attorneys’ Fees and Litigation Costs, and  
6 the Class Representative Payment, all as determined by the Court at the Final Approval Hearing.  
7 (Agreement at § 4.4.) (Decl. Zakay at ¶ 14.)

8 The Net Settlement Amount shall equal the amount available for Individual Class Payments  
9 after deducting the Court-approved amounts for the PAGA Penalties Payment, Class Representative  
10 Service Award, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and  
11 the Administration Expenses Payment. (Agreement at § 1.28) The submission of a claim form is  
12 not required for a Participating Class Member to be paid an Individual Class Payment, including  
13 the PAGA Payment. (Agreement at § 3.1.) The Individual Class Payment will be calculated by  
14 dividing the Net Settlement Amount by the total number of workweeks worked by all Participating  
15 Class Members during the Class Period and then multiplying that amount by the total number of  
16 workweeks worked by each Participating Class Member during the Class Period. The entire Net  
17 Settlement Amount shall be distributed. (Agreement at § 3.2.4.) (Decl. Zakay at ¶ 15.)

18 Class Members will have forty-five (45) days after the mailing of the Class Notice to exclude  
19 themselves or submit written objections. The deadlines will be extended an additional fourteen (14)  
20 calendar days for Class Members whose notice is re-mailed. (Agreement at § 7.5.1.) All Class  
21 Members who do not “opt out” will be deemed Participating Class Members and will be bound by  
22 the Settlement. The Notice will advise the Class Members of their right to object to the Settlement.  
23 (Agreement at § 1.11) (Decl. Zakay at ¶ 16.)

24 Prior to mailing the Class Notice to the Class, the Settlement Administrator will perform a  
25 search on the National Change of Address Database to update the Class Members’ addresses. The  
26 Settlement Administrator will perform a skip-trace search and re-mail all Class Notices that are  
27 returned on or before the Response Deadline. (Agreement at § 1.10.) If an Individual Class Payment  
28 or Individual PAGA Payment check is not cashed within 180 days after the Settlement

1 Administrator's last mailing to the Participating Class Member, the funds from such uncashed check  
2 will be transmitted to the cy pres, designated as St. Anne's, to be applied to its non-profit charitable  
3 purposes and promote justice for all Californians as compliant with California Code of Civil  
4 Procedure, section 384. Alternatively, if the Court does not approve the uncashed funds being paid  
5 to St. Anne's as the cy pres, for its charitable purpose, the settlement administrator will transmit the  
6 uncashed funds to a cy pres beneficiary as agreed upon by the Parties, which to the extent possible,  
7 will be the Children's Foundation of America, if approved by the Court, or the Children Advocacy  
8 Institute if the Children's Foundation of America is not approved by the court. (Agreement at §  
9 4.4.3.) (Decl. Zakay at ¶ 17.)

10 The Parties have agreed to use Apex Class Action LLC as the Settlement Administrator.  
11 (Agreement at § 1.2.) Payment of the expenses of the Settlement Administrator from the Gross  
12 Settlement Amount shall be made for the expenses of effectuating and administering the Settlement.  
13 (Agreement at § 1.3.) The Settlement Administrator shall receive payment for services estimated at  
14 an amount not to exceed \$11,500. (Agreement at § 3.2.3.) (Decl. Zakay at ¶ 18.) A declaration  
15 from Apex Class Action outlining its qualifications and providing for the estimated administration  
16 costs is filed concurrently with this Motion.

17 Subject to Court approval, the Agreement provides for Class Counsel to be awarded (a)  
18 Attorneys' Fees of not more than one-third of the Gross Settlement Amount, which is currently  
19 estimated to be \$383,333.33, and (b) Litigation Expenses of up to \$30,000. (Agreement at § 3.2.2.)  
20 In support of this request, Class Counsel will provide evidentiary support, including lodestar method  
21 calculations. Subject to Court approval, the Agreement provides for payment of a Class  
22 Representative Service Payment to each Plaintiff of no more than \$10,000.<sup>1</sup> (Agreement at § 3.2.1.)  
23 Defendants will not oppose a motion for approval of attorneys' fees, costs and a Class  
24 Representatives Service Payment consistent with the Agreement. (Agreement at §§ 3.2.1, 3.2.2.)  
25 (Decl. Zakay at ¶ 19.)  
26  
27

28 <sup>1</sup> Plaintiffs will address the reasonableness of this award when filing their final approval papers, including the  
enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251 (2015) and *Clark v. Am.*  
*Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 Subject to Court approval, \$60,000 will be paid for settlement of civil penalties under  
2 PAGA, Labor Code Section 2698 *et seq.* (Agreement at § 3.2.5.) Pursuant to the requirements of  
3 Labor Code §2699(i), the PAGA Payment shall be allocated \$45,000 (75%) to the LWDA (the  
4 “LWDA PAGA Payment”) as the LWDA’s share of the settlement of civil penalties and \$15,000  
5 (25%) will be paid to the Aggrieved Employees as Individual PAGA Payments. (Agreement at §  
6 3.2.5.) (Decl. Zakay at ¶ 20.)

### 7 III. CASE BACKGROUND

8 On May 3, 2022, Plaintiff Clarke filed a class action complaint in this Court, asserting claims  
9 for: (1) Unpaid overtime; (2) Unpaid meal period premiums; (3) Unpaid rest period premiums; (4)  
10 Unpaid minimum wages; (5) Final Wages not timely paid; (6) Wages not timely paid during  
11 employment; (7) Non-Compliant wage statement; (8) Failure to keep requisite records; (9)  
12 Unreimbursed Business Expenses; (10) Violation of Business & Professions Code §§17200, *et. seq.*  
13 On May 11, 2023, Plaintiff Bowie served the Labor and Workforce Development Agency  
14 (“LWDA”) and Defendants with a PAGA notice. On May 16, 2023, Claimant Bowie served the  
15 LWDA with an amended PAGA notice. As part of the Settlement, on August 2, 2023, Plaintiff  
16 filed a First Amended Complaint naming Bowie as an additional Plaintiff and adding an eleventh  
17 cause of action for Violations of the Private Attorneys General Act at Labor Code Sections 2698,  
18 *et seq.* (“PAGA”) (Decl. Zakay at ¶ 7.)

19 Plaintiffs seeks to represent a putative class of all individuals who are or previously were  
20 employed by Defendants in California and classified as non-exempt hourly employees during the  
21 Class Period. (Agreement at § 1.5.) The Class Period is the period from May 3, 2018 to September  
22 16, 2023. (Agreement at § 1.12.) The Complaint alleges the causes of action listed above. The  
23 Action seeks unpaid wages and premiums, statutory and PAGA penalties, attorneys’ fees, and  
24 litigation costs.<sup>2</sup> (Decl. Zakay at ¶ 8.)

25 Prior to mediation, the Parties engaged in investigation and the exchange of documents and  
26 information in connection with the Action. As part of this process, Defendants provided a significant  
27 sample of time records and payroll records, Plaintiffs’ personnel files and policies executed therein,

28 <sup>2</sup> Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 applicable employee handbooks, as well as other documents and information, to Class Counsel to  
2 review and analyze. On July 6, 2023, the Parties participated in an all-day mediation presided over  
3 by Steve Serratore, a respected mediator of wage and hour class actions. After the presentation and  
4 recommendation of a mediator's proposal by Mr. Serratore, the Parties reached a settlement and  
5 thereafter executed a binding Memorandum of Understanding. Thereafter, the Parties documented  
6 the agreement in the form of a Settlement Agreement, which was signed by the Parties and is now  
7 presented to this Court for preliminary approval. (Decl. Zakay at ¶ 9.)

8       Although a resolution has been reached, Defendants deny that they have violated any  
9 applicable law, committed any wrong against Plaintiffs or any other current or former employee, or  
10 that they have otherwise damaged Plaintiffs or any other current or former employee in any way.  
11 Further, Defendants contend that class certification would be inappropriate for any reason other  
12 than settlement. Plaintiffs contend that Defendants violated California wage and hour laws.  
13 Plaintiffs further contend that the Action is appropriate for class certification on the basis that the  
14 Plaintiffs' claims meet the requirements for certification. Without admitting that class certification  
15 is proper, Defendants have stipulated that the above Class may be certified for settlement purposes  
16 only. The Parties agree that certification for settlement purposes is not an admission that  
17 certification would be proper if the class certification issues were litigated. Further, the Agreement  
18 is not admissible in this or any other proceeding as evidence that the Class could be certified absent  
19 a settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the  
20 requirements for establishing class certification with respect to the Class are satisfied. (Decl. Zakay  
21 at ¶ 10.)

22       Class Counsel has conducted a thorough investigation into the facts of the action and  
23 diligently evaluated the Class Members' claims against Defendants. Prior to the mediation, counsel  
24 for Defendants provided Class Counsel with access to the necessary data and information to  
25 evaluate the claims by the Class. Class Counsel reviewed the production of documents and  
26 conducted an extensive review of a significant sample of time records and data with the assistance  
27 of an expert (Berger Consulting Group). Based on the foregoing and their own independent  
28 investigation, evaluation and experience, Class Counsel believe that the Settlement is fair,

1 reasonable, and adequate and is in the best interest of the Class considering all known facts and  
2 circumstances, including the risk of significant delay, defenses asserted by Defendants, and  
3 potential appellate issues. (Decl. Zakay at ¶ 11.)

#### 4 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 5 **COURT TO GRANT PRELIMINARY APPROVAL**

6 When a proposed class-wide settlement is reached, the settlement must be submitted to the  
7 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,  
8 p.11-87.) California “[p]ublic policy generally favors the compromise of complex class action  
9 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*  
10 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are  
11 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*  
12 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d  
13 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

14 The primary question presented on an application for preliminary approval of a proposed  
15 class action settlement is whether the settlement is “within the range of possible approval.” (*Manual*  
16 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7<sup>th</sup> Cir.  
17 1982).) Preliminary approval is the prerequisite to giving notice so that “the proposed settlement...  
18 may be submitted to members of the prospective Class for their acceptance or rejection.”  
19 (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp.  
20 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, \*3  
21 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed settlement, which  
22 was negotiated at arm’s length by counsel, is presented for court approval. (*Newberg*, 3d Ed., §11.41,  
23 p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; see  
24 also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial  
25 court’s determination that settlement was “fair, reasonable and adequate” where the settlement  
26 “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks  
27 plaintiff would have faced if she proceeded to litigate her case.’”)) However, the ultimate question  
28 of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the  
settlement is given to the Class Members and a final settlement hearing is held by the Court.

1       **A.       The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

2           Approval of a proposed settlement of a class action suit is a matter within the broad  
3 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)  
4 In considering a potential settlement for preliminary approval purposes, the trial court does not have  
5 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the  
6 dispute, and need not engage in a trial on the merits. (*Wershba*, *supra*, 91 Cal. App. 4th at 239-40;  
7 *Dunk*, *supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a settlement  
8 is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice*  
9 *v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question  
10 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and  
11 evaluation by the attorneys for the parties based upon a comparison of “‘the terms of the  
12 compromise with the likely rewards of litigation.’” (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d  
13 Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*  
14 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the  
15 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what  
16 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With  
17 regard to class action settlements, the opinions of counsel should be given considerable weight both  
18 because of counsel’s familiarity with this litigation and previous experience with cases such as  
19 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of  
20 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts  
21 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*  
22 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

23       **B.       Factors To Be Considered In Granting Preliminary Approval**

24           In determining whether to grant preliminary approval, the court considers whether “(1) the  
25 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)  
26 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class  
27 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*  
28 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be

determinative. Here, the Settlement meets the criteria for preliminary approval.

**1. The Settlement Is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel**

This Settlement is the result of extensive and hard-fought litigation and negotiations before an experienced mediator. Defendants denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is beneficial to the Class Members to put to rest the Released Class Claims.<sup>3</sup> Plaintiff and Class Counsel recognize the expense involved in continuing to litigate and ultimately trying the Action against Defendants through possible appeals, which could take several years. Class Counsel have also considered the uncertain outcome and risk of litigation, especially in complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement is in the best interest of the Class Members. (Decl. Zakay at ¶ 21.)

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced counsel who zealously advocated their respective positions with the assistance of an experienced mediator. Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash. Public Power*, 720 F. Supp. at 1392.)

**2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of Approval**

The proposed Settlement has no “obvious deficiencies” and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment if they do not opt out. (Agreement at § 3.1.)

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<sup>3</sup> Released Class Claims is defined in the Settlement Agreement at §§ 1.40 and 5.2 and is limited to claims asserted in the Action or those that could have reasonably been asserted based on the factual allegations made.

1 Defendants' total potential exposure for the alleged violations at the time this Settlement  
2 was negotiated was calculated by BCG, Plaintiff's damage expert. For the Class, Plaintiffs estimate  
3 that Defendants potentially could be subject to maximum liability for damages to the Class in the  
4 amount of \$7,097,313 consisting of \$1,436,530 for unpaid wages, \$2,554,435 for rest periods,  
5 \$2,601,110 for meal periods, and \$505,238 for unreimbursed business expenses. In addition,  
6 Plaintiff's expert calculated \$2,436,877 in waiting time penalties and \$869,650 for wage statement  
7 penalties. Consequently, the Settlement of \$1,150,000 represents approximately 16% of the  
8 maximum labor code damages to the Class and 11% of the maximum labor code damages and  
9 waiting time and wage statement penalties, assuming these amounts could be proved at trial  
10 (excluding PAGA Penalties). Given the amount of the Settlement compared to the potential value  
11 of claims in this case and taking into consideration the defenses and contentions raised by  
12 Defendants associated with the potential application of Wage Order 5 and its implications with  
13 respect to claims for overtime, meal and rest breaks, the Settlement is fair and reasonable. The goal  
14 of this litigation – to provide compensation to Class Members for allegedly unpaid time, for  
15 allegedly missed meal and rest breaks and reimbursements – has been met. (Decl. Zakay at ¶ 6.)

16 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \*12 (N.D. Cal.  
17 2015) the court approved a settlement of an action claiming unpaid wages where the settlement  
18 amount constituted roughly 10% of the estimated actual damages to the class, determining it was  
19 fair, reasonable, and adequate. Here, the settlement consideration exceeds the percentage approved  
20 in *Stovall-Gusman*, and as a result, is entitled to preliminary approval.

21 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.  
22 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, several defenses asserted by  
23 Defendants presented serious threats to the claims of the Plaintiffs and the other Class Members.  
24 For instance, Defendants took the position that Wage Order 5 applied to the class members that  
25 would have significant implications with respect to overtime, meal and rest break claims. Indeed,  
26 during litigation, Defendants presented counsel for Plaintiff with a decision by the Labor Board,  
27 holding that Wage Order 5 applied to St. Anne's, and the claims at issue. If a Court were to find  
28 the same, the Class Members would risk losing those claims and all entitlement to damages.

1 Defendants also asserted that the employment practices complied with all applicable Labor Laws.  
2 Specifically, Defendants argued that the Supreme Court decision in *Brinker v. Superior Court*, 53  
3 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims on liability, value, and class  
4 certifiability as to the meal and rest period claims. Before and during the mediation, Defendants  
5 argued that they adopted and strictly enforced lawful policies and afforded Plaintiff and the Class  
6 Members compliant meal and rest breaks, and that employees like the Plaintiff *chose* not to take  
7 compliant breaks.. Defendants argued, therefore, that under the *Brinker* decision they have no  
8 liability for the missed breaks whatsoever. Defendants additionally contend that the underlying  
9 merits of Plaintiffs' wage and hour claims are deficient because, among other reasons, there is  
10 insufficient evidence to prove that: (1) any of the underlying violations actually occurred, (2) any  
11 of the putative class members were entitled to expense reimbursement, (3) Defendants' wage  
12 statements fully complied with the law, and (4) Defendants compensated all putative class members  
13 for all the time they spent performing work for, or were under the control of, Defendants. (Decl.  
14 Zakay at ¶ 22.)

15       There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable  
16 to obtain class certification and thereby not recover on behalf of any employee other than  
17 themselves. Defendants argued that the individual experience of each employee varied with respect  
18 to the alleged claims. While other cases have approved class certification of wage and hour claims,  
19 class certification in this action would have been hotly disputed and was not a foregone conclusion,  
20 because, among other reasons, Defendants contend that: (1) Plaintiffs will not be able to identify  
21 sufficiently pervasive patterns and practices to justify class claims, (2) Defendants policies and  
22 procedures as set forth in their employee materials complied with all California laws, and (3)  
23 Plaintiffs themselves did not suffer all of the alleged violations for which they seek to be class  
24 representatives. Even if class certification was successful, as demonstrated by the California  
25 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are  
26 significant hurdles to overcome for a class-wide recovery even where the class has been certified.  
27 (Decl. Zakay at ¶ 23.)  
28

1 Here, the risk of further litigation is substantial. After arm's-length negotiations between  
2 experienced and informed counsel, the Parties recognized the potential risks and agreed on the  
3 Settlement.

4 Finally, Plaintiffs' expert calculated that Defendants could be liable for PAGA penalties in  
5 an amount of \$2,168,300. However, Courts have considerable discretion to reduce the penalty  
6 award. Some trial courts have awarded no civil penalties, even when Labor Code violations are  
7 established. *See In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award  
8 of \$0 in PAGA penalties in a wage and hour class action). To recover any PAGA penalties,  
9 Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. *See*  
10 *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) Here,  
11 Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay  
12 period the employee worked. Again, Defendants raised several defenses that present serious threats  
13 to the claims of the Plaintiffs and the Aggrieved Employees. In all, Plaintiffs' PAGA liability  
14 exposure is hotly contested. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates  
15 the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial,  
16 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good  
17 faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such  
18 reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff prevailed at  
19 trial, and even then, the PAGA penalties were reduced by 90%. (Decl. Zakay at ¶ 24.)

20 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the**  
21 **Class Representative or Segments of The Class**

22 The relief provided in the Settlement will benefit all members of the Class who do not opt  
23 out. The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments  
24 of the Class in any way. Each Participating Class Member will be entitled to a cash payment based  
25 on the plan of allocation described herein. Each Individual Class Payment will be determined based  
26 upon the weeks worked by that employee during the prescribed Class Period. (Decl. Zakay at ¶ 4.)

27 1. Plaintiffs will apply to the Court for a Class Representative Service Payment in  
28 consideration for their services, and for the risks undertaken on behalf of the Class. Plaintiffs

1 performed their duties admirably by working with Class Counsel. The Plaintiffs' requested payment  
2 of \$10,000 is well within the accepted range of awards for purposes of preliminary approval.  
3 Plaintiffs performed their duties admirably by working with Class Counsel. At this stage, the  
4 requested Plaintiffs' service payment is well within the accepted range of awards for purposes of  
5 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386  
6 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v.*  
7 *Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000  
8 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007  
9 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class  
10 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL  
11 4473183, \*7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in  
12 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, \*16-17 (N.D.Cal. 2007)  
13 (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in  
14 enhancements). As explained in *Glass v. UBS Financial Services, Inc.*, service awards are routinely  
15 awarded to class representatives to compensate the employees for the time and effort expended on  
16 the case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and  
17 to serve as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at \*16-  
18 17. (Decl. Zakay at ¶ 25.)

19           **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**  
20           **Preliminary Approval Of The Settlement**

21           The stage of the proceedings at which this Settlement was reached supports preliminary  
22 approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough  
23 investigation into the facts of the class action, including before this action was filed. Prior to the  
24 mediation, Class Counsel performed significant review and analysis of Defendants' documents,  
25 time records and pay records via both formal and informal discovery. Class Counsel engaged in a  
26 thorough research and analysis of the relevant claims, data and law. Class Counsel are experienced  
27 with the claims at issue here, as Class Counsel previously litigated and settled similar claims in  
28 numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed

1 sufficient information to make an informed judgment regarding the likelihood of success on the  
2 merits and results that could be obtained through further litigation. (Decl. Zakay at ¶ 26.)

3 Based on the foregoing data and their own independent investigation and evaluation, Class  
4 Counsel is of the opinion that the settlement with Defendants for the terms set forth in the  
5 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all  
6 known facts and circumstances, including the risk of significant delay, defenses asserted by  
7 Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for both  
8 Parties possessed sufficient information to make an informed judgment regarding the likelihood of  
9 success on the merits and the results that could be obtained through further litigation.

#### 10 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

11 Plaintiffs contend that the proposed Settlement meets all the requirements for class  
12 certification under the California Code of Civil Procedure section 382 as demonstrated below, and  
13 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court  
14 should conditionally certify the Class for settlement purposes only, defined as follows:

15 The “Class” or “Class Members” includes:

16 **“All persons who are employed or have been employed by Defendants in California as**  
17 **hourly-paid or non-exempt employees at any time during the Class Period. (Agreement**  
18 **at § 1.4.)**

18 The Parties estimate that there are 60,000 workweeks worked by 855 Class Members.  
19 (Agreement at § 4.1.) (Decl. Zakay at ¶ 28.)

#### 20 **A. California Code of Civil Procedure §382**

21 Plaintiff seeks certification of this Class for settlement purposes under California Code of  
22 Civil Procedure section 382. Although Defendants dispute that the Plaintiffs can satisfy these  
23 requirements for any reason other than for purposes of settlement, in the interest of resolving the  
24 Action, Defendants will not dispute that the proposed Class should be certified for purposes of  
25 settlement only.

#### 26 **B. The Proposed Class Is Ascertainable and Numerous**

27 Here, the approximately 855 current and former employees that comprise the Class are  
28 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955))

(class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)) Here, the approximately 855 current and former employees that comprise the Class can be identified based on Defendants' records and are sufficiently numerous for class certification. (Decl. Zakay at ¶ 28(a).) For purposes of settlement only, Defendants will not oppose a finding of numerosity.

### **C. Common Issues of Law and Fact Predominate**

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. (1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.")). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely furnish accurate, itemized and legal wage statements; (iv) whether Defendants failed to reimburse employees for necessary business expenditures; (v) whether Defendants subjected Class Members to unfair business practices; (vi) whether Defendants are liable for attorneys' fees and costs. (Decl. Zakay at ¶ 28(b).) Defendants will not oppose a finding of commonality for purposes of settlement only.

### **D. The Claims of the Plaintiff Are Typical of the Class Claims**

"The typicality requirement is met when the claims of the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th

1 Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that  
2 “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably  
3 coextensive with those of absent class members; they need not be substantially identical.” (50 F.3d  
4 at 1020.) Plaintiffs contends that the typicality requirement is fully satisfied. Plaintiffs, like every  
5 other member of the Class were employed by Defendants and are members of the Class. Plaintiffs  
6 were subject to the same employment practices, meal and rest periods, and received similar wage  
7 statements. Thus, the claims of the Plaintiffs and the Class Members arise from the same course of  
8 conduct by the Defendants, involve the same employment policies, and are based on the same legal  
9 theories. (Decl. Zakay at ¶ 28(c).) For purposes of settlement only, Defendants will not oppose  
10 typicality.

11 **E. The Class Representative Fairly and Adequately Protected the Class**

12 Plaintiffs contend that the Class Members are adequately represented because Plaintiffs and  
13 Class Counsel (a) do not have any conflicts of interest with other Class Members, and (b) will  
14 prosecute the case vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiffs are  
15 well aware of their duties as representatives of the Class and have actively participated in the  
16 prosecution of this case to date. First, Plaintiffs effectively communicated with Class Counsel,  
17 provided documents to them and participated investigation and negotiations in the Action. Second,  
18 Plaintiffs retained competent counsel who are experienced in employment class actions. Third,  
19 there is no antagonism between the interests of the Plaintiffs and those of the Class. Both the  
20 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.  
21 (Decl. Zakay at ¶ 28(d).)

22 **F. The Superiority Requirement Is Met**

23 To certify a class, the Court must determine that a class action is superior to other available  
24 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of  
25 common issues will reduce litigation costs and promote greater efficiency, a class action may be  
26 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th  
27 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by  
28 the Plaintiffs. Defendants will not dispute such a finding for purposes of this settlement only.

1           **VI.     THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

2           The Court has broad discretion in approving a practical notice program. The Parties have  
3 agreed upon procedures for providing the Class Members with written notice of the Settlement like  
4 those approved and utilized in hundreds of class action settlements. The Class Notice, drafted jointly  
5 and agreed upon by the Parties through their respective counsel and to be approved by the Court,  
6 includes all relevant information. (See Exhibit A to the Agreement.) The Class Notice will state that  
7 the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to  
8 them to request exclusion or to submit an objection. The Class Members will be given an  
9 opportunity to object to the terms of the Agreement and/or the request for attorneys' fees and costs  
10 and to participate at the final approval hearing. Class Members will be instructed to contact the  
11 Settlement Administrator and/or Class Counsel, not the Court. This notice program was designed  
12 to meaningfully reach the Class Members and advise them of all pertinent information concerning  
13 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due  
14 process, is the best notice practicable under the circumstances, and constitutes due and sufficient  
15 notice to all persons entitled thereto. The Class Notice provides information on the terms and  
16 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,  
17 time, and place of the final settlement approval hearing; and the procedure and deadline for  
18 submitting comments, objections, and requests for exclusion. The Class Notice complies with Rules  
19 of Court 3.766 and 3.769(f). (Decl. Zakay at ¶ 30.)

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