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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

MANUEL VILLA, an individual(s), on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRILLIUM PUMPS USA, INC., a Delaware
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 22CECG01104

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: October 17, 2023

Time: 3:27 p.m.

Judge: Hon. Jonathan Skiles

Dept.: 403

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I. INTRODUCTION

Plaintiff MANUEL VILLA (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 278 Class Members and 196 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **“Class”** and **“Class Period”** shall mean all non-exempt employees who are or previously were employed by Defendant and performed work in California (“Class”) during the period from April 11, 2018, through and including December 2, 2022 (“Class Period”). Agreement at §§ I(G)-(H).

a. The **“Settlement Class Members”** means all Class Members who have not submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at § I(GG).

b. The **“Class Size”** is comprised of 278 individuals who collectively worked approximately 20,344 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § III(A)(2).

2. The **“Aggrieved Employees”** and **“PAGA Period”** means all non-exempt employees who are or previously were employed by Defendants and performed work in California during the period of February 2, 2021, through and including December 2, 2022 (“PAGA Period”). Agreement at § I(B), (V). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(8). At the time of mediation, there were approximately 196 Aggrieved Employees who worked approximately 4,569 pay periods during the PAGA Period.

3. The **“Gross Settlement Amount”** is Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Service Award”** of not more than \$10,000.00 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action and in

¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

exchange for executing a General Release. Agreement at §§ III(N)(9).

b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$216,666.67 *and* litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at § III(N)(10);

c. A **“PAGA Settlement”** of Thirty-Seven Five Hundred Dollars (\$40,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Settlement (\$30,000.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$10,000) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(W); III(N)(11).

d. **“Settlement Administration Costs”** not to exceed \$11,000.00 payable to the Settlement Administrator, ILYM Group Inc., for, *inter alia*, the administration of the Class Notice and Settlement Administration Costs. Agreement at § III(N)(12).

4. The **“Net Settlement Amount”** of approximately \$347,333.33 (Gross Settlement Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(N)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of **\$1,249.40**. JCL Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement

1 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
2 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
3 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
4 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

5 **II. FACTS AND PROCEDURE**

6 **A. Overview of the Litigation**

7 Defendant designs, manufactures, sells and services highly engineered valves, pumps, and
8 actuators for use in the power, oil and gas, general industry, water and wastewater sectors in the state
9 of California, including in Fresno County where Plaintiff worked. Plaintiff worked for Defendant in
10 California from November of 2020 to August of 2021. At all times during his employment, Plaintiff
11 was denied legally compliant meal and rest periods, and minimum wages and overtime compensation.
12 Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures
13 contained in, among other documents, the Employee Handbook. JCL Dec., ¶ 8.

14 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
15 compliant meal and rest periods, failed to reimburse mandatory business expenses, failed to furnish
16 accurate itemized wage statements, and failed to pay all wages when due. Defendant denies liability
17 for each of Plaintiff's claims. Further, Defendant asserts that they fully complied with all applicable
18 employment laws and raised several other significant defenses to Plaintiff's claims, including but not
19 limited to, asserting that they maintained facially compliant meal and rest period policies, paid their
20 employees for all hours worked, and timely paid all wages due upon separation of employment. JCL
21 Dec., ¶ 9.

22 On April 11, 2022, Plaintiff filed a class action complaint in the Fresno County Superior Court,
23 Case No. 22CECG01104 ("Action"). The Action alleged ten causes of action against Defendant for:
24 (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Overtime
25 Wages in Violation of California Labor Code §§ 510; (3) Failure to Pay Minimum Wages in Violation
26 of California Labor Code §§ 1194, 1197, and 1197.1.; (4) Failure to Provide Required Meal Periods in
27 Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in
28 Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage

1 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation
2 of California Labor Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for Required
3 Expenses in Violation of California Labor Code § 2802; (9) Unlawful Deductions; and (10) Violation
4 of the Private Attorneys General Action [Labor Code §§ 2698, *et. seq.*]. JCL Dec., ¶ 10.

5 Prior to commencing written discovery, the Parties agreed to mediate this action. To prepare for
6 mediation, the Parties agreed to informally exchange documents and data points subject to the
7 mediation privilege, including but not limited to, the Class Members' time data and certain payroll data
8 points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting
9 Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 11.

10 On November 2, 2022, the Parties participated in a full day mediation with jurist and mediator,
11 Hon. Brian C. Walsh (Ret.). The mediation concluded with a settlement after the Parties agreed to a
12 Mediator's Proposal, which was subsequently memorialized in the form of a Memorandum of
13 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
14 is the subject of the instant motion. JCL Dec., ¶ 12.

15 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

16 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
17 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
18 part of the interview process, the Plaintiff produced documents related to his employment, including
19 wage statements, and information related to compensation plans. At the conclusion of the interviews,
20 Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 13.

21 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,
22 Defendants produced several documents, including but not limited, copies of Plaintiff's hiring
23 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and
24 determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among
25 other things, provide compliant meal and rest periods, failed to pay all wages due to rounding, and
26 failed to pay for all hours worked. JCL Dec., ¶ 14.

27 To prepare for mediation, Defendants produced time and payroll records for the Class Members,
28 aggregate workweek and pay period data for the Class Members, average hourly rate for the Class

1 Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel
2 reviewed hundreds of pages of documents and more than 100,000 unique cells of time and payroll data.
3 JCL Dec., ¶ 15.

4 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
5 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
6 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
7 credentialed and experienced experts in their fields and have provided their expertise on thousands of
8 cases. JCL Dec., ¶ 16.

9 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
10 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
11 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
12 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
13 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of unpaid
14 sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period premiums
15 paid during the Class Period. JCL Dec., ¶ 17.

16 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
17 Plaintiff's suitability as a putative class representative through interviews, background investigations,
18 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
19 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
20 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
21 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
22 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
23 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
24 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
25 claims being settled, as well as the impediments to recovery, such as to make an independent
26 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 18.

27 Class Counsel only agreed to enter the Settlement following this thorough investigation and
28 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and

marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 19.

C. The Parties Settled at Mediation

On November 2, 2022, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.). Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement after the Parties agreed to a Mediator's Proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 20.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Settlement Class consists of all non-exempt employees who are or previously were employed by Defendants and performed work in California during the period between April 11, 2018, through and including December 2, 2022 who did not submit a timely and valid request for exclusion. Agreement at I(GG). At the time of mediation, Defendants estimated that the Class was comprised of 278 individuals that worked approximately 20,344 workweeks during the Class Period. Agreement at § III(A)(2); JCL Dec., ¶ 21.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$650,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of not more than \$10,000 to Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA Settlement in the amount of \$40,000; (4) Settlement Administration Costs estimated at \$11,000; (5) Class Counsel Award in the amount of

1 \$241,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
2 to be \$216,666.67 and an estimated \$25,000 for actually incurred litigation expenses. See generally
3 Agreement at § III(M).

4 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
5 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
6 distributed to each participating member of the Settlement Class Member. Agreement at § I(P). There
7 is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll
8 taxes. Agreement at § III(A)(1).

9 3. The Funding Date

10 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
11 Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final approval
12 of this Settlement. Agreement at § I(N).

13 4. Formula for Calculating Individual Settlement Payments

14 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
15 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
16 worked for Defendants in California during the Class Period. Using the Class Data, the Settlement
17 Administrator shall add up the total number of Workweeks for all Class Members. The respective
18 Workweeks for each Class Member will be divided by the total Workweeks for all Class Members,
19 resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then
20 be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
21 Settlement Payments. Agreement at § III(N)(1).

22 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
23 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class
24 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class
25 Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their
26 respective Payment Ratios. Agreement at § III(N)(1).

27 Given that there are approximately 278 Settlement Class Members, the average gross recovery
28 is approximately \$1,249.40 (Net Settlement Amount divided by Settlement Class Members). JCL

Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all class claims alleged in the operative complaint, or which could have reasonably been alleged in the operative complaint based on the facts alleged, which occurred during the Class Period, including (a) all claims for failure to pay minimum wages under Cal. Labor Code §§ 1194, 1197 and 1197.1; (b) all claims for failure to pay overtime wages under Cal. Labor Code §§ 510, et seq.; (c) all claims for failure to provide required meal periods under Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; (d) all claims for failure to provide required rest breaks under Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; (e) all claims for failure to provide accurate itemized wage statements under Cal. Labor Code § 226; (f) all claims for failure to provide wages when due under Cal. Labor Code §§ 201, 202 and 203; (g) claims for failure to reimburse employees for required expenses under Cal. Labor Code § 2802; (h) claims under the California Business and Professions Code § 17200 et. seq. including injunctive relief related to the California Labor Code violations covered by this release; (i) liquidated damages; (j) interest; (k) attorneys' fees; and (l) costs; and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside the Class Period. Agreement at § I(AA).

6. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims alleged in the operative complaint and Plaintiff's PAGA Notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I(BB).

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III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

The proposed Settlement, including a Gross Settlement Amount of \$650,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

4 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by
5 Experienced Counsel.

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation with highly respected jurist and mediator Hon. Brian C.
12 Walsh (Ret.). Judge Walsh managed the Parties’ expectations and provided a useful, neutral analysis
13 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF
14 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
15 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
16 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
17 ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated
18 negotiations, the Parties reached an agreement via a mediator’s proposal, and the mediation session
19 concluded with a settlement. JCL Dec., ¶ 20.

20 Once the Parties memorialized the settlement in the form of a Memorandum of Understanding,
21 the Parties engaged in negotiations regarding the written terms of the class action settlement. The
22 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
23 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

24 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
25 Settlement’s Reasonableness.

26 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
27 the factual and legal issues in dispute. In addition to informal discovery, document review, data
28 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no

two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 23.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 24.

3. The Settlement Falls Within the Recognized Range of Reasonableness.

The Gross Settlement Amount of \$650,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added)). For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the

reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

The Gross Settlement Amount of \$650,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger Consulting Group to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA Penalties) at \$2,818,887 dollars. Thus, the Gross Settlement Amount of \$650,000 represents approximately 23% of Defendants’ *class-wide* liability exposure. JCL Dec., ¶ 25. The following summarizes Defendants’ estimated exposure.

(1) Estimated Damages for Meal Period Violations

One of Plaintiff’s primary claims alleged that Defendants failed to provide compliant meal periods, and further failed to provide any meal period premiums. Specifically, Plaintiff alleged that because of her rigorous work schedules, Plaintiff and Class Members were unable to take timely and duty-free meal periods. Plaintiff also alleged that as a result of Defendant’s unlawful rounding policy with respect to meal periods raised a rebuttable presumption that Defendant committed meal period violations. (See *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.) Conversely, Defendants argued, among other things, that they provided Class Members with the opportunity to take compliant meal periods and that rounding, if any, was the result of Class Members recording their own time, did not result in meal period violations. Defendants also argued that they maintained facially complaint meal period policies. Thus, Defendants argued that any missed meal periods were voluntarily and did not trigger liability for premium payments. Similarly, Defendants argued that any divergence from these

fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 written policies were not systematic and, if they existed at all, were location and department specific.
2 Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal period
3 violations. In total, Class Counsel estimated Defendants' exposure for meal period claims at \$503,456.
4 JCL Dec., ¶ 26.

5 (2) Defendants' Estimated Exposure of Rest Period Violations

6 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
7 since Defendant enforced rigorous work requirements for Plaintiff and Class Members, Plaintiff and
8 Class Members were often required to work through rest periods. Nevertheless, Defendant never paid
9 a single rest period premium. Consequently, Plaintiff alleged that he is owed rest period premiums for
10 rest period violations that occurred during the Class Period. JCL Dec., ¶ 27.

11 Again, Defendants denied liability and asserted that they maintained legally compliant rest
12 period policies and practices throughout the Class Period. Defendants argued that some evidence of a
13 uniform unlawful policy does not show that Defendants had a *practice* of denying rest breaks. (*See*
14 *Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that "the existence of a uniform
15 unlawful policy does not necessarily mean the employer has liability for violations that can be
16 demonstrated with common proof.")). Moreover, Plaintiff recognizes the evidentiary burdens
17 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
18 Member testimony, making it a riskier claim at class certification and liability stages. Certification
19 likely would have required depositions of Class Members who provided declarations, and Defendants
20 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
21 were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
22 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
23 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
24 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
25 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
26 generate uniform practices."). Accordingly, Plaintiff estimated Defendants' exposure for rest period
27 claims at \$739,368. JCL Dec., ¶ 27.

28 ///

1 (3) Defendants’ Estimated Exposure for Unpaid Wages due to Rounding

2 Additionally, Plaintiff alleged that Defendants failed to pay their employees for all hours worked
3 as a result of its time rounding policy. The Court of Appeal has held that a time-rounding policy is only
4 allowed if it is “neutral, both facially and as applied...because its net effect is to permit employers to
5 efficiently calculate hours worked **without imposing any burden on employees.**” (*See’s Candy Shops,*
6 *Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 903 (“*See’s Candy Shops*”).) More specifically,
7 “an employer is entitled to use [a rounding policy] if the rounding policy is fair and neutral on its face
8 and ‘it is used in such a manner that **will not result, over a period of time, in failure to compensate**
9 **the employees properly for all the time they have actually worked.**” (*Id.* at p. 907 (citing 29 C.F.R.
10 § 785.48; DLSE Manual, §§ 47.1, 47.2); see also *AHMC Healthcare, Inc. v. Superior Court* (2018) 24
11 Cal.App.5th 1014, 1028.) “[A]n employer’s rounding practices comply with [the DOL rounding
12 regulation] if the employer applies a consistent rounding policy that, on average, favors neither
13 overpayment nor underpayment.” (*Id.* at p. 901 (citing *Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832
14 F.Supp.2d 1122, 1126).) Specifically, Plaintiff asserted that Defendant’s time rounding policy was not
15 neutral and instead resulted in more Class Members being underpaid rather than overpaid. Defendant
16 vigorously denied liability for this claim. Defendant argued that all Class Members were properly paid
17 minimum and overtime compensation for all hours worked and that rounding, if any, was neutral and
18 did not result in Class Members being underpaid. In total, Class Counsel estimated Defendants’
19 exposure for this claim at \$76,241. JCL Dec., ¶ 28.

20 (4) Exposure for Unreimbursed Business Expenses

21 Plaintiff further alleged that Defendants required the Class Members to regularly use their
22 personal cell phones to receive and respond to work-related communications with supervisors and co-
23 workers regarding project completions, processing of purchase orders, scheduling and completion of
24 job tasks. California law requires “[a]n employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer...” (See *Cal. Labor Code* § 2802(a).)
27 Class Counsel estimated Defendants’ exposure for this claim at \$120,000. Defendants deny they owe
28 any unpaid reimbursements to Class Members. JCL Dec., ¶ 29.

1 (5) Defendants’ Estimated Exposure for Miscalculation of Regular Rate of Pay

2 Plaintiff also alleged that Defendants failed to calculate certain non-discretionary compensation
3 into the regular rate of pay for purposes of paying overtime wages and redeemed sick pay. Based on
4 the review of the Class Members’ time and payroll data, BCG estimated Defendants underpaid the
5 Class Members approximately \$55,348. Defendants vigorously denied liability and asserted that
6 employees were paid all wages owing and that all incentive compensation was either properly
7 calculated into the regular rate of pay or properly excluded as discretionary compensation. JCL Dec., ¶
8 30.

9 (6) Defendants’ Estimated Exposure for Derivative Wage Statement Violations

10 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage
11 statements. Specifically, Plaintiff alleges that as a result of Defendants’ failure to provide meal and rest
12 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
13 derivative wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88
14 Cal.App.5th 927 (concluding that meal premiums are “wages” entitling employees to derivative wage
15 statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage
16 statements, Plaintiff could not establish the injury requirement on a class-wide basis. Class Counsel
17 estimated that Defendants’ exposure for this claim at \$398,400 in penalties. JCL Dec., ¶ 31.

18 (7) Defendants’ Estimated Exposure for Waiting Time Penalties

19 Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative liability for
20 waiting time penalties. Although these *penalties* represented one of Defendants’ largest dollar amount
21 of exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendants argued that Plaintiff could
22 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
23 Notwithstanding the uncertain nature of the claims, Class Counsel’s estimated Defendants’ exposure
24 for this claim at \$926,074. JCL Dec., ¶ 32.

25 (8) Defendants’ PAGA Exposure

26 Class Counsel’s damage model also estimated Defendants’ exposure for PAGA Settlement. At
27 the time of mediation, Plaintiff estimated Defendants’ PAGA exposure to be \$1,155,100 if successful at
28 trial. JCL Dec., ¶ 33. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and

1 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a
2 good faith amount” for PAGA Settlement and “there is no indication that this amount was the result of
3 self-interest at the expense of class members,” such amounts are generally considered reasonable.
4 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
5 Courts routinely approve of amounts for PAGA Settlement in the range of zero to two percent of the
6 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
7 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
8 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
9 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
10 in the range of zero to two percent of the total settlement).

11 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$40,000 which is
12 16.25% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
13 Settlement. Seventy-Five percent (75%) of the PAGA Settlement (\$30,000.00) will be paid to the
14 LWDA (“LWDA PAGA Settlement”) with the remaining twenty-five percent (25%) of the PAGA
15 Settlement (\$10,000.00) will be distributed to the Aggrieved Employees, which is within the range of
16 PAGA Settlement approved by courts and should be approved. JCL Dec., ¶ 34.

17 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
18 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
19 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
20 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
21 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
22 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
23 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
24 6, 2016) (PAGA penalties denied after trial).

25 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
26 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
27 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
28 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of pay periods (approximately 4,569) by \$5 results in a total potential liability of \$22,845. JCL Dec., ¶ 35.

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.

B. Inherent Risks of Continued Litigation Support Preliminary Approval.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.'" (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 36.

6 “The Settlement eliminates these and other risks of continued litigation, including the very real
7 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
8 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
9 inherently perilous regardless of the strengths of merits of the claims:

10 [N]othing is assured when litigating against commercial giants with vast
11 litigative resources, particular in such complex litigation as this, which
12 would strain the cognitive capacities of any jury. Defense judgments were
13 hardly beyond the realm of possibility. Accordingly, this factor weighs in
14 favor of preliminary approval.

15 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

16 Finally, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
20 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
21 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
22 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 37. “Avoiding such a trial and the
23 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
24 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
25 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
26 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

27 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$650,000.00 that is
28 approximately 23% of Defendants’ *class-wide* liability exposure for damages and statutory penalties,

1 and approximately 16.36% of Defendants' maximum class wide liability exposure for damages and
2 penalties, including PAGA Penalties. Given the amount of the settlement here, as compared to potential
3 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
4 reasonable. JCL Dec., ¶ 38.

5 **C. The Proposed Notice Informs the Class about the Case and Settlement**

6 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
7 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
8 information to decide whether they should accept the benefits offered, opt out and pursue their own
9 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
10 App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class
11 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
12 request exclusion." (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
13 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
14 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

15 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
16 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
17 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
18 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
19 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
20 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
21 and scope of the Released Claims. See Class Notice, attached as Exhibit A to the Agreement. The
22 Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class
23 Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 39.

24 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
25 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

(the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”). JCL Dec., ¶ 40.

D. The Court Should Preliminarily Approve the Class Representative Service Award

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 41.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 42.

E. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a Class Counsel Award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the potential value of

1 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
2 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method or the
3 lodestar method is used, fee awards in class actions average around one-third of the recovery.”);
4 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
5 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
6 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
7 with market rates).) Courts have long recognized that when class counsel’s efforts result in the creation
8 of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable
9 right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
10 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
11 reasonable attorney’s fee from the fund as a whole”); *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th
12 480, 488-89 (“Laffitte”) (common fund doctrine “long recognized” under California law). In *Laffitte*,
13 the California Supreme Court upheld the trial court’s award of 33.33% of the settlement amount of \$19
14 million with a 2.13 multiplier and affirmed that “empirical studies show the percentage method with a
15 lodestar cross-check is the most prevalent form of fee method in practice.” *Id.* at 497.

16 Here, Class Counsel requests attorneys’ fees in the amount of \$216,666.67, representing one-
17 third of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in
18 similar wage and hour class actions that Class Counsel has received in California Superior Courts, over
19 the past five years. Moreover, the requested one-third attorneys’ fee award is in the middle of
20 historically recognized range of attorneys’ fees awarded in common fund class action settlements. JCL
21 Dec., ¶ 43. The Attorneys’ Fees request should be awarded based upon the Gross Settlement Amount
22 in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further explained
23 below, the reasonableness of the requested \$216,666.67 Attorneys’ Fees award is further supported by
24 the lodestar cross-check. JCL Dec., ¶ 43.

25 Class Counsel’s lodestar to date is \$148,747, **exclusive of costs**, with significant work remaining.
26 JCL Dec., ¶¶ 44-46; Zakay Dec., ¶ 4. Thus, Class Counsel’s fee request at this time is equal to Class
27 Counsel’s lodestar with a 1.45 multiplier – well below the 2.13 multiplier approved in *Laffitte* –and is
28 well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*,

2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Further, as noted above, the one-third fee request is in the middle of comparable awards for common fund cases, which establishes the requested award as reasonable. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte*.

Regarding costs, the appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded litigation costs for consultants, online legal research, copying, postage, long distance charges, travel expenses, filing fees, mediation fees and investigation fees). Collectively, Class Counsel expended \$9,962.04 prosecuting this action, with additional costs remaining. JCL Dec. ¶ 48; Zakay Dec., ¶¶ 7-8. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of the litigation and, thus, should be reimbursed. JCL Dec. ¶ 49; Zakay Dec ¶ 8.

In light of the above, Class Counsel respectfully requests this Court approve a Class Counsel Award in the amount of \$241,666.67 comprised of \$216,666.67 for attorneys' fees and up to \$25,000.00 for reimbursable litigation costs. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 50.

///

1 **F. Provisional Certification for Settlement Purposes Is Appropriate**

2 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
3 of the Class is appropriate. JCL Dec., ¶ 51.

4 a. The Standard for Class Certification

5 Class actions are statutorily authorized “when the question is one of common or general interest,
6 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
7 court” (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332“. Class
8 certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined
9 community of interest, and (3) that certification will provide substantial benefits to litigants and the
10 courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest
11 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
12 representatives with claims or defenses typical of the class; and (3) class representatives who can
13 adequately represent the class.” (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.) Class treatment
14 is appropriate even if class members at some point may be required to make an individual showing as
15 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
16 *Sav-On*, 34 Cal.4th at 333.)

17 i. Numerosity and Ascertainability

18 “Ascertainability is achieved by defining the class in terms of objective characteristics and
19 common transactional facts making the ultimate identification of class members possible when
20 that identification becomes necessary. While often it is said that class members are ascertainable
21 where they may be readily identified without unreasonable expense or time by reference to official
22 records, that statement must be considered in light of the purpose of the ascertainability
23 requirement. Ascertainability is required in order to give notice to putative class members as to
24 whom the judgment in the action will be res judicata.” (*Nicodemus v. Saint Francis Memorial*
25 *Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

26 Here, plaintiff seeks to certify a class consisting of all non-exempt employees of
27 Defendant who worked for Defendant from April 11, 2018 through and included December 2,
28 2022. Plaintiff estimates that the Class has 278 members. Therefore, the Class is sufficiently

1 numerous to warrant certification. Moreover, the class is readily ascertainable by reference to
2 Defendant's payroll records and other personnel information. Therefore, the proposed class is
3 sufficiently numerous and ascertainable to be certified for the purpose of settlement. JCL Dec., ¶
4 52.

5 ii. Community of Interest

6 "[T]he 'community of interest requirement embodies three factors: (1) predominant
7 common questions of law or fact; (2) class representatives with claims or defenses typical of the
8 class; and (3) class representatives who can adequately represent the class.'" (Brinker Restaurant
9 Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021, internal citations omitted.) "The focus of
10 the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances
11 are markedly different or whether the legal theory upon which the claims are based differ from
12 that upon which the claims of the other class members will be based." (Classen v. Weller (1983)
13 145 Cal. App. 3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class
14 representative's counsel and the existence of conflicts between the representative and other class
15 members." (Caro v. Procter & Gamble Co. (1993) 18 Cal. App. 4th 644, 669.)

16 Here, there are common questions of law and fact. The statutes relating to each of
17 Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually,
18 Defendants' policies and practices apply class-wide and Defendant's liability can be determined
19 by facts common to all members of the class. Plaintiff's wage and hour claims are typical of the
20 proposed Settlement Class because they arise from the same factual basis and are based on the
21 same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are
22 entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured
23 by the same company-wide practices to which the proposed Class Members were subject to and
24 seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests
25 of the Class Member by initiating this litigation, undertaking extensive class discovery, and
26 evaluating the proposed settlement to assure that it is fair. Accordingly, Plaintiff will be able to
27 adequately represent the class, and does not have any conflicts that would make him unable to
28 represent the class. JCL Dec., ¶ 53.

1 Additionally, Plaintiff is represented by competent Class Counsel who have extensive
2 experience in litigating wage and hour class action cases. Class Counsel successfully briefed,
3 argued, certified, and gained state court settlement approval of the same class-wide causes of
4 action that are at issue in this case. Class Counsel's wage and hour class action experience
5 establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 55-58,
6 Declaration of Shani Zakay, ¶ 3. Accordingly, the community of interest requirement has been
7 met.

8 iii. Superiority of Class Certification

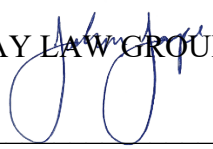
9 Certifying the class would be superior to any other available means of resolving the
10 disputes between the Parties. Absent class certification, the employees would have to litigate their
11 claims individually, which would result in wasted time and resources relitigating the same issues
12 and presenting the same testimony and evidence. Moreover, given the size and amount of each
13 individual claim, the Class Members likely have little incentive to litigate their claims on an
14 individual basis because the out-of-pocket expense and personal commitment necessary to litigate
15 each claim outweighs any potential recovery. JCL Dec., ¶ 54. Class certification will allow the
16 employees' claims to be resolved in a relatively efficient and fair manner. (*Sav-On Drugs Stores,*
17 *Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) Also, class certification is frequently granted
18 in employee wage and hour claims, as class litigation eliminates the possibility of repetitious
19 litigation and provides small claimants with a method of obtaining redress for claims which would
20 otherwise be too small to warrant individual litigation. *Id.*

21 IV. CONCLUSION

22 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
23 presented the materials and information necessary for preliminary approval, the Parties request that
24 the Court preliminarily approve the settlement.

25 Dated: September 21, 2023

ZAKAY LAW GROUP, APLC

26 By: 
27 Jaclyn M. Joyce
28 Attorney for Plaintiff