

1 ROBBINS ARROYO LLP  
BRIAN J. ROBBINS (SBN: 190264)  
2 brobbins@robbinsarroyo.com  
DIANE E. RICHARD (SBN: 204897)  
3 drichard@robbinsarroyo.com  
600 B Street, Suite 1900  
4 San Diego, CA 92101  
Telephone: (619) 525-3990  
5 Facsimile: (619) 525-3991

6 THE DENTE LAW FIRM  
MATTHEW S. DENTE (SBN: 241547)  
7 matt@dentelaw.com  
600 B Street, Suite 1900  
8 San Diego, CA 92101  
Telephone: (619) 550-3475  
9 Facsimile: (619) 342-9668

10 Attorneys for Plaintiff Sergio Peralta

11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 SERGIO PERALTA, Individually and  
on Behalf of Other Members of the Public  
14 Similarly Situated,

15 Plaintiff,

16 v.

17 LQ MANAGEMENT L.L.C. d/b/a  
HVM/LQ MANAGEMENT L.L.C., and  
18 HVM/LQ MANAGEMENT L.L.C.,

19 Defendants.

Case No. 3:14-CV-01027-DMS-JLB

**CLASS ACTION**

**REPRESENTATIVE ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S RENEWED  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Judge: Hon. Dana M. Sabraw  
Courtroom: 13A  
Hearing Date: July 17, 2015  
Hearing Time: 1:30 p.m.

Action Filed: January 28, 2014  
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1 **I. INTRODUCTION**

2 Through this renewed motion, Plaintiff Sergio Peralta ("Plaintiff") hereby moves  
 3 the Court for preliminary approval of the proposed class action Settlement<sup>1</sup> entered into  
 4 by Plaintiff, on behalf of himself, Non-Exempt Class members, and Pay Stub Class  
 5 members (collectively referred to as the "Class" or "Class Members"), and defendant LQ  
 6 Management L.L.C. d/b/a HVM/LQ Management L.L.C. ("Defendant").

7 Subject to Court approval, Defendant and Plaintiff have agreed to settle Class  
 8 Members' claims in exchange for a non-reversionary, non-claims-made common fund  
 9 Class Settlement Amount of \$900,000, which is inclusive of the payments to: (i)  
 10 Participating Class Members; (ii) the California Labor and Workforce Development  
 11 Agency ("LWDA") for civil penalties arising under the California Labor Code Private  
 12 Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* ("PAGA");  
 13 (iii) Plaintiff for a Class Representative Enhancement Service Award; (iv) Class Counsel  
 14 for attorneys' fees and costs; and (v) the Claims Administrator for Claims Administration  
 15 Costs. In addition to the \$900,000 common fund, the Settlement also commits Defendant  
 16 to pay—separate from and in addition to the Class Settlement Amount—employer side  
 17 payroll taxes on the wage component of payments made to Class Members. As a result  
 18 of the negotiated non-claims-made process, Class Members do not need to submit a claim  
 19 form to share in the Settlement funds.

20 The proposed Settlement satisfies all of the criteria for preliminary approval.  
 21 Accordingly, Plaintiff requests that the Court grant preliminary approval of the proposed  
 22 Settlement; conditionally certify the Non-Exempt Class and the Pay Stub Class for  
 23 Settlement purposes only; appoint Plaintiff as the Class Representative, The Dente Law  
 24 Firm and Robbins Arroyo LLP as Class Counsel, and Phoenix Settlement Administrators

25 \_\_\_\_\_  
 26 <sup>1</sup> Unless otherwise noted, all capitalized terms shall have the same definition as set forth  
 27 in the Stipulation for Class Action Settlement ("Stipulation"). A true and correct copy of  
 28 the Stipulation is attached as Exhibit 1 to the Declaration of Diane E. Richard in Support  
 of Plaintiff's *Renewed* Unopposed Motion for Preliminary Approval of Class Action  
 Settlement ("Richard Declaration" or "Richard Decl.") filed concurrently herewith.

1 ("Phoenix") as the Claims Administrator; approve the Notice Packet<sup>2</sup> to be disseminated  
2 to the Class Members; and schedule a final approval hearing in this matter.

## 3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 4 **A. The Initiation of the Litigation and the Removal Process**

5 On January 28, 2014, Plaintiff filed a Complaint, initiating a class action lawsuit  
6 against defendants LQ Management L.L.C. d/b/a HVM/LQ Management L.L.C. ("La  
7 Quinta") and HVM/LQ Management L.L.C. (collectively, "Original Defendants") in the  
8 San Diego County Superior Court, entitled *Peralta v. LQ Management LLC, et al.*, Case  
9 No. 37-2014-00000412-CU-OE-CTL. On February 27, 2014, Plaintiff filed his First  
10 Amended Complaint ("FAC"), adding PAGA causes of action after the PAGA exhaustion  
11 period had expired. Richard Decl., ¶¶6-8; *see also* Declaration of Matthew S. Dente in  
12 Support of Plaintiff's *Renewed* Unopposed Motion for Preliminary Approval of Class  
13 Action Settlement ("Dente Decl."), ¶¶6-8, filed concurrently herewith.

14 In summary, the FAC alleged against Original Defendants various wage and hour  
15 claims as a result of three primary allegations. First, Plaintiff alleged that Original  
16 Defendants failed to provide all California employees (regardless of exempt or non-  
17 exempt status) with wage statements that complied with California Labor Code section  
18 226(a) and the "Records" section of the Industrial Welfare Commission ("IWC") Wage  
19 Order as a result of the failure to: (i) provide the inclusive dates of the pay period (by not  
20 providing pay period begin dates on the wage statements); and (ii) provide the accurate  
21 name of the employing entity. Further, on behalf of all California non-exempt  
22 employees, Plaintiff also alleged that Original Defendants failed to provide on the wage  
23 statements: (i) an accurate recording of the hours worked during the pay period (as a  
24 result of it combining hours worked with hours not worked); and (ii) an accurate  
25 recording of applicable rates of pay and gross wages earned. Second, Plaintiff alleged  
26

27 <sup>2</sup> "Notice Packet" collectively refers to the Notice of Class Action Settlement attached as  
28 Exhibit A to the Stipulation, and the Settlement Allocation Form attached as Exhibit B to  
the Stipulation. *See* Richard Decl., Exhibit 1.

1 that Original Defendants did not provide meal and rest periods to its California non-  
2 exempt employees as required under the California Labor Code and IWC Wage Order.  
3 Finally, Plaintiff alleged that when Original Defendants paid meal break premium pay to  
4 non-exempt employees, it did not incorporate non-base pay (such as incentive pay) into  
5 the regular rate of compensation calculation and thus, did not pay the amount required by  
6 the Labor Code. Richard Decl., ¶9; Dente Decl., ¶9.

7 On February 28, 2014, La Quinta provided a written response to the LWDA with  
8 respect to Plaintiff's notice of PAGA claims. As detailed in the February 28 letter, La  
9 Quinta provided notice that it modified the form of wage statements issued to all  
10 California employees to display the following: (i) the inclusive dates of the pay period,  
11 including both the period start date and the period end date; (ii) all applicable hourly rates  
12 in effect during the pay period and the corresponding number of hours worked at each  
13 hourly rate; and (iii) the total hours worked (which was modified to list separately these  
14 work hours from hours paid but not worked such as sick and vacation days). Each of the  
15 corrections described in the February 28 letter directly address nearly all of allegations  
16 made in Plaintiff's then-operative FAC regarding wage statement deficiencies. The  
17 February 28 letter further disputes the claim that the incorrect employer is identified on  
18 the pay stubs provided. Finally, La Quinta, through the February 28 letter, denied  
19 Plaintiff's meal and rest period allegations. Richard Decl., ¶11; Dente Decl., ¶11.

20 On April 23, 2014, Defendant removed the action to this Court under the Class  
21 Action Fairness Act of 2005, 28 U.S.C. § 1332(d) ("CAFA"). Thereafter, Plaintiff filed a  
22 motion to remand. After briefing on the remand motion, a series of meet and confer  
23 efforts with Defendant's counsel, and being presented with further evidence supporting  
24 that the amount in controversy requirement had been met, La Quinta and Plaintiff agreed  
25 that the Court had subject matter jurisdiction under the CAFA. Accordingly, Plaintiff  
26 withdrew his motion to remand. Richard Decl., ¶13; Dente Decl., ¶13.

1           **B.     The Operative SAC**

2           After a series of meet and confer efforts, counsel for Defendant and Plaintiff  
3 (collectively the "Parties") filed joint motions with the Court to permit Plaintiff to file a  
4 Second Amended Complaint ("SAC") in order to refine the claims at issue in light of the  
5 evidence presented to date. The Court permitted amendment and Plaintiff filed the SAC  
6 on July 24, 2014. Richard Decl., ¶¶9-10, 14-16; Dente Decl., ¶¶9-10, 14-16.

7           Plaintiff's SAC, the operative complaint, alleges putative class action claims  
8 against defendant La Quinta<sup>3</sup> for: (i) failure to authorize and permit rest periods; (ii)  
9 failure to provide meal periods; (iii) failure to provide and maintain compliant itemized  
10 wage statements; and (iv) unfair competition. These claims are brought on behalf of two  
11 putative classes: (i) the Non-Exempt Class; and (ii) the Pay Stub Class. Plaintiff's SAC  
12 additionally alleges four enforcement causes of action under PAGA for civil penalties for  
13 La Quinta's alleged failures to provide accurate wage statements to its California  
14 employees, provide meal and rest breaks to its non-exempt employees, and pay the  
15 correct rate of pay for break premium wages. Defendant answered Plaintiff's SAC on  
16 August 8, 2014 ("Answer"). Richard Decl., ¶¶17-19; Dente Decl., ¶¶17-19.

17           **C.     The Parties' Mediation Efforts**

18           Subsequent to the filing of La Quinta's Answer, counsel for the Parties continued  
19 their meet and confer efforts regarding the claims and defenses at issue in the action and  
20 decided that the best course of action would be to determine whether the claims could be  
21 resolved through mediated efforts. Consequently, the Parties selected well-respected  
22 employment, class action mediator Mark S. Rudy, Esq. ("Mediator Rudy") and secured  
23 January 6, 2015 as the mediation date. Richard Decl., ¶20; Dente Decl., ¶20.

24           Counsel for all Parties extensively investigated Plaintiff's claims. The Parties  
25 exchanged information sufficient to enable them to fully evaluate the strengths and  
26

27 <sup>3</sup> Defendant HVM/LQ Management L.L.C. was dismissed through the amendment  
28 process as a result of evidence demonstrating that that entity was not a proper defendant.  
Richard Decl., ¶16; Dente Decl., ¶16.



1 weaknesses of the claims and defenses raised by each side. Among other things,  
2 Defendant provided Plaintiff with detailed information about: (i) the form and content of  
3 itemized wage statements and how and when modifications were made to the wage  
4 statements; (ii) the number of Putative Class Members as of the date of production; (iii)  
5 the number of pay periods in which each Putative Class Member received a wage  
6 statement; (iv) time and pay records which permitted among things a review of data  
7 pertaining to the frequency and length of meal breaks, the amount of meal break premium  
8 payments made, and shift lengths to determine the number of rest periods required to be  
9 permitted on each shift; and (v) policy and training documents concerning meal and rest  
10 breaks, meal break premium pay, meal waivers, and on-duty meal period agreements.  
11 Stipulation, ¶E; Richard Decl., ¶¶22-24; Dente Decl., ¶¶22-24. Additionally, while the  
12 Parties were preparing for mediation, the Parties also participated in an Early Neutral  
13 Evaluation Conference, a Case Management Conference, preparing a joint discovery  
14 plan, and Initial Disclosures. Richard Decl., ¶21; Dente Decl., ¶21.

15 The Parties worked with Mediator Rudy to successfully resolve this case at a full-  
16 day mediation session held on January 6, 2015, in San Francisco, California. Prior to the  
17 mediation, the Parties submitted extensive mediation briefs, evidence, and legal  
18 authorities to the mediator. In addition, the Parties shared with one another analysis of  
19 the data and existing case law supportive of their positions. After serious, intense, and  
20 protracted arm's-length negotiations, the Parties reached a settlement formalized in a  
21 Memorandum of Agreement. Thereafter, the Parties spent significant time negotiating  
22 the terms of the Stipulation including the Notice Packet now before this Court. Richard  
23 Decl., ¶¶24-25; Dente Decl., ¶¶24-25.

### 24 **III. SUMMARY OF SETTLEMENT TERMS**

25 The Settlement provides that Defendant will a pay a non-reversionary, non-claims-  
26 made \$900,000 Class Settlement Amount, *plus* employer payroll taxes on the wage  
27 component of the Settlement payments, to settle the claims of Plaintiff and those of Class  
28

1 Members in the following classes:

2 "Non-Exempt Class": All Hourly Employees (i.e., hourly employees  
3 classified as non-exempt) employed by La Quinta in California at any time  
4 during the Class Period of June 21, 2012 through the Date of Preliminary  
Approval; and

5 "Pay Stub Class": All Hourly Employees and Non-Hourly Employees  
6 (persons classified as exempt employees) employed by La Quinta in  
California at any time during the Class Period of January 28, 2013 and the  
Date of Preliminary Approval.

7 Stipulation, ¶¶1.4, 1.25, 1.30, 4.1. Defendant has represented that as of October 12,  
8 2014, there are approximately 1,242 Putative Class Members. Of this amount, La Quinta  
9 has represented that: (i) 1,189 have been employed as Hourly Employees and fifty-three  
10 (53) have been employed as Non-Hourly Employees; and (ii) 1,087 are in the Pay Stub  
11 Class, and 1,189 are in the Non-Exempt Class. Stipulation, ¶2.1; Richard Decl., ¶¶25-26;  
12 Dente Decl., ¶¶25-26.

13 Subject to Court approval, the Settlement calls for the following payments from the  
14 \$900,000 Class Settlement Amount prior to distributions to Eligible Participating Class  
15 Members: (i) Plaintiff's Class Representative Enhancement Service Award (which  
16 Plaintiff will request to be not more than \$5,000; (ii) Class Counsel's attorneys' fees  
17 (which they will seek in a separate application in an amount of 30% of the Class  
18 Settlement Amount—\$270,000; (iii) reimbursement of Class Counsel's costs, up to  
19 \$17,000; (iv) PAGA payment of \$12,000 to be paid to the LWDA for its 75% share of  
20 the total \$16,000 PAGA payment; and (v) Claims Administration Costs estimated not to  
21 exceed \$16,500. The Parties propose to have Phoenix serve as the Claims Administrator.  
22 Stipulation, ¶¶4.1, 4.3, 9.1-9.3; Richard Decl., ¶27; Dente Decl., ¶27. Phoenix has been  
23 appointed as a third part administrator in both state and Federal courts. The president and  
24 managing partner has over seven (7) years of experience in claims management and  
25 administration of class and collective action matters. Declaration of Michael E. Moore  
26 on Behalf of Administrator with Respect to Qualifications of Class Administrator,  
27  
28

1 passim. Moreover, Plaintiff had received "bids" from four settlement administrators and  
2 Phoenix's bid was the lowest cost bid. Richard Decl., ¶27.<sup>4</sup>

3 After deducting: (i) the Court-approved Class Counsel's fees and costs;  
4 (ii) the Court-approved Class Representative Enhancement Service Award; (iii) the  
5 PAGA Payment to the LWDA; and (iv) the Claims Administration Costs, the remaining  
6 balance available for distribution (the "Net Settlement Amount") is estimated to be  
7 \$579,500 and shall be distributed to Eligible Participating Class Members (i.e., those  
8 Class Members who do not timely opt out of the Settlement and for whom the Claims  
9 Administrator does not receive a returned, undeliverable Notice Packet by the twenty-  
10 eighth calendar day prior to the Final Approval Hearing). Because Class Counsel  
11 negotiated a non-reversionary settlement, all of the Class Settlement Amount will be  
12 distributed and none will revert back to La Quinta. Stipulation, ¶¶4.1-4.2, 4.3; Richard  
13 Decl., ¶28; Dente Decl., ¶28.

14 Because Class Counsel negotiated a non-claims-made process, Class Members do  
15 *not* need to submit anything to make a claim under the Settlement; they automatically  
16 will be mailed a Settlement check should final approval be granted as long as they are an  
17 Eligible Participating Class Member. Therefore, to ensure the best practicable process of  
18 distributing the Notice Packets to Class Members in a timely fashion, the Settlement  
19 provides that the Claims Administrator is to undertake reasonable address verification  
20 measures including upfront national change of address database searches, upfront skip  
21 tracing for Class Members formerly employed by La Quinta, and more in-depth skip  
22 tracing measures for a time certain when Notice Packets are returned as undeliverable.  
23 Stipulation, ¶¶1.38,5.4-5.5; Richard Decl., ¶29; Dente Decl., ¶29.

24 After the Claims Administrator mails the Notice Packets and undertakes the  
25 Reasonable Address Verification Measure, each Eligible Participating Class Member will  
26 be mailed their Individual Class Member Payment less any applicable tax withholdings,  
27

28 <sup>4</sup> This information contained in the last two sentences has been added to this  
Memorandum to address Item No. 3 from the Court's April 30, 2015 Order.

1 upon the Effective Date of the Settlement. Stipulation, ¶8.2; Richard Decl., ¶30; Dente  
2 Decl., ¶30. The Individual Class Member Payments will be allocated according to the  
3 following formula: First, each Eligible Participating Class Member in the Pay Stub Class  
4 will receive \$25 if said Eligible Participating Class Member was issued a pay check for  
5 any Compensable Pay Period after February 21, 2014 through the Date of Preliminary  
6 Approval. Second, in addition to the above-described flat \$25 payment, the following  
7 point system will be utilized to determine Eligible Participating Class Members' pro-rata  
8 share of the Net Settlement Amount remaining after the flat \$25 payments are deducted:

9 a. *For each member of the Non-Exempt Class:*

10 i. 0.25 (¼) points is given for each Compensable Pay Period between  
11 June 21, 2012 and the Date of Preliminary Approval.

12 b. *For each member of the Pay Stub Class who is an Hourly Employee:*

13 i. 1.5 (1½) points is given for each Compensable Pay Period between  
14 January 28, 2013 and February 21, 2014.

15 c. *For each member of the Pay Stub Class who is a Non-Hourly Employee:*

16 i. 0.5 (½) points is given for each Compensable Pay Period between  
17 January 28, 2013 and February 21, 2014.

18 This formula is based on assigning a weight to each of the claims in accordance with the  
19 parties' views of the potential damages. The \$25 flat sum amount is due to view that the  
20 potential damages would be limited based on the limited occurrences of potentially  
21 affected wage statements. While, the point system utilized is based on the parties' views  
22 of respective potential damages for each of the noted claims: (i) 0.25 points are given for  
23 the Non-Exempt claims (meal and rest break claims) because of the view of limited  
24 potential damages for these claims; (ii) 1.50 points for the Hourly Pay Stub Class claims  
25 are given because the potential damages are greater due to the allegations of multiple  
26 defects in the wage statements; and (iii) 0.50 points for the Non-Hourly Pay Stub Class  
27 claims are given because of the potential damages for fewer alleged defects in the wage  
28

1 statements. Richard Decl., ¶30.<sup>5</sup> An Eligible Participating Class Member's pro-rata share  
 2 shall be calculated by: (i) adding all the points assigned to the Eligible Participating Class  
 3 Member according to the formula above; and (ii) dividing the result by the total points  
 4 assigned to all Eligible Participating Class Members. For the purpose of calculating  
 5 applicable taxes, the Parties agree that: (i) 10% of the amount paid to each member of the  
 6 Non-Exempt Class constitutes wages and 90% constitutes penalties; and (ii) 100% of the  
 7 amount paid to each member of the Pay Stub Class constitutes penalties. Stipulation,  
 8 ¶4.4; Richard Decl., ¶¶30-31; Dente Decl., ¶¶30-31. It is estimated that on average Class  
 9 Members will receive an estimated \$399.25 prior to deduction of any applicable payroll  
 10 taxes. Declaration of David Voyen on Behalf of Administrator with Respect to  
 11 Preliminary Calculations ("Voyen Decl."), ¶9. Moreover, it is estimated that the average  
 12 recovery for members of the Non-Exempt Class is \$408.05 prior to deduction of any  
 13 applicable payroll taxes, and the estimated range of recovery for members of the Non-  
 14 Exempt Class is \$3.99 to \$408.05, prior to deduction of any applicable payroll taxes<sup>6</sup>.  
 15 Voyen Decl., ¶9.

16 As part of the Settlement, Plaintiff and Participating Class Members who are  
 17 Hourly Employees, release, resolve, relinquish, discharge, and settle each and all of the  
 18 Released Parties from each of the Hourly Employee Released Claims through the Date of  
 19 Preliminary Approval. Likewise, as part of the Settlement, Plaintiff and Participating  
 20 Class Members who are Non-Hourly Employees, release, resolve, relinquish, discharge,  
 21 and settle each and all of the Released Parties from each of the Non-Hourly Employee  
 22 Released Claims through the Date of Preliminary Approval. Each of the releases  
 23 encompassed in the Hourly Employee Released Claims and the Non-Hourly Employee  
 24

25 <sup>5</sup> This information has been added to address Item No. 2 in the Court's April 30, 2015  
 26 Order regarding the point system.

27 <sup>6</sup>The information about the average recovery and range of recovery for members of the  
 28 Non-Exempt Class has been added to address Item No. 1 in the Court's April 30, 2015  
 Order. The Parties requested that Phoenix calculate the requested information. See  
 Richard Declaration, footnote 2.

1 Released Claims are narrowly tailored to encompass only those claims that are  
 2 specifically alleged in, or arising out of the same nucleus of operative facts by, Plaintiff's  
 3 SAC. Stipulation, ¶¶10.1-10.2; Richard Decl., ¶33; Dente Decl., ¶33.

4 Notification to appropriate Federal and State Officials of the proposed Settlement  
 5 pursuant to 28 U.S.C. section 1715 has been timely provided. Declaration of Christopher  
 6 W. Decker Regarding Notice to United States Attorney General and to State Attorneys  
 7 General of Proposed Class Action Settlement Pursuant to 28 U.S.C. § 1715(b) ("Decker  
 8 Decl."), *passim*.<sup>7</sup>

#### 9 **IV. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

10 A class action may not be dismissed, compromised, or settled without the approval  
 11 of the Court. Fed. R. Civ. P. 23(e). Judicial proceedings have led to a defined procedure  
 12 and specific criteria for settlement approval in class action settlements, as described in the  
 13 *Manual for Complex Litigation* (Fourth) (the "Manual") § 21.63 (2004). The Manual's  
 14 settlement approval procedure describes the following steps:

- 15 1. Preliminary approval of the proposed settlement at an informal hearing;
- 16 2. Dissemination of mailed and/or published notice of the settlement to all  
 17 affected class members; and
- 18 3. A final settlement approval hearing, at which class members may be heard  
 19 regarding the settlement, and evidence and argument concerning the fairness, adequacy,  
 20 and reasonableness of the settlement may be presented. *Id.* This procedure, commonly  
 21 used by courts and endorsed by the leading class action commentator, Professor  
 22 Newberg, safeguards Class Members' procedural due process rights and enables the  
 23 Court to fulfill its role as the guardian of class interests. *See* H. Newberg & A. Conte, 4  
 24 Newberg on Class Actions ("4 Newberg") § 11.2 (4th ed. 2002).

25 \_\_\_\_\_  
 26 <sup>7</sup> This information has been added to address Item No. 4 from the Court's April 30, 2015  
 27 Order. Because the Court directed the Parties to clarify the Notice by describing how the  
 28 Parties arrived at the points system (Item No. 2 from the Court's April 30, 2015 Order),  
 Decker Decl. will file a further declaration detailing service of notice under 28 U.S.C. §  
 1715(b) of the clarified notice.

1 With this motion, the Parties request that the Court take the first step in the  
 2 settlement approval process and grant preliminary approval of the proposed Settlement.  
 3 The purpose of the Court's preliminary evaluation of the proposed Settlement is to  
 4 determine whether it is within the "range of reasonableness" and whether the Notice  
 5 Packet setting forth the terms and conditions of the Settlement and the scheduling of a  
 6 formal fairness hearing are worthwhile. *See* 4 Newberg, *supra* § 11.25.

7 The following schedule sets forth a proposed sequence for the relevant dates and  
 8 deadlines, assuming this Court grants preliminary approval of the proposed Settlement on  
 9 July 17, 2015, and sets a final approval hearing on or around November 6, 2015:

10 July 31, 2015 (Within 14 calendar days of Date of Preliminary Approval)	Deadline for Defendant to provide Claims Administrator with Class List.
11 August 6, 2015 (Within 20 calendar days of Date of Preliminary Approval)	Deadline for Claims Administrator to provide Class Counsel with a modified Class List.
12 August 10, 2015 (Within 10 calendar days from receipt of Class List)	Deadline for Claims Administrator to Mail Notice Packets to Class Members.
13 August 10, 2015 (Within 10 calendar days from receipt of Class List)	Deadline for Claims Administrator to Mail Notice Packets to Class Members.
14 August 10, 2015 (Within 10 calendar days from receipt of Class List)	Deadline for Claims Administrator to Mail Notice Packets to Class Members.
15 September 14, 2015 (10 calendar days before the deadline for Class Members to opt-out or object)	Last day for Class Counsel to file Motion for attorneys' fee and cost award.
16 September 14, 2015 (10 calendar days before the deadline for Class Members to opt-out or object)	Last day for Class Counsel to file Motion for attorneys' fee and cost award.
17 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit any challenge to the number of pay periods specified on Settlement Allocation Form.
18 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit any challenge to the number of pay periods specified on Settlement Allocation Form.
19 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit written objections to the Settlement.
20 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit written objections to the Settlement.
21 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit Requests for Exclusions to be excluded from the Settlement.
22 September 24, 2015 (45 days after mailing of Notice Packet)	Last day for Class Members to submit Requests for Exclusions to be excluded from the Settlement.
23 October 9, 2015 (28 days before the Final Approval Hearing)	Last day for Claims Administrator to provide the Parties with a declaration of compliance with its obligations under the Settlement.
24 October 9, 2015 (28 days before the Final Approval Hearing)	Last day for Claims Administrator to provide the Parties with a declaration of compliance with its obligations under the Settlement.
25 October 23, 2015 (14 calendar days before the Final Approval Hearing)	Last day for Class Counsel to file Motion for Final Approval of Settlement.
26 October 23, 2015 (14 calendar days before the Final Approval Hearing)	Last day for Class Counsel to file Motion for Final Approval of Settlement.
27	
28	

1 2 3 4 October 30, 2015 (7 calendar days before the Final Approval Hearing)	Last day for filing of any written opposition to motion for final approval of Settlement and/or Plaintiff's request for Attorneys' Fees and Costs, Class Representative Enhancement Service Award, and payment of Claims Administration Costs.
5 6 November 3, 2015 (3 calendar days before the Final Approval Hearing)	Last day for filing of any replies to any opposition.
7 November 6, 2015 at 1:30 p.m.	Final Approval Hearing.

8 **V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

9 **A. The Governing Principles**

10 The law favors settlement, particularly in class actions and other complex cases  
11 where substantial resources can be conserved by avoiding the time, cost, and rigors of  
12 formal litigation. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992);  
13 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); 4 Newberg, *supra* §  
14 11.41 (and cases cited therein).

15 To grant preliminary approval of this Settlement, the Court need find only that the  
16 Settlement falls within the range of possible final approval, also described as "the range  
17 of reasonableness." *See, e.g., Singer v. Becton Dickinson & Co.*, No. 08-cv-821-IEG  
18 (BLM), 2009 WL 4809646, at \*7 (S.D. Cal. Dec. 9, 2009) ("Rather, at the preliminary  
19 approval stage, the Court need only review the parties' proposed settlement to determine  
20 whether it is within the permissible 'range of possible judicial approval' and thus, whether  
21 the notice to the class and the scheduling of the formal fairness hearing is appropriate.")  
22 (citing 4 Newberg, *supra* § 11.25); *see also Wright v. Linkus Enters., Inc.*, 259 F.R.D.  
23 468, 472 (E.D. Cal. 2009); *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. 2008).

24 Furthermore, courts must give "proper deference to the private consensual decision  
25 of the parties," since:

26 [T]he court's intrusion upon what is otherwise a private consensual  
27 agreement negotiated between the parties to a lawsuit must be limited to the  
28 extent necessary to reach a reasoned judgment that the agreement is not the  
product of fraud or overreaching by, or collusion between, the negotiating



1 parties, and that the settlement, taken as a whole, is fair, reasonable and  
adequate to all concerned.

2 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (citation omitted).  
3 Indeed, as a "[s]ettlement is the offspring of compromise," the question upon preliminary  
4 approval "is not whether the final product could be prettier, smarter or snazzier, but  
5 whether it is fair, adequate and free from collusion." *Id.* Accordingly, a court should not  
6 second guess the parties, or substitute its judgment for that of the proponents of the  
7 settlement, particularly when experienced counsel familiar with the litigation have  
8 reached settlement. *See Hammon v. Barry*, 752 F. Supp. 1087, 1093 (D.D.C. 1990);  
9 *Steinberg v. Carey*, 470 F. Supp. 471, 474 (S.D.N.Y. 1979).

10 The Manual characterizes the preliminary approval stage as an "initial assessment"  
11 of the fairness of the proposed settlement made by the court on the basis of written  
12 submissions and an informal presentation from the settling parties. The Manual  
13 summarizes the preliminary approval criteria as follows:

14 If the preliminary evaluation of the proposed settlement does not disclose  
15 grounds to doubt its fairness or other obvious deficiencies, such as unduly  
16 preferential treatment of class representatives or of segments of the class, or  
17 excessive compensation for attorneys, and appears to fall within the range of  
18 possible approval, the court should direct that notice under Rule 23(e) be  
given to the class members of a formal fairness hearing, at which arguments  
and evidence may be presented in support of and in opposition to the  
settlement.

19 *See* 4 Newberg, *supra* §11.25 (quoting *Manual for Complex Litigation* (Third) § 30.41  
20 (1995)).

21 Here, as shown below, the proposed Settlement falls well within the range of  
22 reasonableness.

23 **B. The Terms of the Settlement Disclose No Grounds to Doubt Its Fairness**

24 A preliminary review of the terms of the Settlement gives rise to no doubts as to its  
25 fairness. Here, the Parties negotiated the Settlement in good faith and at arm's length,  
26 following an intensive investigation of the factual and legal claims over a period of  
27 almost one year and a full-day mediation session, and ultimately agreed on the terms of  
28

1 the Settlement. The Parties shared extensive information with one another before  
 2 arriving at the Settlement, and fully apprised each other of their respective factual  
 3 contentions, legal theories, and defenses. Stipulation, ¶¶A-E; Richard Decl., ¶¶6-24;  
 4 Dente Decl., ¶¶6-24. Class Counsel are experienced in class action wage-and-hour  
 5 litigation. Richard Decl., ¶3-5; Dente Decl., ¶¶3-5. Defendant's counsel is also  
 6 experienced. See Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Class Action  
 7 Defense, <http://www.ogletreedeakins.com/practice-areas/class-action> (last visited June 17  
 8 2015).

9 **C. Liability Is Vigorously Contested, and the Settlement Provides**  
 10 **Reasonable Compensation for the Class Members' Alleged Injuries**

11 Of particular relevance to the reasonableness of the proposed Settlement is the fact  
 12 that Defendant has legal and factual grounds available to it for defending this action.  
 13 Defendant vigorously contested liability and claimed that: (i) the form and content of La  
 14 Quinta's wage statements issued prior to February 22, 2014, did not violate California  
 15 Labor Code section 226(a) and the "Records" section of the IWC Wage Order and any  
 16 inaccuracies were not done knowingly and intentionally; (ii) the form and content of La  
 17 Quinta's wage statements issued after February 21, 2014, have been modified in  
 18 compliance with the law and do not violate California Labor Code section 226(a) and the  
 19 "Records" section of the IWC Wage Order, but even if these wage statements were not in  
 20 full compliance with the law because they do not identify certain information for  
 21 adjustments (such as "hours worked" for "Bonus OT adjustments," and "rate of pay" and  
 22 "hours worked" for overtime adjustments made for "Here for You" incentive payments),  
 23 these adjustments occurred so infrequently (e.g., quarterly) that there would be minimal  
 24 wage statements at issue; (iii) any omission of information from the wage statements  
 25 resulted in no injury and therefore no recovery under California Labor Code section  
 26 226(e); (iv) incentive pay and other forms of non-base pay are not required to be paid as  
 27 part of meal and rest break premium payments under California Labor Code section  
 28 226.7 and, even, if it were required, the amount of damages was *de minimis*; (v) it has

1 authorized and permitted rest breaks to Hourly Employees; (vi) it provided meal periods  
2 in compliance with the California Labor Code and IWC Wage Order to all Hourly  
3 Employees, the on-duty meal periods provided to Front Desk Sales Representatives  
4 ("FDSRs") and Night Auditors were permitted due the nature of the work these  
5 employees performed and their written consent to take their meal periods on-duty, and it  
6 has already compensated its Hourly Employees for any possible meal period violations  
7 by paying them an additional hour of pay under California Labor Code section 226.7 on  
8 those occasions where a meal period was not taken in an abundance of caution; (vii)  
9 penalties should be limited to the lower, initial violations penalties because no citation  
10 had been issued against La Quinta; (viii) La Quinta is not subject to civil penalties under  
11 PAGA or that any such penalties should be significantly reduced due to lack of injury;  
12 and (ix) any omission of information on wage statements for exempt employees was  
13 substantially less than that for Hourly Employees as a result of minimal amount of  
14 information required to be included on Non-Hourly Employees' wage statements.  
15 Additionally, Defendant strongly contested the propriety of class treatment of the putative  
16 class claims at issue, especially the meal and rest break claims, and the injury component  
17 for the wage statement claims. While Plaintiff believes overall the claims alleged are  
18 strong, Plaintiff also recognizes not only Defendant's defenses but also the fact that  
19 Defendant did change the form and content of its wage statements after the action was  
20 filed. Notwithstanding Defendant's arguments, the Settlement commits Defendant to pay  
21 an all-cash Settlement of \$900,000 for the asserted claims in addition to employer payroll  
22 taxes on the wage component of the Settlement payments. Richard Decl., ¶23; Dente  
23 Decl., ¶23.

24 As a result of the action, Defendant has already changed the form of its wage  
25 statements, a substantial benefit achieved at the outset of the case. In addition, the  
26 Settlement provides a significant monetary recovery to Class Members and easily falls  
27 within the range of reasonableness. On average, each Participating Class Member is  
28 eligible to receive an estimated \$399 prior to payroll deductions. Voyen Decl., ¶9. It

1 provides substantial and immediate cash benefits to Eligible Participating Class  
 2 Members. The Settlement is jointly presented as the product of extensive arm's-length  
 3 negotiations by experienced counsel on both sides after thorough investigation of the  
 4 claims and recognition of the strengths and weaknesses of each other's positions. In  
 5 calculating the appropriate settlement amount, the Parties had sufficient information, and  
 6 conducted an adequate investigation, to allow them to make an educated and informed  
 7 analysis. Stipulation, ¶¶E, H-J; Richard Decl., ¶¶22-24, 30, 32; Dente Decl., ¶¶22-24, 30,  
 8 32.<sup>8</sup>

9 The Settlement is fair, reasonable, and adequate, given the inherent risks of  
 10 litigation, the risk that class certification may be denied, the risk that even if a violation is  
 11 found penalties and damages may be limited, and the costs of pursuing the litigation  
 12 through trial and subsequent appeals. The Settlement will finally resolve all claims at  
 13 issue, the litigation costs, and attorneys' fees. Richard Decl., ¶¶42-45; Dente Decl., ¶¶42-  
 14 45.

15 Despite the asserted fairness of the Settlement terms, should any Class Member,  
 16 upon reviewing the Notice of Class Action Settlement, be unsatisfied with the terms, each  
 17 has the right to submit a Request for Exclusion from (i.e., opt out of) the Settlement, in  
 18 which case the Class Member would retain any claim he or she may have against  
 19 Defendant. Stipulation, ¶5.6. Moreover, Class Members who do not opt out may, upon  
 20 providing proper notice to the Parties and the Court, object to one or more of the  
 21 Settlement's terms. Stipulation, ¶6.

22 Accordingly, preliminary approval of the Settlement is appropriate.

23 **VI. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**  
 24 **APPROPRIATE**

25 It is well established that trial courts should use a lower standard for determining  
 26 the propriety of certifying a settlement class, as opposed to a litigation class. The reason

27 <sup>8</sup> To address Item No. 1 in the Court's April 30, 2015 Order, the Richard Declaration and  
 28 the Dente Declaration at paragraph 30 have been updated with the analysis and  
 comparison ordered.

1 for this is that no trial is anticipated in a settlement class, so the case management issues  
2 inherent in determining if the class should be certified need not be confronted. *Amchem*  
3 *Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

#### 4 **A. Rule 23(a)'s Requirements for Certification Are Met Here**

5 For settlement purposes, each of Rule 23(a)'s requirements necessary for  
6 certification of the Settlement Class—numerosity, commonality, typicality, and adequacy  
7 of representation—are met here. *See* Fed. R. Civ. P. 23(a); *see also Hanlon*, 150 F.3d at  
8 1019.

##### 9 **1. Numerosity**

10 Rule 23(a)(1) requires that the proposed class be so numerous that joinder of all  
11 class members is impracticable. Plaintiff need not, however, show that the number is so  
12 large that it would be impossible to join every Class Member. *Harris v. Palm Springs*  
13 *Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964); *Murray v. Local 2620, AFL-*  
14 *CIO*, 192 F.R.D. 629, 631 (N.D. Cal. 2000). The Classes are comprised of more than  
15 1,189 Non-Exempt Class Members and more than 1,087 Pay Stub Class Members, which  
16 is large enough to make joinder impracticable. The proposed Class therefore satisfies  
17 Rule 23(a)(1)'s numerosity requirement.

##### 18 **2. Commonality**

19 Rule 23(a)(2) requires that there be "questions of law or fact common to the class."  
20 Fed. R. Civ. P. 23(a)(2). The showing needed to satisfy the commonality requirement is  
21 "minimal." *Hanlon*, 150 F.3d at 1020. "Indeed, Rule 23(a)(2) has been construed  
22 permissively.... The existence of shared legal issues with divergent factual predicates is  
23 sufficient, as is a common core of salient facts coupled with disparate legal remedies  
24 within the class." *Id.* at 1019; *see also Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir.  
25 1992) ("A common nucleus of operative fact is usually enough to satisfy the  
26 commonality requirement of Rule 23(a)(2).").

27 For settlement purposes, the members of the proposed Non-Exempt Class share  
28 common issues of fact and law including: whether Defendant had a policy of not

1 providing meal periods to Non-Exempt Class members in conformance with California  
2 law; whether Defendant had a policy of not authorizing and permitting Non-Exempt  
3 Class members to take rest breaks in compliance with California law; whether Defendant  
4 had a policy of not paying Non-Exempt Class members break premiums under California  
5 Labor Code section 226.7 at the regular rate of compensation which did not incorporate  
6 non-base pay (such as incentive pay) into the rate calculation; and whether California  
7 Labor Code section 226.7(c) requires Defendant to include into the regular rate of  
8 compensation calculation non-base pay (such as incentive pay) in addition to base hourly  
9 pay. Commonality among Non-Exempt Class members exists therefore given the  
10 common Labor Code provision at issue, the common Defendant policies at issue, and the  
11 common statutory remedy—premium payments under California Labor Code section  
12 226.7(c)—at issue. Likewise, the members of the proposed Pay Stub Class share common  
13 issues of fact and law including: whether all itemized wage statements issued to Pay Stub  
14 Class members fail to list one or more of the required items of California Labor Code  
15 section 226(a); whether injury under California Labor Code section 226(e)(1), (e)(2)  
16 resulted from omissions alleged all the wage statements Defendant issued to Pay Stub  
17 Class members; whether the alleged omissions from the wage statements issued to Pay  
18 Stub Class members were knowing and intentional as required under California Labor  
19 Code section 226(e)(1); and whether statutory penalties under California Labor Code  
20 section 226(e)(1) should be paid to all Pay Stub Class members. Commonality therefore  
21 exists for Pay Stub Class members as a result of the common Labor Code provision  
22 alleged to be violated, the common wage statements issued by Defendant that are alleged  
23 to have one or more items omitted that are required by the Labor Code, and the common  
24 penalty to be claimed—the penalty under California Labor Code section 226(e)(1).  
25 Richard Decl., ¶¶11,19; Dente Decl., ¶¶11, 19.

26 Rule 23(a)(2)'s commonality requirement is clearly met here for both the proposed  
27 Non-Exempt Class as well as the proposed Pay Stub Class. *Amchem Prods.*, 521 U.S. at  
28 622-24.

### 3. Typicality

Rule 23(a)(3) requires that Plaintiff's claims are typical of the claims of the Class. The typicality inquiry focuses on whether Plaintiff possesses the same interest and suffered the same injury as Class Members and is satisfied if Plaintiff's claims are "reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.

The purpose of the typicality requirement is to ensure that class representatives are motivated to protect the interests of the class. *See Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3d Cir. 1985). "[T]he Ninth Circuit interprets Rule 23(a)(3) typicality permissively." *Bates v. United Parcel Serv.*, 204 F.R.D. 440, 446 (N.D. Cal. 2001); *see also Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001) ("We do not insist that the named plaintiffs' injuries be identical with those of the other class members, only that the unnamed class members have injuries similar to those of the named plaintiffs and that the injuries result from the same, injurious course of conduct.").

Plaintiff is a member of both the proposed Non-Exempt Class as well as the proposed Pay Stub Class. *See Bailey v. Patterson*, 369 U.S. 31, 32-33 (1962). He worked for Defendant in California as a Hourly Employee, was subject to Defendant's employment policies and practices that are the subject matter of this litigation—namely meal and rest breaks for Hourly Employees, and the issuance of wage statements of a particular form and content for all California employees. Plaintiff's claims as a Hourly Employee are therefore typical of the other Non-Exempt Class Members' claims. Likewise, Plaintiff's claims as an employee who received wage statements from Defendant with alleged deficiencies are therefore typical of the other Pay Stub Class Members' claims. Nothing about the claims alleged in the SAC are unique to Plaintiff, nor preclude class certification of the Non-Exempt Class and the Pay Stub Class. The typicality requirement is easily satisfied here. Richard Decl., ¶¶11, 17, 19; Dente Decl., ¶¶11,17, 19; *see also* Declaration of Sergio Peralta in Support of Plaintiff's Unopposed

1 Motion for Preliminary Approval of Class Action Settlement ("Peralta Decl."), ¶¶1-6,  
2 filed concurrently herewith.

#### 3 4. Adequacy

4 Rule 23(a)(4)'s adequacy requirement is met if Plaintiff will fairly and adequately  
5 represent the Class. The adequacy inquiry turns on whether Plaintiff has interests similar  
6 to those of the Class Members, has the motivation to further the interests of the Class, and  
7 has retained qualified, motivated, and competent counsel. The purpose of the adequacy  
8 requirement is to protect the due process interests of absent Class Members who must be  
9 afforded adequate representation before entry of a judgment that binds them. The Ninth  
10 Circuit has identified two criteria for determining the adequacy of representation: "First,  
11 the named representatives must appear able to prosecute the action vigorously through  
12 qualified counsel, and second, the representatives must not have antagonistic or  
13 conflicting interests with the unnamed members of the class." *Lerwill v. Inflight Motion*  
14 *Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) (certifying a class for unpaid overtime  
15 wages). Both criteria are met here.

16 Here, Plaintiff has chosen competent, qualified, and experienced class counsel.  
17 Richard Decl., ¶¶1, 3-5, 35; Dente Decl., ¶¶1, 3-5, 35. He has participated in Class  
18 Counsel's investigation of the class-wide claims, has engaged in extensive discussions  
19 with Class Counsel, and has been educated on the nature of class action litigation and the  
20 duties and responsibilities of being a class representative. Richard Decl., ¶¶37-40; Dente  
21 Decl., ¶¶37-40; Peralta Decl., ¶¶1-6.. After considering the duties and responsibilities of  
22 being a class representative as well as the risks and burdens of class litigation, Plaintiff  
23 nevertheless desired to pursue this Lawsuit as a class action. *Id.* All of these factors  
24 indicate that Plaintiff has fairly and adequately represented the Class and will continue to  
25 do so.

26 Moreover, Plaintiff does not have any conflicts with the Class. To the contrary,  
27 Plaintiff has a strong interest in establishing liability and obtaining a recovery from  
28



1 Defendant. Plaintiff is able and willing to prosecute this case and to protect the interests  
2 of Class Members. *Id.* The adequacy requirement is met here.

3 **B. Rule 23(b)'s Requirements for Certification Are Met Here**

4 Common issues of law or fact "predominate over any questions affecting only  
5 individual members." Fed. R. Civ. P. 23(b)(3). Commonality under Rule 23(a) has been  
6 established above. The focus under Rule 23(b)(3) shifts to whether common issues  
7 predominate. Normally, courts pragmatically assess the entire action and the issues  
8 involved to determine if the common questions present a significant aspect of the case  
9 and can be resolved for all members of the class in a single adjudication. *Romero v.*  
10 *Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 489 (E.D. Cal. 2006). "When common  
11 questions present a significant aspect of the case and they can be resolved for all  
12 members of the class in a single adjudication, there is clear justification for handling the  
13 dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022  
14 (citation omitted); *see also Amchem Prods.*, 521 U.S. at 622-24.

15 The proposed Non-Exempt Class and the proposed Pay Stub Class both are  
16 sufficiently cohesive to warrant adjudication by representation. Plaintiff and each Non-  
17 Exempt Class member seek penalties and unpaid wages arising from meal and rest break  
18 claims—namely whether breaks were given in compliance with the law and whether break  
19 premium pay was calculated at the correct regular rate of pay under California Labor  
20 Code section 226.7(c). Therefore common questions regarding Non-Exempt Class  
21 members' entitlement to the penalties and unpaid wages at issue predominate over  
22 individual questions; and each Non-Exempt Class members' potential statutory legal  
23 remedies are identical within the Non-Exempt Class. The predominance requirement is  
24 met and therefore the proposed Non-Exempt Class should be certified for settlement  
25 purposes. Richard Decl., ¶¶17, 19; Dente Decl., ¶¶17, 19.

26 Similarly, Plaintiff and each Pay Stub Class member seek penalties arising  
27 omission from wage statements information required by California Labor Code section  
28 226(a). Common questions predominate over individual questions regarding Pay Stub

1 Class members' entitlement to the penalties at issue; and each Pay Stub Class members'  
2 potential legal remedies are identical within the Pay Stub Class. These common  
3 questions include: what constitutes an "injury," whether the omission of information from  
4 pay stubs are in violation of California Labor Code section 226(a), whether the omissions  
5 are knowing and intentional, and whether a subsequent violation penalty should be  
6 applied. The predominance requirement is met and therefore the proposed Pay Stub  
7 Class should be certified for settlement purposes. Richard Decl., ¶¶17, 19; Dente Decl.,  
8 ¶¶17, 19.

9 The class action device proposed here "is superior to other available methods for  
10 fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This action  
11 allows all of the Non-Exempt Class and Pay Stub Class claims to be fairly, adequately,  
12 and efficiently resolved to a degree that no other mechanism or forum would provide. As  
13 in *Hanlon*, the alternative methods of resolution are individual claims for a relatively  
14 small amount of damages. 150 F.3d at 1023. These claims "would prove uneconomic  
15 for potential plaintiffs" because "litigation costs would dwarf potential recovery." *Id.*  
16 For this reason, a class action is the superior method of resolution here.

17 For these reasons, the Non-Exempt Class and the Pay Stub Class should both be  
18 certified for settlement purposes.

## 19 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

### 20 **A. The Class Notice Satisfies Due Process Requirements**

21 Due process and judicial interpretation of the notice provisions under California  
22 and federal law require notice be provided to Class Members by the best reasonable  
23 method available. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974). The  
24 notice plan here entails mailing the Notice Packet to the last known (and updated)  
25 addresses of all Class Members based on Defendant's payroll records and diligent  
26 administrative efforts. The Notice Packet is consistent with class certification notices  
27 approved by numerous federal courts and is, under the circumstances of this case, the best  
28 notice practicable. Defendant will provide the Claims Administrator with a database (the

1 "Class List") identifying each Class Member, his or her social security number, and  
2 his/her Last Known Address. The Class List will also contain information as to whether  
3 the Class Member is an Hourly Employee or a Non-Hourly Employee, as well as the  
4 dates of employment during the Class Period in which each Putative Class Member was  
5 employed and the aggregate number of Compensable Pay Periods in which the Putative  
6 Class Member was employed by Defendant during the Class Period. Stipulation, ¶5.3.  
7 The Claims Administrator, prior to mailing the Notice Packets, will, after receiving the  
8 Last Known Addresses and social security numbers of Class Members from Defendant,  
9 conduct a Reasonable Address Verification Measure by performing a search through the  
10 United States Postal Service's National Change of Address database to update Class  
11 Member contact information and, with respect to formerly employed Class Members,  
12 perform upfront "skip trace" searches in an attempt to locate the best possible address for  
13 Class Members from the outset. After conducting the address verifications and updating  
14 each Settlement Allocation Form with each Class Members' estimated settlement  
15 payment award, the Claims Administrator will mail the Notice Packet to the Class  
16 Members. *Id.*, ¶¶1.38, 5.4, 5.5. The Claims Administrator will endeavor to determine the  
17 updated addresses for Class Members whose Notice Packets are returned undelivered and  
18 will re-send Notice Packets to them as appropriate after performing another skip trace to  
19 locate any better address. *Id.* Thus, the proposed Notice of Class Action Settlement  
20 process satisfies all due process requirements. *See Eisen*, 417 U.S. 156.

21 **B. The Proposed Class Notice Packet Is Accurate and Informative**

22 The proposed Notice Packet provides: (i) information on the meaning and nature of  
23 the proposed Settlement; (ii) the terms and provisions of the Settlement; (iii) the relief the  
24 Settlement will provide Class Members, including an estimate of the amount to be paid to  
25 each Class Member; (iv) the amount requested by Class Counsel for reimbursement of  
26 costs and attorneys' fees, and for the Class Representative Enhancement Service Award;  
27 (v) the procedure and deadlines for submitting requests to be excluded from the  
28 Settlement and/or objections to the Settlement; and (vi) the date, time, and place of the

1 Final Approval Hearing. Richard Decl., Exhibit 1<sup>9</sup>.

2 The Notice Packet also fulfills the requirement of neutrality in class notices. *See*  
 3 H. Newberg & A. Conte, 5 Newberg on Class Actions ("5 Newberg") § 8.12 (5th ed.  
 4 2002). It summarizes the proceedings to date, and the terms and conditions of the  
 5 Settlement, in an informative and coherent manner, in compliance with the Manual's  
 6 statement that the notice should state essential terms "concisely and clearly ... in plain,  
 7 easily understood language." *See* Manual, *supra* § 21.31. The Notice of Class Action  
 8 Settlement clearly states that the Settlement does not constitute an admission of liability  
 9 by Defendant and recognizes that the Court has not ruled on the merits of the Lawsuit. It  
 10 also states that the Court's final settlement approval decision has yet to be made.  
 11 Accordingly, the Notice Packet complies with the standards of clarity, fairness,  
 12 completeness, and objectivity required of a settlement class notice disseminated under  
 13 authority of the Court. *See* Fed. R. Civ. P. 23(c)(2),(e); 5 Newberg, *supra* §§ 8.12, 8.17;  
 14 Manual, *supra* §§ 21.311, 21.312.

## 15 **VIII. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

16 The last step in the settlement approval process is the Final Approval Hearing, at  
 17 which the Court may hear all evidence and argument necessary to evaluate the proposed  
 18 Settlement. At that hearing, proponents of the Settlement may explain and describe its  
 19 terms and conditions and offer argument in support of Settlement approval, and members  
 20 of the Class, or their counsel, may be heard in support of or in opposition to the  
 21 Settlement. The Parties propose that the Final Approval Hearing be held on or about  
 22 November 6, 2015, at 1:30 p.m.

## 23 **IX. CONCLUSION**

24 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant  
 25 preliminary approval of the proposed Settlement, grant conditional certification of the

26 \_\_\_\_\_  
 27 <sup>9</sup> Following the Court's April 30, 2015 Order, the Parties modified the Notice to clarify  
 28 basis for the point system allocation. That Notice is attached as Exhibit A to Exhibit 1 of  
 the Richard Decl. Attached as Exhibit 2 to the Richard Declaration is a redline of the  
 modifications made to the original Notice to address the Court's April 30, 2015 Order.

1 Settlement Class, approve the proposed form of Notice Packet, and schedule the Final  
2 Approval Hearing.

3 Dated: June 17, 2015

Respectfully submitted,

4 ROBBINS ARROYO LLP  
5 THE DENTE LAW FIRM

6 s/ Diane E. Richard

7 DIANE E. RICHARD

8 Attorneys for Plaintiff Sergio Peralta

9 Email: drichard@robbinsarroyo.com

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