

MAR 16 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 ALEJANDRO LOPEZ and NOELIA
12 LEYVA, on behalf of themselves and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 WALDORF ASTORIA MANAGEMENT
17 LLC, a Delaware limited liability company;
18 WALDORF=ASTORIA EMPLOYER LLC,
19 a Delaware limited liability company; and
20 DOES 1 through 100, inclusive,

21 Defendants.

Case No.: 20STCV17212

ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

22 **I. BACKGROUND**
23

24 Plaintiffs Alejandro Lopez and Noelia Leyva sue their former employer,
25 Defendants Waldorf Astoria Management, LLC and Waldorf=Astoria Employer LLC
(collectively, "Defendants"), for alleged wage and hour violations. Defendants operate

1 the La Quinta Resort & Club in La Quinta, California. Plaintiffs seek to represent a
2 class of Defendants' current and former non-exempt employees.

3 This action is the result of the consolidation of three actions. On March 2, 2020,
4 Plaintiff Leyva filed a putative wage-and-hour class action against Defendant Waldorf
5 Astoria Management LLC in the Superior Court of California County of Riverside,
6 Case Number RIC2000943 (the "Leyva Action"). On July 2, 2020, Plaintiff Leyva
7 filed a First Amended Complaint in the Leyva Action adding a cause of action under
8 the Private Attorneys General Act ("PAGA"). On May 4, 2020, Plaintiff Lopez filed a
9 separate putative wage-and-hour class action against Defendants Waldorf Astoria
10 Management, LLC and Waldorf=Astoria Employer LLC in the Superior Court of
11 California for the County of Los Angeles (the "Lopez Action"). On November 20,
12 2020, Plaintiff Lopez filed a separate representative action seeking PAGA civil
13 penalties for various Labor Code violations ("Lopez PAGA Action").

14 On November 6, 2020, Plaintiff Lopez and Defendants entered into a stipulation
15 to file a First Amended Complaint ("FAC") in the Lopez Action to add a PAGA claim,
16 dismiss individual and class claims without prejudice, and to stay the Lopez Action
17 pending mediation. Pursuant to that stipulation, on November 23, 2020, Plaintiff Lopez
18 filed the FAC in the Lopez Action adding a cause of action under PAGA and removing
19 class and individual allegations.

20 On May 14, 2021, the parties attended an unsuccessful mediation before
21 mediator Louis Marlin, Esq. On September 28, 2021, the parties participated in a
22 second full-day mediation before Mark S. Rudy, Esq. With the aid of the mediator's
23 evaluation and after further negotiations, the parties reached a settlement to resolve
24 both the Leyva and Lopez Actions. A hearing date was scheduled for April 4, 2022.

1 The parties did not timely file a motion to approve the settlement and requested
2 two continuances to do so. See Case Anywhere postings of March 9, 2022 and April
3 29, 2022.

4 Pursuant to the settlement, the parties agreed to file a Second Amended
5 Complaint (“SAC”) in the Lopez Action: (1) adding Plaintiff Leyva as a named
6 plaintiff; (2) adding all individual and class allegations for the causes of action
7 originally alleged in the Leyva Action and Lopez Action; and (3) effectively
8 consolidating the Leyva Action and the Lopez Action. On July 21, 2022, Plaintiffs
9 filed the operative SAC which alleges causes of action for: (1) Failure to Pay Overtime
10 Wages (Labor Code §§ 510, 1194, 1197); (2) Failure to Pay Minimum Wages (Labor
11 Code § 1197); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512); (4)
12 Failure to Provide Rest Periods (Labor Code § 226.7); (5) Failure to Pay Due Wages at
13 Termination (Labor Code §§ 201-203); (6) Wage Statement Violations (Labor Code §
14 226(a)); (7) Unreimbursed Business Expenses (Labor Code § 2802); (8) Violation of
15 Business and Professions Code § 17200, et seq.; and (9) Violation of the Private
16 Attorneys General Act (“PAGA”) (Labor Code § 2699). This, however, did not occur
17 until June 21, 2022. The parties did not file any motion to preliminarily approve the
18 settlement until August 19, 2022, eleven months after representing that they had
19 reached a settlement.

20 The terms of settlement were finalized in a long-form Joint Stipulation Re: Class
21 Action and Representative Action Settlement Agreement. The matter came on for
22 hearing on December 21, 2022, at which time a “Checklist” of issue requiring attention
23 was discussed. The matter was recalendared for March 7, 2023 at which time a First
24 Amended Joint Stipulation re Class Action and Representative Action Settlement
25 Agreement was presented. All references below are to that agreement.

1 The revised agreement did not include a form of Notice. The proposed form of
2 notice was submitted March 7, 2023.

3 Having considered the Amended Joint Stipulation re Class Action and
4 Representative Action Settlement Agreement, preliminary approval is granted and a
5 schedule for notice and final approval is set, as detailed below.

6
7 **II. THE TERMS OF THE SETTLEMENT**

8 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

9 “Settlement Class”, “Settlement Class Members” or “Class Members” means all
10 current and former non-exempt, hourly-paid employees who worked for Defendants at
11 the La Quinta Resort & Club located at 49499 Eisenhower Drive, La Quinta, California
12 92253 at any time during the Class Period. (¶1.EE)

13 “Class Period” means the period from March 2, 2018 through November 17,
14 2022. (¶1.D)

15 “Aggrieved Employees” means Class Members who worked for Defendants at
16 the La Quinta Resort & Club located at 49499 Eisenhower Drive, La Quinta, California
17 92253 during the PAGA Period in California as non-exempt, hourly-paid employees.
18 (¶1.B)

19 “PAGA Period” means the period from March 2, 2019 through November 17,
20 2022 (¶1.S)

21 “Participating Class Members” means all Settlement Class Members who do not
22 submit a timely and valid Request for Exclusion. (¶1.T)

23
24 **B. THE MONETARY TERMS OF SETTLEMENT**

25 The essential monetary terms are as follows:

- 1 • The Gross Settlement Amount (“GSA”) is **\$1,610,000** (¶1.K). This includes
2 payment of a PAGA penalty of **\$50,000** to be paid 75% to the LWDA (\$37,500)
3 and 25% to the Aggrieved Employees (\$12,500) (¶1.O).

- 4 ○ Increase In Workweeks: Defendants represent that there are
5 approximately 136,000 Workweeks worked during the Class Period. If
6 there is a 10% increase in the number of workweeks, which is estimated
7 to be approximately 136,000 workweeks, it would trigger an escalator
8 provision where Defendants would have the choice between either (1) the
9 gross settlement amount would increase by 1% for every 1% increase in
10 workweeks over the 10% threshold, or, at Defendants’ sole option (2) the
11 post acceptance portion of the Covered Period of 90 days or the date of
12 preliminary approval would be scaled back to a date between the date the
13 stipulation of settlement is signed and the date the additional workweeks
14 would reach a number that would cause the escalator provision to be
15 triggered. (¶17)

- 16 • The Net Settlement Amount (“Net”) (**\$922,000**) is the GSA less:

- 17 ○ Up to **\$563,500** (35%) for attorney fees (¶12);
18 ○ Up to **\$40,000** for attorney costs (*Ibid.*);
19 ○ Up to **\$15,000 [\$7,500 each]** for service awards to the proposed class
20 representatives (¶1.BB); and
21 ○ Estimated **\$19,500** for settlement administration costs (¶1.CC).

- 22 • Employer Taxes shall be paid by Defendants separate, apart, and in addition to
23 the Gross Settlement Amount (¶14.C).

- 24 • Assuming the Court approves all maximum requested deductions, approximately
25 **\$922,000** will be available for distribution to participating class members.

1 Assuming full participation, the average settlement share will be approximately
2 \$530.49. ($\$922,000 \text{ Net} \div 1,738 \text{ class members} = \530.49). In addition, each
3 Aggrieved Employee will receive a portion of the PAGA penalty, with an
4 average of \$7.20 ($\$12,500$ or 25% of \$50,000 PAGA penalty).

- 5 • There is no Claim Requirement (Notice p. 1).
- 6 • The settlement is not reversionary (§1.K).
- 7 • Individual Settlement Share Calculation: To determine each Participating Class
8 Member's Participating Individual Settlement Share, the Settlement
9 Administrator will determine the aggregate number of Workweeks worked by all
10 Participating Class Members during the Class Period ("Participating Class
11 Workweeks") and use the following formula: Participating Individual Settlement
12 Share = $(\text{Participating Class Member's Workweeks} \div \text{Participating Class}$
13 $\text{Workweeks}) \times \text{Net Settlement Amount}$. (§10.C)
- 14 • PAGA Payments: To determine each Aggrieved Employee's Individual PAGA
15 Payment, the Settlement Administrator will use the following formula:
16 Aggrieved Employee's Individual PAGA Payment = $(\text{Aggrieved Employee's}$
17 $\text{Workweeks} \div \text{PAGA Workweeks}) \times \$12,500.00$ (the PAGA Payment). (§10.E)
- 18 • Tax Withholdings: Each Individual Settlement Share shall be allocated as
19 follows: 33% as wages (to be reported on an IRS Form W-2); and 67% as
20 interest, premiums, and penalties (to be reported on an IRS Form 1099). The
21 Individual PAGA Payments to the Aggrieved Employees shall be characterized
22 as non-wages (to be reported on an IRS Form 1099). (§14.A)
- 23 • Funding of Settlement: Defendants shall, within thirty (30) calendar days of the
24 Effective Date, make payment of the Gross Settlement Amount (as the same may
25 be escalated pursuant to Paragraph 17 of the Agreement) and Employer Taxes

1 (which shall be determined by the Settlement Administrator), to the Settlement
2 Administrator pursuant to Internal Revenue Code section 1.468B-1 for deposit in
3 an interest-bearing qualified settlement account (“QSA”) with an FDIC insured
4 banking institution. (§11.B)

- 5 • Distribution: Within seven (7) calendar days after payment of the full Gross
6 Settlement Amount and Employer Taxes by Defendants, or as soon thereafter as
7 practicable, the Settlement Administrator shall distribute Payments from the
8 QSA for all of the following on the same date: (1) the Service Award to
9 Plaintiffs as specified in the Agreement and approved by the Court; (2) the
10 Attorneys’ Fees and Cost Award to be paid to Class Counsel, as specified in this
11 Agreement and approved by the Court; (3) the Settlement Administrator Costs,
12 as specified in the Agreement and approved by the Court; (4) the LWDA
13 Payment, as specified in this Agreement and approved by the Court; (5)
14 Individual PAGA Payments as specified in the Agreement and approved by the
15 Court, and (6) the Net Settlement Amount from which Individual Settlement
16 Payments shall be made to Participating Class Members, less applicable taxes
17 and withholdings. All interest accrued shall be for the benefit of the Class
18 Members and distributed on a pro rata basis to Participating Class Members
19 based on the number of Workweeks worked by them in the Class Period. (§11.C)
- 20 • Uncashed Settlement Payment Checks: Individual Settlement Payment and
21 Individual PAGA Payment checks shall remain valid and negotiable for one
22 hundred and eighty (180) calendar days after the date of their issuance. Within
23 seven (7) calendar days after expiration of the 180-day period, checks for such
24 payments shall be cancelled and funds associated with such checks will be
25 distributed to the Controller of the State of California to be held pursuant to the

1 Unclaimed Property Law, California Civil Code section 1500 et. seq., for the
2 benefit of those Settlement Class Members and PAGA Members who did not
3 cash their checks until such time as they claim their property. (§11.A)
4

5 **C. TERMS OF RELEASES**

- 6 • Release by All Participating Class Members: Effective only upon the entry of an
7 Order granting Final Approval of the Settlement, entry of Judgment, and
8 payment by Defendants to the Settlement Administrator of the full Gross
9 Settlement Amount and Employer's Taxes necessary to effectuate the
10 Settlement, Plaintiffs and all Participating Class Members release, and discharge
11 the Released Parties of all claims against the Released Parties asserted in the
12 Operative Complaint in the Lopez Action, and any and all claims, demands,
13 rights, liabilities, and/or causes of action, of any form whatsoever, that may be
14 asserted against the Released Parties based on or arising out of, the factual
15 allegations and claims in the Operative Complaint filed in the Lopez Action,
16 including, but not limited to the following, for the duration of the Class Period:
17 (a) all claims for failure to pay overtime wages and/or failure to pay overtime at
18 the appropriate rate of pay; (b) all claims for failure to pay minimum wages;(c)
19 all claims for failure to provide compliant meal and rest periods and/or
20 premiums for noncompliant meal and/or rest periods; (d) all claims for failure to
21 timely pay all wages due, including upon termination or resignation; (e) all
22 claims for failure to provide timely, accurate and fully compliant wage
23 statements; (f) all claims for failure to reimburse employees for work related
24 expenses; (g) all claims asserted through California Business & Professions
25 Code § 17200 et seq. arising out of the Labor Code violations referenced in the

1 Operative Complaint; (h) all claims for violation of Labor Code sections 200,
2 201, 202, 203, 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1194, 1194.2, 1197,
3 2802, and applicable portions of California Code of Regulations, Title 8, section
4 11070, Wage Order No. 5-2001; and (i) all claims and/or causes of action not
5 otherwise specified that were pleaded in the Operative Complaint or could have
6 been pleaded based on the facts alleged in the Operative Complaint or which
7 arise out of or such facts (“Class Released Claims”). (¶7.A)

- 8 • Release By Aggrieved Employees: For Aggrieved Employees, and, to the extent
9 permitted by law, the State of California, the release includes for the duration of
10 the PAGA Period, all claims, demands, rights, liabilities, and/or causes of action,
11 of any form whatsoever, that were asserted or could have been asserted against
12 the Released Parties based on or arising out of the allegations and claims in the
13 Leyva PAGA Notice, the Lopez PAGA Notice (collectively, the “PAGA
14 Notices”) and the Operative Complaint, including but not limited to claims for
15 PAGA civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1,
16 and 2699 in connection with alleged violations of Labor Code sections 201, 202,
17 203, 204, 226, 226.7, 246, 432, 510, 512, 1174, 1194, 1197, 1198.5, 2802, and
18 2810.5 (the “PAGA Released Claims”). The release expressly excludes all other
19 claims, including claims for vested benefits, wrongful termination,
20 unemployment insurance, disability, social security, workers’ compensation, and
21 any other claims outside of the Class Released Claims of Participating Class
22 Members arising during the Class Period and the PAGA Released Claims of
23 Aggrieved Employees (and, to the extent permitted by law, the State of
24 California) arising outside of the PAGA Period. The Class Released Claims and
25

1 PAGA Released Claims shall be referred to herein as the “Released Claims”.

2 (¶7.B)

- 3 • “Released Parties” shall mean Defendants, owners of the La Quinta Resort &
4 Club, including but not limited to BRE Iconic LQR Owner LLC, LQR Property
5 LL, LQR Golf LLC and LQR Resort Desert Real Estate Inc. f/k/a MSR Resort
6 Desert Real Estate Inc., and each of their past, present, and future respective
7 subsidiaries, dba’s, related and affiliated entities, joint ventures, parents,
8 divisions, insurers and reinsurers, and company-sponsored employee benefit
9 plans of any nature, successors, predecessors in interest, and each of their past
10 and present officers, directors, shareholders, exempt employees, agents,
11 members, managing entities, joint employers, integrated enterprises, principals,
12 heirs, representatives, accountants, auditors, consultants, attorneys,
13 administrators, fiduciaries, trustees, agents, anyone acting for any of them.

14 (¶1.Y)

- 15 • The named Plaintiffs will also provide a general release and a waiver of the
16 protections of Cal. Civ. Code §1542. (¶7.C)
- 17 • The releases are effective upon the entry of an Order granting Final Approval of
18 the Settlement, entry of Judgment, and payment by Defendants to the Settlement
19 Administrator of the full Gross Settlement Amount and Employer’s Taxes
20 necessary to effectuate the Settlement within thirty (30) calendar days of the
21 Effective Date (¶¶ 7A, 11.B).

22
23 **D. SETTLEMENT ADMINISTRATION**

- 24 • The proposed Settlement Administrator is Phoenix Class Action Administration
25 Solutions (¶8) which has provided evidence that no counsel are affiliated with it

1 and that it has adequate procedures in place to safeguard the data and funds to be
2 entrusted to it. (See Decl. of Jodey Lawrence.)

- 3 • Settlement administration costs are estimated to be **\$19,500** (¶1.CC).
- 4 • Notice: The manner of giving notice is described below.
- 5 • Opt Out/Objection Dates: “Response Deadline” means the deadline for Settlement
6 Class Members to mail any Requests for Exclusion, Objections, or Workweek
7 Disputes to the Settlement Administrator, which is forty-five (45) calendar days
8 from the date that the Class Notice is first mailed in English and Spanish by the
9 Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an
10 instance, the Response Deadline shall be fifteen (15) calendar days from the re-
11 mailing, or forty-five (45) calendar days from the date of the initial mailing,
12 whichever is later, in which to postmark a Request for Exclusion, Workweek
13 Dispute or Objection. (¶1.Z)
 - 14 ○ Settlement Class Members who worked during the PAGA Period as
15 Aggrieved Employees that submit a valid Request for Exclusion will still
16 be deemed Aggrieved Employees, will still receive their Individual PAGA
17 Payments, and will be bound by the release of the PAGA Released Claims.
18 (¶9.C)
 - 19 ○ If Class Members comprising more than three percent (3%) of the total
20 Workweeks worked by Class Members during the Class Period opt-out of
21 the Settlement by submitting Request for Exclusion forms, Defendants
22 may, at their option, rescind and void the Settlement and all actions taken in
23 furtherance of it will thereby be null and void. (¶19.M)
- 24 • Notice of Final Judgment will be posted on the Settlement Administrator’s website
25 (¶18).

1
2 **III. SETTLEMENT STANDARDS AND PROCEDURE**

3 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
4 of an entire class action, or of a cause of action in a class action, or as to a party,
5 requires the approval of the court after hearing.” “Any party to a settlement agreement
6 may serve and file a written notice of motion for preliminary approval of the settlement.
7 The settlement agreement and proposed notice to class members must be filed with the
8 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
9 Court, rule 3.769(c).

10 “In a class action lawsuit, the court undertakes the responsibility to assess
11 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
12 dismissal of a class action. The purpose of the requirement [of court review] is the
13 protection of those class members, including the named plaintiffs, whose rights may not
14 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
15 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
16 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
17 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
18 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
19 agreement to the extent necessary to reach a reasoned judgment that the agreement is
20 not the product of fraud or overreaching by, or collusion between, the negotiating
21 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
22 concerned.”] [internal quotation marks omitted].

23 “The burden is on the proponent of the settlement to show that it is fair and
24 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient

1 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
2 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
3 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

4 Notwithstanding an initial presumption of fairness, “the court should not give
5 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
6 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
7 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
8 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
9 members, the court must independently and objectively analyze the evidence and
10 circumstances before it in order to determine whether the settlement is in the best
11 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
12 In that determination, the court should consider factors such as “the strength of
13 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
14 the risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and stage of the proceedings, the
16 experience and views of counsel, the presence of a governmental participant, and the
17 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
18 factors is not exclusive and the court is free to engage in a balancing and weighing of
19 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
20 245.

21 At the same time, “[a] settlement need not obtain 100 percent of the damages
22 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
23 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
24 substantially narrower than it would be if the suits were to be successfully litigated,’
25 this is no bar to a class settlement because ‘the public interest may indeed be served by

1 a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation.” *Id.* at 250.

3
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8
9 **1. The settlement was reached through arm’s-length bargaining**

10 On May 14, 2021, the parties attended an unsuccessful mediation before
11 mediator Louis Marlin, Esq. On September 28, 2021, the parties participated in a
12 second full-day mediation before Mark S. Rudy, Esq. With the aid of the mediator’s
13 evaluation and after further negotiations, the parties reached the Settlement to resolve
14 the Leyva Action and Lopez Action. (Bibiyán Decl. ¶¶ 18, 20-21)

15
16 **2. The investigation and discovery were sufficient**

17 Class Counsel represents that prior to mediation, Plaintiffs were provided with
18 what Plaintiffs understand from Defendants, defense counsel, and Class Counsel
19 consults to be, among other things: (1) Plaintiff Lopez’s personnel file; (2) Plaintiff
20 Leyva’s personnel file; (3) a sampling of 12.5% of time and payroll records for all of
21 Defendants’ non-exempt, hourly-paid employees who worked at the La Quinta Resort
22 & Club located at 49499 Eisenhower Drive, La Quinta, California 92253 for the period
23 March 2, 2019 through September 21, 2021; (4) hire and termination dates for those
24 employees; and (5) Defendants’ relevant written policies. (*Id.* at ¶7; Patel Decl. ¶8). A
25 damages model was created by an outside expert hired by proposed class counsel

1 (Supplemental Declaration of Bibiyan filed February 9, 2023 . ¶8). It was represented
2 at oral argument that the sample of pay records had a 6.52% margin of error with a 95%
3 confidence level, suggesting its statistical viability as to the records sampled. This data
4 was extrapolated for the time period prior to March 2, 2019. (Supplemental Declaration
5 of Bibiyan filed February 9, 2023 ¶64).

6 The case, in some measure, was predicated on the theory that Defendant
7 maintained a parking lot for employees that was distant from the worksite and that they
8 were not able to clock in for work until taking a shuttle to the worksite creating a delay
9 of perhaps 15 minutes per shift. Whether and to what extent this theory of the case
10 would succeed was a contested issue. In addition, Plaintiffs urged that they had
11 interrupted meal periods and were required to use their phones or employer provided
12 walkie-talkies during meal and rest periods. This was disputed by the employer, who
13 also contended that many proposed class members were subject to binding agreements
14 to arbitrate and that the use of personal phones for business purposes was exaggerated.
15 Plaintiffs also contended that they were required to separately launder their uniforms, a
16 claim disputed by the employer. Derivative claims based on each of these claims was
17 alleged.

18 It was not clear that the case would be certified based on the facts and the law or
19 what range of damages might be awarded.

20 From the Supplemental Declaration of Bibiyan filed February 9, 2023 (¶¶ 22-66)
21 it appears counsel had sufficient information to value the case and considered both the
22 strength of the potential class claims and the possible defenses thereto.

23 //

24 //

25 //

1
2 **3. Counsel is experienced in similar litigation**

3 Class Counsel represent that they are experienced in class action litigation,
4 including wage and hour class actions. (Declaration of David D. Bibiyan ¶¶8-9;
5 Declaration of Haines; Declaration of Dychter.
6

7 **4. Percentage of the class objecting**

8 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
9 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
10 the court receive objections to the proposed settlement, it will consider and either sustain
11 or overrule them at the fairness hearing.”].
12

13 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
14 **FAIR, ADEQUATE, AND REASONABLE**
15

16 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
17 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
18 does when it approves a settlement as in good faith under Code of Civil Procedure
19 section 877.6, the court must at least satisfy itself that the class settlement is within the
20 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
21 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
22 consider and weigh the nature of the claim, the possible defenses, the situation of the
23 parties, and *the exercise of business judgment* in determining whether the proposed
24 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
25 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

1
2 **1. Amount Offered in Settlement**

3 The most important factor is the strength of the case for plaintiffs on the merits,
4 balanced against the amount offered in settlement.” (*Id.* at 130.)

5 Class Counsel estimated Defendants’ maximum exposure at \$39,054,438 and
6 “reasonable” exposure at \$13,235,437, based on the following analysis:

7

| 8 Violation | Maximum Exposure | Reasonable Exposure |
|-----------------------------|-------------------------|----------------------------|
| 9 Unpaid Wages | \$2,539,849.00 | \$1,777,894.00 |
| 10 Meal Period Violations | \$2,258,386.00 | \$1,580,870.00 |
| 11 Rest Period Violations | \$2,134,759.00 | \$1,794,331.00 |
| 12 Unreimbursed Expenses | \$2,040,000.00 | \$1,428,000.00 |
| 13 Wage Statement Penalties | \$4,644,400.00 | \$2,322,200.00 |
| 14 Waiting Time Penalties | \$4,242,344.00 | \$2,212,672.00 |
| 15 PAGA Penalties | \$21,194,700.00 | \$2,119,470.00 |
| 16 Total | \$39,054,438.00 | \$13,235,437.00 |

17 (Bibiyan Supplemental Decl. ¶¶27-66)

18 Class Counsel obtained a gross settlement valued at \$1,610,000.

19 **2. The Risks of Future Litigation**

20 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
21 motion practice and appeals) are also likely to prolong the litigation as well as any
22 recovery by the class members. Even if a class is certified, there is always a risk of
23 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
24 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
25

1 conducting class actions, which means, under suitable circumstances, entertaining
2 successive motions on certification if the court subsequently discovers that the propriety
3 of a class action is not appropriate.”].) Further, the settlement was negotiated and
4 endorsed by Class Counsel who, as indicated above, are experienced in class action
5 litigation. Based upon their investigation and analysis, the attorneys representing
6 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
7 adequate.

8 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
9 which was sent a copy of the Settlement Agreement on August 19, 2022 and has not yet
10 objected. (Patel Decl., Exhibit 3.) Any objection by it will be considered at the final
11 fairness hearing.

12
13 **3. The Releases Are Limited**

14 The Court has reviewed the Releases to be given by the absent class members and
15 the named plaintiffs. The releases, described above, are tailored to the pleadings and
16 release only those claims in the pleadings. There is no general release by the absent
17 class. The named plaintiffs’ general releases are appropriate given that each was
18 represented by counsel in its negotiation.

19
20 **4. Conclusion**

21 Class Counsel estimated Defendant’s maximum exposure at \$39,054,438 and
22 “reasonable” exposure at \$13,235,437. Class Counsel obtained a gross settlement valued
23 at \$1,610,000. Given the uncertain outcomes, including that the legal theories are not
24 entirely tested, many potential class members are subject to agreements to arbitrate, the
25

1 facts are disputed, and that many of the penalties are discretionary, the settlement is
2 within the “ballpark of reasonableness.”

3
4 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

5 A detailed analysis of the elements required for class certification is not required,
6 but it is advisable to review each element when a class is being conditionally certified.
7 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
8 advocating class treatment must demonstrate the existence of an ascertainable and
9 sufficiently numerous class, a well-defined community of interest, and substantial
10 benefits from certification that render proceeding as a class superior to the alternatives.”
11 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

12
13 **1. The Proposed Class is Numerous**

14 There are approximately 1,738 putative Class Members. (Patel Decl. ¶91.)
15 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
16 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “requirement that there be many
17 parties to a class action is liberally construed,” and citing examples wherein classes of
18 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
19 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

20
21 **2. The Proposed Class Is Ascertainable**

22 “A class is ascertainable, as would support certification under statute
23 governing class actions generally, when it is defined in terms of objective
24 characteristics and common transactional facts that make the ultimate identification
25

1 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
2 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

3 The class is defined above. Class Members are ascertainable through
4 Defendants’ records. (Patel Decl. ¶91.)
5

6 **3. There Is A Community of Interest**

7 “The community of interest requirement involves three factors: ‘(1) predominant
8 common questions of law or fact; (2) class representatives with claims or defenses typical
9 of the class; and (3) class representatives who can adequately represent the class.’”

10 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

11 As to predominant questions of law or fact, Plaintiffs contend that this litigation is
12 brought to resolve common issues that include, without limitation: (1) whether Class
13 Members are entitled to pay for tasks performed off-the-clock; (2) whether Defendants
14 provided full, un-interrupted meal periods; (3) whether Class Members are entitled to
15 premium pay for interrupted meal periods; (4) whether Defendants provided full, un-
16 interrupted rest periods; (5) whether Class Members are entitled to premium pay for
17 interrupted rest periods; (6) whether the failure to pay for time worked off-the-clock
18 entitles Class Members to waiting time penalties or wage statement violations; (7)
19 whether the failure to pay due premium wages entitles Class Members to waiting time
20 penalties or wage statement violations; (8) whether the failure to pay for all time worked
21 was willful to justify waiting time penalties or wage statement violations; and (9) whether
22 the failure to pay for all time worked constitutes an injury sufficient to justify wage
23 statement violations. (MPA at 35:11-21.)

24 As to typicality, Plaintiffs contend that their claims are typical of those of other
25 Class Members as Plaintiffs: (1) are non-exempt, hourly-paid employee like other Class

1 Members; (2) complain of not being paid for all time under Defendants' control or
2 suffered and/or permitted to work for Defendants; (3) did not receive full premium pay
3 for meal periods that were not compliant with the Labor Code; and (4) never received
4 premium pay for rest periods that were not provided to Class Members. (MPA at 36:12-
5 16.)

6 As to adequacy, each Plaintiff represents that he or she is aware of the duties and
7 risks of serving as class representative and has participated in the litigation. (Declaration
8 of Noelia Leyva ¶¶4-5; Declaration of Alejandro Lopez ¶¶9-18.) As previously stated,
9 Class Counsel have experience in class action litigation.

10
11 **4. Substantial Benefits Exist**

12 Given the relatively small size of the individual claims, a class action is superior to
13 separate actions by the class members.

14
15 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
16 OF DUE PROCESS**

17 The purpose of notice is to provide due process to absent class members. A practical
18 approach is required, in which the circumstances of the case determine what forms of
19 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
20 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
21 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
22 stake of the individual class members; (4) the cost of notifying class members; (5) the
23 resources of the parties; (6) the possible prejudice to class members who do not receive
24 notice; and (7) the res judicata effect on class members.

1 **1. Method of class notice**

2 Within twenty-one (21) calendar days after the Preliminary Approval Date,
3 Defendants' Counsel shall provide the Settlement Administrator with the Class List.
4 This information will remain confidential and will not be disclosed to anyone, except as
5 required to applicable taxing authorities, pursuant to Defendants' express written
6 authorization, or by order of the Court. If Class Counsel believe it is necessary to access
7 information in the Class List to fulfill their duties as Class Counsel under this
8 Settlement Agreement, then Class Counsel and Defendants' Counsel are required to
9 meet and confer on the issue; however, if Defendants object to such access, then Class
10 Counsel must move Ex Parte regarding their request to access information in the Class
11 List. The Settlement Administrator shall perform an address search using the United
12 States Postal Service National Change of Address ("NCOA") database and update the
13 addresses contained on the Class List with the newly-found addresses, if any. Within
14 fourteen (14) calendar days of receiving the Class List from Defendants, the Settlement
15 Administrator shall mail the Class Notice in English and Spanish to the Settlement
16 Class Members via first-class regular U.S. Mail using the most current mailing address
17 information available. The Settlement Administrator shall maintain the Class List and
18 digital copies of all the Settlement Administrator's records evidencing the giving of
19 notice to any Settlement Class Member, for at least four (4) years from the Final
20 Approval Date. (¶9.A.1)

21 If a Class Notice from the initial notice mailing is returned as undeliverable, the
22 Settlement Administrator will attempt to obtain a current address for the Settlement
23 Class Member to whom the returned Class Notice had been mailed, within five (5)
24 calendar days of receipt of the returned Class Notice, by undertaking skip tracing. If the
25 Settlement Administrator is successful in obtaining a new address, it will promptly re-

1 mail the Class Notice to the Settlement Class Member. Further, any Class Notices that
2 are returned to the Settlement Administrator with a forwarding address before the
3 Response Deadline shall be promptly re-mailed to the forwarding address affixed
4 thereto. (§9.A.2)

5 **2. Content of class notice.**

6 A copy of the proposed class notice is attached to the Settlement Agreement as
7 Exhibit A. The notice includes information such as: a summary of the litigation; the
8 nature of the settlement; the terms of the settlement agreement; the maximum
9 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
10 the enhancement award, and claims administration costs); the procedures and deadlines
11 for participating in, opting out of, or objecting to, the settlement; the consequences of
12 participating in, opting out of, or objecting to, the settlement; and the date, time, and
13 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
14 given in both English and Spanish (§1.CC).

15 **3. Settlement Administration Costs**

16 Settlement administration costs are estimated at **\$19,500**, including the cost of
17 notice (§1.CC). Prior to the time of the final fairness hearing, the settlement
18 administrator must submit a declaration attesting to the total costs incurred and
19 anticipated to be incurred to finalize the settlement for approval by the Court.

20
21 **E. ATTORNEY FEES AND COSTS**

22 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
23 implied, that has been entered into with respect to the payment of attorney fees or the
24 submission of an application for the approval of attorney fees must be set forth in full in
25

1 any application for approval of the dismissal or settlement of an action that has been
2 certified as a class action.”

3 Ultimately, the award of attorney fees is made by the court at the fairness
4 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
5 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
6 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
7 1132-1136. In common fund cases, the court may use the percentage method. If
8 sufficient information is provided a cross-check against the lodestar may be conducted.
9 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
10 agreement by the parties to the contrary, “the court ha[s] an independent right and
11 responsibility to review the attorney fee provision of the settlement agreement and
12 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
13 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

14 The question of class counsel’s entitlement to **\$563,500** (35%) in attorney fees
15 will be addressed at the final fairness hearing when class counsel brings a noticed
16 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
17 the court with current market tested hourly rate information and billing information so
18 that it can properly apply the lodestar method and must indicate what multiplier (if
19 applicable) is being sought.

20 Based on the chronology above, and without regard to any delays in the Court’s
21 calendar, the actions of counsel appear to have delayed this matter by at least six
22 months (April 4, 2022 to August 22, 2022 and December 21, 2022 to February 9,
23 2023). Counsel shall brief why their fees ought not be reduced to 30% to compensate
24 the proposed class for the delay occasioned by Plaintiffs’ counsel’s failure to file a
25

1 timely motion for preliminary approval that could be approved without continuances
2 and additional information.

3 Fee Split: Each Plaintiff represents that he or she consented to the following fee-
4 splitting arrangement between Class Counsel: 45% to Bibiyan Law Group, P.C. and
5 55% to Dychter Law Offices, APC and United Employees Law Group, P.C. (Decl. of
6 Noelia Leyva ¶6; Decl. of Alejandro Lopez ¶20.)

7 Class counsel should also be prepared to justify the costs sought (capped at
8 **\$40,000**) by detailing how they were incurred.

9 10 **F. SERVICE AWARDS**

11 The Settlement Agreement provides for a service award of up to **\$7,500 each** for
12 the class representatives. Trial courts should not sanction enhancement awards of
13 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
14 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
15 form of quantification of time and effort expended on the litigation, and in the form of
16 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
17 required in order for the trial court to conclude that an enhancement was ‘necessary to
18 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
19 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
20 original.

21 The Court will decide the issue of the enhancement award at the time of final
22 approval.

23 24 **V. CONCLUSION AND ORDER**

25 The Court hereby:

- 1 (1) Grants preliminary approval of the settlement as fair, adequate, and
2 reasonable;
- 3 (2) Grants conditional class certification;
- 4 (3) Appoints Alejandro Lopez and Noelia Leyva as Class Representatives;
- 5 (4) Appoints David Bibiyan, Alexander I. Dychter and Walter Haines as Class
6 Counsel;
- 7 (5) Appoints Phoenix Class Action Administration Solutions as Settlement
8 Administrator;
- 9 (6) Approves the proposed notice plan; and
- 10 (7) Approves the proposed schedule of settlement proceedings as follows:
- 11 • Deadline for Defendant to provide class list to settlement administrator: April 6,
12 2023 (within 21 calendar days from preliminary approval)
 - 13 • Deadline for settlement administrator to mail notices: April 20, 2023 (within 14
14 calendar days of receiving the Class List)
 - 15 • Deadline for class members to opt out: June 5, 2023 (45 calendar days from the
16 initial mailing of the Notice Packets)
 - 17 • Deadline for class members to object: June 5, 2023 (45 calendar days from the
18 initial mailing of the Notice Packets)
 - 19 • Deadline for class counsel to file motion for final approval: June 26, 2023 (16
20 court days prior to final fairness hearing)
 - 21 • Final fairness hearing: July 19, 2023 at 9:00 a.m.

22
23 Dated: 3/16/2022



MAREN E. NELSON

Judge of the Superior Court