PROPOSED TENTATIVE

On April 15, 2026, plaintiffs Aniceto Sierra Hernandez and Melanie Troxler (the court will use their individual names or collectively plaintiffs) filed a second amended class action complaint against defendant Railway Jonata, LLC (dba The Inn at Mattei's Tavern, Auberge Resorts Collection), raising ten (10) causes of action for wage and hour violations, as follows: 1) Unfair Competition pursuant to Business and Professions Code, section 17200, et seq.; 2) failure to pay overtime wages; 3) failure to pay minimum wages; 4) failure to provide required meals periods; 5) failure to provide required rest periods; 6) failure to reimburse necessary business expenses; 7) failure to provide accurate itemized wage statements; 8) failure to pay wages when due; 9) failure to provide gratuities; and 10) civil penalties under the Private Attorney General Act (the PAGA).[1] Mr. Hernandez was employed by defendant as a nonexempt employee, paid on an hourly basis, between September 2023 and September 16, 2026; Ms. Troxler was employed by defendant as a nonexempt bartender between March 2023 and June 2023. The class is brought on behalf of all current and former nonexempt employees in California "at any time during the period beginning four years from the date of the filing of this Complaint and ending on date determined by the Court . . ." Defendant filed an answer to the original complaint on May 5, 2025.

On April 17, 2026, plaintiffs filed a motion for preliminary approval of settlements reached in the class and PAGA representative actions, with an original hearing set for April 29, 2026. Because the motion was untimely, the court continued the hearing to June 24, 2026. Settlement for the class and PAGA actions occurred after a full-day mediation session on August 5, 2025, before mediator Honorable Jan Adler (Ret.), during which the parties reached a global settlement. There are 371 members of the putative class as part of the class action settlement and 361 putative aggrieved employees under the PAGA. The gross settlement amount consists of a non-reversionary amount of $400,000, reduced by the following: 1) $10,000 earmarked for the PAGA settlement, of which 65% ($6500) will go to the Labor and Workplace Development Agency (LWDA) and 35% ($3,500) split between the 361 aggrieved employees; 2) class counsel attorney fees of $133,333.33, which constitutes 33.333333% of the gross settlement amount; 3) litigation costs for attorneys of no more than $25,000; 4) a class enhancement award of $12,500 for Mr. Hernandez and Ms. Troxler each (totaling $25,000); and 5) costs of $7,450 to Apex Class Action, LLC, as a third-party administrator. This leaves a net settlement amount of $199,216.67, with an average payout of $536.97 to the 371 putative class members. The actual amount to be dispersed will be calculated for each class member by dividing the net settlement amount by the total number of workweeks worked by each class member (there are a total of 21,498 workweeks) during the class period.

Attached to the noticed motion are the following documents: 1) a memorandum of points and authorities; 2) a declaration from attorney Nicole Barvie, class counsel, which includes the

[1] Prior to the submission of the April 15, 2026, second amended complaint, there were two separate lawsuits at play. The first was filed by Ms. Troxler in Case No. 24CV2115, on April 12, 2024; the second was initiated by Mr. Hernandez on February 18, 2025. On April 10, 2026, the parties filed a joint stipulation permitting the parties to add Ms. Troxler as a named plaintiff in the second amended complaint in this matter to effectuate the global settlement. The court signed the joint stipulation on April 10, 2026.

settlement agreement; proof of filing the notice of settlement in compliance with Labor Code section 2699, subdivision (l)(2) (***now*** section 2699, subdivision (s)(2)) with the LWDA; and a copy of an invoice from Apex as the third-party class administrator, charging $7,450 for the administration of this settlement; 3) a declaration from attorney Jamie Serb, Ms. Troxler's counsel; and 4) declarations from Ms. Troxler and Mr. Hernandez in support of the their appointment as representatives and the award of a $12,500 enhancement.

The court will detail the legal standards that govern and frame the court's inquiry; address some preliminary documents that should be filed before the final approval hearing; and then assess the merits of the requests made. The court will conclude with a summary of its conclusions.

A) What are the General Standards for Approval of a Class Action Settlement?

The general rules for class action precertification settlements are governed by California Rules of Court, rule 3.769. "Rule 3.769 of the California Rules of Court [hereafter, CRC] sets forth the procedures for settlement of class actions in California. (See also Code Civ. Proc., § 581, subd. (k).) A two-step process is required. First, the court preliminarily approves the settlement and the class members are notified as directed by the court. [CRC 3.769(c)-(f).] 'The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.' [CRC 3.769(f).] Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement. [CRC 3.769(g).] If the court approves the settlement, a judgment is entered with provision for continued jurisdiction for the enforcement of the judgment. [CRC, rule 3.769(h).]" (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.)

A party to the settlement must move for "preliminary approval of the settlement." (CRC, rule 3.769(c).) After the hearing, the court makes an order approving or denying "certification of a provisional settlement class." (CRC, rule 3.769(d).) If the court grants preliminary approval, it must set a final approval hearing, and order notice be given to the class. (CRC, rule 3.769(e).) "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (CRC, rule 3.769(f).) At the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (CRC, rule 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC, rule 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

This is of course a *preliminary approval*, not a final approval. Nevertheless, precertification settlements in class actions should be scrutinized. (*Cho v. Seagate Technology Holdings, Inc*. (2009) 177 Cal.App.4th 734, 743.) This is accomplished through careful review by the trial court; precertification settlements are routinely approved where they are found fair, adequate and reasonable. (*Ibid;* see also *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240 [precertification settlements in class action suits should be scrutinized more carefully].) " 'Due regard,' . . . 'should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.] . . . .' " (*7–Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting from *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; see *Roos v. Honeywell Internat., Inc.* (2015) 141 Cal.App.4th 1472, 1481- 1482, overruled on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all circumstances. For example, a trial court does not abuse its discretion in approving a settlement when it finds that the settlement was achieved at arm's length negotiation; the fact the case was vigorously litigated; plaintiff was represented by experienced counsel; the number of class members who objected or opted out was very small; and plaintiff faced considerable risk in proceeding to trial. (*Cho, supra*, at p. 745.)

The proponents have the burden to show the settlement is fair, although a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; and counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra, at p.* 1802.) This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." In short, the trial court may not determine the adequacy of a class-action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court's responsibility to ensure the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardian of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra,* 186 Cal.App.4th at p. 408, fn. 6.)

The court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." As our high court has reiterated, PAGA suits exhibit virtually none of the procedural characteristics of class actions. (*Estrada v. Royalty Carpet Mills, Inc*. (2024) 15 Cal.5th 582, 599.) In that regard, when reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff, supra*, 23 Cal.App.5th at p. 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

That being said, section 2699, subdivisions (s)(1) to (4) require the court to follow certain requirements for PAGA settlements. First, for cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the LWDA with a file-stamped copy of the complaint that includes the case number assigned by the court. (Subd. (s)(1)). Second, "the superior court shall review and approve any settlement of any civil action filed pursuant to this part. *The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court*." (Subd. (s)(2), italics added.) Third, "a copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order." (Subd. (s)(3.) And fourth, "[it]ems required to be submitted to the [LDWA] under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3." (Subd. (s)(4).) Courts under this scheme consider (1) whether the statutory requirements of notice to the LDWA have been satisfied, and (2) whether the settlement agreement is fair, reasonable, and adequate, as well as meaningful and consistent with PAGA's public policy goals, which include "augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance." (*Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, *15 (N.D. Cal. Dec. 8, 2021); see *Gilmore v. McMillan-Hendryx Incorporated* (E.D. Cal., Jan. 20, 2022, No. 1:20-CV-00483-HBK) 2022 WL 184004, at *2.)

Prior to 2021, no published California appellate case had explored the standard a trial court should employ in evaluating the reasonableness of a PAGA settlement. That changed in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 overruled in part on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 708-710. (See also *Flores v. Starwood Hotels & Resorts Worldwide* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1075.) In *Moniz*, despite the differences between class and PAGA actions, the appellate court determined that "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz*, *supra,* 72 Cal.App.5th at 76.) The *Moniz* court also indicated: "Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement." (*Ibid*.) "Given

PAGA's purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair *in view of PAGA's purposes and policies*." (*Ibid.,* italics added.) "We therefore hold that a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable and adequate in view of the PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Ibid.*) Put another way: "We emphasize that in any case involving a proposed PAGA settlement, the trial court must review the settlement for fairness and 'scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest.' " (*Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 263, citing *Moniz*; see also *LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1195 [same].) Once approved, under the newly enacted rules, 65% of civil penalties recovered go to the state, while 35% go to the PAGA class.

B) <u>Preliminary Matters</u>

Plaintiff should file a "Notice of Settlement" of the entire case, as contemplated by CRC, rule 3.1385(a), at least before final approval.

Plaintiff should also submit, also before final approval, a copy of (or its verbatim contents) of the attorney-fee agreement with plaintiffs as mandated by CRC, rule 3.769(b). This provision requires that any attorney-fee agreement, express or implied, that has been entered into with respect to payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the settlement that has been certified as a class action. That has not been done.

Plaintiffs have complied with section 2699, subdivision (s)(2), which requires that the proposed settlement regarding PAGA be submitted to the LWDA at the same time it is submitted to the court. Attached to Ms. Barvie's declaration is copy of the submission made to LWDA. The court will want to confirm with counsel that it will comply with section 2699, subdivision (s)(3), which requires that a copy of the superior court's judgment as to civil penalties "shall be submitted to the [LWDA] within 10 days after entry of judgment."

C) <u>Are the Class Action and PAGA Settlements Fair, Adequate and Reasonable?</u>

As noted, the amount of the gross settlement is $400,000. Subtracted from this are requested attorney's fees of $133,333.33 (33.33333% of $400,000); 2) up to $25,000 in litigation costs; 3) settlement administration costs of $7,450; 4) enhancement payments to each plaintiff of $12,500 (for a total of $25,000); and 5) the PAGA settlement amount of $10,000, with $6,500 going to the LWDA and $3,500 split evenly between the 361 aggrieved employees, leaving a net settlement amount of $199,216.67. In determining whether the class settlement is fair, adequate and reasonable a trial court's broad discretion is exercised through several well-recognized factors, as discussed above. The list, which is not exhaustive and should be tailored to each case, includes the strength of plaintiffs' case, the risk, expense, 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 stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Roos, supra*, at 241 Cal.App.4th at pp. 1481-1482.) The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz, v. BCI Coca-Cola Bottling Co. of Los Angeles, supra,* 186 Cal.App.4th at pp. 407–08.)

The settlement amount is nonreversionary, and the evidence shows that both sides engaged in a rigorous arms-length negotiation, culminating in a settlement following mediation. Class counsel appear experienced wage and hour attorneys. There is no evidence of collusion, particularly as the settlement was the result of a neutral mediation, with the mediator also experienced in wage and hour class action settlements. Plaintiffs' counsel has been involved in a number of class action suits, as detailed in the briefing and the individual declarations. There appears to be no objections to the settlement.

Counsel informs the court, through the declaration of Ms. Barvie, that pre-filing investigation involved "several lengthy interviews with Plaintiffs," and a review of documents related to plaintiffs' employment, including time and payroll records. To prepare for mediation, according to Ms. Barvie, class counsel "requested documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure . . . Defendant produced the time records for the Class Members, aggregate workweek and pay period data for the Class Members, wage statements for the Class Members, and copies of applicable handbooks, policies, and agreements containing . . . compensation, timekeeping and meal and rest period policies," which totaled over 197 pages of pertinent policy documents, wage statements, handbooks for Calls Members, and more than 35,000 unique cells of payroll data, and more than 70,000 unique cells of time data for Class Counsel to analyze." According to counsel, counsel reviewed "the "approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period." Counsel also "estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of off-the-clock work performed by the

Class Members during the Class Period." Counsel "calculated and created a damage model for Defendant's potential liability exposure while accounting the uncertainties of continued litigation. The damage model informed and guided Class Counsel during the mediated settlement discussions" Overall, "Class Counsel thoroughly investigated the claims at issue, including (1) determination of Plaintiffs' suitability as a putative class representative through interviews, background investigations, and analysis of [the] employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class action as to claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class time and payroll records; (5) analyzing Defendant's labor policies and practices and the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation."

Ms. Barvie declares that she estimated defendant's potential maximum exposure was approximately $1,833,1800 (Barvie Dec. at ¶ 26), with following maximum values for each category discounted at the time of mediation based on defendant's claimed defenses, as follows: 1) $16,419 for underpaid overtime; 2) $52,599 for meal period violations; 3) $1,305,568 for rest period violations; 4) unpaid necessary business expenses of $49,004; 5) $391,799 for waiting time and wage statement violations (for a total discounted maximum value at mediation of $1,815,389.) Counsel also estimated that at mediation defendant's maximum exposure for PAGA penalties was $635,000. (Barvie's Dec., ¶¶ 26-37.) Ms. Barvie observes that at trial, in order to recover PAGA penalties, plaintiffs "would be required . . . to prove each of the Labor Code violations," and at a mediation "Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees," meaning defendant's "PAGA liability exposure [was] hotly contested." Further, according to counsel, there were significant litigation risks, including the uncertain nature of class certification, defendant's "factual and litigation defenses," coupled with the "continued and extensive" use of resources and time for litigation. With all this in mind, counsel negotiated a gross settlement of $400,000 which constituted a 21.82 % of the maximum value above of $1,833,180.

" 'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.' [Citation.]" (*7–Eleven Owners for Fair Franchising, supra,* 85 Cal.App.4th at p. 1150.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." (*Wershba, supra,* 91 Cal.App.4th at p. 246.) Class counsel is experienced, and she details the inherent risks of any continued litigation and the documents reviewed; the assessments appear reasonable. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 801)

Accordingly, the court finds the amount the gross settlement ($400,000) to be reasonable based on the evidence presented and counsel's experience as detailed above. The later point is bolstered by Jamie Serb's declaration, which details over a decade of experience in wage and hour litigation.

That being said, the court must separately address the fairness of the PAGA settlement, which is $10,000 (separate and apart from its inclusion into the *overall fairness* of the $400,000), with 65% to the state ($6,500) and 35% ($3,500) to 361 aggrieved employees on a proportionate basis, based on the number of payroll periods, during the "PAGA period." Plaintiffs note in their evidentiary proffer that the discounted maximum value for the PAGA violations was $635,000, and $10,000 represents approximately 1.5% of that amount.

It is not entirely clear under existing precedent whether this amount can satisfy the standards enunciated under *Moniz,* for there is a paucity of California published appellate case law discussing the reasonableness of PAGA settlements when they are made in conjunction with a class action settlement. That is not true with California federal case authority, which expressly indicates that "courts have raised concerns of about settlements ***<u>of less than 1%</u>*** of the total value of a PAGA claim" when made in conjunction with class action settlement. (*Cole v. Lane Bryant, Inc.* (N.D. Cal., Feb. 10, 2025) 2025 WL 823268, at p. 3, citing *Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972, emphasis added.) And as observed in *Vasquez v. Leprino Foods Company* (E.D. Cal., June 17, 2024), 2024 WL 3026131 at page 23 "federal district courts have approved a broad range of PAGA penalties. *See Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019) [collecting cases in which settlements providing for $10,000 in PAGA penalties were preliminarily or finally approved despite total settlement amounts of $900,000 and $6.9 million]; see *also Alcala v. Meyer Logistics, Inc.* (C.D. Cal. June 17, 2019), 2019 WL 4452961, at p. 9 [collecting cases in which PAGA penalties within the zero to two percent range were approved by courts].)" The settlement amount here is not less than 1% and falls in the range approved by other courts, under the authorities noted above. As the LWDA has not objected to the PAGA settlement amount (and there are no objections by any class members), and as the $400,000 overall settlement seems sufficiently robust to further the remedial purposes of PAGA per *Moniz,* the court will approve the $10,000 PAGA settlement as reasonable.

D) <u>Is Preliminary Certification Appropriate for the Class Action?</u>

Class action certification questions are essentially procedural and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant common questions of law or fact, class representatives with claims or defenses typical of the class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

There has been a sufficient preliminary showing of numerosity, ascertainability, and predominance or commonality. The class, while large – 371 members during a defined class period, with names obtained through existing employment records, as well as 361 aggrieved employees for PAGA purposes – is not cumbersome. It appears the claims are sufficiently similar, subject to the same policies or practices, with similar job duties and universal formula. It also appears the class representatives have typical claims of the class/aggrieved employees as a whole. A class action appears the superior way to a fair and efficient adjudication of the lawsuit. Certification of the class seems appropriate.

E) <u>Are the Procedures for the Claim Forms and Opt-Out Adequate</u>?

Attached to Ms. Barvie's declaration is the settlement agreement consummated by the parties; attached to the settlement agreement is Exhibit A, which in turn contains the notice to be sent to the putative class members and aggrieved employees. It consists of a 13-page document entitled "Notice of Proposed Settlement of Class Action And Hearing Date for Final Court Approval." It describes the nature of the lawsuit, as well as the recipients' legal rights and options. There is a place on the form which describes the two-part settlement – a class settlement and PAGA settlement. Each is described and the amounts for each class member and aggrieved employee are calculated separately. The Notice describes the legal rights and options of each recipient (i.e., what happens if nothing is done, the option to opt-out, the response deadline, the ability to object, participation in final approval hearing, and challenges to the calculations). The Notice then takes the recipient step-by-step through the process, with eight (8) separate headings, outlined in clear, nontechnical language, as follows: 1) Why did I get this Notice?; 2) What is this class action lawsuit about? 3) What are the terms of the Settlement?; 4) What Do I Release under the Settlement?; 5) How much will my payment be?; 6) How can I get a payment?; 7) What if I don't want to be part of the Settlement; and 8) How do I Object to the Settlement. These descriptions outline the nature of the class claims; who may be eligible; the gross and net settlement amounts minus the amounts for attorney's fees, costs, settlement administration expenses, enhancements, and PAGA disbursement (and formula). They explain how an individual class member's award will be calculated (excluding those who opt out), and how the PAGA formula will be distributed to aggrieved employees. The Notice makes it clear that a form need not be submitted for payment, and indicates how the distribution will be calculated if no form is submitted. It indicates that plaintiffs are bound by the settlement agreement unless the class member affirmatively excludes himself or herself from the settlement (making it clear that the recipient will not be able to opt out of PAGA settlement distribution). The Notice informs the recipient of he or she can be part of the settlement group, how he or she can be part of the settlement but object, and how he or she can opt-out; advises of the preliminary and final approval hearings and their possible dates, and who to contact for more information. The notice adequately explains the options before the putative class member, including disputes and opt out procedures, under the heading. It explains the nature of the release given to defendants from all causes of action; and where to contact counsel for more information.

Accordingly, the Notice seems adequate.

F) Should the Court Grant Preliminary Appointment/Approval of the Settlement Administrator, Its Costs Request, and Class Counsels' Requests for Attorney's Fees and Litigation Costs?

Plaintiffs ask the court to appoint Apex Class Action, LLC as the third-party settlement/claims administrator, and asks the court to approve up to $7,450 for this purpose. Attached as Exhibit C to Ms. Barvie's declaration is an invoice from Apex, indicating all anticipated costs, including Spanish translations. The court appoints Apex Class Action, LLC, at the third-party administrative, and awards costs of up to $7450.

Plaintiffs also ask the court to appoint Barvie Law, APC, and specifically Nicole Barvie, as well as Crosner Legal, PC, and specifically Jamie Serb and Zachary Crosner, as plaintiffs' class counsel. The court makes that appointment.

In addition, plaintiff asks the court to award $133,333.33 in attorney's fees and a maximum of up to $25,000 in litigation costs. As noted above, plaintiffs are directed to provide a copy of the attorney fee agreement before the final approval hearing.

The attorney fee amount of $133,333.33 seems reasonable. (See, e.g., *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 578 [it is well settled that attorney fees under Code Civ. Proc., § 1021.5 may be awarded for class action suits benefiting a large number of people]; see also *Clark, supra,* 175 Cal.App.4th at p. 791.) The court has a duty to review and approve attorney's fees, even where the parties agree on the amount. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Use of the percentage method in class action matters is permissible, and there is evidence the parties intended the attorney fees would be paid out of any common fund that had been created. Although counsel does not offer any evidence to support the lodestar method, that is not dispositive. " 'Fee awards in class action average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.' " (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 545.) The amount requested is standard in these matters and is preliminarily approved.

The court also preliminarily approves litigation costs of up to $25,000, but will expect clear evidentiary support to be submitted at the final approval hearing before costs are awarded.

One point requires further elucidation at the hearing, particularly in light of the failure to attach any attorney fee agreement as required by CRC, rule 3.79. The court directs plaintiffs at the hearing to describe the relationship between Barvie Law, APC, and Crosner Legal PC, and how the attorney fees and costs award will be allocated/distributed between the two.

G) <u>Should the Court Preliminarily Grant an Enhancement for the Class Representatives?</u>

The court provisionally appoints plaintiffs as class representatives (and representatives of all aggrieved employees), as they have satisfied the requirements for such appointment.

Plaintiffs ask the court to preliminarily approve a class enhancement award of $12,500 for each (totaling $25,00 in total). It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark* v. *American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id*. at p. 806.) Specificity, however, is required; there is no presumption of fairness in review of an incentive fee award. (*Id*. at p. 807; *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit].)

Both plaintiffs have provided declarations in support of the enhancement requests Ms. Troxler's declaration is silent about any specific efforts she made, advancing instead generic claims of responsibility as follows: ". . . I knowingly and voluntarily undertook [a duty to putative class members to faithfully prosecute this action with their best interests at the forefront of every decision . . . I believe that I faithfully executed the duties of Class Representative . . ." Mr. Serb in his declaration attempts to bolster the claim, declaring in relevant part as follows: ". . . The request is reasonable given the risks she undertook on behalf of the Class Members and Aggrieved Employees, and by contacting and retaining counsel to pursue those claims[.] Plaintiff Troxler helped make this settlement possible for the absent Class Members and Aggrieved Employees, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiff Troxler also exposed herself to unwanted notoriety related to filing a public lawsuit . . . for the benefit of other employees, placing each at risk of discrimination by future prospective employers. ***<u>As set forth in more detail in her declaration</u>*** filed with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff Troxler provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments." (Emphasis added.) Despite the highlighted language above, Ms. Troxler's declaration does not provide any further detail, as noted.

Mr. Hernandez's declaration is also silent about his specific efforts in advancing the lawsuit, as he has filed the same declaration as Ms. Troxler, outlined above (i.e., cloaked exclusively in generic descriptions of responsibility). Ms. Barvie's declaration reads in relevant part as follows: "The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of this case and the strategies for prosecuting the claims, responding to written discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Claims, and agreeing to provide Defendant a general release of all claims arising out of his employment." Ms. Barvie indicates that she will file a "formal motion" for the enhancement award "once preliminary approval" is granted, and she contends the "above showing is sufficient for preliminary approval . . ."

Ms. Barvie is incorrect – the above showing is ***not*** sufficient to justify an award of $12,500 to each plaintiff, for a total enhancement award of $25,000, even for purposes of preliminary approval. There are a number of reasons for this. First, even if the court assumes arguendo that the average payout for a class member is $536.97 (net settlement amount divided by the number of putative class members), as indicated in Ms. Barvie's declaration, both plaintiffs would be receiving a multiplier of 23 times (23.19 times to be exact) over the average payout. Cases have expressed concern when there is a large disparity between an incentive award and recovery of class members. (*Clark v. American Residential Services, LLC, supra,* 175 Cal.App.4th at p. 806, fn. 14, citing *Alberto v. GMRI, Inc*. (2008) 252 F.R.D. 652, 669 [given a proposed $5,000 incentive award and an average $24.17 recovery (multiple of just over 20), when there was no evidence demonstrating the quality of plaintiff's representative service, plaintiff should be prepared to present evidence of the named plaintiff's "substantial efforts" as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs"].)

True, the present situation is not as stark as that presented in *Clark v. American Residential Services, LLC, supra*, where the two class representatives requested an enhancement that amounted to "at least 44 times the average payout to a class member . . ." (175 Cal.App.4th at p. 805; see also *Staton v. Boeing Co*. (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of $30,000 when average payout was $1,000, a multiplier of 30]; compare with *Munoz, supra*, 186 Cal.App.4th at p. 412 [noting that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively]; see also *Pauley v. CF Entertainment* (C.D. Cal., July

23, 2020, No. 2:13-CV-08011-RGK-CW) 2020 WL 5809953, at *3 [plaintiffs request of $10,000 each in class representative awards, is over thirty-five times greater than the average recovery per unnamed class member, and provide little justification for this].) *Clark* found the declarations at issue inadequate when the declarants stated they spent "several hours" in initial consultation with counsel; had their depositions taken, with one attending a full day of mediation; and they "reviewed 'thousands of pages' of documents." (*Clark, supra*, 175 Cal.App.4th at p. 805.) The declarations were too conclusory because there was "no further quantification of the time [the class representatives spent] in commencing suit"; and did not describe the "potential stigma" that "may affect . . . future employability in this industry," along with the "potential risk of being liable for costs" if "we were unsuccessful in this lawsuit." (*Ibid.*) As observed by one federal district court, "$5,000 is a presumptively reasonable award, even for settlements much larger than the one here. (*See, e.g. Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at **19* (N.D. Cal. Apr. 1, 2011) (approving $5,000 to named plaintiffs in a $27,000,000 settlement); *Hopson v. Hanesbrands Inc.* No. CV-08-0844 EDL WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (approving $5,000 incentive award in a $408,420 settlement in which the average plaintiff received $1,568.44)" (*Pauley v. CF Entertainment* (C.D. Cal., July 23, 2020, No. 2:13-CV-08011-RGK-CW) 2020 WL 5809953, at *4.)

The two declarations offered by plaintiffs, coupled counsels' recitations, are as threadbare as those in *Clark* and its progeny. As noted by *Clark*: ". . . [T]he trial court is not bound to, and should not, accept conclusory statements about 'potential stigma' and 'potential risk' in the absence of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual – not a negligible – risk existed, or why it might be difficult to get plaintiffs to come forward to prosecute a particular case.." (*Ibid.*) Similar defects condemned by *Clark* are present here, underscored by the fact that both declarations advance boilerplate recitations, and read almost exactly the same, jot for jot, on all critical points.

Counsel should address these deficiencies at the hearing. The court will preliminarily approve a class enhancement of only $7,500 for each plaintiff. Counsel may submit additional declarations or supporting evidence before final approval, showing the full $12,500 is justified for each plaintiff.

In Summary:

- Plaintiffs are directed to file a Notice of Settlement as required by CRC, rule 3.1385 (at least before final approval).
- Plaintiffs are directed to provide the attorney-fee agreements as required by CRC, rule 3.796(b) (at least before final approval).

- The court preliminarily approves the gross settlement of $400,000, as fair, adequate, reasonable, and preliminarily certifies the class of 371 as appropriate for class action treatment, as it has a well-defined community of interest, meaning there are predominant common questions of law and fact, and that plaintiffs as class representatives can adequately represent the class. The court approves the representative PAGA action of $10,000 with 361 aggrieved employees on the same grounds. The court therefore approves the Notice to be sent to the class and aggrieved employees and finds generally that the procedures and releases are adequately explained.

- The court preliminarily approves the appointment of Apex Class Action, LLC as the third-party settlement administrator, and preliminarily authorizes up to $7,450 for expenses in this regard.

- The court preliminarily approves the appointment of Barvie Law, APC and Crosner Legal, PC, as class counsel, and preliminarily approves an award of attorney fees of $133,333.33, along with a maximum of $25,000 in litigation costs (assuming sufficient documentation is offered at the final approval hearing to justify the final amount).

- The court preliminarily approves the appointment of plaintiffs Aniceto Sierra Hernandez and Melanie Troxler as representatives for the class and representative action.

- With all this said, preliminary approval is conditioned on a meaningful discussion with class counsel as to the following topics at the hearing:
    - Counsel should confirm that it plans to send the final judgment to the LWDA.

    - Counsel should explain how attorney fees/costs will be divided between attorneys from Barvie Law, APC, and Crosner Legal, PC. The record is silent on these points.

    - Counsel should address the weak evidentiary showing offered to justify a $12,500 enhancement for Aniceto Sierra Hernandez and Melanie Troxler each, as their declarations offered are boilerplate and without specifics, and thus are similar to the threadbare declarations condemned in *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-806 and progeny. The court observes that plaintiffs are asking for a multiplier of over 23 times the average payout to the class, a multiplier appellate courts have questioned without a far more robust factual record in support. Preliminarily, the court approves $7,500 for each plaintiff. Additional declarations and supporting evidence may be submitted before final approval showing the full $12,500 for each plaintiff is warranted.