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FILED
Superior Court of California
County of Los Angeles

AUG 18 2016

Sherri R. Carter, Executive Officer/Clerk

By Joel Franco Deputy

5 Counsel for Plaintiff DAVID AGUILAR, on behalf of
Himself and others similarly situated

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES

9
10 ROSALIO ANAYA, an individual, and
DAVID AGUILAR, an individual, on behalf
11 of themselves and others similarly situated,

12 Plaintiffs,

13 v.

14 WILLIAMS-SONOMA, INC., a Delaware
corporation; SUTTER STREET
15 MANUFACTURING, INC., a California
corporation; CORNERSTONE STAFFING
16 SOLUTIONS, INC., a California
corporation; and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No. BC562546

Honorable William F. Highberger, Dept. 322

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER:
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Yeremian; and [Proposed] Order]*

Date: September 9, 2016

Time: 1:30 p.m.

Dept: 322

By Fax

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff David Aguilar ("Plaintiff"), on behalf of himself and the putative class of
4 similarly situated employees, brought an action against Defendants Williams-Sonoma, Inc., Sutter
5 Street Manufacturing, Inc., and Williams-Sonoma Direct, Inc. (collectively "Defendants"), for: (1)
6 failure to pay minimum wages; (2) failure to pay wages and overtime; (3) failure to provide meal
7 periods; (4) failure to provide accurate wage statements; (5) failure to pay final wages when due;
8 (6) failure to reimburse for necessary business expenditures; (7) and unfair business practices; (8)
9 failure to provide rest breaks; and (9) penalties pursuant to Labor Code § 2699, *et seq.* Plaintiff
10 and Defendants shall collectively be referred to as the "Parties."

11 The class consists of all current and former employees within the State of California who
12 were employed as non-exempt hourly employees at Defendants' City of Industry, California
13 location at any time from November 3, 2010 to the date of Preliminary Approval or August 10,
14 2016, whichever occurs first ("Class Members").

15 After engaging in substantial investigation and extensive and hard-fought negotiations with
16 the assistance of a respected third-party neutral, the parties have agreed to settle all claims alleged
17 in the lawsuit on a class-wide non-reversionary basis for \$1,200,000.00, inclusive of all fees and
18 costs. All Class Members who submit a Claim Form shall receive a settlement share.

19 The proposed settlement is fair, reasonable, and adequate, and in the best interests of the
20 class. Consequently, Plaintiff, with the consent and approval of Defendants, hereby moves this
21 Court for an order: (1) granting preliminary approval of the proposed class action settlement, as
22 embodied in the Joint Stipulation of Class Action Settlement and Release between Plaintiff and
23 Defendants ("Stipulation") attached to the Declaration of David Yeremian filed concurrently
24 herewith; (2) approving the Class Notice to be sent to Class Members, and the notification
25 schedule as set forth in the Stipulation and the Proposed Order, also filed concurrently herewith;
26 and (3) setting a hearing for final approval of the class action settlement.

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1 **II. STATUS OF THE LITIGATION**

2 **A. Procedural History**

3 On November 3, 2014, Plaintiff, David Aguilar (“Plaintiff”), along with former co-plaintiff
4 Rosalio Anaya filed their initial class action complaint in the Los Angeles County Superior Court,
5 Case No. BC 562546, for: (1) failure to pay minimum wages; (2) failure to pay wages and
6 overtime under Labor Code § 510; (3) Meal-Period liability under Labor Code § 226.7 (4)
7 violation of Labor Code § 226(a); (5) waiting time penalties under Labor Code § 203; (6) failure
8 to reimburse for necessary business expenditures in violation of Labor Code § 2802 (7) and
9 violation of Business and Professions Code § 17200, *et seq.* Plaintiffs sought to represent all
10 current and former employees within the State of California who are or were employed as non-
11 exempt hourly employees by defendants at a manufacturing facility, warehouse, and/or
12 distribution center from November 3, 2010 to present. Defendants Williams-Sonoma, Inc.
13 (“Williams-Sonoma”) and Sutter Street Manufacturing, Inc. (“Sutter Street”), answered on
14 December 17, 2016. (Declaration of David Yeremian (“Yeremian Decl.”), ¶ 15.)

15 On March 6, 2015, Cornerstone Staffing Solutions, Inc. (“Cornerstone”), filed a motion to
16 compel arbitration of Anaya’s claims which the remaining defendants joined. On April 7, 2016,
17 the Court granted Cornerstone’s motion to compel arbitration with respect to Anaya. Anaya then
18 settled with Cornerstone. On August 9, 2016, the Court dismissed Anaya and Cornerstone from
19 this action leaving Aguilar as the sole plaintiff along with Defendants Williams-Sonoma, Sutter
20 Street and Williams-Sonoma Direct, Inc. (*Id.*, ¶ 16.)

21 Aguilar, by leave of this Court, filed his First Amended Class Action Complaint on August
22 9, 2016, adding Defendant Williams-Sonoma Direct, Inc. and the Eighth and Ninth Causes of
23 action for Rest Break Liability Under Labor Code § 226.7, and Penalties Pursuant to Labor Code §
24 2699, *et seq.*, respectively. The complaint seeks compensatory and liquidated damages for unpaid
25 minimum wages; compensatory damages for unpaid overtime wages; premium pay for meal
26 period and rest break liability; penalties pursuant to Labor Code § 226; compensatory damages for
27 unpaid reimbursed business expenses; waiting time penalties pursuant to Labor Code § 203; wage
28 and penalties pursuant to Labor Code § 558; and penalties pursuant to Labor Code § 2699, *et seq.*;

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1 restitution and injunctive relief for unfair competition; as well as prejudgment interest, costs, and
2 attorneys' fees. (*Id.*, ¶ 17.)

3 On April 11, 2016, the parties mediated with Mark S. Rudy, a respected mediator with
4 experience in class action cases, particularly wage and hour class actions. (*Id.*, ¶ 21.) After much
5 deliberation regarding the legal issues of Plaintiff's claims, the parties were able to reach a good
6 faith arms length settlement. (*Id.*)

7 **B. Investigation**

8 Before filing the lawsuit, David Yeremian & Associates, Inc. (hereinafter "Class Counsel")
9 investigated and researched the facts and circumstances underlying the pertinent issues and the
10 law applicable thereto. (*Id.* at ¶ 14). This required thorough discussions between Class Counsel
11 and Plaintiffs, as well as preliminary research into the various legal issues and written agreements
12 involved in the case. After conducting their initial investigation, Class Counsel determined that
13 Plaintiff's claims were well suited for class action adjudication owing to what appeared to be a
14 common course of conduct affecting a similarly situated group of employees. (*Id.*)

15 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
16 claims giving rise to the action, including (1) informal discovery; (2) meeting and conferring with
17 defense counsel; (3) reviewing and analyzing time, pay, and punch-in/out records, Defendant's
18 applicable policies as well as the employee handbook, Plaintiff's personnel file, and other
19 documentation; (4) researching the applicable law and potential defenses; (5) constructing damage
20 models based on countervailing interpretations of California law; and (6) reviewing information
21 provided by Defendant at the mediation that was held in this case. Based on the foregoing
22 investigation, Class Counsel has determined that there are 675 total class members (248 formers);
23 they earned an average of \$15.62 per hour; and there are approximately 60,300 shifts in the class
24 period. (*Id.* at ¶¶ 18, 19).

25 Defendants, for their part, vigorously contested liability and the amount of claimed
26 damages (*Id.* at ¶ 20). After Class Counsel analyzed the relevant documents and other gathered
27 data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*)

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1 **C. Settlement Efforts**

2 On April 11, 2016, the parties and their counsel mediated this case before Mark S. Rudy,
3 Esq., a well respected mediator with experience in class action cases, particularly wage and hour
4 class actions. (*Id.* at ¶ 21). During the mediation, the parties discussed all aspects of the case,
5 including the risks of litigation and the risks to both parties of proceeding with a motion for class
6 certification, as well as the applicable law relating to claims at issue. The parties exchanged
7 additional information. (*Id.*). As a result of the mediation, the parties agreed to settle the lawsuit
8 according to the terms set forth in the Joint Stipulation of Class Action Settlement and Release.
9 (*Id.* at ¶ 5; Exhibit 1 to Yereimian Decl. (the "Stipulation"))).

10 From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks
11 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
12 Counsel believe that the recovery for each class member is fair and reasonable, taking into
13 consideration the amounts received in other wage and hour class actions, the risks inherent in
14 litigation of this genre, and the reasonable tailoring of each class member's claim to the settlement
15 award he or she will receive. (*Id.*, *passim*). Further, and based on the settlement negotiations,
16 which were hard-fought and conducted in good faith and at arm's length between attorneys with
17 substantial experience litigating class actions and wage and hour cases, the Stipulation was the
18 product of a non-collusive settlement process in which the parties were forced to make significant
19 compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.* at ¶ 55).

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 Under the terms of the proposed Stipulation, the parties have agreed that all claims brought
22 on behalf of the class shall be fully and finally resolved for a maximum settlement amount of
23 \$1,200,000.00 ("Total Maximum Settlement Amount"). (*Id.* at ¶ 5; Exh. 1, ¶ 41.) The Settlement
24 Amount is non-reversionary and no portion of this Settlement Amount may revert to Defendants.
25 (*Id.*) The Stipulation defines the Class Members as all current and former employees within the
26 State of California who were employed as non-exempt hourly employees at Defendants' City of
27 Industry, California location at any time from November 3, 2010 to the date of Preliminary
28 Approval or August 10, 2016, whichever occurs first ("Class Members"). (Exh. 1, ¶ 9.) The

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1 amount of the Total Maximum Settlement Amount remaining after the following deductions have
2 been made (called the "Net Settlement Sum") shall be available for distribution to Class Members
3 who submit Claim Forms:

- 4 • Fee and Expense Award of one-third of the Total Settlement Amount to Class
5 Counsel for attorneys' fees (\$400,000.00) and actual litigation costs to Class
6 Counsel (not to exceed \$10,000.00) (*Id.*, ¶ 19);
- 7 • Incentive Award of \$5,000.00 to Plaintiff David Aguilar for his service and
8 participation as class representative (*Id.*, ¶ 23);
- 9 • PAGA Payment of \$10,000 (of which \$7,500 shall be paid to the LWDA with the
10 remainder distributed to eligible class members) (*Id.*, ¶ 28);
- 11 • Employer's share of payroll taxes on the tax-eligible portion of amounts distributed
12 to class members (*Id.*, ¶ 67); and,
- 13 • Administration Costs not to exceed \$11,250.00 (*Id.*, ¶ 2).

14 The Net Settlement Amount will be distributed to Class Members based on their respective
15 Percentage Share of the Total Class Work Weeks. (*Id.*, ¶ 31, 40, 42, 62). Approximations and
16 averages will be used to cover periods where data is missing or otherwise not available.

17 For the Court's review and approval, attached to the Stipulation, as Exhibit 1 and 2 are the
18 Claim Form and Notice of Class Action Settlement ("Class Notice"). (*Id.* at ¶ 52.) These
19 documents collectively are referred to as the "Notice Packet." The Class Notice itself fully
20 apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the
21 settlement, and their options thereunder. In the Class Notice, Class Members will also receive
22 Class Counsel's contact information, so that class members can speak to attorneys conversant with
23 the legal and factual issues involved in this case. The efforts taken to ensure that Class Members
24 receive the Class Notice and are well informed about the settlement augur a favorable response
25 and low opt out rate. (*Id.*) The parties have approved these documents, which are to be
26 disseminated to class members consistent with the manner and timing set out in the Stipulation
27 and Proposed Order. The parties now respectfully request that this Court approve them as well.

28 The parties have also agreed that CPT Group, Inc. ("CPT") shall handle the notice and

1 claims administration, and the parties respectfully request this Court to appoint CPT to handle
2 those procedures.

3 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

4 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince*
5 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
6 (1981) 29 Cal. 3d 462 (finding that California public policy “encourages the use of the class action
7 device”). Any doubt as to the appropriateness of class treatment should be resolved in favor of
8 class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75. The
9 decision to certify a class is purely a procedural one, and should be based on the allegations in the
10 operative complaint, and not in the perceived factual or legal merit of the class claims. *Linder v.*
11 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

12 To certify a settlement class, the Court must find the two primary requirements for
13 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
14 defined community of interest in the questions of law and fact involving the parties to be
15 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09 ; *Daar v. Yellow Cab*
16 *Company* (1967) 67 Cal. 2d 695, 704; *Daniels v. Centennial Capital Group* (1993), 16 Cal. App.
17 4th 467, 471; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341. These
18 criteria are met here for the reasons set forth below.

19 **A. There Is An Ascertainable Class**

20 Whether a class is ascertainable is determined by examining the class definition, the size of
21 the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at
22 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271;
23 *Miller v. Woods* (1983) 148 Cal. App. 3d 862, 873. Class members are “ascertainable” where they
24 may be readily identified without unreasonable expense or time. Plaintiff contends, and
25 Defendants do not dispute for settlement purposes only, this requirement is met. Class members
26 are any current and former employees within the State of California who were employed as non-
27 exempt hourly employees at Defendants’ City of Industry, California location at any time from
28 November 3, 2010 to the date of Preliminary Approval or August 10, 2016, whichever occurs first

1 (“Class Period”). Documents and information exchanged between the parties reflect a class of
2 approximately 675 total members. (Yeremian Decl. ¶ 64a, b). Defendants are required to and do
3 maintain a record of each such person, including contact information and social security numbers.
4 Therefore, there is an ascertainable class.

5 **B. There Is A Well-Defined Community of Interest**

6 A community of interest is established by the predominance of common issues of law and
7 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

8 [D]oes not depend upon an identical recovery, and the fact that each
9 member of the class must prove his separate claim to a portion of
10 any recovery by the class is only one factor to be considered ... The
11 mere fact that separate transactions are involved does not of itself
12 preclude a finding of the requisite community of interest so long as
13 every member of the alleged class would not be required to litigate
14 numerous and substantial questions to determine his individual right
15 to recover subsequent to the rendering of any class judgment which
16 determined in plaintiffs’ favor whatever questions were common to
17 the class.

18 *Id.* at 809.

19 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
20 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and Class
21 Members is united in its proof. (Yeremian Decl. ¶ 64f). Because Plaintiff has alleged a single
22 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
23 common question fundamental to all class members.” *See In Re NASDAQ Market-Makers*
24 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
25 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in
26 inferring class-wide causation, class-wide injury, and class-wide damages when a common course
27 of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350 (granting class
28 certification in a manufacturing defect case when a common course of action had been proven).
This inference ““ eliminates the need for each class member to prove individually the consequences
of the defendants’ actions to him or her.”” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
(1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay

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1 minimum wages and overtime, provide meal and rest periods, reimburse Class Members for
2 necessary business expenditures, provide compliant wage statements, and pay final wages when
3 required, practices that affected all Class Members in the same way. The outcome of litigation on
4 this matter depends upon questions that are common to Class Members. (Yeremian Decl. ¶ 64).
5 These issues will not be decided on the basis of facts peculiar to each Class Member, but rather on
6 the basis of facts common to them all. It is also true that these issues of liability can be determined
7 on a class-wide basis. (*Id.*).

8 **C. The Named Plaintiff's Claims Are Typical**

9 A class representative's claims are typical when they arise from the same event, practice,
10 or course of conduct that gives rise to the claims of other putative class members, and if their
11 claims rest on the same legal theories. The class representative's claims must be "typical" but not
12 necessarily identical to the claims of other class members. It is sufficient that the representative is
13 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
14 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
15 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
16 representative must have identical interests with the class members."). Thus it is not necessary that
17 the class representative should have personally incurred all of the damages suffered by each of the
18 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

19 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
20 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
21 basis and are based on the same legal theories. (Yeremian Decl. ¶ 64c). Plaintiff was a non-exempt
22 hourly employee at Defendants' City of Industry, California location, during the Class Period.
23 (*Id.*). The central issues of this litigation (whether Defendants failed to pay wages, overtime, etc.),
24 which would arise if this was an individual action of Plaintiff, apply to the other Class Members as
25 well, and the answer to these questions would determine Defendants' liability to all Class
26 Members. (*Id.*). Thus, the claims of Plaintiff are typical of the claims of Class Members. (*Id.*).
27 Accordingly, the typicality requirement is satisfied. (*Id.*).
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1 **V. THE TWO-STEP APPROVAL PROCESS**

2 Any settlement of class action litigation must be reviewed and approved by the Court. This
3 is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
4 detailed review after the notice has been distributed to the class members for their comments or
5 objections. In this regard, the Manual for Complex Litigation (Second) explains:

6 A two step process is followed when considering class settlements...
7 If the proposed settlement appears to be the product of serious,
8 informed, non-collusive negotiations, has no obvious deficiencies,
9 does not improperly grant preferential treatment to class
10 representatives or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given
to the class members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

11 *Manual for Complex Litigation (Second)* (1985) at § 30.44. The preliminary approval of the class
12 action settlement by the trial court is simply a conditional finding that the settlement appears to be
13 within the range of acceptable settlements. *See, e.g., Newberg*, § 11.25; *North County*
14 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95 ;
15 *Federal Manual for Complex Litigation, Second* ("MCL 2d") § 30.44 ("[P]reliminary approval is
16 appropriate if the agreement is "fair, reasonable, and adequate under the circumstances."). Thus,
17 the preliminary approval of the class action settlement by the trial court is simply a conditional
18 finding that the settlement appears to be within the range of acceptable settlements.

19 A review of the preliminary approval criteria demonstrates a substantial basis for granting
20 the preliminary approval requested by the instant Motion and proceeding to a full settlement
21 hearing.

22 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

23 As a matter of public policy, courts both encourage the use of the class action device and
24 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
25 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a
26 failure of justice in our judicial system."); *State v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460, 471;
27 *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors
28 settlements, particularly where complex class action litigation is concerned."); *Newberg*, § 11.41.

1 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
2 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
3 negotiations were conducted in good faith. *Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
4 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *In re Chicken Antitrust Litigation*
5 (N.D. GA 1980) 560 F. Supp. 957, 962; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447;
6 *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F.2d
7 677, 681. Courts do not substitute their judgment for that of the proponents, particularly when
8 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007
9 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087; *In re*
10 *Armored Car Antitrust Litigation* (N.D. GA 1979) 472 F. Supp 1357; *Sommers v. Abraham*
11 *Lincoln Federal Savings & Loan Association* (ED PA 1978) 79 F.R.D. 571.

12 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
13 several factors that should be analyzed in determining if a class action settlement should be
14 approved. These factors include: (1) the strength of plaintiffs' case; (2) the risk, expense,
15 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
16 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
17 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
18 participant; and (8) the reaction of the class members to the proposed settlement.

19 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
20 discovery before entering into meaningful settlement negotiations in this matter. (Yeremian Decl.,
21 ¶¶ 14-21.) This discovery permitted Class Counsel to fairly evaluate the strengths of the case and
22 the risks associated with ongoing litigation. (*Id.*, ¶¶ 22-41, 42-46.) Class Counsel is experienced in
23 the handling of wage and hour class actions and supports this Settlement. (*Id.*, ¶¶ 47-51.)

24 **A. The Strength of Plaintiff's Case.**

25 The claims in operative Complaint include failure to pay minimum wages and overtime,
26 provide meal and rest breaks, reimbursements, paystub and waiting time violations, unfair
27 business practices and PAGA violations. (Yeremian Decl., ¶ 15). Class Counsel felt confident that
28 the claims in this case would be certified given that Defendants' pay, meal, rest, and

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1 reimbursement policies were applicable uniformly all Class Members. Based on the facts alleged
2 and the investigation conducted, Plaintiff evaluated the maximum potential exposure Defendant
3 had to each of the claims. (Yeremian Decl., ¶¶ 22-41).

4 **B. The Risks Associated with the Merits.**

5 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
6 Plaintiff contends that he and other Class Members were not properly paid minimum wages,
7 overtime pay, premium pay for deficiently provided meal periods and rest-breaks, or
8 reimbursements of necessary expenditures in accordance with California Law. Defendants
9 countered that the wage claims stemming from the off-the-clock security checks were subject to
10 the *de minimis* defense. If such a defense held, there would be zero liability for the minimum
11 wage/overtime and claims derivative of these facts. (*Id.*, ¶ 41). With regard to the meal and rest
12 claims, Defendant maintained that its written policies were compliant with *Brinker* and therefore it
13 met the standard of making the breaks available to the class members. (*Id.*) Additionally,
14 Defendants contend that the variance in the daily routines of the Class Members, the publication of
15 compliant policies and break schedules would be a potential stumbling block on certification,
16 because of the individualized issues of fact. (*Id.*) All of these reasons make settlement all the
17 more attractive. (*Id.*) If Defendants' contentions were to be proven as true, and Defendants prevail
18 in trial, the likely outcome of this claim would be no recovery for the Settlement Class Members.
19 (*Id.*)

20 **C. The Risks Associated with Waiting Time Penalties and 226 Violations.**

21 In order to establish liability for these penalties, Plaintiffs would have to establish that
22 Defendant's conduct was willful. Labor Code § 203 states "if an employer willfully fails to pay . .
23 . any wages of an employee who is discharged or who quits, the wages of the employee shall
24 continue as a penalty. . ." for up to 30 days. (Lab. Code § 203; see also *Mamika v. Barca*, 68
25 Cal.App.4th 487 (1998). With these penalties, there is always the risk that the trier of fact would
26 not have held that Defendants' actions were done "willfully." As discussed above, Plaintiff alleges
27 that Defendants failed to pay Class Members proper wages, overtime, etc. Class Members are
28 entitled to these wages, premiums, and penalties, which they were not paid at the time of their

1 termination or resignation. (*See, e.g., Ghory v. Al-Lahham* (1998) 209 Cal. App. 3d 1487, 1492
2 (noting that “if [an employee] is entitled to overtime compensation, he is entitled to penalty wages
3 as well”). If Plaintiff is successful on his claims, the penalties pursuant to Labor Code § 203 shall
4 attach. Defendants may have been able to establish that its failure to pay such amounts allegedly
5 owed was not “willful.” (Yeremian Decl., ¶¶ 32-34.)

6 With regard to the paystub violations, Defendant argued that penalties under 226(e) are not
7 automatic. Rather, class members would have to show they suffered injury from noncompliant
8 wage statements and defendant’s non-compliance was knowing and intentional. Plaintiff
9 recognized that this standard made the merits of such a claim difficult to meet. (*Id.* at ¶¶ 28-31.)

10 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
11 and in the best interest of Class Members. (Yeremian Decl., *passim*).

12 **D. The Risks Associated with PAGA Penalties.**

13 PAGA penalties are derivative of other violations. So, the inherent risk to this claim begins
14 with the risks discussed above related to the predicate claims. On top of those risks are the risks of
15 proving that such claims are manageable, that the penalties cannot be stacked and are ultimately
16 subject to the discretion of the trial judge. (*Id.* at ¶¶ 36-39.)

17 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

18 Given the risks outlined above, the issues in this case were complex and the risk for
19 Plaintiff and Class Members, associated with this litigation, was high. (Yeremian Decl., ¶¶42-46).
20 There are the risks described above as to the merits. There are also risks in terms of obtaining
21 certification (also described above) and fighting off de-certification. A class trial would have
22 required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and
23 the parties would have had to spend a substantial amount of time.

24 Finally, given the complexity and unsettled nature of the issues, it is likely that any
25 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
26 further delay for Class Members who have already waited years for resolution in this matter.

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F. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples for litigating class claims, decertification is a real risk in any class action of any size that Class Counsel must take into account.

G. The Amount Offered in Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties. In order to determine the approximate potential damages which would be owed to the Class, Class Counsel analyzed the time, payroll, and punch-in/out data for Plaintiff, provided by Defendants for a sampling of the Class Members. (Yeremian Decl., ¶¶ 18, 19.) By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial.

There are approximately 675 total Class Members. There are approximately 248 former employees. The average hourly rate for each class member was approximately \$15.62 per hour and approximately 60,300 shifts during the class period. (*Id.* at ¶ 18.) Using this information, Class Counsel estimated the maximum exposure of the claims as follows:

a.	Minimum Wage:	\$542,700.00
b.	Overtime:	\$706,414.50
c.	Meal Break Violations:	\$1,883,772.00
d.	Rest Break Violations:	\$1,883,772.00
e.	Unreimbursed Expenses	\$16,875.00
f.	Section 226 Violations:	\$1,708,000.00
g.	Section 203 Violations:	\$929,702.40
h.	Total: ¹	\$7,128,535.90

Once Class Counsel was able to determine the maximum potential damages, Class Counsel was able to determine a fair and reasonable settlement for the Class. (*Id.* at ¶ 41.) Class Counsel

¹ Excludes minimum wages damages since overtime damages exceed that number. Also excludes PAGA.

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1 analyzed the likelihood of success on the merits. (*Id.*) Class Counsel believes that the Class had a
2 reasonable likelihood of success on the core claims. (*Id.*) However, Defendants dispute Class
3 Counsel's contention with respect to Plaintiff's likelihood of success on the merits, and deny any
4 and all wrongdoing in this matter and is confident it has strong legal and factual defenses to
5 Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the claim
6 for waiting time penalties was not as strong, because Defendant may have had the opportunity to
7 establish that it had a good faith belief that it was complying with law. (*Id.*) After taking into
8 account the likelihood of success on each claim, Class Counsel determined that the settlement
9 amount of \$1,200,000.00 was fair and reasonable.

10 Under the Settlement, each of the approximately 675 Settlement Class Members will
11 receive approximately \$1,777.77 before taking into account attorney's fees and costs,
12 enhancement awards to the named Plaintiff of this Action, costs of claims administration, payment
13 of PAGA fees, interest, and penalties (this number will vary depending on the number of Work
14 Weeks during the Class Period). (*Id.* at ¶ 41.) Each Settlement Class Member will roughly receive
15 on average \$1,135.19 after expenses but before payroll taxes. (*Id.*) Plaintiff feels that this
16 Settlement is fair, reasonable, and advantageous to Class members. (*Id. passim.*)

17 To summarize, the Settlement here is fair because it provides a substantial payment to each
18 class member for releasing his or her claims (*see* Yeremian Decl., ¶¶ 7-13, 55) discussing the
19 *Kullar* analysis); extinguishes the risk of litigation (*see* Yeremian Decl., ¶¶ 42-46 discussing the
20 risk, expense and likely duration of further litigation as well as risk of maintaining class action
21 status through trial); and provides a fair and adequate distribution of the settlement proceeds
22 whereby the funds are allocated to class members proportionally based on the number of Work
23 Weeks during the class period. (Yeremian Decl., ¶ 54.)

24 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
25 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
26 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim*).
27 Throughout this case, Class Members have been represented by experienced counsel with many
28 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 47-51.)

1 Class Counsel have devoted a considerable amount of time to the prosecution of this case,
2 including but not limited to, interviewing Plaintiff at length on repeated occasions; drafting
3 pleadings; drafting discovery; reviewing and analyzing the time and pay records for Plaintiff and
4 Class Members; reviewing and analyzing the employee handbook, applicable arbitration
5 agreements, Plaintiff's personnel file, and other documentation; discussing this case with defense
6 counsel; researching California law; preparing; preparing for and attending mediation; and
7 negotiating and finalizing the Stipulation and related documents. (Yeremian Decl., ¶¶ 56-68.)

8 Among those matters considered during the course of settlement negotiations were the
9 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
10 length of further litigation, including class certification and the appeals process; the present state
11 of the law as it applies to wage and hour class actions, particularly in light of *Kirby v. Immoos Fire*
12 *Protection, Inc.*, (2012) 53 Cal. 4th 1244; present value of a settlement versus the long wait
13 necessitated by any potential judgment in Class Members' favor; the burdens of proof necessary to
14 establish liability against Defendants; and Defendants' defenses to the action. (Yeremian Decl.,
15 *passim.*)

16 These factors each indicated that the interests of Class Members are best served by a
17 settlement of this action in the manner and upon the terms set forth in the Stipulation. The
18 Stipulation confers a substantial benefit on the class for \$1,200,000.00. Moreover, the settlement
19 awards for each Settlement Class Member will be tailored to the extent to which he or she was
20 affected by Defendants' alleged wage and hour violations, specifically the number of Work Weeks
21 worked by the respective Settlement Class Member during the Class Period. (*Id.* at ¶ 5.)

22 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
23 of the Class Members. (*Id.*, *passim*). Although the recommendations of counsel proposing the
24 class settlement are not conclusive, the Court can properly take the recommendations into account,
25 particularly if counsel have been involved in litigation for some period of time, appear to be
26 competent, and have experience with this type of litigation, and significant discovery has been
27 completed. *See Newberg*, §11.47.

28 ///

1 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND**
2 **REASONABLE**

3 It is appropriate to provide a relatively modest additional incentive payment to the class
4 representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
5 F.Supp. 294; *Bogosian v. Gulf Oil Corp.* (E.D. Pa. 1985) 621 F.Supp. 27 (award of \$20,000.00
6 each to two class representatives in antitrust case); *Bryan v. Pittsburgh Plate Glass Co. (PPG*
7 *Industries, Inc.)* (W.D. Pa. 1973) 59 F.R.D. 616, 617, *aff'd* 494 F.2d 799 (3d Cir.), *cert. denied in*
8 *Abate v. Pittsburgh Plate Glass Co.* (1974) 419 U.S. 900 (payments of \$17,500.00 to class
9 members who aided in advancing Title VII case).

10 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing
11 and helping to prosecute this class action. Plaintiff spent considerable amount of time better
12 apprising himself of his rights, deciding whether remedial action should be taken, how it should be
13 taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours with
14 Plaintiff discussing his case and the law. (Yeremian Decl., ¶ 59-63.) In the end, Plaintiff decided
15 to vindicate not only his own rights but also those of his co-workers by filing a class action
16 lawsuit.

17 The courage it took to do this should not be underestimated. By suing Defendants, Plaintiff
18 increased his risk of retaliation by prospective employers. (*Id.* at ¶ 60.) Plaintiff has now cost
19 Defendants a substantial sum of money, and such conduct will not be lost on a prospective
20 employer who has to choose between an applicant who has never sued a prior employer and one
21 who has. (*Id.*) This risk is particularly real in the information age, where employers can, more
22 easily than ever, perform background checks of prospective employees, sometimes with the stroke
23 of a key. (*Id.*)

24 But Plaintiff did not allow his fears of the potential repercussions of being a class
25 representative deter him from acting for the benefit of Class Members. (*Id.* at ¶ 61.) To the
26 contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has
27 devoted substantial time to helping Class Counsel effectively develop and prosecute this action at
28 every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
conferred with Class Counsel on numerous occasions to discuss every aspect of this case; Plaintiff

1 provided Class Counsel with information about Defendants, about the industry generally, and
2 Defendants employment policies, reviewed documents, identified witnesses, consulted Class
3 Counsel throughout the litigation repeatedly and at length, participated in the mediation process,
4 monitored the progress of the litigation with Class Counsel, and reviewed and signed the
5 settlement agreement. (*Id.*)

6 Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge
7 of Defendants' practices and helping Class Counsel with the prosecution of this action. (*Id.* at ¶
8 62.) He has diligently, adequately, and fairly represented Class Members, and has not placed his
9 interests above any Class member. (*Id.*) These sorts of payments to class representatives have been
10 common features of settlements negotiated by Class Counsel and have been routinely approved by
11 trial courts. (*Id.*)

12 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
13 \$5,000.000 to named Plaintiff is fair and reasonable. (*Id.* at ¶ 63.)

14 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
15 **CLASS MEMBERS.**

16 Constitutional due process requires that class members be provided with notice sufficient
17 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
18 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
19 information to make an informed decision as to whether to accept or object to the settlement. *Id.* at
20 314. The notice must apprise the class members of the pendency of the action; reasonably convey
21 information regarding the settlement and the class members' rights, entitlements, and obligations;
22 and afford class members the opportunity to present their objections. *Id.*

23 The Claim Form and Class Notice, attached to the Stipulation as Exhibits 1 & 2 meet
24 constitutional standards because it provides all the information a reasonable person would need to
25 make a fully informed decision about the settlement. It will notify all Class Members of the terms
26 of the Settlement, of its effect on their rights, of their options as class members (i.e., participate,
27 object, opt out, do nothing), and of the consequences of exercising those options. (Yeremian Decl.,
28 ¶¶ 52-54.) Moreover, the Class Notice will specifically direct any Class Member who has

1 questions or concerns to contact the Settlement Administrator, CPT Group. (*Id.*) Moreover the
2 claims process is not overly burdensome. Class Members need only to submit a claim form to the
3 administrator within 60 days of the mailing to participate in the settlement—they sign, date, fill in
4 the last 4 digits of their social and put a stamp on it. (*Id.* at ¶ 53.) If they have any questions, they
5 will have the contact information of the Claims Administrator and Class Counsel in the Notice
6 Packet. (*Id.*) Sixty days is ample time for Class Members to review the forms and contact the
7 administrator or Class Counsel for clarification or additional information. (*Id.*) Also a claims
8 process is appropriate as it ensures that money from the settlement is actually reaching class
9 members rather than ending up in an out of use address and landing with the State of California in
10 trust for the class members who may never actually receive the funds. (*Id.*)The claims process also
11 includes a reminder postcard to Class Members to ensure that they timely submit their Claim
12 Forms. (*Id.*)

13 The standard for determining the adequacy of notice is whether the notice has “a
14 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior*
15 *Court* (1975) 50 Cal.App.3d 960, 974. The Judicial Council of California’s Deskbook on the
16 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
17 notice by mail is preferred when possible and dissemination of combined certification/settlement
18 notice is a common and accepted practice. *In re Vitamin Cases* (2003)107 Cal.App.4th 820, 828.

19 Here, the Class Notice will be sent via first-class mail to each Class Member. (Yeremian
20 Decl., ¶ 52.) Any Class Notices returned to the Settlement Administrator with a forwarding
21 address shall be re-mailed by the Settlement Administrator within 5 calendar days following
22 receipt of the returned mail. For any Class Notices returned to the Settlement Administrator
23 without a forwarding address, the Settlement Administrator shall conduct address searches using
24 skip tracing methods, and shall promptly, within the time periods described in the preceding
25 sentence, re-mail the Notices to the newly-found addresses. In the event that an intended recipient
26 of a Class Notice does not receive the Class Notice, the intended recipient shall nevertheless
27 remain a Settlement Class Member, but not an Authorized Claimant, unless he or she timely files a
28 Claim Form as provided in this Settlement Agreement. Those Class Members who receive a re-

1 mailed Class Notice and Claim Form, whether by skip-trace or by request, will have between the
2 later of (a) an additional 15 calendar days or (b) the Claims Deadline to postmark a Claim Form.

3 Pursuant to controlling authority, the proposed Class Notice and method of distribution
4 fully comport with due process requirements. Therefore, the Court should approve the Class
5 Notice and direct that it be distributed as proposed herein.

6 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

7 Non-settling parties and third parties periodically may attempt to object to proposed class
8 action settlements, but the right of non-settling parties to object at the final settlement approval
9 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
10 members have standing to object to a proposed settlement. "Beginning from the unassailable
11 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
12 to inject their concerns via objection at the settlement stage would tend to frustrate this goal."

13 *Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.

14 As *Newberg* observes, even non-settling defendants in a multiple-defendant litigation
15 context have no standing to object to the fairness or adequacy of the settlement by other
16 defendants; they are limited to objecting to any terms that would preclude them from seeking
17 indemnification from the settling defendants. *See Newberg*, §11.55. Since an application is being
18 filed to obtain a good faith determination, no persons other than class members have standing to
19 object to the proposed settlement. *In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.

20 **X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS
21 REASONABLE AND SHOULD BE APPROVED.**

22 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an award
23 of fees equal to one-third of the of the Total Settlement Amount, amounting to \$400,000.00 plus
24 actual litigation costs, not to exceed \$10,000.00, upon proof of receipt. The requested fees are fair
25 compensation for a law firm involved in undertaking complex, risky, expensive, and time-
26 consuming litigation solely on a contingent basis. *See, Laffitte v. Robert Half Int'l, Inc.* ____,
27 Cal.4th __ (Aug. 11, 2016); 2016 WL 4238619 (indicating that it is proper to award class counsel
28 fees based on a percentage of the fund method). (Yeremian Decl. ¶¶ 56-58). Defendants will not

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1 oppose Class Counsel's fee request.

2 California courts routinely look to the federal courts on class action approvals. The Ninth
3 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
4 to award a percentage of the "common fund" created as a result of the settlement. *Vincent v.*
5 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common
6 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
7 so that the active beneficiary does not bear the entire burden alone." *Id.* Accordingly, under Ninth
8 Circuit law, the District Court has discretion to choose either the percentage-of-the-fund method or
9 the lodestar method. *In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d
10 1291, 1295-96.

11 Several courts have, however, expressed frustration with the "lodestar" approach for
12 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
13 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
14 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
15 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
16 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The
17 Ninth Circuit has used the percentage of the common fund approach to determine the award of
18 attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79
19 (approving attorneys' fee of 33 1/3% of settlement fund).

20 Class Counsel's application for attorneys' fees in light of the facts and circumstances
21 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
22 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances
23 of the case. *Newberg*, at §14.03; see also *In re Activision Securities Litigation*, 723 F. Supp. at
24 1378. According to *Newberg*:

25 No general rule can be articulated on what is a reasonable
26 percentage of a common fund. Usually 50% of the fund is the upper
27 limit on a reasonable fee award from a common fund in order to
28 assure that the fees do not consume a disproportionate part of the
recovery obtained for the class, although somewhat larger
percentages are not unprecedented. *Newberg*, § 14.03.

1 Newberg further notes: “[A]chievement of a substantial recovery with modest hours expended
2 should not be penalized but should be rewarded for considerations of time saved by superior
3 services performed.” *Id.* at §§ 14-10:14-11.

4 The attorneys’ fees request provided for in the Stipulation is commensurate with judicial
5 precedent. Both state and federal courts regularly approve fee awards equal to or greater than the
6 percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir.
7 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*
8 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs’ counsel
9 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D.
10 D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc.*
11 *v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, *aff’d* 622 F.2d 1106 (2d
12 Cir. 1980) (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.
13 N.Y. 1981) 516 F.Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los*
14 *Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of
15 recovery achieved).

16 In wage and hour class actions in particular, California trial courts have customarily
17 approved attorney’s fees consistent with or greater than the percentage of the common fund
18 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
19 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys’ fees of at least
20 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
21 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
22 Angeles County Super.Ct. Case No. BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
23 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
24 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct.
25 Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
26 *Restaurants*, Orange County Super.Ct. Case No. 02CC10201 (2006) (Hon. Ronald L. Bauer);
27 *Moore v. IKEA*, Los Angeles County Super.Ct. Case No. BC 263646 (Sept. 2006) (Hon. Peter
28 Lichtman); *Big Lots Overtime Cases*, San Bernardino County Super. Ct. JCCP Proceeding No.

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1 4283 (Feb. 2004) (Hon. Walter L. Blackwell, III); *Fitzpatrick v. Baja Fresh*, Los Angeles
2 Super.Ct. Case No. BC 265578 (Hon. Anthony J. Mohr) (Mar. 2003).

3 Here, Class Counsel have borne the entire risk and costs of litigation and will not receive
4 any compensation until recovery is obtained. (*See Yeremian Decl.*, ¶¶ 56-58.) The Court should
5 also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the
6 requested award for Class Counsel is reasonable.

7 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
8 **APPROVAL**

9 The parties respectfully request this Court, as part of the preliminary-approval process, to
10 grant the following relief and make the following orders:

- 11 1. Review and approve the Stipulation;
- 12 2. Review and approve the Class Notice and Claim Form, and all corresponding
13 attachments, attached to the Stipulation;
- 14 3. Consider and determine that the proposed class action settlement as set forth in the
15 Stipulation preliminarily appears fair, reasonable, and adequate;
- 16 4. Enter an order conditionally certifying the action as a class action for settlement
17 purposes only and preliminarily approving the proposed class action settlement and the
18 Stipulation;
- 19 5. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. to serve as
20 Class Counsel for settlement purposes;
- 21 6. Approve and appoint CPT Group as the Claims Administrator to handle the notice and
22 claims procedures as set forth in the Stipulation;
- 23 7. Order Defendants to disclose to CPT only, and not Class Counsel, the names, last-
24 known addresses, and social security numbers of class members as set forth in the Stipulation;
- 25 8. Order that CPT mail the Class Notice, and all corresponding attachments, to Class
26 Members; and
- 27 9. Set a date for the Final Approval Hearing.

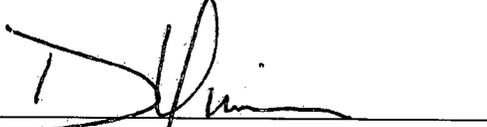
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1 Dated: August 17, 2016

Respectfully submitted,

2 DAVID YEREMIAN & ASSOCIATES, INC.

3
4 By 

5 David Yeremian
6 Attorneys for Plaintiff DAVID AGUILAR, and
7 the putative class

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