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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

REBECCA NISHIMOTO, individually and on) Case No. 34-2017-00211426
behalf of all others similarly situated,) *[Assigned for All Purposes to the Hon. Alan G.*
) *Perkins, Dept. 35]* _

Plaintiff(s),)

vs.)

T&S BUSINESS CORPORATION, and)
DOES 1-10, inclusive,)

Defendants.)

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: January 14, 2020
Time: 9:30 a.m.
Department: 35
Judge: Hon. Alan G. Perkins

Submitted Under Separate Cover

- Declaration of Adrian Bacon, Declaration of Rebecca Nishimoto and Accompanying Exhibits; and
[Proposed] Order.

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PLEASE TAKE NOTICE that on January 14, 2020 at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 35 of the above-captioned Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiff Rebecca Nishimoto (“Plaintiff”) will and hereby does move for an order: (1) granting class certification of the below-defined Class for settlement purposes only pursuant to Code of Civil Procedure § 382; (2) preliminarily approving the Joint Stipulation and Class Action Settlement Agreement (the “Settlement”) between Plaintiff and T&S Business Corporation (“Defendant”); (3) appointing Adrian Bacon and Todd M. Friedman, (of the Law Offices of Todd M. Friedman) as Class Counsel for the Class; (4) appointing Plaintiff as the Class Representative for the Class; (5) approving the use of the proposed notice procedure and related forms; (6) directing that the Class Notice be mailed to the Class; and (7) scheduling a hearing date for a final approval hearing.

This Motion is made on the following grounds: (1) the Class meets all the requirements for class certification for settlement purposes only under Code of Civil Procedure § 382; (2) Plaintiff and his counsel are adequate to represent the Class; (3) the Settlement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims in this case; (4) the proposed notice procedure fully comports with all due process requirements; and (5) in view of the foregoing, the Settlement should be preliminarily approved, notice should be disseminated to Class Members, a final approval hearing should be scheduled, and the [Proposed] Order Granting Preliminary Approval of Class Action Settlement should be entered.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declaration of Adrian Bacon, the Declarations of Plaintiff in support thereof, all exhibits thereto, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

By: 

Law Offices of Todd M. Friedman, P.C.
Adrian R. Bacon, Esq.

I. INTRODUCTION

Through this Motion, Plaintiff Rebecca Nishimoto (“Plaintiff”) respectfully requests for this Court to conditionally certify the below-defined Class for settlement purposes only pursuant to Code of Civil Procedure § 382, preliminarily approve the Joint Stipulation and Class Action Settlement Agreement (the “Settlement”),¹ direct that notice be disseminated to the Class, and schedule a final approval hearing. The Settlement provides for a non-reversionary Settlement Fund of \$488,750.00 in compromise of the disputed wage and hour claims asserted in this case, which will be automatically distributed to Class Members without them being required to submit claim forms.

This Court should grant this Motion because: (1) the Class meets the requirements for class certification for settlement purposes only under of Code of Civil Procedure § 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and adequacy; (3) Plaintiff is adequate to serve as the Class Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed notice procedures, and related forms, fully comport with due process and adequately apprise Class Members of their rights; and (6) a final fairness hearing should be scheduled to allow Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below, this Court should grant this Motion in its entirety and preliminarily approve the Settlement.

¹ The Settlement is attached as Exhibit A to the Declaration of Adrian Bacon in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("AB"), which is submitted concurrently herewith under separate cover.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant T&S Business Corporation owned, controlled, and/or operated the restaurants, which employed Plaintiff and similarly situated persons as Non-Exempt employees within the meaning of Wage Order 5. (AB, ¶ 4.) Plaintiff is a former employee of Defendant who worked as a non-exempt server. (*Id.*, ¶ 5.) The Class Members in this case are other current and former non-exempt employees who worked for Defendant in California during the Class Period. (*Id.*, Ex A Settlement, ¶ I, c.) The original complaint in this Action was filed by Plaintiff on April 24, 2017, in the Superior Court of the State of California, County of Sacramento, hereinafter known as the “Action.” (AB, ¶ 6). The operative complaint asserts claims for unfair competition (Business and Professions Code § 17200 *et seq.*), failure to provide meal and rest breaks, wage statement penalties (Labor Code § 226), and civil penalties (PAGA).

After the pleadings were resolved, and discovery was exchanged, the Parties agreed to pursue a class-wide resolution through mediation. (AB, ¶ 7.) On June 6, 2018, the Parties participated in a full day of mediation with Peter D. Lichtman (Ret)., a highly regarded mediator with extensive experience in wage and hour and class action litigation. (*Id.*) In connection with the mediation, the Parties exchanged formal and informal discovery that included, but was not limited to: (1) the size and composition of the Class, including the number of members, and total number of work weeks; (2) production of a sampling of Class Members’ records (including timesheets, wage statements, and testimony); and relevant documents setting forth Defendant’s policies, practices and procedures regarding the disputed issues. (*Id.*, ¶ 8). Based on this information, Plaintiff prepared a detailed mediation brief and estimates of Defendant’s potential liability exposure in this action. (*Id.*, ¶ 9).

Armed with this information, the Parties reached an agreement in principle for the resolution of this lawsuit on a class-wide basis with the assistance of experienced wage and hour mediator Peter D. Lichtman., on June 6, 2018. (AB, ¶ 10.) Now that the Parties have finalized the Settlement, Plaintiff submits it to this Court for preliminary approval. (*Id.*)

III. OVERVIEW OF THE SETTLEMENT

The Settlement provides for a non-reversionary Settlement Fund of \$488,750.00 on behalf of the Class. The Class is defined as “All non-exempt employees of T&S Business Corporation in California during the period of April 24, 2013 through June 30, 2018.” (Settlement, ¶ IV, 11.) The Net Settlement Amount to participating class members (estimated

1 to be at least \$243,333.33) is the portion of the Maximum Gross Settlement Amount remaining
2 after the following deductions: (i) Administration Costs (currently estimated at \$20,000); (ii)
3 Fee and Expense Award (up to \$162,916.67, one-third of the Settlement Fund, allocated for
4 attorneys' fees, plus costs estimated not to exceed \$15,000, allocated to class counsel costs);
5 (iii) Incentive Award to the named Plaintiff of \$10,000; and (iv) PAGA Award (\$50,000.00
6 allocated as follows: 75% (\$37,500 to go to the California Labor and Workforce Development
Agency, and 25% (\$12,500) to the class members. (See *Id.*, ¶¶ 30-31).

7 The entirety of the Gross Individual Settlement Payment Sum will be paid to
8 Participating Class Members (i.e., Class Members who do not request exclusion from the
9 Class). (Bacon Decl.Ex A Settlement, ¶ 7.21.) The Net Settlement Sum will be allocated as a
10 Percentage Share based on the Class Member's Qualifying Work Weeks compared to the Total
11 Work Weeks for all Class Members. (*Id.*) For tax purposes, each Settlement Award will be
12 treated as follows: 90% to alleged penalties, interest and liquidated damages (for which IRS
1099 Forms will be issued), and 10% to alleged wages (for which a W-2 will be issued). (*Id.*, ¶
7.22).

13 All Class Members who do not request exclusion from the Class will release all known
14 and unknown wage and hour claims for the Class Period that were, or could have been, asserted
15 in the action against the Released Parties, *without a waiver of Civil Code § 1542*. (Settlement,
16 ¶ X, A, 70) Named Plaintiff will release the Released Parties from all known or unknown claims
17 he may have against Defendant including a waiver of Civil Code § 1542. (*Id.*)

18 Within fifteen (15) days of the entry of the Preliminary Approval Order, Defendant will
19 provide the Settlement Administrator with the name, most current mailing address from their
20 records, number of Work Weeks during the Class Period, and social security number (last 4
21 digits only) contained in its records for each Class Member. (Settlement, ¶ VII, A, 44) Within
22 15 days of the of receipt from Defendant of the Class Members' information, the Settlement
23 Administrator will mail packets containing the Class Notice and Claim Form to each Class
Member. (*Id.* at 9.1.) Class Members will then have 45 days to submit disputes, requests for
exclusion, and/or objections. (*Id.* at ¶ 7.23, 9.9-9.13.)

24 After Final Approval, the Settlement Administrator will make all required disbursements
25 from the Settlement Fund within 15 days of the receipt of the settlement funds. (*Id.* at ¶ 11.1.)
After the issuance of payments, Authorized Claimants will then have 180 days to cash their

1 checks for Settlement Awards. (*Id.* at ¶ 11.5) Any checks that have not been cashed after 180
2 days will be sent to the California Controller Department of Unclaimed Funds for the benefit of
3 the intended payee. No funds will revert to Defendant.

4 **IV. ARGUMENT**

5 **A. This Court Should Conditionally Certify the Class Because It Meets All the 6 Requirements for Class Certification for Settlement Purposes.**

7 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
8 and its members are too numerous for joinder to be practical; (2) the representative and absent
9 class members share a community of interest and questions of law and fact common to the class
10 predominate over questions unique to individual class members; (3) the representative's claims
11 are typical of the class' claims; and (4) the representative will fairly and adequately represent
12 the class' interests. (See, e.g., *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)
13 "[I]t is also well established that trial courts should use different standards to determine the
14 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
15 standard of scrutiny is used for settlement cases." (*Global Minerals & Metals Corp. v. Superior
16 Court* (2003) 113 Cal.App.4th 836, 859 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
17 1794, 1807 & fn.19 (*Dunk*)].) As the court noted in *Dunk*, although certification requirements
18 are intended "to protect the interests of the non-representative class members," that concern is
19 "protected by the trial court's fairness review of the settlement." (*Dunk*, 48 Cal. App. 4th at p.
20 1807 n.19.)

21 **1. The Class Is Objectively Ascertainable and Sufficiently Numerous.**

22 A class is ascertainable when it may be readily identified without unreasonable expense
23 or time by reference to official records. (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
24 932 [citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579].) In addition, no set number of
25 class members is required as a matter of law to maintain a class action. (*Hebbard v. Colgrove*
(1972) 28 Cal.App.3d 1017, 1030.) Thus, the California Supreme Court has upheld a class of as
few as 10 individuals. (See *Bowles v. Superior Court* (1955) 44 Cal.2d 574.) The Class is
defined as "all non-exempt employees of T&S Business Corporation., in California during the
period of April 24, 2013 through the period of June 30, 2018." (Settlement, ¶ IV, 11). This
Class is objectively ascertainable because its members may be identified by reference to
Defendant's records, which Defendant has agreed to share the relevant information from to

1 facilitate the settlement process. (AB, ¶ 11) This Class is also sufficiently numerous because
2 would be impractical and economically inefficient to require approximately 1,430 Class
3 Members to separately maintain individual actions or be joined as named plaintiffs in this
4 action. (*Id.*, ¶ 12.) Thus, the Class' membership is also sufficiently numerous. (See *Daar v.*
5 *Yellow Cab Co.* (1967) 67 Cal.2d 695.)

6 **2. Common Questions Predominate Over Individual Questions.**

7 A question of law or fact is common if it may be resolved through common proof. (See,
8 e.g., *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1305.) As for predominance, it
9 "is a comparative concept, and 'the necessity for class members to individually establish
10 eligibility and damages does not mean individual fact questions predominate.'" (*Sav-On Drug*
11 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 (*Sav-On*) [quoting *Reyes v. San Diego*
12 *County Bd. of Supervisors* (1979) 196 Cal.App.3d 1263, 1278].) Accordingly, "[i]ndividual
13 issues do not render class certification inappropriate so long as such issues may effectively be
14 managed." (*Id.*)

15 The following common questions exist in this matter: (a) Whether Defendant failed to
16 pay Plaintiff and members of the Class all of the wages they are due and owed; (b) Whether
17 Defendant had a standard policy and/or practice of denying Plaintiff and members of the
18 Plaintiff Class proper meal and rest breaks; (c) Whether Defendant had a standard policy and/or
19 practice of failing to compensate Plaintiff and members of the Plaintiff Class for meal and rest
20 periods that did not comply with California law; (d) Whether Defendant failed to provide
21 Plaintiff and members of the Class with proper itemized wage statements in violation of Labor
22 Code section 226, and applicable Industrial Welfare Commission Orders, and applicable State
23 Regulations; (g) Whether Defendant had/has policies and/or practices that result in reporting
24 time hours not being adequately compensated; (h) Whether Defendant unlawfully and/or
25 willfully failed to promptly pay compensation owing to members of the Subclass upon
termination of their employment in violation of Labor Code sections 201-203; (i) Whether
Defendant has unlawfully failed to issue accurate itemized wage statements pursuant to Labor
Code § 226; and (j) Whether Plaintiff and members of the Class sustained damages, and if so,
the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and
equitable relief. (AB, ¶ 13.)

1 From their review of the information they obtained, Plaintiff’s counsel determined that
2 for purposes of these claims, Defendant’s policies and practices are either identical or
3 sufficiently similar to raise the same questions of liability, and applied to all Class Members.
4 (AB, ¶ 13-14.) Because Class Members would have to prove the same issues of law and fact to
5 prevail, and because their potential legal remedies are identical, it would be preferable to
6 resolve all Class Members’ claims by means of the Settlement than to require each Class
7 Member to litigate his or her individual claims. (*Id.*) Therefore, common questions predominate,
8 and class-wide settlement is superior to any other method of resolution. (*Id.*)

3. *Plaintiff is Typical of the Class.*

9 Typicality “requires a showing that the class representative has claims or defenses
10 typical of the class.” (See, e.g., *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069.) This
11 focuses on “the nature of the claim or defense of the class representative, and not to the specific
12 facts from which it arose or the relief sought.” (*Hanon v. Dataproducts Corp.* (9th Cir. 1992)
13 976 F.2d 497, 508 [internal citations and quotations omitted].) This requirement ensures that the
14 named plaintiff has interests that are reasonably co-extensive with those of absent class
15 members. (See *id.*) “The test of typicality is whether other members have the same or similar
16 injury, whether the action is based on conduct which is not unique to the named plaintiffs, and
17 whether other class members have been injured by the same course of conduct.” (*Id.* [internal
18 quotations and citations omitted].) Notably, “it has never been the law in California that the
19 class representative must have *identical* interest with the class members.” (*Classen v. Weller*
20 (1983) 145 Cal.App.3d 27, 46.)

21 In light of these standards, Plaintiff is typical of Class Members. Like Class Members,
22 Plaintiff worked a non-exempt employee for Defendant in California during the Class Period
23 and was subject to the same general policies and practices with respect to, payroll, wage
24 statements and job duties. (AB, ¶ 14.) In addition, Defendant would primarily assert the same
25 defenses to Plaintiff’s claims as to those of Class Members – e.g., that Defendant paid her for all
hours worked, that Plaintiff’s claims were preempted by a collective bargaining agreement,
Plaintiff was provided with compliant meal and rest break periods, and that any pay stub
violations/incomplete final wage payments, if they occurred at all, resulted from good faith
mistakes. (AB, ¶ 15.) Thus, Plaintiff is typical of the Class.

1 members, and a final fairness and approval hearing being held at which class members may be
2 heard with respect to the settlement. (E.g., *id.*) For the reasons discussed below, this Court
3 should preliminarily approve the Settlement, allow the Parties to give notice to the Class, and
4 schedule a final fairness hearing.

5 **1. The Settlement Is Within the Range of Reasonableness.**

6 The Settlement results in a substantial benefit to all Class Members. Courts often
7 approve settlements where Class Members receive only pennies or even just coupons or
8 vouchers. *See, e.g., Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 590 (affirming
9 final approval of wage and hour class action settlement where 20% of the fund allocated to the
10 class was merchandise vouchers). Here, Authorized Claimants will be sent checks for their
11 Settlement Awards, in the form of monetary payments, with average pre-tax estimated
12 payments currently estimated as being \$170.16 (based on a class size of 1,430 members).
(AB, ¶ 31.) Thus, the Settlement provides meaningful relief for the disputed wage and hour
13 claims, making it well within the range of reasonableness.

14 **2. The Settlement Was Reached at Arms' Length Through Experienced
15 Counsel and an Experienced Mediator with Sufficient Information to
16 Intelligently Negotiate a Fair Settlement in View of the Claims Asserted
17 and Risks of Continued Litigation.**

18 A settlement is presumptively fair where it is reached through arms' length bargaining,
19 based on sufficient discovery and investigation to allow counsel and the court to act
20 intelligently, counsel is experienced in similar litigation, and the percentage of objectors is
21 small.² (*Dunk*, 48 Cal.App.4th at p. 1802.) In deciding whether to approve a proposed
22 settlement, a trial court has broad powers to determine if the proposed settlement is fair under
23 the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In
24 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,
adequate, and reasonable." (*Dunk*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].)
25 Relevant factors for that determination, include, but are not limited to: "[T]he complexity and
likely duration of further litigation, the risk of maintaining class action status through trial, the
amount offered in settlement, the extent of discovery completed and the state of the
proceedings, the experience and views of counsel, the presence of a governmental participant,

² Because the fourth prerequisite cannot be addressed until the final approval hearing, only the first three are relevant at this stage of the approval process.

1 and the reaction of the class members to the proposed settlement.” (*Id.*) These factors require
2 balancing, are non-exhaustive, and, as such, trial courts should tailor the factors consider to each
3 case and give due regard to “what is otherwise a private consensual agreement between the
4 parties.” (*Id.*)

5 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
6 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
7 under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
8 250 (*Wershba*)). Because settlements inherently involve compromise, even settlements providing
9 for substantially narrower relief than likely would be obtained if the suit were successfully
10 litigated can be reasonable because “the public interest may indeed be served by a voluntary
11 settlement in which each side gives ground in the interest of avoiding litigation.” (*Id.* [quoting
12 *Air Line Stewards, etc., Local 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].) In
13 addition, courts review the discovery process and information received through it to aid them in
14 assessing whether the parties sufficiently developed the claims and their supporting factual
15 bases before reaching settlement. (See *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th
16 116, 129-131 (*Kullar*)). Information is sufficient where it allows the parties and the court to
17 form “an understanding of the amount that is in controversy and the realistic range of outcomes
18 of the litigation.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 801.) This
19 requirement exists so that the parties can provide the court with “a meaningful and substantiated
20 explanation of the manner in which the factual and legal issues have been evaluated.” (*Kullar*,
21 168 Cal.App.4th at p. 118.) Here, Plaintiff estimated Defendant’s potential exposure in this case
under numerous scenarios, with the vast majority of that exposure taking the forms of liquidated
damages, interest, and penalties. (AB, ¶ 29-48). As explained below there are numerous reasons
why the Settlement is a fair, adequate, and reasonable compromise of the claims in this case
notwithstanding Defendant’s maximum conceivable liability exposure. *Id.*

22 First, there are significant risks with respect to class certification that support the
23 fairness, adequacy, and reasonableness of the Settlement. Before the Parties participated in
24 mediation, the California Supreme Court decided *Duran v. U.S. Bank National Association*
25 (2014) 59 Cal.4th 1 (*Duran*). While the *Duran* decision leaves open the possibility of a class
action proceeding based on common evidence, coupled with statistical evidence, it also places a
heightened emphasis on manageability considerations, even where common questions

1 predominate as to liability. (*Duran*, 59 Cal.4th at pp. 28-29.) In view of *Duran* (as well as
2 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 (*Brinker*)), the claims for
3 unpaid time based on off the clock work could present class certification issues based on
4 manageability considerations. *Duran*, 59 Cal.4th at p. 39 & fn. 33; *Brinker*, 53 Cal.4th at pp.
5 1051-1052.) Here, among other things, Class Members worked different schedules, were
6 assigned to jobs, and Defendant provided evidence which showed that class members did take
7 meal breaks or had time to do so. While Plaintiff contends that these variations solely concern
8 damages, and that defects in Defendant's timesheets allow for common proof of liability, even
9 the existence of some common proof does not eliminate the manageability risks. These
10 considerations strongly support the fairness of the Settlement because, absent certification of the
underlying unpaid wage and meal break claims, Defendant's exposure would be limited to
penalties associated with allegedly defective wage statements and alleged rest break violations.

11 Second, there are significant risks with respect to arbitration. Defendants represented
12 that most, if not all Class Members entered into arbitration agreements such as the one entered
13 into by Plaintiffs. The Ninth Circuit has recently held that such agreements can be a bar to class
14 certification under the right circumstances. See *O'Connor v. Uber Technologies, Inc.*, (9th Cir.
15 2018) 904 F.3d 1087. Recent Supreme Court precedent, including *Epic Systems Corp. v. Lewis*,
16 138 S.Ct. 1612 (2018), suggested that Plaintiffs would face an uphill battle on the issue of
17 arbitrability of the employment contracts. Moreover, in another action litigated by undersigned
18 counsel, a Central District Court granted Final Approval over the objections of six class
19 members due to the heightened certification risk posed by a similar arbitration issue. See *Kim v.*
Tinder, Inc. (C.D. Cal. June 19, 2019) Case No. CV 18-3093-JFW(ASx) 2019 WL 2576367 *6-
8.

20 Third, there was risk with respect to the merits of the claims asserted. As to the claims
21 concerning off the clock work, there is a risk that Defendant could establish, among other
22 things, that the unpaid reporting time at issue is *de minimis*, that Class Members could have
23 recorded the unpaid time notwithstanding the purported defects in the timekeeping practices, or
24 could have chosen to go home early of their own accord as opposed to being sent home by
Defendant resulting in individualized issues.

25 As to the claims that Defendant is liable under Labor Code §§ 203 and 226(e) on a
derivative basis based on their alleged failures to pay Class Members for all hours, and for meal

1 and rest break premiums, there is a risk that those claims could fail for the same reasons as the
2 underlying wage claims or that Defendant could establish a good faith defense to preclude the
3 imposition of penalties. The primary outstanding issue was with respect to a non-derivative §
4 226 violation, as the pay stubs did not include an employee ID or last four digits of the social
5 security number. Defendant had arguments that the information was available through other
6 sources or was an omission in good faith. As to the claims under the PAGA, there is also a risk
7 that any penalties could be drastically reduced in the Court's discretion under Labor Code
§ 2699(e)(1).

8 Each of these factors bore heavily on the negotiations leading to the Settlement. In view
9 of these risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for
10 these claims and warrants preliminary approval. (*Id.*) Further, the policy under California law in
11 favor of settlement in class actions and other complex cases applies with particular force in this
12 case. (*Id.*) Certainty of recovery is enhanced by an equitable and timely consummated
13 settlement such as that under consideration in this case. (*Id.*) Tensions created in the
14 employment relationship in the litigation process are alleviated by such settlements as opposed
15 to a trial of the matter, and all parties are in a better position to move forward with their roles in
16 the economy. (*Id.*) The expense of protracted litigation in these cases is formidable. (*Id.*) Thus,
while the risks listed herein are far from exhaustive, they show that the Settlement is fair,
adequate, and reasonable in view of them.

17 **3. The Settlement Fairly, Reasonably, and Adequately Compensates
Settlement Class Members.**

18 The entire Net Settlement Sum will be paid to Authorized Claimants based on their
19 respective Work Weeks. (Bacon Decl. Ex A ¶ 48) This method for allocating the Net Settlement
20 Sum to Class Members is fair, adequate, and reasonable because Class Members with more
21 Work Weeks are more likely to have potentially missed more meal and rest breaks or worked
22 more hours off the clock for Defendant and are also more likely to have been issued a larger
23 number of allegedly defective wage statements. (AB, ¶ 48.) Thus, the method of allocation
24 under the Settlement is fair, adequate, and reasonable.

25 **4. The Proposed Awards of Attorneys' Fees and Costs Are Fair, Adequate,
and Reasonable and Should Be Preliminarily Approved.**

“Empirical studies show that, regardless whether the percentage method or the lodestar
method is used, fee awards in class actions average around one-third of the recovery.” (*Chavez*
v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 47 fn. 11 [quoting *Shaw v. Toshiba America*

1 *Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972].) This is also consistent with
2 Plaintiff's attorneys' experience in these types of cases. (AB, ¶¶ 18-28.) Here, Plaintiff's
3 attorneys intend to request attorneys' fees of (\$162,916.67 (one third of the Settlement Fund)
4 and actual costs of up to \$15,000.00. (AB, ¶ 49.) In view of Plaintiff's attorneys' efforts and
5 risks in pursuing this case, and the results achieved (i.e., obtaining a favorable class-wide
6 resolution in the face of a highly uncertain, and ever-evolving, legal landscape as to core issues
7 in this case—especially with respect to the PAGA and class manageability considerations),
these amounts are reasonable and thus warrant preliminary approval. (AB, ¶ 49.)

8 **5. *The Proposed Incentive Award to Plaintiff Is Also Fair, Adequate, and***
Reasonable and Should Be Preliminarily Approved.

9 Courts routinely approve incentive awards to compensate named plaintiffs for the
10 services they provide and the risks they incur during class action litigation, often in much higher
11 amounts than that sought here. (See, e.g., *Bell v. Farmers Ins. Exchange* (2004) 115
12 Cal.App.4th 715, 726 [upholding “service payments” to named plaintiffs for their efforts in
13 bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294
14 [approving \$50,000 enhancement award].) Here, the Settlement provides that Plaintiff may seek
15 an Incentive Award of up to \$10,000.00. (Settlement, ¶ 7.15). This amount is entirely
16 reasonable given Plaintiff's efforts in this case and the risks she undertook on behalf of Class
17 Members. Here, Plaintiff advanced the interests of the Class by, among other things, speaking
18 extensively with counsel on numerous occasions to help identify and develop the claims in this
19 case, participating in a full day of mediation, and carefully reviewing the Settlement and related
20 documents. (AB, ¶ 50.) Plaintiff also risked being required to pay Defendant's costs if this
21 action had been unsuccessful. (*Id.*) Further, Plaintiff took the personal risk of potentially facing
22 intrusive discovery and disclosure to future employers that she sued a former employer after
23 employment, making their futures uncertain—especially for purposes of finding future
24 employment positions. (*Id.*) Moreover, Plaintiff is agreeing to a much broader release of claims
25 than other Class Members. (*Id.*) Given these considerations, the modest Incentive Award to
Plaintiff is appropriate and justified as part of the Settlement.

1 **C. This Court Should Approve the Proposed Notice Procedures and Forms**
2 **Because They Adequately Apprise Class Members of Their Rights Under the**
3 **Settlement and Fully Comport with Due Process.**

4 Plaintiff requests that this Court approve the proposed plans for giving notice to the
5 Class and administering the Settlement. The standard for determining the adequacy of notice is
6 whether the notice has “a reasonable chance of reaching a substantial percentage of the class
7 members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) This process is described
8 in Paragraphs 45-48 of the Settlement. This process includes multiple measures to ensure that as
9 many Class Members as practicable receive actual notice of the Settlement and have sufficient
10 time to exercise their rights. Therefore, the proposed notice plan, calling for first-class mailed
11 notice to all class members, certainly meets the constitutional standards and should be approved.
12 (See *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-812.)

13 With respect to its content, “[The] notice given to the class must fairly apprise the class
14 members of the terms of the proposed compromise and of the options open to dissenting class
15 members.” (*Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-
16 152.) The purpose of the notice is to give class members sufficient information to decide
17 whether they should accept the benefits offered, opt out and pursue their own remedies, or
18 object to the settlement. (*Id.*) Here, the Class Notice (Settlement, Ex. 2 [Class Notice]) provides
19 Class Members with all pertinent information that they need to fully evaluate their options and
20 exercise their rights under the Settlement. Specifically, they clearly and concisely explain,
21 among other things: (1) what the Settlement is about; (2) who is a Class Member; (3) how Class
22 Counsel will be paid; (4) how to receive a Settlement Award; (5) how to opt out of the Class;
23 (6) how to object to the Settlement; (7) how the Settlement will be allocated; (8) how payments
24 to Class Members will be calculated; and (9) the Class Member’s Settlement Award.
25 Accordingly, the Class Notice should be approved because it describes the Settlement with
26 sufficient clarity and specificity to explain to Class Members what this case is about, their rights
27 under the Settlement, and how to exercise those rights.

28 **V. CONCLUSION**

29 For the reasons set forth herein, this Court should certify the Class for settlement
30 purposes only under Code of Civil Procedure § 382, preliminarily approve the Settlement, direct
31 that notice be disseminated to Class Members, schedule a final approval hearing, and adopt the
32 [Proposed] Order submitted concurrently herewith.

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2 Respectfully submitted,

3 Dated: November 14, 2019

By: _____

4 Law Offices of Todd M. Friedman, P.C.
5 Adrian R. Bacon, Esq.
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PROOF OF SERVICE

1 I am employed in the County of Los Angeles, State of California. I am over the age of
2 18 and not a party to the within action. My business Address is 21550 Oxnard St., Suite 780,
Woodland Hills, CA 91367.

3 On November 14, 2019, I served the following document(s) described as: **MOTION**
4 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the
following parties:

5 [X] **BY EMAIL:** I transmitted the document(s) listed above electronically to the e-
6 mail addresses listed above, by agreement between counsel for the parties to accept
service by email of all pleadings.

7 [X] **BY MAIL**

8 Beth A. Schroeder, Esq.
9 Allison S. Wallin, Esq.
10 RAINES FELDMAN LLP
11 1800 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067

12
13 [X] **STATE** – I declare under penalty of perjury under the laws of the State of
14 California that the above is true and correct.

15 Executed on November 14, at Orange, California.

16 By: /s Adrian R. Bacon