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23 individually and on behalf of all others similarly situated.

24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 JENNIFER PAE, individually and
27 on behalf of all others similarly
28 situated,

Plaintiff,

vs.

29 FOX RESTAURANT CONCEPTS,
30 LLC d/b/a TRUE FOOD
31 KITCHEN; a Arizona limited
32 liability company; FRC TRUE
33 FOOD SMP, LLC, a California
34 limited liability company; FRC
35 TRUE FOOD SDFV, LLC, a
36 California limited liability
37 company; FRC TRUE FOOD
38 NBFI, LLC, a California limited
39 liability company; and DOES 1
40 through 25, inclusive,

Defendants.

CASE NO. 2:16-cv-06965-DSF-FFM
[Assigned to the Hon. Dale S. Fischer,
Courtroom 7D]

**AMENDED NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

[Filed concurrently with the Declaration of
Thomas W. Falvey; Declaration of Michael
H. Boyamian; Declaration of Alex
Hartounian; Declaration of Armand R.
Kizirian; [Proposed] Order]

Hearing Date: December 3, 2018
Time: 1:30 p.m.
Courtroom: 7D (First Street Courthouse)

Complaint Filed: July 22, 2016
Removal Date: September 16, 2016

1 **AMENDED NOTICE OF MOTION AND MOTION TO ALL**
2 **PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 Please Take Notice that on Monday, December 3, 2018, at 1:30 p.m., or as
4 soon thereafter as the matter can be heard in Courtroom 7D of the First Street
5 Courthouse located at 350 West 1st Street, Los Angeles, California, before the
6 Honorable Dale S. Fischer, Plaintiffs Jennifer Pae and Alexandra Sheldon
7 (“Plaintiffs”) will and hereby do move this Court for an Order Granting
8 Preliminary Approval of Class Action Settlement. Plaintiffs’ Motion is based on
9 this Notice and the accompanying Memorandum of Points and Authorities and
10 exhibits thereto; the Declarations of Thomas W. Falvey, Michael H. Boyamian,
11 Alex Hartounian, and Armand R. Kizirian, and the respective exhibits thereto; the
12 Proposed Order; this Court's files and records; and any other evidence, briefing, or
13 argument properly before this Court.

14 Plaintiffs filed this class action lawsuit to address a common occurrence in
15 today’s workplace: the insistence of employers to strictly adhere to labor budgets
16 regardless of the off-the-clock work and missed meal and rest breaks that such
17 policies cause. Plaintiffs allege Defendants Fox Restaurant Concepts, LLC, FRC
18 True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food NBF, I,
19 LLC (“Defendants” or “True Food Kitchen”) consistently failed to pay them and
20 their fellow True Food Kitchen front-of-the-house staff for all hours worked, and
21 that they were not provided meal and rest periods.

22 Numerous True Food Kitchen employees were contacted and verified what
23 Plaintiffs were claiming, namely, that they were not being paid what they were
24 owed, and that they were not being provided with the meal and rest breaks to
25 which they were entitled. Many signed declarations to this effect which were used
26 in support of Plaintiffs’ Motion for Class Certification, which was fully briefed
27 but not ruled on by the Court prior to the Parties entering into this settlement
28 agreement.

1 Defendants vehemently denied - and continue to deny - all allegations.
2 Defendants claim that Class Members were properly paid for all hours worked,
3 provided with meal and rest breaks, and reimbursed for any business expenses in
4 conformity with California law.

5 Class Counsel have reviewed numerous documents pertaining to the Class,
6 such as employee manuals, wage statements, internal training manuals for
7 managers, job descriptions, and other records.

8 Plaintiff Jennifer Pae underwent fierce questioning by Defense Counsel
9 during her deposition and stood by her allegations. She was prepared to see this
10 matter through class certification, even while Defendants tried to undermine the
11 truth of her allegations. Similarly, Plaintiff Alexandra Sheldon originally filed her
12 own suit under the Private Attorneys General Act of 2004. Her claims were
13 brought into this suit for purposes of effectuating a global settlement.

14 Finally, the Class Representatives have negotiated a settlement that, if
15 approved by the Court, will result in a payment of \$900,000 (Nine Hundred
16 Thousand Dollars) in connection with the settlement with the True Food
17 Kitchen front-of-the-house employees. Plaintiffs now seek preliminary
18 approval of this class action settlement.

19 The Class Representatives believe the settlement is fair, reasonable, and
20 adequate. Plaintiffs seek to begin the settlement approval process outlined in the
21 Manual for Complex Litigation (Fourth) §§ 21.632-35 (henceforth, “Complex
22 Manual”). They respectfully request that the Court review the Settlement
23 Agreement attached as Exhibit “1” to the Declaration of Thomas W. Falvey
24 (“Falvey Decl.”), and enter an order:

- 25 (1) granting preliminary approval of the proposed Settlement;
26 (2) conditionally certifying the Class for settlement purposes;
27 (3) approving the form, content and method of distribution of the Notice of
28 Class Action Settlement;

///

1 (4) appoint the Law Offices of Thomas W. Falvey, Boyamian Law, Inc., and
2 the Hartounian Law Firm, P.C. as Class Counsel;

3 (4) appoint Plaintiffs Jennifer Pae and Alexandra Sheldon as class
4 representatives;

5 (5) appoint CPT Group as Settlement Administrator;

6 (6) set a filing deadline for Class Counsel's motion requesting attorneys'
7 fees, costs, enhancement award to Plaintiffs; and

8 (7) schedule a hearing regarding Class Counsel's requests for attorney's fees
9 and costs, enhancement awards to Plaintiffs, and final approval of the proposed
10 Settlement.

11
12 Respectfully Submitted,

13
14 Dated: October 29, 2018

15 BOYAMIAN LAW, INC.
16 LAW OFFICES OF THOMAS W. FALVEY
17 HARTOUNIAN LAW FIRM, P.C.

18 By: /s/ Armand R. Kizirian
19 Armand R. Kizirian
20 Attorneys for Plaintiffs and the Putative Class
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1 **I. INTRODUCTION**

2 Plaintiffs Jennifer Pae and Alexandra Sheldon (“Plaintiffs”) seek
3 preliminary approval of a settlement on behalf of themselves and a Class
4 comprised of all individuals employed as non-exempt front-of-the-house
5 employees in California at all of Defendants’ Fox Restaurant Concepts, LLC,
6 FRC True Food SMP, LLC, FRC True Food SDFV, LLC, and FRC True Food
7 NBF, LLC (“Defendants”, with Plaintiffs, the “Parties”) True Food Kitchen
8 restaurant locations between July 22, 2012 and the date of preliminary approval
9 (“Class Members”).

10 Plaintiffs previously moved for preliminary approval of this Settlement on
11 October 1, 2018. At that hearing, the Court requested that certain changes be made
12 to the Settlement Notice, the cy pres beneficiary, and to the allocation of the
13 employer-side payroll taxes before the Court would grant preliminary approval.
14 The Parties now having made those changes, as outlined below, Plaintiffs resubmit
15 their Motion for Preliminary Approval.

16 The main terms of the Settlement are as follows:

17 a. Defendants agree to pay nine hundred thousand dollars and zero cents
18 (\$900,000.00) (“Gross Settlement Payment Amount”) to settle the Action, which
19 shall include attorneys’ fees and costs, the Class Representative Enhancement
20 Awards, the employer’s share of payroll taxes, and court-approved costs of
21 settlement administration.

22 b. This is not a Claims-Made Settlement. Class Members will receive a
23 portion of the Net Settlement Amount as long as they do not opt out of the
24 Settlement by submitting valid and timely exclusion forms to the Settlement
25 Administrator, as set forth below and as explained in the Notice of Class Action
26 Settlement (“Notice”).

27 The Settlement Agreement, including all exhibits, is attached as Exhibit “1”
28 to the Declaration of Thomas W. Falvey (“Falvey Decl.”), filed herewith. The
Settlement Notice, as revised by the Parties after the October 1, 2018 preliminary

1 approval hearing, is attached as Exhibit “1” to the Declaration of Armand R.
2 Kizirian (“Kizirian Decl.”), filed herewith. A redline version outlining the specific
3 changes made by the Parties to the Settlement Notice is attached as Exhibit “2” to
4 the Kizirian Decl.

5 **II. FACTUAL BACKGROUND**

6 This is a class action suit brought by Plaintiffs Jennifer Pae and Alexandra
7 Sheldon seeking to represent current and former front-of-the-house employees at
8 Defendants’ California True Food Kitchen restaurants. Plaintiffs allege a variety
9 of wage and hour violations on the part of Defendants.

10 First, Plaintiffs allege that they were not properly provided with meal and
11 rest breaks by Defendants. Plaintiffs and Class Members were required to complete
12 meal break waiver forms, and were thereafter generally scheduled for six hour
13 shifts. If Plaintiffs and Class Members worked no more than six hours, they would
14 have been entitled to one rest break. However, Defendants seldom, if ever,
15 provided for a duty-free rest break. Defendants would try and schedule as few
16 front-of-the-house staff as possible for any given shift. However, because
17 scheduling for a shift necessarily occurs before the shift itself, Defendants often did
18 ended up under-staffing shifts with front-of-the-house employees, such as servers.
19 Declaration of Michael H. Boyamian (“Boyamian Decl.”), ¶ 8.

20 When a shift was understaffed, Plaintiffs and Class Members would be
21 expected to work through their rest break. Even though it was never written
22 explicitly by Defendants in any employee manual, Plaintiffs and Class Members
23 understood perfectly well that it would be wholly inappropriate to, e.g., spend 10
24 minutes outside on a break when customers were having their dishes go cold
25 because there were not enough servers to cover all tables.

26 Certain shifts also were scheduled for 8 hours. On such shifts, Plaintiffs and
27 Class Members would be required to take a 30-minute unpaid meal break.
28 However, just as with rest breaks, management would expect Plaintiffs and Class

1 Members to assist during their unpaid meal breaks, particularly if the restaurant
2 was busy during that shift.

3 On shifts that went beyond their scheduled time of 6 or 8 hours, Plaintiffs
4 and Class Members would regularly be required to work off-the-clock. In the case
5 of the six hour shift, Plaintiffs and Class Members would still have to keep
6 working off-the-clock because otherwise, their meal break waiver would no longer
7 be effective at that point and they simply could not keep working without incurring
8 a meal break violation. Similarly, Plaintiffs and Class Members could not keep
9 working after eight hours because to do so would require that employee to incur
10 overtime hours - something that Defendants very much wanted to avoid.

11 Particularly at the end of their shifts after they had already clocked out,
12 Plaintiffs and Class Members would be required to complete side work such as
13 rolling silverware (wrapping napkins around cutlery), sweeping the dining room
14 floor, restocking the service area or wiping down work counters, stocking and
15 cleaning the cupboard, restocking condiments, restocking plates, and cleaning up.

16 Moreover, each True Food Kitchen restaurant was headed by a General
17 Manager. Part of the General Manager's compensation was tied to the profitability
18 of the restaurant. One metric measured by True Food Kitchen and that factored into
19 the profitability of the restaurant was the labor budget. As a result, if a General
20 Manager chose to schedule more staff members on each shift to ameliorate the
21 above under-staffing issues, he or she risked exceeding the labor budget, impacting
22 profitability, and thus ultimately hurting his or her own pay. For this reason, among
23 others, Defendants' local management was not particularly concerned if True Food
24 Kitchen was not complying very well with California's wage and hour laws.
25 Boyamian Decl., ¶ 9.

26 Finally, True Food Kitchen would not reimburse Plaintiffs and Class
27 Members for their replacement aprons, True Food Kitchen t-shirts, and non-stick
28 shoes that they would have to wear. Further, Plaintiffs and Class Members had to

1 purchase an app called HotSchedules in order to access their schedules, but this
2 expense was also not paid for by Defendants. Boyamian Decl., ¶ 10.

3 **III. PROCEDURAL BACKGROUND**

4 This action was filed on July 22, 2016. Plaintiff Jennifer Pae filed a
5 proposed class action alleging various wage and hour violations in the Los
6 Angeles County Superior Court against all Defendants. This action was removed
7 to the Central District of California on September 16, 2016. Plaintiff Alexandra
8 Sheldon filed a separate PAGA-only action on April 26, 2017 in Los Angeles
9 County Superior Court. After the Parties reached a global settlement in principle
10 of the claims from both suits earlier this year, the complaint in this action was
11 amended to add Plaintiff Alexandra Sheldon as a Class Representative, and to add
12 her PAGA claims to this suit. The operative First Amended Complaint with both
13 Plaintiffs Pae and Sheldon was filed on July 10, 2018.

14 Plaintiffs' Counsel has conducted a thorough investigation into the
15 relevant facts and legal claims. Plaintiffs have propounded and responded to
16 written discovery. Plaintiffs have taken depositions of both individual managers
17 and those designated by Defendants as their F.R.C.P. Rule 30(b)(6) witnesses.
18 Plaintiffs analyzed Defendants' voluminous time punch records with the
19 assistance of an expert statistician. Plaintiffs spoke to dozens of Class Members
20 and gathered declarations from those who were willing. Prior to reaching this
21 settlement, Plaintiffs moved for class certification and opposed Defendants'
22 Motion for Partial Summary Judgment. This settlement was reached before the
23 Court issued its ruling on class certification and summary judgment. Boyamian
24 Decl., ¶¶ 6, 8.

25 Mediation was conducted with respected neutral Steven J. Serratore, on
26 April 4, 2018. Counsel for the Parties fully briefed their positions to the mediator.
27 Even after a full day of extensive arms-length negotiations by the Parties, they
28 were unable to reach a settlement. Only through continued negotiations in the

1 days after the mediation did the Parties reach the settlement in principal which
2 ultimately lead to the final agreement. Falvey Decl., ¶ 12; Boyamian Decl., ¶ 13.

3 Based on an independent investigation and evaluation, Plaintiffs' Counsel
4 are of the opinion that the Settlement with Defendants for the consideration and on
5 the terms set forth in the Settlement Agreement is fair, reasonable, and adequate,
6 and is in the best interests of the Class Members, in light of all known facts and
7 circumstances, including the risk of significant delay, the risk that if this matter is
8 litigated a Class may not be certified by the Court or that it may later be
9 decertified, the risk that Defendants will prevail on their defenses, as well as
10 potential appellate issues. Falvey Decl., ¶ 10.

11 **IV. TERMS OF THE SETTLEMENT**

12 With three exceptions, the complete details of the Settlement are contained
13 in the Settlement Agreement, signed by the Parties, and attached as Exhibit "1" to
14 the Falvey Decl. Those three exceptions, concerning the wording of the Settlement
15 Notice, the cy pres beneficiary, and the allocation of employer-side payroll taxes
16 and their impact on requested attorneys' fees, are discussed in the Kizirian Decl. A
17 summary of the settlement's primary terms, as amended after the preliminary
18 approval hearing held on October 1, 2018, are as follows:

19 **A. Class Definition**

20 The Class is comprised all individuals employed as non-exempt front-of-
21 the-house employees in California at all of Defendants' True Food Kitchen
22 restaurant locations between July 22, 2012 and the date of preliminary approval.

23 **B. Settlement Amount**

24 Defendants have agreed to pay \$900,000.00 to fully resolve all claims in the
25 Lawsuit, including claims by eligible Settlement Class Members, attorneys' fees,
26 costs, the employer's share of payroll taxes, Settlement Administration Costs, and
27 the Class Representative's service award.

28 ///

1 **C. Allocation of Payments and Distribution to Class Members**

2 This is not a claims-made settlement. Class Members will receive a portion
3 of the Net Settlement Amount as long as they do not opt out of the Settlement by
4 submitting valid and timely exclusion forms to the Settlement Administrator, as
5 set forth below and as explained in the Notice.

6 Payments to Class Members shall be allocated as 20% for unpaid wages, for
7 which IRS Forms W-2 will be issued, and 80% as penalties and interest, for which
8 IRS Forms 1099-MISC will be issued to Class Members by the Settlement
9 Administrator.

10 The Settlement Administrator will calculate the individual settlement
11 awards to eligible Class Members. In order to calculate each Class Member's
12 share of the settlement, the Settlement Administrator will use data provided by
13 Defendants concerning the number of workweeks that each Class Member
14 worked during the Class Period. The respective weeks worked during the Class
15 Period for each Class Member will be divided by the total weeks worked for all
16 Class Members during the Class Period, resulting in a payment ratio for each
17 Class Member. Each Class Member's payment ratio will then be multiplied by the
18 Net Settlement Amount to determine his or her estimated Individual Settlement
19 Award.

20 Checks issued to Class Members pursuant to this Settlement shall remain
21 negotiable for a period of sixty (60) days from the date of issuance. Class
22 Members who fail to negotiate (i.e., cash or deposit) their check(s) in a timely
23 fashion shall remain subject to the terms of this Settlement. After the expiration of
24 sixty (60) days, the sum of any un-cashed/un-deposited checks shall be issued to
25 Bet Tzedek, i.e. the new cy pres beneficiary designated by the Parties after the
26 October 1, 2018 preliminary approval hearing. Kizirian Decl., ¶ 4.

27 Defendants' data will be presumed to be correct. All compensation disputes
28 will be resolved and decided by the Settlement Administrator and the Settlement

1 Administrator's decision on all compensation disputes will be final and non-
2 appealable. Under no circumstance will the Gross Settlement Amount or any
3 portion thereof revert back to Defendants.

4 **D. Attorneys' Fees, Costs, and Enhancement Fees**

5 Class Counsel may apply for, and Defendants will not oppose, an award of
6 attorneys' fees in an amount up to one-fourth (25%) of the Gross Settlement
7 Amount (\$900,000) minus the employer-side payroll taxes (\$14,773.87), i.e.
8 twenty-five percent of \$885,226.13 (\$221,306.53), and costs of up to \$30,000, all
9 of which shall be paid exclusively from the Gross Settlement Amount. Kizirian
10 Decl., ¶ 5. These fees and costs will compensate Class Counsel for all of the work
11 already performed, and expenses already incurred, in the Action and all work
12 remaining to be performed in documenting the Settlement, securing Court
13 approval of the Settlement, administering the Settlement, ensuring that the
14 Settlement is fairly administered and implemented, obtaining dismissal of the
15 Action with prejudice, and defending against any appeals, as well as all associated
16 expenses.

17 The Class Representative Enhancements are in addition to the Plaintiff's
18 individual settlement award. In exchange for the Class Representative
19 Enhancements, the Class Representatives must execute a general release in favor of
20 Defendants. Defendants will not oppose Plaintiffs' enhancement petition so long as
21 it does not exceed \$15,000 for Plaintiff Jennifer Pae and \$10,000 for Plaintiff
22 Alexandra Sheldon. In addition to providing additional consideration for Plaintiffs'
23 execution of the general release, the Class Representative Enhancements is meant
24 to compensate Plaintiffs for their instrumental role in pushing this litigation
25 forward and putting their name on a public lawsuit, something that ordinary Class
26 Members were not asked to do. Plaintiff Jennifer Pae's enhancement amount is
27 greater than Plaintiff Alexandra Sheldon's because the former was deposed while
28 the latter had not yet had her deposition taken when

1 this matter settled. In the event that the Class Representatives are not awarded the
2 requested amounts, in whole or in part, no part of the requested award shall revert
3 to Defendants, but instead shall revert to the Net Settlement Amount.

4 **E. Costs of Settlement Administration**

5 The Settlement Administrator shall be entitled to payment, from the Gross
6 Settlement Amount, for the reasonable costs of administering this settlement,
7 subject to Court approval. Here, the costs of administering the settlement approval
8 are very likely to remain \$23,500, pursuant to the flat-fee bid provided by CPT
9 Group. *See* CPT Group Bid, attached as Exhibit “2” to the Falvey Decl.

10 **C. PAGA Penalties**

11 Under the terms of the settlement, \$20,000 of the Gross Settlement Amount
12 will be allocated to penalties under the Private Attorneys General Act. Of this
13 \$20,000 amount, 75% or \$15,000 will be paid to California’s Labor and
14 Workforce Development Agency. The remaining 25% or \$5,000 will be added to
15 the Net Settlement Amount for distribution to Class Members.

16 **D. Administration of Notice and Opt-Out Process**

17 This Settlement is not a claims-made settlement. Class Members do not
18 need to submit claims in order to participate in the Settlement. Within fourteen
19 (14) calendar days of preliminary approval, Defendants will provide the
20 Settlement Class’s identifying information to the Settlement Administrator. In the
21 event there is missing contact information, the Parties will make their best efforts
22 to obtain and provide the approximate, last-known data/information. Class
23 Members will have forty-five (45) days in which to postmark objections, disputes,
24 and/or requests for exclusion.

25 The Notice, attached to the Settlement Agreement as Exhibit “B,” shall *not*
26 be used. Instead, the Notice, as revised by the Parties after the October 1, 2018
27 preliminary approval hearing and attached as Exhibit “1” to the Kizirian Decl.,
28 shall be sent by the Settlement Administrator to the Class Members, by first class

1 mail, within thirty (30) calendar days following the preliminary approval of this
2 settlement. The Notice shall notify each Class Member of the number of work
3 weeks within the Class Period and their estimated share of the settlement funds.

4 Those individuals who do not submit valid and timely requests for exclusion
5 shall be deemed “Settlement Class Members”.

6 With the filing of their final approval motion, Class Counsel shall provide
7 the Court with a declaration by the Settlement Administrator specifying the due
8 diligence it has undertaken with regard to the mailing of the Notice.

9 **H. Disputes, Requests for Exclusion, and Objections**

10 The Notice shall provide forty-five (45) days from the mailing date of the
11 Notice for each Class Member to (1) dispute the amount of workweeks worked by
12 a Class Member during the Class Period or the calculation of an individual Class
13 Member’s Settlement Payment; (2) opt out of the Settlement; or (3) object to the
14 settlement.

15 If a Class Member wishes to dispute the amount of workweeks worked by a
16 Class Member during the Class Period or the calculation of an individual Class
17 Member’s Settlement Payment, the Class Member must submit a written, signed
18 dispute along with supporting documents to the Settlement Administrator at the
19 address provided on the Notice within thirty (30) calendar days of the postmark
20 date of the Notice. The Settlement Administrator, in its sole discretion and after
21 consulting with Class Counsel and Defense Counsel, will resolve the challenge
22 and make a final and binding determination without hearing or right of appeal.

23 The Settlement Administrator shall report to Class Counsel and Defense
24 Counsel, in summary or narrative form, the substance of any discrepancies
25 submitted by the Class Member and Defendants’ records. The Settlement
26 Administrator and Class Counsel shall be granted reasonable access to Defendants’
27 records that relate to the discrepancies. The Settlement Administrator shall have
28 full authority to resolve any such discrepancies.

1 No opt out request will be accepted if postmarked to the Settlement
2 Administrator more than forty-five (45) calendar days after the date the Notice was
3 mailed to the Class Member. All original opt out requests shall be sent directly to
4 the Settlement Administrator at the address indicated on the Notice and the
5 Settlement Administrator will forward such opt out requests to Class Counsel and
6 Defense Counsel. The Settlement Administrator will certify jointly to Class
7 Counsel and Defense Counsel the number of all Class Members who have
8 submitted opt out requests and/or objections in response to the Notice.

9 Defendants have the option of withdrawing from the settlement if ten
10 percent (10%) or more of the Class Members opt out of the Settlement.

11 Any Class Member wishing to object to the Court's approval of this
12 Settlement shall follow the procedures set forth herein and shall submit any such
13 written objections, memorandums of points and authorities in support thereof,
14 and/or requests to appear at the final approval hearing, with the Settlement
15 Administrator no later than forty-five (45) days after the mailing of the Notice.

16 A Class Member who has submitted an opt-out request may not submit any
17 objections to the Settlement. Any Class Member who fails to file a timely written
18 objection shall be foreclosed from objecting to this Settlement. Class Counsel and
19 Defense Counsel shall file any response to any objections filed by objecting Class
20 Members at least ten (10) calendar days before the Final Approval Hearing.

21 **I. Release of Claims**

22 Upon the Final Approval Date, Class Members who do not timely opt out
23 shall fully release and discharge the Releasees from all claims, causes of actions,
24 or damages, which have been or could have reasonably been alleged in the suit.

25 **V. LEGAL ARGUMENT**

26 **A. Preliminary Approval of the Settlement is Appropriate.**

27 The dismissal or compromise of a class action requires court approval. Fed.
28 R. Civ. P. 23(e). Approval involves a two-step process in which the Court first

1 determines whether a proposed class action settlement warrants preliminary
2 approval and, if so, directs that notice be sent to proposed class members,
3 reserving closer scrutiny for the final approval hearing. *See Harris v.*
4 *Vector Mktg. Corp.* (N.D. Cal. 2011) 2011 U.S. Dist. LEXIS 48878, 23-24.
5 Approval of a class action settlement rests in the discretion of the Court, which
6 should ultimately determine whether the settlement is fundamentally fair,
7 adequate, and reasonable to the Class. *See Torrissi v. Tucson Elec. Power Co.* (9th
8 Cir. 1993) 8 F.3d 1370, 1375.

9 A court should grant preliminary approval of a settlement if it “appears to be
10 the product of serious, informed, non-collusive negotiations, has no obvious
11 deficiencies, does not improperly grant preferential treatment to class
12 representatives or segments of the class, and falls within the range of possible
13 approval.” *See In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d
14 1078, 1079. Courts should also apply their discretion in light of the judicial policy
15 favoring settlement of complex class action litigation. *See, e.g., Officers for Justice*
16 *v. CM! Serv. Comtnn of City & Cnty. of San Francisco* (9th Cir. 1982) 688 F.2d
17 615, 625 (“[I]t must not be overlooked that voluntary conciliation and settlement
18 are the preferred means of dispute resolution. This is especially true in complex
19 class action litigation. . .”). As discussed below, application of the relevant factors
20 to this case supports preliminary approval.

21 **1. The Settlement is the Product of Informed, Non-Collusive**
22 **Negotiation.**

23 Adequate discovery and the use of an experienced mediator support the
24 conclusion that settlement negotiations were informed and non-collusive. *See*
25 *Villegas v. J.P. Morgan Chase & Co.*, (N.D. Cal. 2012) 2012 U.S. Dist. LEXIS
26 166704, *1546. Each side has apprised the other of their respective factual
27 contentions, legal theories and defenses, resulting in extensive arms-length
28 negotiations taking place among the parties. On April 4, 2018, the Parties

1 attended a full-day mediation with experienced mediator, Steven J. Serratore. The
2 Parties engaged in protracted negotiations and were ultimately able to reach an
3 agreement that was based fundamentally upon the mediator's advice and guidance.
4 While a settlement figure was agreed upon by the Parties in the days after the
5 mediation, negotiations as to the specific terms of the agreement continued for
6 several weeks thereafter. Falvey Decl., ¶¶ 11-12; Boyamian Decl., ¶ 13.

7 Here, the Settlement Agreement was reached through arm's-length
8 negotiations by experienced counsel familiar with the applicable law, class action
9 litigation, and the facts of this case. Class Counsel have a great deal of experience
10 in class action litigation and focus on employment wage and hour matters. At the
11 time of settlement, the Parties had comprehensive information on the claims
12 involved in the suit due to the preparation and briefing with Plaintiffs' Motion for
13 Class Certification and Defendants' Motion for Partial Summary Judgment. As
14 such, the mediation occurred after each side had conducted an extensive
15 investigation of the factual allegations involved in this case, and understood very
16 well the strengths and weaknesses of their respective position. Boyamian Decl., ¶¶
17 12-13; Declaration of Alex Hartounian ("Hartounian Decl."), ¶ 22.

18 **2. The Strength of Plaintiff's Case and the Risk of Further** 19 **Litigation Support Preliminary Approval.**

20 Plaintiffs allege that Defendants failed to properly compensate Class
21 Members for all hours worked at the True Food Kitchen restaurants. Plaintiffs
22 also allege that Defendants did not provide meal and rest breaks in conformity
23 with California law due to chronic understaffing, and failed to reimburse all
24 business expenses. Further litigation carries numerous risks and obstacles for
25 Plaintiffs and Class Members. Falvey Decl., ¶ 13; Boyamian Decl., ¶¶ 14-15.

26 First, Plaintiffs may not be able to certify a class of front-of-the-house
27 employees under Rule 23(b). Rule 23(b) provides that class certification is
28 appropriate where "...the questions of law or fact common to the members of the

1 class predominate over any questions affecting only individual members, and...a
2 class action is superior to other available methods...”. Fed. R. Civ. P. 23(b)(3).

3 Plaintiffs can show through common evidence that Defendants typically
4 scheduled Class Members for six hour shifts in line with their meal break waiver
5 forms. Moreover, Plaintiffs can show that they and Class Members were clocking
6 out from work at or near the sixth or even the eight hour mark but continuing to
7 work off-the-clock by either continuing to wait on tables or completing the
8 required “side work” and then “cashing out.” Plaintiffs submitted substantial
9 evidence in this regard with their Motion for Class Certification. Boyamian Decl.,
10 ¶ 8.

11 However, in opposing Plaintiffs’ Motion for Class Certification, Defendants
12 submitted their own evidence which allegedly showed that Plaintiffs and Class
13 Members were not working off the clock, or that the experiences of the front-of-
14 the-house employees varied. If the Parties had not reached this settlement and the
15 Court found Defendants’ evidence to be credible, no class would be certified for
16 off the clock work. Hartounian Decl., ¶ 23.

17 Similarly, Plaintiffs submitted evidence with their Motion for Class
18 Certification that they and Class Members were also unable to take their rest
19 breaks and meal breaks (when ostensibly provided) due to the amount of work that
20 they were responsible for completing, the chronic understaffing at True Food
21 Kitchen restaurants, and local management’s financial incentive to keep their
22 restaurants understaffed. Boyamian Decl., ¶ 8. On all these points, Defendants
23 cited contrary evidence. When Plaintiffs pointed to a policy of Defendants that
24 supported their claims, Defendants would cite another. When Plaintiffs proffered
25 various declarations of Class Members that were in accord with Plaintiffs’
26 statements, Defendants submitted their own employee declarations.

27 As a result, while Plaintiffs are confident in their claims, it cannot be said
28 that Defendants’ presented no contrary evidence to the Court. Thus, in the

1 absence of settlement, the Court's ruling on the pending Motion for Class
2 Certification and Defendants' Motion for Partial Summary Judgment will come
3 down to a credibility determination by the Court. Consequently, through the
4 compromise of this settlement, the Parties are each assured of certainty with the
5 outcome, and avoid, from Plaintiffs' and the Class's perspective, potentially losing
6 all or some of their claims, and from Defendants' perspective, of this becoming a
7 much more advanced suit. Hartounian Decl., ¶ 23.

8 In addition, with regard to Plaintiffs' claims for wage statement and waiting
9 time penalties, both claims are derivative of Plaintiffs' primary off-the-clock and
10 meal and rest break allegations. Thus, Plaintiffs would recover nothing for
11 themselves, or the Class, if the underlying claims are unsuccessful. Boyamian
12 Decl., ¶ 11.

13 Finally, with regard to waiting time penalties, Defendants might argue
14 that there was a good faith dispute regarding whether Class Members were owed
15 any wages at the time their employment ended. *See* Cal. Code Regs. Tit. 8, §
16 13520 (good faith dispute, based in law or fact, precludes award of waiting time
17 penalties). Defendants might also contend that to the extent that they failed to
18 pay any wages to Class Members, their failure was not willful within the
19 meaning of California Labor Code § 203. *See Amaral v. Cintas Corp. No. 2*, 163
20 Cal. App. 4th 1157, 1201 (2008). In regards to wage statements, Defendants
21 might argue that the statute provides for penalties only if Plaintiffs prove that
22 Defendants' violations were both knowing and intentional. Cal. Lab. Code §
23 226(e). Therefore, even assuming *arguendo* that Plaintiffs can establish a failure
24 to pay wages, Plaintiffs may be unable to demonstrate that Defendants' failure
25 to include overtime on their earnings statement was both knowing and
26 intentional. Without this proof, Plaintiffs cannot recover penalties or fees under
27 Section 226(e). ///

28 ///

1 **3. The Settlement Falls Within the Range of Possible**
2 **Approval.**

3 In deciding whether the proposed settlement is adequate and falls within the
4 range of possible approval, “courts primarily consider plaintiffs’ expected
5 recovery balanced against the value of the settlement offer”, while taking into
6 account the risks of continuing litigation. *See In re Tableware Antitrust Litig.* 484
7 F.Supp.2d at 1080. Courts should recognize that “the agreement reached normally
8 embodies compromise; in exchange for the saving of cost and elimination of risk,
9 the Parties each gave up something they might have won had they proceeded with
10 litigation.” *Officers for Justice* 688 F.2d at 624, (internal quotations and citation
11 omitted). “[I]t is well-settled law that a cash settlement amounting to only a
12 fraction of the potential recovery does not *per se* render the settlement inadequate
13 or unfair. Rather, the fairness and the adequacy of the settlement should be
14 assessed relative to risks of pursuing the litigation to judgment.” *Villegas*, 2012 -
15 U.S. Dist. LEXIS 166704 at 96 (internal quotations and citations omitted).

16 Here, the Settlement is fair, adequate, and well within the range of possible
17 approval. Without conceding that any adverse rulings would be justified, Plaintiffs
18 recognize the risk of such outcomes as described above. Falvey Decl., ¶ 13;
19 Boyamian Decl., ¶¶ 13-15. If Defendants are able to prove that Plaintiffs and Class
20 Members were properly provided with meal and rest breaks, were paid for all
21 hours worked, and did not incur any expenses that should have been compensated,
22 then the instant claims in the suit would be worth very little if anything. As far as
23 the Class is concerned, if Defendants are able to defeat certification by, for
24 example, showing a lack of commonality within the Class, this suit would be
25 drastically limited, encompassing only the named Plaintiffs’ claims and no other
26 Class Members. Boyamian Decl., ¶¶ 14-15.

27 If a class is certified and Plaintiffs are able to demonstrate that they and
28 Class Members were not properly paid for all hours worked, were not adequately

1 provided with meal and rest breaks, and were not reimbursed for all business
2 expenses, then their damages would be based on the degree to which these wage
3 and hour violations were occurring.

4 Based on significant outreach efforts by Class Counsel in connecting
5 directly with Class Members, Class Counsel are able to estimate the following
6 amounts.

7 First, there are approximately 2,250 days in the Class Period (i.e. July 22,
8 2012 to the present). During that time, Defendants greatly expanded their True
9 Food Kitchen restaurant chain in California. On average, for this approximately six
10 year period, Class Counsel estimates that there would be 275 front-of-the-house
11 employees working on any given day. Boyamian Decl., ¶ 17. This figure would
12 have been lower near the start of the Class Period when there were only three True
13 Food Kitchen restaurants in California, and it would be higher now that there are
14 eight True Food Kitchen Restaurants. Half of these restaurants opened in the last
15 two years.

16 In preparing for the Motion for Class Certification, Class Counsel retained
17 an expert statistician to examine the data provided by Defendants. Plaintiffs'
18 statistician found that on 9.1% of all shifts, a meal break violation had occurred.
19 Plaintiffs believe this figure is very conservative because Plaintiffs and Class
20 Members frequently described a practice whereby managers would alter time-clock
21 entries to mask the fact that a meal break violation had occurred (e.g., because it
22 was taken too late in the shift). Because Class Counsel believe this time-clock
23 altering was occurring more than half of the time, Plaintiffs believe that a 20%
24 meal break violate rate is a fairer figure to use in calculating the meal break
25 penalties. *See* Boyamian Decl., ¶ 17.

26 As front-of-the-house staff were generally not well paid, often earning
27 minimum wage, Class Counsel believe that over the six year Class Period, a \$10
28 per hour rate is proper to use for a damages analysis. Boyamian Decl., ¶ 17. Thus,

1 if on the approximately 2,250 days that exist in the Class Period, if 275 Class
 2 Members were working on each day, and 20% of these individuals incurred a meal
 3 break violation, then with the one hour of premium pay for non-compliant meal
 4 breaks, Class Members would be owed **\$1,237,500** in meal break penalties (=
 5 2,250 days * 275 Class Members per day * 20% violation rate * \$10 penalty rate).

6 True Food Kitchen did not track the rest breaks of Class Members. As a
 7 result, Plaintiffs' statistician had no comparable records to do such an analysis on
 8 for rest break violations. Nevertheless, Plaintiffs believe that a similar violation
 9 rate was occurring with rest breaks as with meal breaks. On this basis, Class
 10 Counsel estimates that Plaintiffs and Class Members are owed **\$1,237,500** in meal
 11 break penalties (= 2,250 days * 275 Class Members per day * 20% violation rate *
 12 \$10 penalty rate).

13 For the unpaid wages claim, Class Counsel estimates that Class Members
 14 spent an average of 15 minutes working off-the-clock each day, when accounting
 15 for work done after a shift was over and for work done during meal and rest breaks.
 16 As a result, based upon approximately 2,250 work days in the Class Period, 275
 17 Class Members working each day, 15 minutes of unpaid time, and a \$10 per hour
 18 hourly rate, Class Members are owed \$1,546,875 in unpaid wages. (= 2,250 days *
 19 275 Class Members per day * 0.25 hours off-the-clock each day * \$10 penalty
 20 rate). Most shifts did not last 8 hours. Off-the-clock overtime would only be
 21 incurred if a Class Member's shift was in excess of 8 hours. If even 1 out of 5 shifts
 22 was scheduled for 8 hours, then \$154,687.50 must be added to the above figure to
 23 account for the overtime rate (\$1,546,875 unpaid wages * 20% of shifts * 0.5 to
 24 account for OT premium). Collectively then, Plaintiffs and Class Members are
 25 owed **\$1,701,562.50** in unpaid straight time and overtime wages (= \$1,546,875
 26 straight time wages + \$154,687.50 for OT premium for 20% of shifts).

27 With respect to unreimbursed business expenditures, Class Counsel came to
 28 the conclusion that, on average, Class Members incurred \$100 with such expenses

1 during their time with True Food Kitchen. This principally covered the various
2 articles of clothing that Plaintiffs and Class Members would have to replace at
3 their own cost, along with the HotSchedules app. As a result, for the
4 approximately 3,000 Class Members, this claim would be worth about \$300,000
5 (= 3,000 Class Members * \$100).

6 The above captures the most certain components of the damages at issue in
7 this litigation, and captures the damages from Plaintiffs' core claims. Boyamian
8 Decl., ¶ 18. Added together, Plaintiffs are able to show at least \$4,476,562.50 in
9 damages for the underlying claims (\$1,701,562.50 for unpaid straight time and
10 overtime + \$1,237,500 for missed meal breaks + \$1,237,500 for missed rest breaks
11 + \$300,000 in unpaid business expenditures). In addition, these core amounts
12 would be increased by inaccurate wage statement and waiting time penalties,
13 depending on which specific claims Plaintiffs and the Class ultimately prevailed
14 on. Moreover, the Court would have the discretion to set an amount for PAGA
15 penalties if Plaintiffs and the Class were to prevail on the underlying claims.

16 Nevertheless, the above figures must be discounted for a settlement at this
17 stage in the proceedings because there is no certainty that the Court would
18 ultimately grant Plaintiffs' Motion for Class Certification, and that a jury would
19 come out in favor of Plaintiffs and the Class. If the Court were to deny class
20 certification, then the claims of Class Members other than Plaintiffs would
21 effectively be \$0 as their involvement in the suit would end. As set forth above,
22 for the purposes of settlement only, Plaintiffs concede that this case faces
23 significant hurdles at both the certification and liability phases of the litigation.
24 Falvey Decl., ¶ 13; Boyamian Decl., ¶ 18.

25 Based on the foregoing, the Settlement will result in a fair and reasonable
26 award to Class members in light of the litigation risks. The net amount to be paid
27 to the Class under the proposed Settlement (after payment of Class Counsel's
28 attorneys' fees and costs, Administration Costs, the Class Representative

1 Enhancements) will be at least \$596,500. The average Class Member payout under
2 this amount would be approximately \$198.83. Falvey Decl., ¶ 7. Thus, the
3 Settlement avoids the risks of litigation while ensuring that Class Members receive
4 consideration for a release of their claims. The Settlement also affords relief to
5 Class Members who likely would never have filed individual claims.

6 Under the circumstances the amount of the settlement is fair, adequate and
7 reasonable. *See Vero v. Aaron Bros.*, (N.D. Cal. 2013) 2013 U.S. Dist. LEXIS
8 178511 (granting preliminary approval of settlement of wage and hour claims
9 where the average recovery would be between approximately \$28 and \$45);
10 *Bautista v. Harvest Management Sub*, (C.D. Cal. 2013) No. 2:12-cv-10004 (ECF
11 No. 60) (preliminarily approving a \$2.2 million settlement of wage-and-hour
12 violation claims of 14,000-member class).

13 The plan of allocation is also fair and reasonable. The Settlement provides
14 that the settlement fund shall be allocated based on the number of workweeks
15 worked during the Class Period by Class Members, thus assigning an amount to
16 each Class Member derivative of the amount of work they performed for
17 Defendants. *See, e.g., Ching v. Siemens Indus.*, (N.D. Cal. 2013) 2013 U.S. Dist.
18 LEXIS 169279, at *19 (granting preliminary approval of settlement and finding
19 that weeks worked was a reasonable basis for allocating individual payments).

20 **4. Plaintiffs' Request for Attorneys' Fees and Costs is**
21 **Reasonable.**

22 The Settlement provides that, prior to the final approval hearing, Class
23 Counsel may petition the Court for an award of fees in an amount not to exceed
24 \$225,000 (25% of the Settlement Amount) and an award of litigation expenses in
25 an amount not to exceed \$30,000. However, following the preliminary approval
26 hearing held on October 1, 2018, Class Counsel agreed to seek 25% of the Gross
27 Settlement Amount only *after* the employer-side payroll taxes are deducted.
28 Because the employer-side payroll taxes will total \$14,773.87, Class Counsel will

1 seek \$221,306.53 in attorneys' fees, i.e. 25% of \$885,226.13 (\$900,000 -
2 \$14,773.87). Kizirian Decl., ¶ 5.

3 Class Counsel submit that these amounts are fair and reasonable given their
4 significant investment of time and expense over the last two years, their contingent
5 fee risk, and the result that they have achieved. The fees that will be requested are
6 based on the amount that will be paid out to the Class, and are within the range of
7 reasonableness established by Ninth Circuit authority. *See, e.g., Knight v. Red*
8 *Door Salons, Inc.*, (N.D. Cal. 2009) 2009 U.S. Dist. LEXIS 11149, *17 (observing
9 that class action fee awards average around one-third of the recovery) (citations
10 omitted). Moreover, because the fees that Plaintiffs' Counsel will be requesting
11 match the Ninth Circuit's benchmark of 25% of a common fund, the Settlement is
12 also eminently reasonable in this respect. *See Staton v. Boeing Co.*, 327 F.3d 938,
13 968 (9th Cir. 2003).

14 **5. Plaintiffs' Request for an Enhancement Award for the**
15 **Class Representatives is Reasonable.**

16 Service or incentive awards are typical in class action cases. *Rodriguez v.*
17 *W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958. In evaluating incentive
18 awards, courts may consider "1) the risk to the class representative in commencing
19 suit, both financial and otherwise; 2) the notoriety and personal difficulties
20 encountered by the class representative; 3) the amount of time and effort spent by
21 the class representative; 4) the duration of the litigation and; 5) the personal
22 benefit (or lack thereof) enjoyed by the class representative as a result of the
23 litigation." *Van Vranken V. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.
24 294, 299. Here, Class Counsel believes that the Class Representative Enhancement
25 Awards of \$15,000 for Plaintiff Jennifer Pae and \$10,000 for Plaintiff Alexandra
26 Sheldon is consistent with a fair, just and adequate settlement.

27 Plaintiffs initiated this case and sought counsel to represent the proposed
28 Class. Plaintiffs met with Class Counsel and provided documentary evidence

1 relevant to the claims in the case, discussed case strategy and assisted Class
2 Counsel in evaluating settlement options. Falvey Decl., ¶ 8. Plaintiffs also risked
3 their own professional reputation by suing their former employer. Any potential
4 future employer who searches the internet or runs a background check on
5 Plaintiffs will discover this fact. In a competitive job market, this factor may
6 weigh heavily against them. Therefore, Plaintiffs have also undertaken risks with
7 respect to their future employment prospects. Falvey Decl., ¶ 8. Finally, Class
8 Counsel's request for an award for Plaintiff Jennifer Pae is higher because she was
9 also deposed in this matter.

10 Plaintiffs will each provide a supporting declaration at final approval
11 describing their efforts in this case, the amount of time spent serving the class, and
12 the risks they incurred.

13 **6. The Settlement Administrator Costs are Reasonable.**

14 Plaintiffs propose appointing CPT Group as the Settlement Administrator in
15 this case. Class Counsel obtained three bids from different settlement
16 administrators of settlement administration costs in this case. Class Counsel has
17 elected to use CPT Group as the Settlement Administrator because they offered a
18 competitive bid and have substantial experience in administering class action
19 settlements. Falvey Decl., ¶ 19. The CPT Group estimate is attached to the Falvey
20 Declaration as Exhibit "2". The estimated Settlement Administration Costs of
21 \$23,500 for 3,000 Class Members are reasonable as compared to the \$900,000
22 value of the settlement.

23 **B. The Class Should be Provisionally Certified.**

24 Plaintiffs request that the Court provisionally certify the Rule 23(b)(3) class
25 for settlement purposes. The purpose of provisional class certification is to
26 facilitate distribution to proposed Class Members of notice of the terms of a
27 proposed settlement and the date and time of the final approval hearing. *See*
28 *Manual for Complex Litigation, Fourth* §§ 21.632-33. For purposes of this

1 Settlement only, Defendants that the proposed Class satisfies the requirements for
2 class certification set forth in Rule 23. Settlement Agreement ¶ 9.

3 **7. Standards Governing Approval of Settlement Classes.**

4 When considering a motion for preliminary approval of a settlement, the
5 Court must make a threshold determination as to whether the proposed settlement
6 class meets Rule 23 requirements. *See Hanlon v. Chrysler Corp.* (9th Cir. 1998)
7 150 F.3d 1011, 1019-20. Specifically, the Court must determine whether the
8 proposed class satisfies the requirements that (1) the class is so numerous that
9 joinder would be impracticable; (2) there are questions of law or fact common to
10 the class; (3) the named Plaintiffs' claims are typical of the claims of the
11 proposed class; and (4) Plaintiffs and their counsel will adequately and fairly
12 represent the interests of the class. *Id.* at 1019. Additionally, the action must be
13 maintainable under Fed. R. Civ. P. 23(b) (1), (2), or (3). *Id.* at 1022. Based on
14 these standards, as further discussed below, the Court should certify the proposed
15 Settlement Class for settlement purposes.

16 **8. The Class Satisfies the Requirements of Rule 23(a).**

17 The proposed Class satisfies all requirements of Rule 23(a).

18 First, it is sufficiently numerous to satisfy Rule 23(a)(1). "While there is no
19 set number of members required, courts have generally found classes numbering in
20 the hundreds to be sufficient to satisfy the numerosity requirement." *Campbell v.*
21 *PricewaterhouseCoopers* (E.D. Cal. 2008) 253 F.R.D. 586, 594. In this case, the
22 putative class consists of approximately 3,000 Class Members who worked for
23 Defendants during the Class Period. This will easily satisfy the numerosity
24 requirement. Falvey Decl., ¶ 7.

25 Second, Rule 23(a)(2) is satisfied because there are questions of law and fact
26 common to the proposed Class. *See Mazza v. Am. Honda Motor Co., Inc.* (9th Cir.
27 2012) 666 F.3d 581, 589 ("Commonality only requires a single significant question
28 of law or fact."). The showing required to satisfy commonality is

1 minimal. *Hanlon*, 150 F. 3d at 1020. The presence of a single common question
2 that will “drive the resolution of the litigation” is sufficient *Campbell v.*
3 *PricewaterhouseCoopers, LLP* (E.D. Cal. 2012) 287 F.R.D. 615, 620 (hereinafter
4 *Campbell II*). Here, common factual and legal issues include whether Class
5 Members were required to keep working after clocking out of their shifts, work
6 through their meal and rest breaks, and purchase their own gear for use in the True
7 Food Kitchen restaurants. These issues satisfy the commonality requirement of
8 Rule 23(a)(2). Falvey Decl., ¶ 13.

9 Third, the typicality requirement of Rule 23(a)(3) is satisfied because the
10 claims raised by Plaintiffs are typical of the claims asserted on behalf of the Class.
11 Typicality is established if representative claims are “reasonably co-extensive with
12 those of absent class members; they need not be substantially identical.” *Hanlon*,
13 150 F.3d at 1020. Plaintiffs’ claims arise out of the same factual and legal
14 circumstances as the claims of other Class Members: Like all Class Members,
15 Plaintiffs claim to have had to work off-the-clock and through meal and rest
16 breaks, and to also have purchased their own equipment to work at True Food
17 Kitchen. Because Defendants’ policies and procedures were uniform and applied
18 to all front-of-the-house staff, Plaintiffs’ claims against Defendants are typical of
19 those of the Class. Falvey Decl., ¶ 13.

20 Fourth, Plaintiffs’ counsel satisfy the adequacy requirement of Rule
21 23(a)(4), as well as the requirements of Rule 23(g). Rule 23(a)(4) requires that the
22 Parties fairly and adequately protect the interests of the class. The adequacy
23 requirement is met where the named Plaintiffs and their counsel do not have
24 conflicts of interest with other class members, and the named Plaintiffs and their
25 counsel will vigorously prosecute the interests of the class. *Hanlon*, 150 F.3d at
26 1020. Here, Plaintiffs and their counsel will more than adequately represent the
27 Class. There are no conflicts and the Class Representative have claims that are in
28 line with those of the Class. Plaintiffs have diligently participated in the litigation

1 by communicating regularly with counsel and providing documents and
2 information about the Class claims. Falvey Decl., ¶ 8.

3 Rule 23(g)(1) requires courts, when appointing class counsel, to consider:
4 (1) the work counsel has done in identifying or investigating potential claims in
5 the action; (2) counsel’s experience in handling class actions, other complex
6 litigation and the type of claims asserted in the action; (3) counsel’s knowledge of
7 the applicable law; and (4) the resources that counsel will commit to its
8 representation. Here, Class Counsel have identified, investigated and prosecuted
9 the claims; have extensive experience in class action litigation, including wage-
10 and-hour claims of the type asserted here, and have been appointed Class Counsel
11 in numerous other cases; and have demonstrated that they have the ability and
12 resources to vigorously pursue the claims, e.g. by moving for class certification
13 and opposing a motion for partial summary judgment. Falvey Decl., ¶¶ 1-6;
14 Boyamian Decl., ¶¶ 2-6. For these reasons, Plaintiffs’ Counsel and Plaintiffs meet
15 the adequacy requirement of Rule 23(a)(4). Plaintiffs’ Counsel should be
16 appointed as Class Counsel pursuant to Rule 23(g).

17 **3. The Class Meets the Requirements of Rule 23(b)(3).**

18 The Class meets the requirements of Rule 23(b)(3) because common
19 questions “predominate over any questions affecting only individual members,”
20 and class resolution is “superior to other available methods for the fair and
21 efficient adjudication of the controversy.”

22 First, the Class satisfies the predominance requirement, which examines
23 whether the proposed classes are “sufficiently cohesive to warrant adjudication by
24 representation.” *Hanlon*, 150 F.3d at 1022. “When common questions present a
25 significant aspect of the case and they can be resolved for all members of the class
26 in a single adjudication, there is clear justification for handling the dispute on a
27 representative rather than on an individual basis.” *Id.* Here, common issues
28 predominate because Plaintiffs’ claims turn on a common liability issue suited to

1 class-wide adjudication: Whether or not Class Members were required, pursuant to
 2 common policies and practices, to keep working after clocking out of their shifts,
 3 to keep working through their meal and rest breaks, and to provide their own work
 4 equipment. Boyamian Decl., ¶¶ 8-11.

5 Second, Rule 23(b)(3) is satisfied because resolution of the issues in this
 6 case on a class-wide basis is “superior to other available methods for the fair and
 7 efficient adjudication of the controversy.” *See Hanlon*, 150 F.3d at 1023. The
 8 alternative to a single class action -- numerous individual actions -- would be
 9 inefficient and unfair. *See, e.g., Custom LED, LLC v. eBay, Inc.*, (N.D. Cal. 2013)
 10 2013 U.S. Dist. LEXIS 122022 (superiority established because a “class action
 11 would achieve the resolution of the putative class members’ claims at a lower cost
 12 and would reduce the likelihood of inconsistent determinations”). Class actions are
 13 generally found to be superior where individual claims are relatively small, there is
 14 a large volume of individual claims, individuals lack a compelling interest in
 15 controlling their own litigation, and there would be a strain on judicial resources if
 16 individual claims were filed. *See Wang v. Chinese Daily News, Inc.* (C.D. Cal.
 17 2005) 231 F.R.D. 602, 614.

18 VI. CONCLUSION

19 For all of the reasons set forth above, Plaintiffs respectfully request that this
 20 Court certify the proposed class for settlement, and to grant preliminary approval
 21 of the class action settlement.

22 Dated: October 29, 2018

BOYAMIAN LAW, INC.
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25 By: /s/ Armand R. Kizirian
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