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FILED
Superior Court Of California
County Of Los Angeles

JUL 23 2014

Sherri A. [Signature] Clerk/Clerk
By [Signature] Judi Lara Deputy

FAKED

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

15 ANTOINETTE LINDSAY; individually,
16 and on behalf of other members of the
17 general public similarly situated, and on
18 behalf of aggrieved employees pursuant to
the Private Attorneys General Act
("PAGA");

19 Plaintiff,

20 v.

21 DOUGLAS EMMETT, INC., a Maryland
corporation; DOUGLAS EMMETT
22 MANAGEMENT, INC., a Delaware
corporation; DOUGLAS EMMETT, LLC,
23 an unknown business entity;; and DOES 1
through 100, inclusive,

24 Defendants.

Case No. BC466315 *DSy*
Consolidated With Case Nos. BC474789,
BC474960, and BC478699

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
CERTIFICATION OF THE SETTLEMENT
CLASS; MEMORANDUM OF POINTS AND
AUTHORITIES

[Filed Together with Declarations of Class
Counsel (Alexander R. Wheeler and Edwin
Aiwazian); Declarations of Class
Representatives (Antoinette Lindsay
Manny Vinluan, Tomasa Rodriguez
Caesar Morera, and Edvin Tsaturyan)
[Proposed] Order]

Date: TBD ✓
Time: TBD
Dept: TBD

25
26 AND CONSOLIDATED CASES

RECEIPT #: CCH201272024
DATE PAID: 07/23/14 09:56 AM
PAYMENT: \$60.00
RECEIVED:
CHECK: \$60.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00
310

CIT/CASE: BC466315
LEA/DEF#:

07/23/2014

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Plaintiffs Antoinette Lindsay, Caesar Morera,
3 Edvin Tsaturyan, Tomasa Rodriguez, and Manny Vinluan (“Plaintiffs”) will and hereby
4 move the Court for an order:

- 5 • Granting preliminary approval of the proposed **\$400,000.00** class action
6 settlement described herein and as set forth in the parties’ Stipulated Class
7 Settlement (“Settlement Agreement”), attached as **Exhibit “1”** to the
8 Declaration of Alexander R. Wheeler filed concurrently herewith
9 (“Wheeler Decl.”);
- 10 • Certifying the proposed Settlement Class for settlement purposes;
- 11 • Appointing Antoinette Lindsay, Caesar Morera, Edvin Tsaturyan, Tomasa
12 Rodriguez, and Manny Vinluan as the Class Representatives;
- 13 • Appointing the R. Rex Parris Law Firm and Lawyers *for* Justice, PC as
14 Class Counsel;
- 15 • Approving the proposed Class Notice attached as **Exhibit “A”** to the
16 Settlement Agreement;
- 17 • Approving the proposed Claim Form attached as **Exhibit “B”** to the
18 Settlement Agreement;
- 19 • Appointing Simpluris, Inc. (“Simpluris”) as the Claims Administrator to
20 administer the Settlement and preliminarily approving claims
21 administration costs in an amount up to \$23,000;
- 22 • Directing Simpluris to mail the Class Notice and Claim Form (hereinafter
23 collectively referred to as the “Settlement Documents”) to the proposed
24 Settlement Class;
- 25 • Approving the proposed deadlines for as reflected in the [Proposed] Order
26 lodged together with this motion;
- 27 • Preliminarily approving the request for attorneys’ fees in the amount of
28 \$140,000 and costs in an amount not to exceed \$50,000, as well as an

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1 enhancement award in the amount of \$6,000 to Antoinette Lindsay, \$3,500
2 to Tomasá Rodriguez, \$3,500 to Manny Vinluan, \$2,000 to Caesar
3 Morera, and \$2,000 to Edvin Tsaturyan; and

- 4 • Scheduling a hearing to consider final approval of the proposed settlement,
5 at which final approval hearing the Court would also consider entry of a
6 proposed final judgment; Class Counsel's application for an award of
7 attorneys' fees and reimbursement of costs and expenses; and the
8 enhancement award to the Class Representative.

9 This motion is based on the following memorandum of points and authorities; the
10 Declarations of Class Counsel (Alexander R. Wheeler and Edwin Aiwazian) and the
11 Declarations of the Class Representatives (Antoinette Lindsay, Caesar Morera, Edvin
12 Tsaturyan, Tomasa Rodriguez, and Manny Vinluan) in support thereof; the [Proposed]
13 Order lodged together with this motion, as well as upon the pleadings and other records
14 on file with the Court in this matter, and upon such documentary evidence and oral
15 argument as may be presented at the hearing on this motion.

16
17 DATED: July 22, 2014

R. REX PARRIS LAW FIRM

18
19 By: 

Alexander R. Wheeler
Attorneys for Plaintiffs and the
Settlement Class

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **1. SUMMARY OF MOTION**

3 Plaintiffs seek preliminary approval of the proposed class action settlement, which
4 Defendants do not oppose. Subject to court approval, Plaintiffs and Defendants have
5 agreed to settle Plaintiffs' and the proposed Class Members' claims against Defendants
6 for a total maximum settlement amount of up to \$400,000.00 on a claims-made basis,
7 subject to a 50% floor (the "proposed Settlement").¹ The proposed Settlement includes
8 payment of Plaintiffs' attorneys' fees and costs, the costs of settlement administration,
9 enhancement awards to the Class Representatives, PAGA penalties, and the employees'
10 share of payroll taxes. Plaintiffs also seek to provisionally certify the following Class for
11 settlement purposes, consisting of approximately 723 Class Members, which Defendants
12 also do not oppose:²

13 All persons who, at any time from July 28, 2007, to the
14 date of preliminary approval of this Settlement (the "Class
15 Period") were employed by Douglas Emmett Management,
16 LLC, Douglas Emmett Inc., or Douglas Emmett Builders
17 as a non-exempt employee in the State of California.

18 This proposed Settlement will resolve all of Plaintiffs' and the above-defined
19 Class Members' released claims against Defendants.

20 **2. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

21 Defendants provide property management services to a portfolio of commercial
22 buildings in the State of California. Defendants employed approximately 723 hourly,
23 non-exempt employees in the State of California throughout the Class Period to work on-
24 site at the commercial buildings ("property-level") and at the corporate offices ("non-
25 property level") in various job titles including Assistant Property Manager,
26 Administrative Assistant, Day Porter/Matron, Leasing Agent, Operating Engineer, Cost
27 Analyst, Laborer, and Project Accountant. Plaintiff Antoinette Lindsay was formerly

28 ¹ A copy of the settlement agreement is attached as Exhibit "A" to the Declaration of Alexander R. Wheeler ("Wheeler Decl."), entitled "Stipulated Class Settlement" ("Settlement Agreement").

² ¶¶ 12 and 23 of the Settlement Agreement.

1 employed by Defendants as a non-exempt Assistant Property Manager from
2 approximately August 2008 to approximately August 2010 in the State of California.³
3 Plaintiff Lindsay alleges that she was required to work overtime and work through her
4 lunch breaks for which Defendants failed to pay her overtime compensation.⁴
5 Defendants deny this allegation and contend that Plaintiff Lindsay was compensated in
6 full compliance with all applicable laws.

7 Plaintiff Lindsay filed a class action lawsuit against Defendants on July 28, 2011
8 on behalf of the “property-level” non-exempt employees, the core allegations being that
9 since at least July 28, 2007, Defendants did not pay its “property-level” non-exempt
10 employees for overtime work, missed meal and rest periods, and associated waiting time
11 penalties. In the complaint, Plaintiff Lindsay alleged that during the Class Period,
12 Defendants willfully failed to pay their “property-level” non-exempt employees the state-
13 mandated minimum wage, failed to pay overtime wages, and failed to provide meal and
14 rest periods as required by California law. Plaintiff Lindsay also alleged that Defendants
15 failed to timely pay wages to their “property-level” non-exempt employees both during
16 and upon termination of employment, failed to provide accurate itemized wage
17 statements, and failed to keep complete and accurate payroll records. Plaintiff Lindsay
18 further alleged that due to the underpayment of wages, they were owed waiting time
19 penalties under California Labor Code sections 201 and 202. Plaintiff Lindsay also
20 claimed that Defendants failed to reimburse their “property-level” non-exempt employees
21 for reasonable and necessary business expenses incurred during the course of their
22 employment. The original complaint asserts three causes of action (1) Violation of
23 California Labor Code § 1194 (Unpaid Minimum and Overtime Wages); (2) Violation of
24 California Labor Code § 2698, *et seq.* (California Labor Code Private Attorneys General
25
26
27

³ Declaration of Antoinette Lindsay (“Lindsay Decl.”) at ¶ 2.

⁴ *Id.*

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1 Act of 2004); and (3) Violation of California Business & Professions Code §§ 17200 *et*
2 *seq.*

3 Manny Vinluan filed a class action lawsuit against Defendants on December 8,
4 2011 on behalf of the “non-property-level” non-exempt employees, alleging the same
5 allegations as alleged in Plaintiff Lindsay’s complaint.

6 Immediately after Plaintiff Lindsay filed her lawsuit on July 28, 2011, Defendants
7 presented the Class Members with a uniform, boilerplate individual “Settlement
8 Agreement and Release” (“Releases”) and offered cash payments or hours of personal
9 time off to the Class Members if they signed the Releases. On February 14, 2012,
10 Tomasa Rodriguez, who signed a Release, filed a Complaint for Declaratory Relief
11 against Defendants alleging that the Releases were invalid, unenforceable, and contrary
12 to law and public policy.

13
14 The parties actively litigated all of these cases since the filing of the initial
15 complaint by Plaintiff Lindsay on July 28, 2011. Plaintiffs have vigorously prosecuted
16 this case and Defendants have vigorously contested it. Discovery and motion practice
17 has been extensive by both sides. This discovery and investigation has included, among
18 other things, (a) inspection and analysis of close to 15,000 pages of documents produced
19 by Defendants at Defendants’ counsel’s office; (b) taking and defending 10 depositions;
20 (c) inspection and analysis of documents produced by putative class members; (d)
21 interviews of material witnesses and putative class members; (e) analysis of potential
22 class-wide damages; (f) opposing Defendants’ motion requesting that the court not grant
23 class certification; (g) filing and opposing at least twelve (12) discovery motions; (h)
24 filing demurrers to Defendants’ answers; and (i) research of the applicable law with
25 respect to the claims asserted in the actions and the potential defenses thereto.

26 Thereafter, the parties participated in an extensive private mediation session with Mark S.
27 Rudy, Esq., a well-respected class action mediator. While the case did not settle at the
28 mediation, the parties continued to litigate the cases and, with Mr. Rudy’s assistance and

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1 further discussions and negotiations as well as numerous telephonic sessions with the
2 mediator, the parties reached the proposed Settlement.

3 This proposed Settlement was reached after Class Counsel thoroughly reviewed all
4 available evidence and after arm's-length bargaining by the parties, including attendance
5 at the mediations. The formal and informal discovery conducted in this case, and the
6 information exchanged through the parties' negotiations, are sufficient to assess reliably
7 the merits of the respective parties' positions and to compromise the issues on a fair and
8 equitable basis.

9
10 **3. SUMMARY OF THE SETTLEMENT TERMS**

11 Under the terms of the fully executed Settlement Agreement, Defendants agree to
12 pay a total maximum settlement amount of up to \$400,000.00 ("Maximum Settlement
13 Amount") on a claims-made basis, subject to a 50% floor. The Net Settlement Amount
14 of **\$167,500.00** that will be made available to those Class Members (many of whom
15 already obtained a benefit from Defendants through the Releases) who submit timely and
16 valid Claim Forms ("Qualified Claimants") shall be calculated by deducting the
17 following amounts from the Gross Settlement Amount: (1) \$140,000 to Class Counsel
18 for attorneys' fees; (2) \$50,000 to Class Counsel for litigation costs and expenses; (3)
19 \$17,000 to the Class Representatives as enhancement awards; (4) \$2,500.00 to the
20 California Labor and Workforce Development Agency for PAGA Penalties; (5) up to
21 \$23,000 to the Claims Administrator for the cost of claims administration; (6) and the
22 employees' share of payroll taxes.

23 The Net Settlement Amount of \$167,500.00 shall be distributed on a claims-made
24 basis to Qualified Claimants who timely submit a valid Claim Form. No settlement
25 payment shall be made to any member of the Class who does not submit a timely, valid
26 Claim Form. Regardless of the number of claims submitted by Qualified Claimants, a
27 minimum of fifty (50%) of the Net Settlement Amount (**\$83,750.00**) shall be paid out to
28 Qualified Claimants who mail in valid and timely Claim Forms to the Claims

1 Administrator (“Settlement Floor”). In the event that the claims made by Qualified
2 Claimants do not result in a total payment from the Net Settlement Amount equal to or
3 exceeding the Settlement Floor, the percentage of the Settlement Floor actually claimed
4 by the Qualified Claimants (but not less than forty (40) percent of the Settlement Floor)
5 shall be distributed to the Qualified Claimants and the remaining amount up to ten (10)
6 percent of the Settlement Floor shall be deposited into a *cy pres* fund for the benefit of
7 the Class Members and those funds shall be provided to the LWDA. In the event that the
8 claims made by Qualified Claimants exceed the Settlement Floor, the percentage of the
9 Net Settlement Amount actually claimed by the Qualified Claimants shall be distributed
10 to the Qualified Claimants.

11 The dollar amount payable to each Qualified Claimant will be calculated based on
12 the number of weeks they worked during the Class Period. The Claims Administrator
13 shall assign to each Class Member a “Settlement Ratio,” which shall be a fractional
14 number comprised of (a) that Class Member’s total number of weeks worked during the
15 Class Period as the numerator, and (b) the aggregate total number of weeks worked by all
16 Class Members’ during the Class Period as the denominator. Class Members who did not
17 executed a Release in 2011 through 2013 shall have five (5) extra work weeks added to
18 the numerator on their Settlement Ratio. The Claims Administrator shall assign to each
19 Class Member a “Class Member Payout” which shall be calculated by multiplying that
20 Class Member’s Settlement Ratio by the Net Settlement Amount. All Class Member
21 Payouts shall be allocated for tax purposes as thirty (30) percent unpaid wages to which
22 legally required state and federal payroll deductions shall be taken and a W-2 Form
23 issued.

24
25 **4. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
26 **SETTLEMENTS**

27 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*
28 (1996) 48 Cal.App.4th 1794, 1800; CAL. CIV. CODE § 1781(f). California courts look to

1 federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th
2 at p. 1801, n.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision
3 to approve or reject a proposed settlement is within the court's discretion. *Wershba v.*
4 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether
5 a settlement was fair and reasonable, whether certification of the class was proper, and
6 whether the attorney fee award was proper are matters addressed to the trial court's broad
7 discretion."). Accordingly, a court's decision to approve a class action settlement may be
8 reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler*
9 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiffs v. City of Seattle* (9th Cir.
10 1982) 955 F.2d 1268, 1276.

11 The approval process of any class action settlement is done in two steps: (1) an
12 earlier conditional review by the court; and (2) a later detailed review after the period
13 during which notice is distributed to class members for their comment or objections.
14 *Conte & Newberg, Newberg on Class Actions* § 11.24 (4th Ed.). This procedure, which
15 is commonly utilized by both federal and state courts, assures class members of the
16 protection of procedural due process safeguards, and enables the Court to fulfill its role as
17 the guardian of the interest of the settlement class.

18 Accordingly, preliminary approval does not require a court to make a final
19 determination that the settlement is fair, reasonable, and adequate. Rather, that decision
20 is made only at the final approval stage, after notice of the settlement has been given to
21 the class members and they have had an opportunity to voice their views of the settlement
22 or to exclude themselves from the settlement. *See* CAL. R. CT. 3.769(g). In considering a
23 potential class settlement, the court need not reach any ultimate conclusions on the issues
24 of fact and law which underlie the merits of the dispute (*see City of Detroit v. Grinnell*
25 *Corporation* (2d Cir. 1974) 495 F.2d 448, 456), and need not engage in a trial on the
26 merits. *See Officers for Justice v. Civil Service Commission of City and County of San*
27 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is
28 required for the trial court to grant provisional class certification and preliminary

1 approval; the court may grant such relief upon an informal application by the settling
2 parties, and may conduct any necessary hearing in court or in chambers, at the court's
3 discretion. *Newberg*, at § 11.25.

4
5 **5. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE**

6 To grant preliminary approval of a class action settlement, the trial court must
7 determine whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk*,
8 *supra*, 48 Cal.App.4th at p. 1800. The court has broad powers to determine whether a
9 proposed settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make
10 this fairness determination, courts must consider several relevant factors, including “the
11 strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of
12 further litigation, the risk of maintaining class action status through trial, the amount
13 offered in settlement, the extent of discovery completed and the stage of the proceedings,
14 [and] the experience and views of counsel” *Id.* “The list of factors is not exclusive
15 and the court is free to engage in a balancing and weighing of the factors depending on
16 the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at p. 245.
17 Furthermore, courts give “proper deference to the private consensual decision of the
18 parties” *Hanlon, supra*, 150 F.3d at p. 1027 (citation omitted).

19 The burden is on the proponent of the settlement to show that it is fair and .
20 reasonable. *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of
21 fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
22 investigation and discovery are sufficient to allow counsel and the court to act
23 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
24 objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for*
25 *Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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1 **A. The Proposed Settlement Resulted from Arm's-Length**
2 **Negotiations Based Upon Extensive Investigation and Discovery.**

3 The parties actively litigated both cases since the case was initially filed on July
4 28, 2011. There have been ongoing investigations, pleading challenges, the exchange of
5 written discovery and documents and the informal exchange of information prior to and
6 during mediation.⁵ Furthermore, the parties engaged in an arm's-length mediation
7 session with Mark S. Rudy, Esq. on August 29, 2012, a well-respected mediator
8 specializing in California class action litigation.⁶

9 During the mediation, the parties exchanged information and discussed all aspects
10 of the case including the risks and delays of further litigation, the risks to both parties of
11 proceeding with class certification, the law relating to meal periods, the evidence
12 produced and analyzed, and the possibility of appeals, among other things.⁷ During all
13 settlement discussions, the parties conducted their negotiations at arms' length in an
14 adversarial position.⁸ Arriving at a settlement that was acceptable to both parties was not
15 easy. Defendants and its counsel felt very strongly about its ability to prevail on the
16 merits and at certification. And, Plaintiffs and Class Counsel believed that they would
17 have obtained class certification and prevailed at trial.⁹ The parties heavily litigated the
18 case up until the last mediation earlier this year. Through extensive discussions
19 subsequent to the mediation and after much consideration by the parties as to their
20 respective positions and risks in continued litigation, the parties agreed that this case was
21 well suited for settlement given the legal issues relating to Plaintiffs' claims, as well as
22 the costs and risks to both sides that would attend further litigation.¹⁰

23 The proposed Settlement takes into account the strengths and weaknesses of each
24 side's position and the uncertainty of how the case might have concluded at certification
25

26 ⁵ Wheeler Decl. at ¶¶ 8-12; Declaration of Edwin Aiwazian ("Aiwazian Decl.") at ¶¶ 8-12.

27 ⁶ Wheeler Decl. at ¶¶ 16-17.

28 ⁷ *Id.* at ¶ 16.

⁸ *Id.*

⁹ *Id.* at ¶¶ 8-17.

¹⁰ *Id.* at ¶ 17.

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1 and/or trial.¹¹ Class Counsel also conducted interviews with a number of Settlement
2 Class Members, not to mention the Class Representative.¹² Class Counsel also reviewed
3 close to 15,000 pages of documents produced by both Plaintiffs and Defendants and
4 performed significant research into the law concerning Defendants' defenses.¹³ The
5 proposed Settlement was based on this incredibly large volume of facts, evidence, and
6 investigation.¹⁴ And, Class Counsel has extensive experience in employment class
7 actions, including extensive experience in California wage-and-hour litigation.¹⁵
8

9 **B. The Settlement is Fair, Reasonable, and Adequate.**

10 The proposed Maximum Settlement Amount of up to \$400,000.00 represents an
11 excellent resolution of this case.¹⁶ The proposed Settlement was calculated using
12 information and data uncovered through formal discovery, case investigation and the
13 exchange of information in the context of mediation. The proposed Settlement takes into
14 account the potential risks and reward inherent in any case and in particular with this
15 case. Moreover, considering all of the facts in this case the proposed Settlement amount
16 represents a substantial global recovery for all Class Members.

17 The proposed Settlement provides for a maximum Net Settlement Amount of
18 approximately \$167,500.00 that may be paid out to all Class Members that submit a
19 timely and valid Claim Form.¹⁷ Each Qualified Claimant's share of the Class Fund will
20 be based upon the number of weeks he or she actually worked during the Class Period.¹⁸

21 There is no reason to doubt the fairness of the proposed plan of allocation of the
22 settlement funds for purposes of preliminary approval. Even at the final approval stage,
23 "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
24

25 ¹¹ *Id.* at ¶¶ 19-54.

26 ¹² Wheeler Decl. at ¶ 12; Aiwazian Decl. at ¶ 12.

27 ¹³ Wheeler Decl. at ¶ 12; Aiwazian Decl. at ¶ 11.

28 ¹⁴ Wheeler Decl. at ¶ 8-54.

¹⁵ *Id.* at ¶¶ 47 – 50; Aiwazian Decl. at ¶¶ 2-7.

¹⁶ Wheeler Decl. at ¶¶ 5 – 54; Aiwazian Decl. at ¶ 13.

¹⁷ Wheeler Decl. at ¶ 5.

¹⁸ *Id.* ¶ 53.

1 particularly if recommended by experienced and competent class counsel.” *In re*
2 *American Bank Note Holographies, Inc., Securities Litigation* (S.D.N.Y. 2001) 127
3 F.Supp.2d 418, 429-30.

4 In light of the above considerations, Class Counsel believes that the proposed
5 Settlement as a whole is fair, reasonable, and in the best interest of the Class Members.¹⁹
6 Although the recommendations of Class Counsel are not conclusive, the Court can
7 properly take the recommendations into account, particularly if Class Counsel appears to
8 be competent, has experience with this type of litigation, and significant discovery and
9 investigation has been completed. *Newberg* §11.47. Accordingly, the Court should grant
10 preliminary approval of the proposed Settlement.

11
12 **C. Value of Settlement.**

13 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
14 Plaintiffs have conducted a significant amount of discovery in order to evaluate the
15 potential value and merit of all of her claims.²⁰ The discovery and information obtained
16 allowed Plaintiffs to develop a damages model and complete evaluation of the defenses
17 that Defendants have asserted.²¹ As outlined in the Declaration of Alexander R. Wheeler,
18 Class Counsel performed an extensive analysis of each and every claim pursuant to
19 *Kullar* prior to entering into the proposed Settlement.²²

20
21 **6. CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE.**

22 For settlement purposes, the parties stipulate and agree that the requisites for
23 establishing class certification are met.²³ Code of Civil Procedure Section 382
24 “authorizes class actions ‘when the question is one of a common or general interest, of
25 many persons, or when the parties are numerous, and it is impracticable to bring them all

26
27 ¹⁹ *Id.* at ¶ 54; Aiwazian Decl. at ¶ 13.

²⁰ Wheeler Decl. at ¶¶ 5 - 54.

²¹ *Id.* at ¶¶ 12, 58.

²² *Id.* at ¶¶ 6-54.

²³ ¶¶ 12 and 23 of the Settlement Agreement (Exhibit “1” to Wheeler Decl.).

1 before the court.” *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
2 326. California courts certify class actions where the plaintiff identifies “both [1] an
3 ascertainable class and [2] a well-defined community of interest among class members.”
4 *Id.*

5 Although Defendants contest the applicability of class certification for purposes of
6 litigation, the parties agree that within the context of settlement, the Settlement Class is
7 ascertainable and numerous as to make it impracticable to join all class members,
8 common questions of law and fact predominate, Plaintiffs’ claims are typical of the
9 claims of the Class Members, a class action is superior to other available means for the
10 fair and efficient resolution of the case, Class Counsel will fairly and adequately protect
11 the interests of the Settlement Class, and that the implementation of separate actions by
12 individual members of the Settlement Class would create the risk of inconsistent or
13 varying results.²⁴ Accordingly, this Class is amenable to class certification for settlement
14 purposes as discussed below.

15
16 **A. The Proposed Class is Ascertainable and Sufficiently Numerous for**
17 **Purposes of Settlement.**

18 “Ascertainability is required in order to give notice to putative class members as to
19 whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home*
20 *Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of
21 unnamed plaintiffs by describing a set of common characteristics sufficient to allow a
22 member of that group to identify himself or herself as having a right to recover based on
23 the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.
24 The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000)
25 23 Cal.4th 429, 435.
26
27
28

²⁴ *Id.*

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1 This action involves approximately 723 Class Members.²⁵ This class is
2 sufficiently numerous. See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
3 1524, 1531 n.5. Further, all Class Members can and will be identified by Defendants to
4 the Claims Administrator through a review of its employment records for all employees
5 employed by Defendants during the Class Period.

6
7 **B. The Class Members Share a Well-Defined Community of Interest for**
8 **Purposes of Settlement.**

9 The community of interest requirement “embodies three factors: (1) predominant
10 common questions of law or fact; (2) class representatives with claims or defenses typical
11 of the class; and (3) class representatives who can adequately represent the class.” *Sav-*
12 *on, supra*, 34 Cal.4th at p. 326. “[T]he community of interest requirement for
13 certification *does not mandate that class members have uniform or identical claims.*”
14 *Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th
15 676, 692 (emphasis in original). Rather, courts focus on the defendant’s internal policies
16 and “pattern and practice . . . in order to assess whether that common behavior toward
17 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-on,*
18 *supra*, 34 Cal.4th at p. 333).

19 The “common issues” requirement “involves analysis of whether the proponent’s
20 ‘theory of recovery’ is likely to prove compatible with class treatment.” *Capitol People,*
21 *supra*, 155 Cal.App.4th at p. 690 (emphasis added), citing *Sav-on, supra*, 34 Cal.4th at p.
22 327. Furthermore, the commonality inquiry centers on the “reasonableness” of the
23 defendant’s labor policies as applied to the potential class. *Ghazaryan, supra*, 169
24 Cal.App.4th at p. 1534.

25 Here, common issues of fact and law sufficiently predominate for purposes of
26 settlement. The settlement involves certain employment policies that Plaintiffs contend
27 applied to all Class Members – although Defendants have vigorously denied that
28

²⁵ Wheeler Decl. ¶¶ 5, 12.

1 certification would be appropriate for litigation given its contention of compliance of
2 their policies and individualized implementation issues.²⁶ Plaintiffs' claims involve the
3 contention that there was a common practice of forcing Class Members to work off-the-
4 clock.²⁷ As a result, Plaintiffs contend that they and the proposed Class Members were
5 uniformly not paid for the overtime hours that they worked.²⁸ Further, Plaintiffs contend
6 that the staffing levels at Defendants' properties resulted in systematic deprivation of
7 meal and rest breaks.²⁹ For these reasons, this case is readily amendable to class
8 certification in the settlement context and the Court should provisionally certify the Class
9 for settlement purposes.

10
11 **7. REQUEST FOR ATTORNEYS' FEES AND COSTS**

12 Class Counsel has litigated this case extensively for over three (3) years and was
13 actively preparing it for class certification.³⁰ The ongoing work has been extensive,
14 demanding, and ultimately successful in achieving a substantial settlement resolution.
15 Class Counsel conducted formal and informal investigations into the facts of the case;
16 speaking with the putative class members regarding their job experiences at Defendants'
17 properties; drafting extensive written discovery and meeting and conferring with defense
18 counsel; taking 6 PMK depositions; defending 4 Plaintiffs' depositions; responding to
19 written discovery; filing and opposing approximately 12 discovery motions; conducting
20 an extensive review of data and close to 15,000 pages of documents provided by
21 Plaintiffs and Defendants, preparing for class certification; and preparing for and
22 attending mediation.³¹ Class Counsel will provide extensive evidence as to time worked,
23 litigation efforts, and further argument at the time of filing their memorandum in
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²⁶ Wheeler Dec. ¶ 21.

²⁷ *Id.*

²⁸ Declaration of Antoinette Lindsay ("Lindsay Decl.") at ¶ 2; Declaration of Caesar Morera ("Morera Decl.") at ¶ 2; Declaration of Tomasa Rodriguez ("Rodriguez Decl.") at ¶ 2; and Declaration of Edwin Tsaturyan ("Tsaturyan Decl.") at ¶ 2; and Declaration of Manny Vinluan ("Vinluan Decl.") at ¶ 2.

²⁹ *Id.*

³⁰ *Id.* at ¶ 12; Aiwazian Decl. ¶¶ 8-12.

³¹ Wheeler Decl. at ¶¶ 12, 58; Aiwazian Decl. ¶¶ 8-12.

1 connection with the final fairness hearing in support of their requested the attorneys' fees
2 and costs.

3 The proposed Settlement provides for Class Counsel to apply to the Court for an
4 award of attorneys' fees in an amount up to thirty-five percent (35%) of the Maximum
5 Settlement Amount (\$140,000) and litigation costs and expenses in an amount not to
6 exceed thirty thousand dollars (\$50,000). This attorneys' fees award is commensurate
7 with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the
8 extensive time, effort and expense dedicated to the case, (3) the skill and determination
9 they have shown, (4) the results they have achieved throughout the litigation, (5) the
10 value of the Settlement they have achieved for Class Members, and (6) the other cases
11 they turned down in order to devote their time and efforts to this matter. The proposed
12 Class Notice provides the Class Members with information as to the actual amount of
13 attorneys' fees and costs that will be sought in this matter.

14 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
15 decisions will "not be disturbed on appeal absent a manifest abuse of discretion."
16 *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled
17 that the "experienced trial judge is the best judge of the value of professional services
18 rendered in his court" *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California
19 law provides that attorney fee awards should be equivalent to fees paid in the legal
20 marketplace to compensate for the result achieved and risk incurred. *See Lealao, supra*,
21 82 Cal.App.4th at p. 47. In *Lealao*, the court held that when an action leads to a recovery
22 that can be "monetized" with a reasonable degree of certainty, the trial court should
23 "ensure that the fee awarded is within the range of fees freely negotiated in the legal
24 marketplace in comparable litigation." *Id.* at p. 50. In cases where class members
25 present claims against a maximum settlement fund and the settlement agreement provides
26 that the defendant agrees to paying the attorneys a percentage of the same, use of that
27 percentage method is appropriate. *Id.* at p. 32.

28 ////

1 Class Counsels' application for attorneys' fees in light of the facts and
2 circumstances surrounding the case is well within the range of reasonableness.
3 Historically, courts have awarded fees as high as fifty percent (50%) of the common
4 fund, depending on the circumstances of the case. *Newberg* § 14.03; *see also In re*
5 *Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp.494 (awarding attorneys fees
6 in the amount of 45% of the \$7.3 million settlement fund); *Beech Cinima, Inc. v.*
7 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding
8 approximately 53% of the settlement fund as attorney fees). California Courts routinely
9 approve attorneys' fees in the amount of thirty-three and one-third (33-1/3%) of the
10 settlement fund in wage-and-hour cases. *See Estrada v. Dr. Pepper/Seven-Up*, Los
11 Angeles County Superior Court, Case No. BC262247 (May 2005) (Hon. Anthony J.
12 Mohr); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006)
13 (Hon. Peter Lichtman).

14 In the present case, Class Counsel has borne all the risks and costs of litigation and
15 will not receive any compensation until recovery is obtained.³² Class Counsel is well
16 experienced in wage-and-hour class action litigation and used that experience to obtain a
17 great result for the class.³³ Considering the amount of the fee requested, the work
18 performed, and the risks incurred, the requested fee and costs is reasonable and should be
19 awarded.

20
21 **8. THE PROPOSED CLASS NOTICE IS ADEQUATE**

22 California statutory and case law vests the court with broad discretion in
23 fashioning appropriate class notice. *See* CAL. CIV. CODE § 1781; *Cartt v. Superior Court*
24 (1975) 50 Cal.App.3d 960, 973-74. The proposed Class Notice attached as **Exhibit "A"**
25 to the Settlement Agreement provides information on the meaning and nature of the
26 Settlement; the terms and provisions of the proposed Settlement, the relief the proposed
27

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³² Wheeler Decl. ¶¶ 55-60.

³³ *Id.* at ¶¶ 46 – 49; Aiwazian Decl. ¶¶ 2-7.

1 Settlement will provide to the Settlement Class Members; the application of Class
2 Counsel for reimbursement of costs and attorneys' fees; the date, time, and place of the
3 final settlement approval hearing; and the procedure and deadlines for participating,
4 electing not to participate, or submitting objections to the proposed Settlement. The
5 proposed Class Notice is consistent with class certification notices approved by numerous
6 state and federal courts.

7 The proposed Class Notice also fulfills the requirement of neutrality in class
8 notices. *Newberg*, at § 8.39. "Sufficient information about the case should be provided
9 to enable class members to make an informed decision about their participation."
10 *Manual for Complex Litigation* § 21.311 at p. 413 (4th ed. 2007). The proposed Class
11 Notice summarizes the proceedings to date and the terms and conditions of the proposed
12 Settlement in an informative and coherent manner. The proposed Class Notice is
13 "accurate, objective, and understandable to class members" *Mendoza v. United*
14 *States* (9th Cir. 1980) 623 F.2d 1338. The proposed Class Notice recognizes that the
15 Court has not yet granted final approval and apprises the Settlement Class members of
16 how to object to the proposed Settlement. The proposed Class Notice satisfies all due
17 process requirements and complies with the standards of fairness, completeness, and
18 neutrality. FED. R. CIV. P. 23(c)(2) and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§
19 21.311, 21.312; *See Cartt, supra*, 50 Cal.App.3d at p. 960. Accordingly, the Court
20 should approve the proposed Class Notice.

21
22 **9. APPOINTMENT OF SIMPLURIS, INC. AS THE CLAIMS ADMINISTRATOR.**

23 The parties have selected Simpluris, Inc. ("Simpluris")³⁴ as the Claims
24 Administrator to administer the proposed Settlement. The Claims Administrator will
25 print and distribute the Settlement Documents to the Class Members by First Class mail;
26 establish a mailing address and telephone number to receive Class Members' inquiries
27 about the proposed Settlement; receive, review, and process all Claim Forms, opt-outs,
28

³⁴ Wheeler Decl. at ¶ 66.

1 disputes, and objections to the proposed Settlement; receive and process any written
2 disputes and supporting documentation as to the validity of the information regarding the
3 number of weeks worked by the Class Members provided by Defendants; handle
4 inquiries from Class Members regarding the proposed Settlement; calculate each
5 Qualified Claimant's share of the Class Fund; mail the settlement checks to the Qualified
6 Claimants; and perform any other usual and customary duties for administering a class
7 action settlement. The Claims Administrator's fees and expenses shall be paid out of the
8 Gross Settlement Amount. Accordingly, the Court should appoint Simpluris as the
9 Claims Administrator and direct Simpluris to mail the Settlement Documents to the Class
10 Members in the manner and based on the proposed deadlines below.

11
12 **10. PROPOSED DEADLINES FOR THE NOTICE PROCESS.**

13 Plaintiffs also seek approval at this preliminary approval stage of the proposed
14 deadlines for the notice process. *Newberg*, at § 11.26. The notice process entails mailing
15 the Settlement Documents to all known and reasonably ascertainable Settlement Class
16 Members based on Defendants payroll records. Within seven (7) calendar days from the
17 date of preliminary approval, Defendants shall provide the Claims Administrator with an
18 electronic database containing each Class Member's full name, last known mailing
19 address, full Social Security number, the start and end dates for each period during the
20 Class Period each Class Member was employed, and whether the Class Member executed
21 a Settlement Agreement and Release during the 2011 to 2013 timeframe. The Claims
22 Administrator shall mail the Settlement Documents to the Class Members by First Class
23 mail through the United States Postal Service. Class Members will then have sixty (60)
24 calendar days from the date of the mailing of the Settlement Documents to timely submit
25 a Claim Form, request for exclusion from, or a written objection to the proposed
26 Settlement. Each Class Member's unique Claim Form shall include his or her estimated
27 payout assuming a 100% claims rate.

28 ////

1 **11. APPROVAL OF THE ENHANCEMENT AWARD TO THE CLASS REPRESENTATIVES.**

2 Plaintiffs request that the Court approve an enhancement award in the total amount
3 of \$17,000 payable from the Gross Settlement Amount as follows: \$6,000 to Antoinette
4 Lindsay, \$3,500 to Tomasa Rodriguez, \$3,500 to Manny Vinluan, \$2,000 to Caesar
5 Morera, and \$2,000 to Edvin Tsaturyan. It is within the Court's discretion to award the
6 Settlement Class Representatives for their efforts and work. *Vranken v. Atlantic Richfield*
7 *Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a
8 single class representative). The criteria courts may consider in determining whether to
9 make an incentive award include: 1) the risk to the class representative in commencing
10 suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered
11 by the class representative; 3) the amount of time and effort spent by the class
12 representative; 4) the duration of the litigation; and 5) the personal benefit (or lack
13 thereof) enjoyed by the class representative as a result of the litigation. *Id.*

14 The enhancement award requested is fair and appropriate. Plaintiffs spent a
15 substantial amount of time and effort in producing relevant documents and past
16 employment records, and providing the facts and evidence necessary to prove their
17 allegations.³⁵ They were available whenever Class Counsel needed them and actively
18 tried to obtain information that would benefit the Settlement Class.³⁶ In addition to the
19 effort that Plaintiffs put into pursuing the case, they also took on great risk in pursuing a
20 case against their former employer.³⁷ Few people want to file lawsuits, especially against
21 their employers. By bringing a lawsuit against their former employer, Plaintiffs incurred
22 a real risk of retaliation from future employers that will be present for the rest of their
23 work life.³⁸ Plaintiffs have cost Defendants a substantial sum of money through their
24 allegations on behalf of the Settlement Class.³⁹ Such conduct may be considered by
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27 ³⁵ Wheeler Decl. at ¶¶ 61 – 65; Lindsay Decl. at ¶¶ 3-11; Morera Decl. at ¶¶ 3-9; Rodriguez Decl. at
¶¶ 5-7; Tsaturyan Decl. at ¶¶ 3-9; and Vinluan Decl. at ¶¶ 3-9.

28 ³⁶ *Id.*

³⁷ Wheeler Decl. ¶ 62.

³⁸ *Id.*

³⁹ *Id.*

1 future employers when choosing between an applicant who has never sued a prior
2 employer and one that has.⁴⁰ Accordingly, it is appropriate and just for Plaintiffs to
3 receive a reasonable enhancement payment in addition to their share of the Net
4 Settlement Amount for their time and service as the Class Representatives on behalf of
5 the Class Members.

6
7 **12. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
9 preliminary approval of the proposed Settlement; certify the proposed Settlement Class;
10 appoint Plaintiffs as the Class Representatives; appoint the R. Rex Parris Law Firm and
11 Lawyers *for Justice*, PC as Class Counsel and preliminarily approve their request for
12 attorneys' fees and costs; preliminarily approve the enhancement award request for the
13 Class Representatives; appoint Simpluris, Inc. as the Claims Administrator; approve and
14 direct the Claims Administrator to mail the Settlement Documents to the proposed
15 Settlement Class; and schedule a final approval hearing at the Court's convenience.

16
17 DATED: July 22, 2014

R. REX PARRIS LAW FIRM

18
19 By: 

Alexander R. Wheeler
Attorneys for Plaintiffs and the
Settlement Class

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⁴⁰ *Id.*

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 43364 10th Street West, Lancaster, California 93534.

On July 22, 2014, I served the foregoing document described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF THE SETTLEMENT CLASS; MEMORANDUM OF POINTS AND AUTHORITIES**

_____ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

_____ by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

*** Please See Attached List ***

BY MAIL

_____ I deposited such envelope in the mail at Lancaster, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ **BY EMAIL**

_____ I personally served the foregoing document by email pursuant to the parties written agreement to the email addresses listed on the attachment hereto.

_____ **BY FACSIMILE**

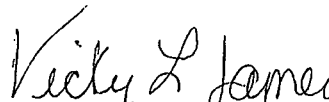
_____ I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

_____ **BY FEDERAL EXPRESS/OVERNIGHT MAIL**

_____ I placed such envelope in a Federal Express Mailer addressed to the party or parties listed on the attached list with delivery fees fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver before 4:00 p.m. on the stated date.

Executed on July 22, 2014, at Lancaster, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Vicky L. James

07/23/2014

ATTACHMENT TO PROOF OF SERVICE

LINDSAY, ANTOINETTE v. DOUGLAS EMMETT, INC., et al.
LOS ANGELES COUNTY CASE NO. BC466315

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07/23/2014