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15 ALMA R. CASTELLANOS, on behalf of herself  
16 and others similarly situated.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST**

19 ALMA R. CASTELLANOS, on behalf of  
20 herself and others similarly situated.

21 PLAINTIFF,

22 vs.

23 CONTINENTAL CURRENCY SERVICES,  
24 INC., a corporation and DOES 1 to 100,  
25 Inclusive.

26 DEFENDANTS.

Case No.: BC567362

*[Assigned for all purposes to Hon. John Shepard  
Wiley, Jr., Dept. 311]*

**CLASS ACTION**

**PLAINTIFF ALMA R. CASTELLANOS'  
NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

*[Filed concurrently with the Declaration of  
Joseph Lavi in Support; and [Proposed] Order]*

Hearing Information:

Date: March 17, 2017

Time: 10:00 a.m.

Dept.: 311

27 **TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE**  
28 **ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on March 17, 2017, at 10:00 a.m., or as soon thereafter  
as the matter can be heard in Department 311 of the Los Angeles Superior Court located at 600  
South Commonwealth Avenue, Los Angeles, California 90005, Plaintiff Alma R. Castellanos will

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

FEB 21 2017

Sherri R. Carter, Executive Officer/Clerk

By CRYSTAL VARGAS, Deputy

1 move for an order granting preliminary approval of the proposed class action settlement on the  
2 terms and conditions set forth in the Stipulation of Settlement and Release (“Stipulation”) between  
3 Plaintiff Alma R. Castellanos (“Plaintiff”) and Continental Currency Services, Inc. (“Defendant”), a  
4 copy of which is attached to the Declaration of Joseph Lavi (“Lavi Dec.”) as **Exhibit “1.”** Plaintiff  
5 will further move that the Order specifically encompass the following:

- 6 1. Certify a class for settlement purposes only;
- 7 2. Appoint the estate of Alma Castellanos as Class Representative for settlement  
8 purposes only;
- 9 3. Appoint Joseph Lavi, Esq. of Lavi & Ebrahimian, LLP and Sahag Majarian, II of the  
10 Law Office of Sahag Majarian II as Class Counsel;
- 11 4. Approve the Notice of Proposed Class Action Settlement in the form attached as  
12 **Exhibit “A”** to the Stipulation;
- 13 5. Approve the Allocation Form in the form attached as **Exhibit “B”** to the Stipulation;
- 14 6. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately  
15 95 days after the Court grants preliminary approval of the Settlement.

16  
17 Dated: February 17, 2017

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**  
**LAW OFFICES OF SAHAG MAJARIAN, II**

18  
19  
20 By: \_\_\_\_\_

Joseph Lavi, Esq.  
Sahag Majarian II, Esq.  
Vincent C. Granberry, Esq.  
Attorneys for PLAINTIFF  
ALMA CASTELLANOS  
and Other Class Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The estate of Plaintiff Alma Castellanos (“Plaintiff”) respectfully submits this memorandum  
4 of points and authorities in support of his motion for preliminary approval of the proposed class  
5 action settlement with Defendant Continental Currency Services, Inc. (“Defendant”). Plaintiff seeks  
6 entry of a proposed order granting preliminary approval of the class settlement which: (1)  
7 preliminarily approves the proposed settlement of the class action; (2) approves the form and  
8 method for providing notice and directs that notice be given to members of the settlement class; (3)  
9 preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval  
10 hearing date.

11 As consideration for this Settlement, Defendant shall pay a sum equal to Six Hundred Ninety-  
12 Four Thousand Five Hundred Dollars (\$694,500.00) (the “Gross Fund Value” or “GFV”) to fund  
13 the non-reversionary, no claims made settlement of this class action. (Stipulation of Settlement and  
14 Release (“Stipulation”) pp. 6:21-23; 7:24-8:2 attached as **Exhibit “1”** to Declaration of Joseph Lavi  
15 (“Lavi Dec.”). The GFV is inclusive of settlement payments to participating Class Members, all  
16 attorneys’ fees and costs, the service payment to Plaintiff for his services as class representative, and  
17 claims administration as provided by this Settlement. (*Id.*)

18 **II. SUMMARY OF LITIGATION**

19 **A. The Parties**

20 The named Plaintiff worked as a non-exempt employee of Defendant from approximately  
21 1988 through on or about January 10, 2014 and seeks to represent approximately 950 current and  
22 former non-exempt employees who have been employed by Defendant in the State of California at  
23 any time from January 28, 2012 to the date of the Court’s Preliminary Approval of Settlement  
24 (hereinafter “Class Members,” “Settlement Class,” or “Settlement Class Members”).

25 **B. The Complaint and Allegations**

26 This is a proposed employee wage and hour class action case. On December 19, 2014,  
27 *Castellanos v. Continental Currency Services, Inc.* was filed as Case Number BC567362 in Los  
28 Angeles County Superior Court as a putative wage and hour class action. The Complaint alleged

1 claims for: (1) Failure to Provide Meal Periods or Pay Meal Period Premium Wages, in Violation of  
2 Labor Code sections 512 and 226.7; (2) Failure to Provide Rest Periods or Pay Rest Period Premium  
3 Wages, in Violation of Labor Code section 226.7; (3) Failure to Pay Overtime Wages for Daily  
4 Overtime and All Time Worked, in Violation of Labor Code sections 510, 1194, and 1198; (4)  
5 Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code section  
6 226; (5) Failure to Timely Pay Wages Due at the Time of Separation of Employment in Violation of  
7 Labor Code sections 201, 202, and 203; and (6) Violation of Business and Professions Code section  
8 17200, *et seq.* (Lavi Decl. ¶4.) On February 17, 2015, Plaintiff filed a First Amended Complaint  
9 (“FAC”) as a matter of right adding a seventh claim for Civil Penalties Pursuant to the Private  
10 Attorneys General Act of 2004 (“PAGA”). (*Id.*) By way of the Stipulation, the Parties have agreed  
11 to the filing of a Second Amended Complaint, which limits Plaintiff’s meal, rest, and overtime  
12 claims to July 28, 2012 through the date notice is mailed to a certified class and limits Plaintiff’s  
13 waiting time penalties claim to December 19, 2013 through the date notice is mailed to a certified  
14 class. (Stipulation, p. 17:6-16, **Exhibit C.**) (*Id.*) On January 19, 2016, the named Plaintiff passed  
15 away. On June 21, 2016, the Court ruled that Plaintiff’s estate had standing to pursue this action.  
16 (*Id.*)

17 Defendant’s defenses to Plaintiff’s claims were as follows: First and foremost, due to a prior  
18 class action settlement involving the same claims, the liability period in this case was limited to July  
19 28, 2012 to the present. Second, with regard to Plaintiff’s claim for missed and/or late meal periods,  
20 Defendant’s argument in defense of this claim was two-fold: 1) that the nature of Defendant’s  
21 operation prevented Class Members from being relieved of all duties during meal periods and that  
22 the majority of Class Members signed on-duty meal agreements and were compensated for that  
23 time; and 2) that Defendant routinely employed Class Members for shifts less than six hours in  
24 length and had obtained valid meal period waivers from Class Members whose shifts were less than  
25 six hours. Thus, Defendant argued, not only was Plaintiff’s claim weak, but any analysis of Class  
26 Members’ meal periods claims would require an individualized inquiry not appropriate for  
27 certification. Third, with regard to Plaintiff’s missed rest period claim, Defendant argued that it  
28 complied with its legal duty to make available duty free rest periods of ten minutes for each four

1 hours of work or major fraction thereof. Further, Defendant argued, to the extent that putative class  
2 members did not take their rest periods or took a rest period less than 10 minutes it was at their own  
3 election and not the result of some unlawful policy of Defendant. Thus, Defendant argued,  
4 Plaintiff's derivative claim for failure to provide complete and accurate wage statements would fail  
5 because there were no meal or rest period premium wages due and owing. Based on the foregoing,  
6 and considering the on-duty meal period agreements and meal period waivers obtained from Class  
7 Members, Defendant contended, that at the time wages were paid out upon separation of  
8 employment, Defendant believed, in good faith, that it was properly paying all wages to separating  
9 employees. In other words, Defendant concluded, Plaintiff would not be able to establish the willful  
10 element of its Labor Code section 203 claim. For these reasons, Defendant concluded, Plaintiff  
11 would not likely prevail on its claims. (Lavi Dec. ¶15.)

12 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by Plaintiff's**  
13 **Expert Witness and the Parties' Counsel**

14 On October 21, 2016, the Parties participated in a full-day mediation session with the Hon.  
15 Carl J. West (Ret.), a highly experienced and well-regarded class action mediator and retired civil  
16 complex judge. As a critical part of settlement negotiations, the Parties engaged in extensive  
17 informal discovery exchange which included putative class members' punch data over the course of  
18 4,504.4 sample workweeks as well as information regarding number of current and former  
19 employees; number of workweeks; number of pay periods; average date of pay; and Plaintiff's  
20 expert witnesses' and counsel's analysis of both the aforementioned sample data as and Defendant's  
21 relevant employee handbooks. (Lavi Dec. ¶5.)

22 Counsel for the Parties have investigated the law as applied to the facts discovered regarding  
23 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by  
24 Plaintiff, and multiple conference calls and email exchanges between Plaintiff's counsel and  
25 Defendant's counsel. (Lavi Dec. ¶6.)

26 Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
27 necessary to litigate their disputes through trial and through any possible appeals. (Lavi Dec. ¶¶5 -  
28 8.) Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation,



1 and the difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel are also  
2 aware of the burdens of proof necessary to establish liability for the claims asserted in the Action,  
3 both generally and in response to Defendant’s compelling defenses thereto, and the difficulties in  
4 establishing damages for the Class Members. (*Id.*) Based on the foregoing, Plaintiff and Class  
5 Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and  
6 reasonable settlement, and is in the best interests of the Class Members. (*Id.*)

7 Defendant denies and continues to deny the allegations in the lawsuit. (Stipulation, p. 3:2-  
8 3:14.) However, Defendant has concluded that any further defense of this litigation would be  
9 protracted and expensive for all Parties. (*Id.*) Substantial amounts of time and resources of  
10 Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense  
11 of the claims asserted by Plaintiff and Class Members. Defendant has also taken into account the  
12 risks of further litigation in reaching its decision to enter into this Settlement. (*Id.*) Despite its  
13 contention that it is not liable for any of the claims set forth by Plaintiff, Defendant has agreed to  
14 settle in the manner and upon the terms set forth in the stipulation of settlement to put to rest the  
15 claims as set forth in the Action. (*Id.*) Defendant claims and continues to claim that Plaintiff’s  
16 claims have no merit and do not give rise to liability. (*Id.*) This stipulation of settlement constituted  
17 a compromise of disputed claims and the monies being paid as part of the Settlement are genuinely  
18 disputed. (*Id.*)

19 **III. THE SETTLEMENT**

20 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and  
21 approving certification of a provisional settlement class, contingent upon final approval of the  
22 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

23 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure  
24 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit  
25 by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a  
26 copy of which is attached to the Declaration of Joseph Lavi as **Exhibit “1.”**

27 A summary of the key terms of the Settlement is as follows:

- 28 1. For settlement purposes only, the Parties agree to the certification of a class pursuant  
to California Code of Civil Procedure section 382 and, as used herein, “Class

1 Members,” “Settlement Class,” or “Settlement Class Members” shall mean all  
2 current and former non-exempt hourly employees employed by Continental Currency  
3 Services, Inc. in California during the period from July 28, 2012 through the date of  
4 preliminary approval of the Settlement. Potential Settlement Class Members who do  
5 not timely opt-out of the Settlement but who do not cash or accept payment from this  
6 Settlement shall nonetheless be considered Class Members. (Stipulation, p. 5:7-12.)  
7 For purposes of the Stipulation, the “Class Period” shall mean the time period from  
8 July 28, 2012 through the date of preliminary approval of the Settlement.”  
9 (Stipulation, p. 6:2-3.)

- 10 2. As used herein, the term “Gross Fund Value” or “GFV” shall mean the maximum  
11 gross amount of Six Hundred Ninety Four Thousand Five Hundred Dollars  
12 (\$694,500.00) to be paid by Defendant pursuant to this Settlement. (Stipulation, p.  
13 6:21-23.)
- 14 3. “Net Fund Value” or “NFV” shall mean the Gross Fund Value minus the Claims  
15 Administration Fee, Attorneys’ Fees, Attorneys’ Costs, 75% of the PAGA allocation  
16 to be provided to the state, and Service Award. (Stipulation, p. 6:26-28.)
- 17 4. The NFV will be used to calculate the Settlement Share each Class Member will  
18 receive if this Settlement becomes effective as defined above. The Proportional NFV  
19 shall be divided by the total aggregate Hours Worked of the Class Members and  
20 divided in proportionate shares based on the number of Hours Worked for the  
21 individual Class Members as reflected in Defendant’s records, for Class Members  
22 that do not timely opt-out. This is a non-reversionary settlement agreement.  
23 (Stipulation, pp. 7:25-26; 8:7-11.)
- 24 5. Fifteen percent (15%) of each “Settlement Share” represents payment in settlement  
25 of wage claims, and will be reduced by applicable payroll tax withholdings and  
26 deductions (with the employer’s share of legally required payroll taxes to be  
27 deducted from the Gross Settlement Amount), reported by the Settlement  
28 Administrator on IRS Form W-2. The remaining eighty-five percent (85%) of each  
Settlement Share represents payment in settlement of non-wage claims for interest  
and penalties, will not be reduced by payroll tax withholdings and deductions, and  
will be reported by the Settlement Administrator on IRS Form 1099. (Stipulation, p.  
12:7-14.)
6. If any Settlement Class Member fails to cash his or her award check within one  
hundred and eighty (180) calendar days of distribution, the funds associated with any  
checks that are not timely negotiated will escheat to the State. Settlement Class  
Members who, for any reason, do not negotiate their checks in a timely manner shall  
remain subject to the terms of the Judgment, including releasing the Released Claims  
set forth in this Settlement Agreement. If a check is returned to the Settlement  
Administrator as undeliverable, the Settlement Administrator will make all  
reasonable efforts to re-mail it to the Participating Class Member at his or her correct  
address. (Stipulation, p. 16:10-17.)

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7. Upon final approval by the Court, the Settlement Class, and each Class Member who has not submitted a timely and valid written request to opt-out of the Settlement shall have released, to the maximum extent permitted by law, Defendant, and each of the Releasees, through, or in concert with any of them, from all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action contingent or accrued for, or which are arising from, related to, or could have been asserted based on, the allegations in the Action ("Released Claims"). (Stipulation, pp. 16:27-17:5.) The Released Claims include all claims which relate to, or could have been asserted based on, the allegations and claims asserted in the Action, including claims for: (a) Defendant's failure to provide meal and rest breaks; (b) Defendant's failure to pay wages, including minimum or overtime wages; (c) Defendant's failure to comply with timekeeping records requirements; (d) Defendant's failure to pay compensation due upon termination in violation of Labor Code §§ 201-3; (e) incomplete or inaccurate wage statements in violation of Labor Code § 226(a); (f) derivative claims for unfair business practices based on the foregoing in violation of § 17200 of California Business and Professions Code; and (g) derivative Private Attorney General Claims based on the foregoing in violation of Labor Code § 2699, and all facts arising in the Complaint, First Amended Complaint, and/or Second Amended Complaint (attached herein as Exhibit C). (Stipulation, pp. 17:6-16.)
8. The Parties have agreed to retain CPT Group, Inc. to perform the customary duties of claims administrator (the "Settlement Administrator"). (Stipulation, p. 5:13.) CPT Group, Inc. shall be paid from the GFV and the estimate of such costs of administration is not to exceed Fourteen Thousand Dollars (\$14,000). (Stipulation, p. 5:14-19.)
9. In consideration for settling this matter and in exchange for the release of all claims by the Settlement Class, and subject to final approval by the Court, Defendant agrees not to oppose Class Counsel's motion for attorneys' fees in the total amount of up to thirty-three and one third percent (33 1/3%) of the GFV or Two Hundred Twenty Nine Thousand One Hundred Eighty Five Dollars (\$229,185.00) to compensate and reimburse Class Counsel for all of the work already performed by Class Counsel in this case and all of the work remaining to be performed by Class Counsel in documenting the Settlement, securing Court approval of the Settlement, administering the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining dismissal of the Action). (Stipulation, pp. 5:4-6; 22:7 - 14.)
10. Subject to approval by the Court, Defendant further agrees to pay Plaintiff a Service Award not to exceed Two Thousand Five Hundred Dollars (\$2,500) in consideration for serving as the PAGA Representative. Defendant will not oppose Class Counsel's request. The Service Award is in addition to the claim share to which Plaintiff is entitled along with other Settlement Class Members and the amount allocated to resolve her/its individual claims. (Stipulation, pp. 7:15-28; 9:3-9.)

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11. The Class Notice will provide that Class Members who wish to object to the Settlement and/or any of its terms, including the payment of Attorneys' Fees and Attorneys' Costs, must submit to the Settlement Administrator, by first-class mail postmarked no later than forty-five (45) days after the Settlement Administrator mails the Class Notices, a written statement on or objection to the Settlement and/or its terms, setting forth the grounds for the statement or objection. The Notice of Objection must be signed by the Class Member and state: (1) the full name of the Class Member; (2) the dates of contract of the Class Member; (3) the last four digits of the Class Member's Social Security number and/or the Employee ID number; (4) the basis for the objection; and (5) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Counsel shall not represent any Class Members with respect to any such objections. (Stipulation, p. 15:8-25.)

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12. The Class Notice will provide that Class Members may exclude themselves from the Settlement by mailing to the Settlement Administrator a signed written Request for Exclusion from the Settlement, postmarked no later than forty five (45) days after the Settlement Administrator mails the Class Notices. To be effective, any written Request for Exclusion from the Settlement must: (1) explicitly and unambiguously state the following statement or similar statement: "I wish to exclude myself from the settlement reached in the matter of Castellanos vs. Continental Currency. I understand by excluding myself, I will not receive any money from the settlement reached in this matter."; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number. The request for exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, or if it does not contain the name, and address of the Class Member. The date of the postmark on the return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. If a question is raised about the authenticity of a signed Request for Exclusion, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Settlement and the Judgment. A Class Member who does not complete and mail a written Request

1 for Exclusion in Settlement in the manner and by the deadline specified above will  
2 automatically become a Participating Class Member and be bound by all terms and  
3 conditions of the Settlement, including its release of claims, if the Settlement is  
4 approved by the Court, and by the Judgment. (Stipulation, pp. 14:8-15:7.)

#### 4 IV. ANALYSIS

##### 5 A. Class Action Settlements Are Subject To Review And Approval Under The 6 California Rules of Court

7 Rule 3.769 of the California Rules of Court requires court approval for class action  
8 settlements. “Before final approval, the court must conduct an inquiry into the fairness of the  
9 proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in  
10 approving settlements which are fair, not collusive, and take into account “all the normal perils of  
11 litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef*  
12 *Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef*  
13 *Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

##### 14 B. This Settlement Is Fair, Reasonable, And Adequate

15 The purpose of the preliminary evaluation of class action settlements is to determine only  
16 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether  
17 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*  
18 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4<sup>th</sup> Ed.) §11:25.)  
19 Courts have broad powers to determine whether a proposed settlement is fair under the  
20 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*  
21 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several  
22 relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and  
23 likely duration of further litigation, the risk of maintaining class action status through trial, the  
24 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,  
25 [and] the experience and views of counsel...” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
26 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and  
27 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
28 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual

1 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual  
2 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to  
3 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
4 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
5 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9<sup>th</sup> Cir. 1998) 150 F.3d 1011,  
6 1027.)

7 A proposed class action settlement is presumed fair under the following circumstances: (1)  
8 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were  
9 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
10 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co.*, *supra*, 48  
11 Cal.App.4th at 1802.) The Declaration of Class Counsel Joseph Lavi demonstrates that the  
12 proposed settlement was the product of serious, informed, and non-collusive negotiations and  
13 demonstrates counsel’s extensive experience in both employment law as well as class action  
14 litigation.

15 **1. The Settlement is the result of serious, informed, and non-collusive**  
16 **negotiations**

17 The Settlement was reached as a result of arm’s-length negotiations facilitated by a highly  
18 regarded and experienced wage and hour mediator and retired civil complex judge, Hon. Carl J.  
19 West (Re.), and analysis by Plaintiff’s expert witness and counsel. (Lavi Dec. ¶¶5-14.) While  
20 Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and  
21 understands the benefit of the Class receiving settlement funds immediately as opposed to risking an  
22 unfavorable decision on class certification, summary judgment, at trial and/or the damages awarded,  
23 and/or on an appeal that can take several more years to litigate. (*Id.*)

24 **2. The extent of the information provided through informal discovery and the**  
25 **stage of the proceedings support the Settlement**

26 As described herein, the Parties investigated and evaluated the factual strengths and  
27 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient  
28 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the

1 proposed Settlement was reached following probative factual evaluation of Defendant’s relevant  
2 policies and procedures; review, compilation, and analysis of well sample time records and pay  
3 records; expert analysis; consideration of the total number of class members; evaluation of  
4 Defendant’s methods providing meal periods, meal period waivers, payment of meal period premium  
5 wages, keeping time and pay records, and providing final wage pay outs upon separation of  
6 employment; Defendant’s method of communication regarding the aforementioned policies; as well as  
7 information obtained from Plaintiff and Defendant. (*Id.*)

8 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth  
9 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view  
10 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*  
11 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

### 12 **3. Plaintiff’s counsel are experienced in similar litigation**

13 Experienced counsel, operating at arms-length, have weighed the strengths of the case and  
14 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of  
15 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether  
16 to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630  
17 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661  
18 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra*, 485 F.Supp. at 617.)

19 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour and  
20 class action matters. Lavi & Ebrahimian LLP is a well-regarded as a firm that handles almost  
21 exclusively employment matters. (Lavi Dec. ¶16.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has  
22 been approved in class counsel in numerous actions and has been named a Southern California  
23 Super Lawyer the area of Plaintiff’s employment litigation - class action from 2011-2017. (*Id.*)  
24 Defendant’s counsel, Lauren J. Katunich of Lathrop & Gage, LLP is also extremely well-regarded  
25 and respected as employment defense counsel. Counsel on both sides share the view – endorsed by  
26 an experienced wage and hour class action mediator and retired civil complex judge – that this is a  
27 fair and reasonable settlement in light of the complexities of the case, the state of the law and  
28

1 uncertainties of class certification and litigation, and the benefit the settlement confers on the class.  
2 (Lavi Dec. ¶¶5-15.) Given the risks inherent in litigation, in class certification proceedings, and in  
3 the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the  
4 class. (*Id.*)

5 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff's**  
6 **case and the risks and costs of further litigation**

7 Plaintiff and its counsel have concluded it was reasonable to enter into the proposed  
8 Settlement. Defendant has vigorously contested and continues to contest liability for the claims  
9 asserted in the action. Although Defendant believes that class certification would be unlikely on  
10 such claims, it nevertheless agreed to attempt resolution of the case through extensive informal  
11 discovery and mediation to avoid the expense, distraction and uncertainty of protracted litigation.

12 There are significant legal uncertainties associated with cases such as this as they can be  
13 factually complex and require protracted litigation to resolve. A settlement is not judged solely  
14 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have  
15 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*  
16 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*  
17 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and  
18 necessary in the settlement process...even if the relief afforded by the proposed settlement is  
19 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to  
20 a class settlement because the public interest may indeed be served by a voluntary settlement in  
21 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at  
22 250.)

23 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

24 To evaluate a settlement, the trial court must receive “basic information about the nature  
25 and magnitude of the claims in question and the basis for concluding that the consideration being  
26 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*  
27 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit  
28



1 statement of the maximum theoretical recovery:

2 “Greenwell misunderstands *Kullar*, apparently interpreting it to require the record  
3 in all cases to contain evidence in the form of an explicit statement of the  
4 maximum amount the plaintiff class could recover if it prevailed on all its  
5 claims—a number which appears nowhere in the record of this case. But *Kullar*  
6 does not, as Greenwell claims, require any such explicit statement of value; it  
7 requires a record which allows “an understanding of the amount that is in  
8 controversy and the realistic ranges of outcomes of the litigation.”

9 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

10 Based on the information informally produced by Defendant, from July 28, 2012 to  
11 October 21, 2016 mediation date, Defendant employed approximately 1,200 current and former  
12 non-exempt employees (550 current employees and 650 former employees) over the course of  
13 approximately 101,622 workweeks with an average rate of pay for \$16.00/hour. In informal  
14 discovery, Defendant produced 4,504.4 workweeks of sample data. According Plaintiff’s expert  
15 witness’ analysis the sample data, Class Members missed 2,523 meal periods; Defendant  
16 provided Class Members 5,548 late meal breaks that occurred after the fifth hour of work; and  
17 worked 1,684 shifts greater than 10 hours. (Lavi Dec. ¶9.)

18 With regard to the meal period claim, Plaintiff argued that the on-duty meal periods  
19 obtained by Defendant were invalid because the nature of the work that Class Members were  
20 performing did not prevent Class Members from being relieved of all duty. Moreover, Plaintiff  
21 argued, the meal period waivers that Defendant obtained were also invalid because the average  
22 number of hours that Class Members worked each work day was 7.3 and meal period waivers are  
23 only valid if Class Members worked 6 hours or less. Therefore, based on Plaintiff’s expert’s  
24 analysis of the sample data and assuming that there were *no* valid on duty meal period agreements  
25 or meal period waivers, then the *maximum* that Plaintiff could recover for the meal period claim  
26 amounted to **\$2,913,308** [(2,523 missed meal periods X 22.56 to extrapolate from sample to class  
27 workweeks X \$16.00/hour average rate of pay = \$910,702) + (5,548 late meal periods X 22.56 to  
28 extrapolate from sample to class workweeks X \$16.00/hour average rate of pay = \$2,002,606) =  
\$2,913,308]. (Lavi Dec. ¶10.)

1 With regard to the rest period claim, Plaintiff argued that each and every shift Class  
2 Members worked exceeding 10 hours necessarily translated to a rest period violation because  
3 Defendant's rest period policy only provided for rest periods for every four hours worked and  
4 failed to inform that Class Members that they were entitled rest periods for every four hours  
5 worked or "major fraction thereof." Therefore, based on Plaintiff's expert's analysis of the  
6 sample data, the maximum that Plaintiff could recover the rest period claim amounted to  
7 \$607,856 [1,684 shifts greater than 10 hours in length X 22.56 to extrapolate from sample to class  
8 workweeks X \$16.00/hour average rate of pay = \$607,856]. (Lavi Dec. ¶11.)

9 As such, the maximum amount of wages Defendant owed Class Members for the claims  
10 alleged in this case amounted to \$3,521,164 exclusive of penalties for inaccurate wage  
11 statements, waiting time, and PAGA. The settlement reached in this matter of \$694,500 equals  
12 approximately 20% of the of the maximum amount of wages Defendant owed in this case. (Lavi  
13 Dec. ¶12.)

14 With regard to the claim for failure to provide complete and accurate wage statements,  
15 Plaintiff argued that if it prevailed on its meal and/or rest period claims, then it would necessarily  
16 expose Defendant to penalties for this claim because premium wages for missed meal and/or rest  
17 periods were not identified on Class Members' wage statements. The maximum exposure for  
18 Plaintiff's wage statement claim amounted to \$2,200,000 [550 current employees X \$4,000  
19 maximum penalty = \$2,200,000]. (Lavi Dec. ¶13.)

20 Finally, with regard to Plaintiff's failure to pay all wages due and owing upon separation  
21 of employment claim, Plaintiff reasoned that given Defendant's arguments that it obtained a  
22 substantial number of on duty meal period agreements, meal period waivers, and, despite the plan  
23 language of its rest period policy, it authorized or permitted all legally-required rest periods,  
24 Plaintiff would not likely be able to establish the *willful* element of its Labor Code 203 claim.  
25 Nevertheless, assuming that Plaintiff could satisfy the *willful* element of this claim, then the  
26 maximum that could be recovered amounted to \$2,496,000 [650 former employees X 8 hour per  
27 work day X \$16.00 average rate of pay X 30 days waiting time = \$2,496,000]. (Lavi Dec. ¶14.)  
28

1 As mentioned above, however, Defendant presented compelling arguments in defense of  
2 Plaintiff's claims and presented substantial obstacles to class certification. Defendant first argued  
3 that due to a prior class action settlement involving the same claims, the liability period in this case  
4 was limited to July 28, 2012 to the present. Second, with regard to Plaintiff's claim for missed  
5 and/or late meal periods, Defendant's argument in defense of this claim was two-fold: 1) that the  
6 nature of Defendant's operation prevented Class Members from being relieved of all duties during  
7 meal periods and that the majority of Class Members signed on-duty meal agreements and were  
8 compensated for that time; and 2) that Defendant routinely employed Class Members for shifts less  
9 than six hours in length and had obtained valid meal period waivers from Class Members whose  
10 shifts were less than six hours. Thus, Defendant argued, not only was Plaintiff's claim weak, but  
11 any analysis of Class Members' meal periods claims would require an individualized inquiry not  
12 appropriate for certification. Third, with regard to Plaintiff's missed rest period claim, Defendant  
13 argued that it complied with its legal duty to make available duty free rest periods of ten minutes for  
14 each four hours of work or major fraction thereof. Further, Defendant argued, to the extent that  
15 putative class members did not take their rest periods or took a rest period less than 10 minutes it  
16 was at their own election and not the result of some unlawful policy of Defendant. Thus, Defendant  
17 argued, Plaintiff's derivative claim for failure to provide complete and accurate wage statements  
18 would fail because there were no meal or rest period premium wages due and owing. Based on the  
19 foregoing, and considering the on-duty meal period agreements and meal period waivers obtained  
20 from Class Members, Defendant contended, that at the time wages were paid out upon separation of  
21 employment, Defendant believed, in good faith, that it was properly paying all wages to separating  
22 employees. In other words, Defendant concluded, Plaintiff would not be able to establish the willful  
23 element of its Labor Code section 203 claim. For these reasons, Defendant concluded, Plaintiff  
24 would not likely prevail on its claims. (Lavi Dec. ¶15.)

25 If the Plaintiff continued litigating this matter, the class members could potentially receive  
26 **nothing** if the court agreed with Defendant's position or if Defendant was able to defeat  
27 certification based on the individual inquiries that would be required regarding Plaintiff's meal and  
28 rest claims. Furthermore, even if the Court agreed with Plaintiff, Plaintiff still had to prove

1 Defendant acted intentionally and *willfully* in order to receive the additional penalties under Labor  
2 Code Sections 203, which constituted over \$1.5M of Defendant’s maximum potential exposure. As  
3 such, Plaintiff’s decision to settle this matter was in the best interest of the Class Members.

4 This is a fair and reasonable result. Other substantial benefits also include that it is a non-  
5 reversionary, non-claims made settlement, which distributes the NFV to Class Members, without  
6 the submission of a claim form, based on a formula that is calculated by dividing by the total  
7 aggregate Hours Worked of the Class Members and divided in proportionate shares based on the  
8 number of Hours Worked for the individual Class Members as reflected in Defendant’s records, for  
9 Class Members that do not timely opt-out. In addition, if any Settlement Class Member fails to cash  
10 his or her award check within one hundred and eighty (180) calendar days of distribution, the funds  
11 associated with any checks that are not timely negotiated will escheat to the State. (Stipulation, p.  
12 16:10-12.) This will allow additional time for Class Members to claim the funds from their  
13 uncashed checks. (*See* Code Civ. Proc. § 1430 [property escheated to the state for five years without  
14 being claimed “permanently escheats” to the state].) (Lavi Dec. ¶16.)

15 The GFV is reasonable in light of the risks involved in this case—including the prospect of  
16 a potential adverse summary judgment ruling, class certification issues as well as the uncertainty of  
17 class certification, defenses to the case, potential appeal, the elements of willfulness and/or injury  
18 required for certain penalties.

19 Plaintiff’s Counsel is convinced that the proposed Settlement is in the best interest of the class  
20 based on the negotiations and a detailed knowledge of the issues present in this action. The  
21 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment  
22 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,  
23 the difficulties of complex litigation, the lengthy process of establishing specific damages and  
24 various possible delays and appeals, as well as the viability of Defendant were also carefully  
25 considered by Class Counsel in agreeing to the proposed Settlement. In light of the above, the  
26 proposed Settlement is well within the “ballpark” of reasonableness and should be granted  
27 preliminary approval.

28 ///

1 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

2 The court may make an order approving certification of a provisional settlement class after the  
3 preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes,  
4 courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v.*  
5 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is anticipated  
6 in a settlement class case, so the case management issues inherent in the ascertainable class  
7 determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*  
8 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action  
9 for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff’s class for  
10 settlement purposes only.

11 The requirements under California Code of Civil Procedure Section 382 are all met for the  
12 purposes of certifying this case for settlement purposes:

13 • Numerosity: The settlement class consists of approximately 950 Class Members.  
14 Thus, the requirement of numerosity is easily met because joinder of 950 individual plaintiffs into a  
15 single case is otherwise impracticable in light of the circumstances of this case.

16 • Typicality: The claims of the class representative are typical of the claims of the class  
17 members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay  
18 meal period premium wages for missed meal periods, failure to pay rest period premium wages for  
19 missed rest periods failure to pay for all overtime hours worked, failure to provide complete and  
20 accurate wage statements, and failure to pay all wages due upon separation of employment) as the  
21 class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the  
22 class as a whole.

23 • Ascertainability: The proposed “Settlement Class” is easily ascertainable based on  
24 Defendant’s own payroll records.

25 • Adequacy: Plaintiff and, subsequently, her estate, acting thorough her husband, Mr.  
26 Castellanos, have proven to be an adequate class representative. Both Plaintiff and her estate have  
27 conducted themselves diligently and responsibly in representing the class in this litigation, they  
28 have understood their fiduciary obligations, and has actively participated in the prosecution of this

1 case. (Lavi Dec. ¶21.) Before her demise, named Plaintiff spent hours in meetings and conferences  
2 with counsel to get a better understanding of her work environment and requirements. Following  
3 her demise, Plaintiff's estate, through her husband, committed to the continued diligent  
4 representation of the class, attended the mediation in the matter. (*Id.*) Further, Plaintiff never had  
5 and her estate does not have any interest that are adverse to the interests of the other class members.  
6 (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement purposes  
7 and has been appointed as class counsel before by this Court as well as both State and Federal  
8 Courts. (Lavi Dec. ¶17)

9 • Commonality: Many common issues of law and fact unite the class. The common  
10 questions of law and fact include, but are not limited to:

- 11 1) Whether Defendant failed to provide the Class Members meal period  
12 premium wages for missed meal periods;
- 13 2) Whether Defendant failed to provide the Class Members rest period premium  
14 wages for missed rest periods;
- 15 3) Whether Defendant failed to pay the Class Members for all hours worked,  
16 including overtime hours worked;
- 17 4) Whether Class Members are entitled to waiting time penalties for  
18 Defendant's failure to pay all wages upon separation of employment; and
- 19 5) Whether Defendant violated Business and Professions Code section 17200.

20 • Superiority: A class action is superior to other available means for the fair and  
21 efficient adjudication of this controversy. Joinder of all members of the proposed class is  
22 impractical. Class treatment will permit a large number of similarly-situated persons to prosecute  
23 their common claims in a single forum simultaneously for settlement purposes without the  
24 unnecessary duplication of effort and expense that numerous individual actions would engender.

## 25 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

26 The proposed Class Notice and Allocation Form in the forms attached to the Stipulation as  
27 Exhibits A and B, respectively, should be approved for dissemination to the Class Members. These  
28 documents inform the Class of the terms of the Settlement, of their right to receive their  
proportional share of the Settlement and the manner in which to do so, of their right to request  
exclusion or to comment upon or object to the Settlement, and of their right to appear in person or

1 by counsel at the final approval hearing and to be heard regarding approval of the Settlement.  
2 Adequate periods of time are provided by each of these procedures. Furthermore, the date and time  
3 of the Final Approval hearing will be inserted in the Notice and the Allocation Form will identify  
4 the information upon which the Class Member's share will be calculated as well as the estimated  
5 amount he or she can expect to receive if he or she chooses to participate in the settlement.

6 **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

7 Plaintiff's Counsel seeks attorneys' fees and costs award of 33 1/3% of the GFV or Two  
8 Hundred Twenty Nine Thousand Dollars One Hundred Eighty Five Dollars (\$229,185) and Class  
9 Counsel's costs not to exceed Eleven Thousand Dollars (\$11,000), for the time spent litigating this  
10 matter as well as expenses incurred in the prosecution of this Lawsuit thus far. Defendant will not  
11 object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within  
12 the historical range of attorneys' fee awards under the common fund theory, which is generally  
13 from 20% to 50%. The requested fee is a fair compensation for undertaking complex, risky,  
14 expensive, and time-consuming litigation on a contingent fee basis, especially in light of the  
15 substantial benefits achieved by Plaintiff's counsel for the Settlement Class Members. Plaintiff's  
16 counsel diligently litigated and investigated this case.

17 California courts have recognized that an appropriate method for awarding attorney's fees in  
18 class actions is to award a percentage of the "common fund" created as a result of the settlement.  
19 (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15  
20 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253,  
21 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the  
22 common fund is fairness to the successful litigant, who might otherwise receive no benefit because  
23 his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to  
24 others who are entitled to share in the fund and who should bear their share of the burden of its  
25 recovery; encouragement of the attorney for the successful litigant, who will be more willing to  
26 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he  
27 is assured that he will be properly and directly compensated should his efforts be successful. (*City*  
28 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme

1 Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from  
2 which others derive benefits may require those passive beneficiaries to bear a fair share of the  
3 litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California  
4 Supreme Court recognized that the common fund doctrine has been applied “consistently in  
5 California when an action brought by one party creates a fund in which other persons are entitled to  
6 share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

7 Several courts have expressed frustration with the alternative “lodestar” approach for  
8 deciding fee awards, which usually involves wading through voluminous and often indecipherable  
9 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.  
10 Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar  
11 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages  
12 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;  
13 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at  
14 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to  
15 determine the award of attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*  
16 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%.])

17 Plaintiff’s counsel’s request for fees equal to 33 1/3% of the GFV is within the range of  
18 reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%,  
19 depending on the circumstances of the case. (*See In re Activision Sec. Litig., supra*, 723 F. Supp. at  
20 1378.) According to Professor Newberg: “No general rule can be articulated on what is a  
21 reasonable percentage of a common fund...Usually 50 per cent of the fund is the upper limit on a  
22 reasonable fee award from a common fund, in order to assure that fees do not consume a  
23 disproportionate part of the recovery obtained for the class, though somewhat larger percentages are  
24 not unprecedented.” (Newberg, *supra*, §14.6.)

25 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation  
26 associated with this class action on a pure contingency basis. The factual and legal issues posed in  
27 this case were highly disputed, and there were also risks as to whether or not a class would be  
28 certified, leaving a large number of putative class members unlikely to receive any recovery.



1           Based on Class Counsel’s past experience in class action wage and hour litigation, it is safe  
2 to state that Class Counsel is very likely to be called upon, after the Class Notice and Allocation  
3 Form have been sent, to expend substantial amounts of additional time to help Class Members  
4 understand the terms of the proposed Settlement and to assist Class Members in the preparation and  
5 documentation of their Allocation Form. It is also likely that, even after final approval of the  
6 Settlement has been granted, Class Counsel will be called upon to expend additional amounts of  
7 time in the presentation and resolution of contests and disputes relating to Class Members’  
8 allocation under the terms of the proposed Settlement, as to the amounts of individual claims and  
9 perhaps other individual issues.

10           The Court should preliminarily approve the requested attorney’s fees and costs, which are  
11 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great  
12 risk undertaken by Class Counsel. The requested attorneys’ fees and costs will not be opposed by  
13 Defendant, and are well within established guidelines. The Class Members will also be notified of  
14 the requested amount and have an opportunity to object to the requested fees.

#### 15 **VIII. THE REQUESTED INCENTIVE AWARD IS REASONABLE**

16           The named Plaintiff’s and her estate are entitled to enhancement awards for their service as  
17 class representative and the risks associated with their role as Class Representative and Plaintiff in  
18 this Lawsuit. Plaintiff, before her demise, and her estate thereafter, understood and continue to  
19 understand their role as Class Representative, they have protected the interests of Class Members  
20 during the pending of this matter, even after the demise of the named Plaintiff, and will continue to  
21 do so. (Lavi Dec. ¶21.) Plaintiff, before her demise, spent hours in meetings and conferences with  
22 counsel to get a better understanding of her work environment and requirements and, after  
23 Plaintiff’s demise, her estate continued to diligently represent the class and even attended the  
24 mediation in the matter. (*Id.*) Even after mediation, Plaintiff’s estate spent another two and one  
25 half months engaged in the continued negotiations that it took to ultimately reach a settlement as  
26 well as understanding and discussing the settlement agreement with Class Counsel. (*Id.*) Further,  
27 Plaintiff did not, and her estate does not have any interest that is adverse to the interests of the  
28 other class members. (*Id.*) Defendant will not oppose the application for an enhancement of \$2,500

1 for Service Award from the GFV, in recognition of Plaintiff's services, and her estate's services to  
2 the Settlement Class in this Lawsuit as well as providing the Defendant with a general release of  
3 any and all rights and claims against the Defendant. Class Counsel can attest that Plaintiff and,  
4 subsequently, her estate, devoted a proportionate amount of time and work assisting counsel in the  
5 case, communicating with counsel frequently, providing documents and information regarding his  
6 employer and employment, which led to increase in the value and ultimate success of the  
7 Settlement. (*Id.*)

#### 8 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

9 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 10 1. Following the preliminary approval of the Settlement, Defendant will have  
11 fifteen (15) days to provide the Claims Administrator with the Class Data List.  
12 Based on the Class Data List, the Claims Administrator will calculate the total  
13 number of Hours Worked for the Settlement Class Members. This will result in  
14 an aggregate amount of Hours Worked, as well as an individual amount of  
15 Hours Worked for the Settlement Class Members. In order to determine the  
16 amount of payment for each Hours Worked, the NVF will be divided by the total  
17 aggregate Hours Worked of the Settlement Class Members. (Stipulation, pp.  
18 11:28-12:6.)
- 19 2. Within thirty-five (35) calendar days of preliminary approval, the Claim  
20 Administrator shall mail, by U.S. First Class, to Class Members a Class Notice.  
21 The Class Notice will list the individual Settlement Class Member's total  
22 number of Hours Worked. (Stipulation p. 14:4-7.)
- 23 3. If the Class Notice is returned as undeliverable with a forwarding address  
24 provided by the United States Postal Service, the Claims Administrator will  
25 promptly resend the Class Notice to that forwarding address along with a brief  
26 letter stating that the Class Member has until the original deadline set forth on  
27 the Class Notice. If an original mailing is returned as undeliverable without a  
28 forwarding address, the Claims Administrator will perform one skip trace only,  
and if it obtains a more recent address, will resend the Class Notice along with a  
brief letter stating that the Class Member has until the original deadline set forth  
on the Class Notice to opt-out. The Claim Administrator will complete such re-  
mail Class Notices that are returned as undeliverable within fifteen (15) days of  
mailing the Class Notice. (Stipulation p. 16:1-9.)
4. The Class Notice will provide that Class Members who wish to object to the  
Settlement and/or any of its terms, including the payment of Attorneys' Fees and  
Attorneys' Costs, must submit to the Settlement Administrator, by first-class  
mail postmarked no later than forty-five (45) days after the Settlement  
Administrator mails the Class Notices, a written statement on or objection to the

1 Settlement and/or its terms, setting forth the grounds for the statement or  
2 objection. The Notice of Objection must be signed by the Class Member and  
3 state: (1) the full name of the Class Member; (2) the dates of contract of the  
4 Class Member; (3) the last four digits of the Class Member's Social Security  
5 number and/or the Employee ID number; (4) the basis for the objection; and (5)  
6 if the Class Member intends to appear at the Final Approval/Settlement Fairness  
7 Hearing. Class Members who fail to make objections in the manner specified  
8 above shall be deemed to have waived any objections and shall be foreclosed  
9 from making any objections (whether by appeal or otherwise) to the Settlement.  
10 Class Members who submit a timely Notice of Objection will have a right to  
11 appear at the Final Approval/Settlement Fairness Hearing in order to have their  
12 objections heard by the Court. (Stipulation, pp. 15:8-25.)

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5. The Class Notice will provide that Class Members may exclude themselves from the Settlement by mailing to the Settlement Administrator a signed written Request for Exclusion from the Settlement, postmarked no later than forty five (45) days after the Settlement Administrator mails the Class Notices. To be effective, any written Request for Exclusion from the Settlement must: (1) explicitly and unambiguously state the following statement or similar statement: "I wish to exclude myself from the settlement reached in the matter of Castellanos vs. Continental Currency. I understand by excluding myself, I will not receive any money from the settlement reached in this matter."; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number. The request for exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, or if it does not contain the name, and address of the Class Member. The date of the postmark on the return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court. (Stipulation, p. 14:8-28.)
  6. The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiff's Attorneys' Fees and Costs and Service Payments to the Class Representative will be determined by the Court.
  7. The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately ninety-five (95) days following the Court's granting of preliminary approval of the proposed Class Action Settlement. The Parties' respective counsel will bring

1 their calendars to the preliminary approval hearing for purposes of scheduling the  
2 Final Fairness and Approval Hearing.

- 3 8. Within ten (10) calendar days after the Effective Date<sup>1</sup>, Defendant will deposit  
4 the money necessary to fund the Settlement into a qualified settlement account  
5 maintained by the Claims Administrator. (Stipulation, p. 16:19-22.)
- 6 9. Within ten (10) calendar days after Defendant's deposit of funds with the Claims  
7 Administrator, the Claims Administrator will pay all claims and Court-approved  
8 attorneys' fees and costs, Claims Administrator fees, the Service Award to  
9 Plaintiff and payment to LWDA. (Stipulation, p. 16:22-25.)

10 **X. CONCLUSION**

11 The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and  
12 immediate payment to Class Members; it is non-collusive; and it was achieved as the result of  
13 informed, extensive, and arms' length negotiations conducted by counsel for respective parties who  
14 are experienced in wage and hour class action litigation. For the foregoing reasons, the parties  
15 respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the  
16 proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement, and the  
17 proposed Allocation Form, and set a date for a final approval hearing.

18 Dated: February 17, 2017

19 Respectfully submitted,  
20 **LAVI & EBRAHIMIAN, LLP**  
21 **LAW OFFICES OF SAHAG MAJARIAN, II**

22 By: 

23 Joseph Lavi, Esq.  
24 Sahag Majarian II, Esq.  
25 Vincent C. Granberry, Esq.  
26 Attorneys for PLAINTIFF  
27 ALMA CASTELLANOS  
28 and Other Class Members

<sup>1</sup> "Effective Date" shall mean the later of: (1) if no appeal is taken, the applicable date for seeking appellate review of the Court's final approval of the settlement has passed without a timely appeal or request for review having been made or 60 days after Final Approval Order is signed; or (2) if an appeal is timely filed with respect to the Judgment, the date such an appeal is dismissed or the Judgment is affirmed, and the Judgment is not subject to further judicial review or reconsideration by any court, but only after all of the following events have occurred: (i) this Stipulation has been executed by all Parties and by counsel for the Parties; (ii) the Court has given preliminary approval to the settlement; (iii) Class Notice has been given to the Settlement Class Members, providing the Class Members with an opportunity to opt-out of the Settlement Class; and (iv) the Court has held a formal fairness hearing and entered a final order and judgment certifying the Settlement Class, and approving this Stipulation consistent with California Rule of Court 3.769(h). (Stipulation, p. 6:9-20.)