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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DANTE HENDERSON, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

BIZON GROUP, INC. a California corporation;
and DOES 1 through 50, Inclusive;

Defendants.

Case No. HG21115170

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

Date: December 15, 2023
Time: 9:00 a.m.

Judge: Hon. Evelio Grillo
Dept.: 21
Reservation ID: 780156766364

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	4
	C. The Parties Settled at Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiffs' Claims	6
	1. The Composition of the Participating Class Members	6
	2. The Settlement Consideration	6
	3. The Funding Date	7
	4. Formula for Calculating Individual Class Payments	7
	5. Release by Participating Class Members	8
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
III.	ARGUMENT	8
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	8
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	9
	2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the	

1	Settlement's Reasonableness	10
2	3. The Settlement Falls Within the Recognized Range of Reasonableness	10
3	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	11
4	(1) Estimated Damages for Meal Period Violations	12
5	(2) Defendant's Estimated Exposure of Rest Period Violations	12
6	(3) Defendant's Estimated Exposure for Unpaid Wages	13
7	(4) Defendant's Estimated Exposure for Wage Statement Violation	13
8	(5) Defendant's Estimated Exposure for Waiting Time Penalties	14
9	(6) Defendant's PAGA Exposure	14
10	b. Inherent Risks of Continued Litigation Support Preliminary Approval	15
11	B. The Proposed Notice Informs the Class about the Case and Settlement	17
12	C. The Court Should Preliminarily Approve the Service Award	18
13	D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs	19
14	E. Provisional Certification for Settlement Purposes is Appropriate	20
15	1. The Standard for Class Certification	20

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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined
Community of Interest Among the Settlement Class Members20

IV. CONCLUSION22

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TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	9
5	<i>Apple Computer, Inc. Derivative Litig.</i>	
6	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	9
7	<i>A.S.A Cal Ltd.</i>	
8	(2009) 176 Cal.App.4th 1333, 1341.....	16
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	16, 20
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	16
13	<i>Bufile v. Dollar Financial Group, Inc.</i>	
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15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
17	<i>Carrington v. Starbucks Corp.,</i>	
18	30 Cal. App. 5th 504, 517, 539 (2018).....	15
19	<i>Cart v. Super. Ct.</i>	
20	(1975) 50 Cal.App.3d 960, 972.....	17
21	<i>Cellphone Termination Fee Cases</i>	
22	180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010)	8-9, 18
23	<i>Chance v. Super. Ct.</i>	
24	(1962) 58 Cal.2d 275, 290.....	17
25	<i>Chavez v. Netflix, Inc.</i>	
26	(2008) 162 Cal.App.4th 43, 66 n.11.....	19
27	<i>Clark v. American Residential Services LLC</i>	
28	(2009) 175 Cal.App.4th 785.....	18
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	9
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	9
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	16
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	15
	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	17
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	11
	<i>Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009).....	14
	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14

1	<i>Kass v. Young</i>	
2	(1977) 67 Cal.App.3d 100, 106).....	17
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	(2008) 168 Cal.App.4th 116, 133.....	10
5	<i>Lee v. Dynamex, Inc.</i>	
6	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	20
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	15, 17
9	<i>McKenzie v. Fed. Express Corp.</i>	
10	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	14
11	<i>Michael Milken and Assoc. Sec. Litig.</i>	
12	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	11
13	<i>Misra v. Decision One Mortg. Co.</i>	
14	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	15
15	<i>Moniz v. Adecco USA, Inc.</i>	
16	(2021) 72 Cal.App.5th 56, 77.....	14
17	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
18	(2010) 186 Cal.App.4th 399, 409.....	11
19	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
20	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	11, 17
21	<i>Newman v. Stein</i>	
22	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
23	<i>Nordstrom Com. Cases</i>	
24	186 Cal.App.4th 576, 589 (2010).....	15
25	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
26	(1994) 27 Cal.App.4th 1085, 1089-90.....	8
27	<i>Nvidia Derivs. Litig.</i>	
28	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	16
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	16
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	8, 11
	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	12-13
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	16
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	18
	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 319, 326, 333.....	20
	<i>Stambaugh v. Super. Ct</i>	
	(1976) 62 Cal.App.3d 231, 236.....	9
	<i>State of Cal. v. Levi Strauss & Co.</i>	
	(1986) 41 Cal.3d 460, 482, 485.....	9, 18

///

1	<i>Taco Bell Wage & Hour Actions</i>	
2	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	15
3	<i>Tien v. Tenet Healthcare Corp.</i>	
4	(2012) 209 Cal.App.4th 1077, 1088.....	16
5	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
6	(1975) 48 Cal. App. 3d 143, 151-52.....	17
7	<i>Villa v. United Site Servs. of California, Inc.</i>	
8	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	13

STATUTES, RULES AND CODES

9	<i>Cal.Civ.Proc.</i> Code § 382.....	20
10	<i>Cal. Lab.</i> Code § 2698.....	3, 4
11	<i>Bus. and Prof. Code</i> § 17200.....	4
12	<i>Cal. Lab.</i> Code § 1194,	4
13	<i>Cal. Lab.</i> Code § 1197.....	4
14	<i>Cal. Lab.</i> Code § 1197.1	4
15	<i>Cal. Lab.</i> Code § 510	4
16	<i>Cal. Lab.</i> Code § 226.7	4
17	<i>Cal. Lab.</i> Code § 512.....	4
18	<i>Cal. Lab.</i> Code § 226.....	4, 14
19	<i>Cal. Lab.</i> Code § 226.2.....	4
20	<i>Cal. Lab.</i> Code § 2802.....	4
21	<i>Cal. Lab.</i> Code § 201.....	4
22	<i>Cal. Lab.</i> Code § 202.....	4
23	<i>Cal. Lab.</i> Code § 203.....	4, 14
24	Cal. Rules of Court, rule 3.769(c)-(g).....	8
25	Cal. Rules of Court, rule 3.776(e)-(f).....	18

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I. INTRODUCTION

Plaintiff Dante Henderson (“Plaintiff”) seeks preliminary approval of the Joint Stipulation Regarding Class Action and Representative Action Settlement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 213 Class Members and 170 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” means all persons currently or formerly employed by defendant BIZON GROUP, INC. (“Defendant”) either directly or through any subsidiary, staffing agency or professional employer organization, as non-exempt, hourly-paid employees, at any time during the period of October 7, 2017 through October 7, 2023 (the “Class Period”) in the State of California. Agreement at §1(D)-(E).

a. The “**Participating Class Members**” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion. Agreement at § 1(T).

2. The “**Class Size**” is comprised of 213 individuals who collectively worked approximately 13,375 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 17.

3. The “**Aggrieved Employees**” and “**PAGA Period**” Class Members working for Defendant, as non-exempt, hourly-paid employees from July 29, 2020 through October 7, 2023 (the “PAGA Period”) in the State of California. Agreement at §§ 1(B), (S). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 9(C). At the time of mediation, there were approximately 170 Aggrieved Employees during the PAGA Period.

4. The “**Gross Settlement Amount**” is Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00). Agreement at § 1(K). The Gross Settlement Amount is non-reversionary and includes the following:

a. An “**Service Award**” of not more than \$10,000.00 to Plaintiff Henderson in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ 1(AA); 7(D).

¹ The Agreement is attached as Ex “1” 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.

1 b. **“Attorneys’ Fees and Litigation Costs”** in the amount not of not more than
2 \$159,750.00, comprised of thirty-five percent (35%) of the Gross Settlement Amount for attorneys’
3 fees, currently estimated to be \$134,750.00 *and* litigation expenses not to exceed \$25,000.00, to be
4 paid to Class Counsel. Agreement at § 12;

5 c. A **“PAGA Settlement Amount”** of \$40,000 shall be allocated from the Gross
6 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act
7 of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement
8 to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator
9 shall distribute 25% of the PAGA Amount to Aggrieved Employees on a *pro rata* basis based upon
10 their respective Workweeks worked as Aggrieved Employees during the PAGA Period (“PAGA
11 Payment”). Agreement at § 15.

12 d. **“Settlement Administration Costs”** not to exceed \$6,500 payable to the
13 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class
14 Notice and Settlement Administration Costs. Agreement at §§ 1(BB), (CC).

15 4. The **“Net Settlement Fund”** of approximately \$168,750.00 (Gross Settlement Amount
16 less the requested Attorneys’ Fees and Litigation Costs, Service Award to Plaintiff, PAGA Payment,
17 and Settlement Administration Costs) will be allocated to all Participating Class Members on a pro-
18 rata basis according to the number of Workweeks each Participating Class Member worked during the
19 Class Period. Agreement at §§ 1(P); 10. The entire Net Settlement Amount will be paid to all
20 Participating Class Members who do not opt out of the Settlement resulting in an average Individual
21 Class Payment of **\$792.25**. JCL Dec., ¶ 6.

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

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant is in the business of manufacturing, marketing, and distributing specialty metal
9 containers. Plaintiff Henderson was employed by Defendant from August of 2020 to approximately
10 February 12, 2021, as a non-exempt employee. Declaration of Dante Henderson at ¶ 4. Plaintiff
11 alleged that he was denied legally compliant meal and rest periods and minimum wages and overtime
12 compensation during his employment, was not furnished with compliant wage statements, and was
13 not timely paid all wages due upon his separation of employment. Throughout his employment,
14 Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 8.

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

22 On July 29, 2021, Plaintiff served Defendant and the Labor and Workforce Development Agency
23 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts
24 and theories supporting Defendant's alleged violations of various provisions of the California Labor
25 Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue
26 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et*
27 *seq* ("PAGA"). JCL Dec., ¶ 10.

28 On October 7, 2021, Plaintiff filed a class action complaint in the Alameda County Superior

1 Court, Case No. HG21115170 (“Action”). The Action alleged ten causes of action against Defendant
2 for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay
3 Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*, (3) Failure to Pay Minimum Wages in
4 violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required Meal Periods in
5 violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide
6 Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
7 Order; (6) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802; (7)
8 Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (8) Failure
9 to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (9) Failure to Provide
10 Reporting Time Pay in violation of Wage Order No. 5; and (10) Violation of the Private Attorneys
11 General Act [Labor Code §§ 2698, *et. seq.*] (“PAGA”). JCL Dec., ¶ 11.

12 The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to
13 informally produce additional documents and data points subject to the mediation privilege, including
14 but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*,
15 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
16 Defendant’s time and payroll data. JCL Dec., ¶ 12.

17 On June 5, 2023, the Parties participated in a full day mediation with wage and hour class and
18 PAGA mediator Michael Loeb, Esq. The mediation concluded with a settlement, which was
19 subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties
20 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.
21 JCL Dec., ¶ 13.

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

23 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s
24 allegations. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As
25 part of the interview process, Plaintiff produced documents related to his employment, including time
26 and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s
27 complaints justified further inquiry. JCL Dec., ¶ 14.

28 Class Counsel subsequently requested Plaintiff’s employee file from Defendant. In response,

1 Defendant produced dozens of documents, including but not limited, copies of Plaintiff's hiring
2 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and
3 determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to, among
4 other things, provide accurate wage statements and to provide compliant meal and rest periods. JCL
5 Dec., ¶ 15.

6 To prepare for mediation, Defendant produced the time and payroll records for the Class
7 Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the
8 Class Members, and copies of applicable handbooks, policies, and agreements. JCL Dec., ¶ 16.

9 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
10 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
11 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
12 credentialed and experienced experts in their fields and have provided their expertise on thousands of
13 cases. JCL Dec., ¶ 17.

14 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
15 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
16 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
17 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
18 and rest periods. JCL Dec., ¶ 18.

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

assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 19.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its 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 Defendant, 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., ¶ 20.

C. The Parties Settled at Mediation

On June 5, 2023, the Parties conducted a full day of mediation with Michael Loeb, Esq. Mediator Loeb 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 Mediator Loeb'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. 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., ¶ 21.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all persons currently or formerly employed by Defendant, either directly or through any subsidiary, staffing agency or professional employer organization, as non-exempt, hourly-paid employees, at any time from October 7, 2017 through October 7, 2023 in the State of California. Agreement at § 1(D). The Participating Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § 1(T). At the time of mediation, Defendant estimated that the Class was comprised of 213 individuals who worked approximately 11,187 workweeks during the Class Period. Agreement at § 17.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$385,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments

1 to the Participating Class Members; (2) a Service Award of not more than \$10,000.00 to Plaintiff for
2 his services on behalf of the Class and, equally important, for a general release of claims; (3) the PAGA
3 Settlement Payment in the amount of \$40,000; (4) Settlement Administration Costs estimated at
4 \$6,500; and (5) Attorneys' Fees and Litigation Costs in the amount of \$159,750.00, comprised of
5 attorneys' fees equal to 35% of the Gross Settlement Amount estimated to be \$134,750.00 and an
6 estimated \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § 1(K).

7 Subject to the Court approving the Service Award, Attorneys' Fees and Litigation Costs, PAGA
8 Settlement Payment, and the Settlement Administration Costs, the Net Settlement Fund will be
9 distributed to each Participating Class Member. Agreement at § 1(Q). There is no reversion to
10 Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement
11 at § 1(M).

12 3. The Funding Date

13 Defendant shall fund the settlement on September 30, 2024, or within (7) calendar days of the
14 Final Approval Date, whichever occurs later. Agreement at § 11(B).

15 4. Formula for Calculating Individual Settlement Payments

16 Participating Class Members will receive an Individual Settlement Payment. The Individual
17 Settlement Payment will be proportional to the number of Workweeks each Class Member worked for
18 Defendant during the Class Period. The data provided by Defendant to the Settlement Administrator
19 will allow the Settlement Administrator to calculate the number of Workweeks worked by each Class
20 Member during the Class Period. Agreement at § 9(A). Each Class Member's final Individual
21 Settlement Payment for purposes of payment will be calculated by multiplying the Settlement Class
22 Member's Workweeks worked divided by the total Workweeks worked by the Class multiplied by the
23 Net Settlement Amount. Agreement at § 9(C). For purposes of these calculations, a Workweek shall
24 mean the number of weeks that a Settlement Class Member actually worked for Defendant in a non-
25 exempt, hourly-paid position during the Class Period in California, based on hire dates, re-hire dates
26 (as applicable), and termination dates (as applicable). Agreement at § 1(DD). Each Individual
27 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
28 employee payroll taxes, etc.). Agreement at § 14.

Given that there are approximately 213 Settlement Class Members, the average gross recovery is approximately \$792.25 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

¶ 6.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Class Released Claims that accrued during the Class Period. Agreement at § 7(A).

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

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the PAGA Released Claims that accrued during the PAGA Period. Agreement at § 7(B).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$385,000.00 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;” and (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 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

The Parties participated in mediation the highly respected mediator Michale Loeb, Esq. Mediator Loeb managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations,

1 the Parties reached an agreement and the mediation session concluded with a settlement. JCL Dec., ¶
2 22.

3 The Parties then engaged in negotiations regarding the written terms of the Settlement. The
4 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
5 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

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

8 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
9 the factual and legal issues in dispute. In addition to informal discovery, document review, data
10 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
11 two cases are identical, this research provided Class Counsel with a marker to inform settlement
12 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
13 Counsel to realistically assess the value of Plaintiff’s claims and intelligently engage defense counsel
14 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
15 ¶ 24.

16 Class Counsel only agreed to enter the Settlement following their thorough investigation and
17 evaluation of Plaintiff’s claims. Based on this investigation of the facts, applicable law, and marketplace
18 for similar settlements, and considering the risk of significant delay, uncertainty associated with
19 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
20 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
21 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 25.

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

23 The Gross Settlement Amount of \$385,000.00 is within the range of reasonableness. To
24 determine whether a settlement is fair and reasonable, the court should “consider enough information
25 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
26 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
27 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
28 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the

1 ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
2 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
3 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
4 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
5 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
6 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
7 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
8 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
9 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

11 The Gross Settlement Amount of \$385,000.00 is fair and reasonable considering the nature and
12 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
13 mediation, Class Counsel retained Berger Consulting Group to develop economic damage models
14 measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation.
15 The various models were informed by Class Counsel’s investigation, including the analysis of a
16 significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for
17 *class claims* (excluding PAGA penalties) ranged between \$884,154.80 (“Realistic Damages”) and
18 \$2,704,219.00 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty
19 regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between
20 43.5% (“Realistic Damages”) and 14.2% (“Maximum Damages”) of Defendant’s class-wide exposure
21 – well within the recognized range of reasonableness. The following summarizes Defendant’s liability
22 exposure. JCL Dec., ¶ 26.

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 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
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 (1) Estimated Damages for Meal Period Violations

2 Plaintiff's primary claim in this Action alleges that Defendant failed to provide compliant meal
3 periods. Plaintiff's expert made the following notable findings with respect to Defendant's meal break
4 violations: nearly half (49.7%) of all shifts analyzed included a meal break violation. This includes
5 36.1% of shifts where the first meal break was taken after the end of the fifth hour of work. Plaintiff's
6 expert also found that 100% of all shifts between 10 and 12 hours did not include a second recorded
7 meal period. Defendant raised a number of defenses, including that in shifts exceeding 5 hours but less
8 than 6 hours, employees voluntarily waived their meal periods, and that in shifts exceeding 10 hours
9 but less than 12 hours, employees voluntarily waived their second meal periods. Defendants also
10 argued, among other things, that they provided all their employees with the opportunity to take
11 compliant meal periods, and that they maintained facially compliant meal period policies. Thus,
12 Defendant argued that any missed meal periods were voluntarily and did not trigger liability for
13 premium payments. Defendant further argued that any claimed violations required a highly
14 individualized inquiry not suitable to class treatment. JCL Dec., ¶ 27.

15 Taking Defendant's defenses into account, Plaintiff applied a 50% discount to this claim.
16 Plaintiff estimated that the damages for this claim ranged from approximately \$325,428 dollars to
17 approximately \$650,856 dollars. JCL Dec., ¶ 27.

18 (2) Defendant's Estimated Exposure of Rest Period Violations

19 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
20 Plaintiff alleged that Class Members were often not afforded the opportunity to take a complaint rest
21 period due to their rigorous work load requirements and understaffing and that they were required on
22 premises during rest breaks. Defendants denied liability and asserted that it maintained legally
23 compliant rest period practices throughout the Class Period. Moreover, Plaintiff recognized the
24 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,
25 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
26 stages. Certification likely would have required depositions of Class Members who provided
27 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
28 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.

Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Taking these defenses into account, Plaintiff’s damages model applied a discount to Plaintiff’s rest break claim to mirror Plaintiff’s meal break claim. Plaintiff estimated Defendants’ exposure for this claim to be between approximately \$325,428 dollars to approximately \$650,856 dollars. JCL Dec., ¶ 28.

(3) Defendant’s Estimated Exposure for Unpaid Wages

Plaintiff also alleged that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserted that Class Members were required to work “off-the-clock” because 1) Class Members had to wait in line to clock in for their shifts; and 2) Class Members had to undergo a COVID-19 screening prior to clocking in; 3) Class Members donned and doffed safety equipment off the clock. Defendant vigorously denied liability for this claim. Defendant asserted that it had in place a policy requiring its employees to accurately record all their time worked daily and argued that such policies and procedures required its employees not to work while off the clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because individualized issues predominated. For example, even assuming Plaintiff performed work while off-the-clock, which Defendant disputes, the time spent would vary drastically from class member to class member that it could not be established by common proof. Plaintiff recognized the risks and uncertainties of certifying this claim. Plaintiff estimated Defendant’s exposure for this claim ranged between \$43,675 dollars and \$54,594 dollars. JCL Dec., ¶ 29.

(4) Defendant’s Estimated Exposure for Wage Statement Violations

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that Defendant’s wage statements did not properly identify Bizon Group, Inc. as the legal entity that is the employer, and instead listed an unregistered d.b.a. for Bizon Group, Inc. Defendant maintains that its wage statements are compliant, and further argued that Plaintiff cannot show that Class Members suffered an “injury” because of wage statement violations,

1 as required by Labor Code section 226. Taking Defendant's defenses into account, Plaintiff discounted
2 this claim 50%. Plaintiff estimated that Defendant's exposure on this claim ranged between \$91,387.40
3 dollars and \$365,550.00 dollars. JCL Dec., ¶ 30.

4 (5) Defendant's Estimated Exposure for Waiting Time Penalties

5 Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for
6 waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
7 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could
8 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
9 Notwithstanding the uncertain nature of the claims, Class Counsel's Realistic Model discounted the
10 waiting time penalty claim by 90% and estimated Defendant's exposure for these claims ranged
11 between \$98,236.30 dollars and \$982,363.00 dollars. JCL Dec., ¶ 31.

12 (6) Defendant's PAGA Exposure

13 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
14 the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between \$38,950.00
15 dollars and \$2,254,300.00 dollars. JCL Dec., ¶ 32. The proposed PAGA allocation of the Gross
16 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
17 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication
18 that this amount was the result of self-interest at the expense of class members," such amounts are
19 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
20 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
21 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
22 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
23 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
24 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
25 PAGA claim settlements in the range of zero to two percent of the total settlement).

26 Here, the Parties negotiated a good faith PAGA Settlement Payment in the amount of \$40,000.00
27 which is 10.4% of the Gross Settlement Amount. This amount falls well within the range of PAGA
28 penalties approved by courts and should be approved. The LWDA Payment represents seventy-five

1 percent (75%) of the PAGA penalties (\$30,000.00) and will be paid to the LWDA. The remaining
2 twenty-five percent (25%) (\$10,000.00) represents the amount that will be distributed to the Aggrieved
3 Employees. JCL Dec., ¶ 33.

4 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
5 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
6 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
7 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
8 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
9 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
10 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
11 6, 2016) (PAGA penalties denied after trial).

12 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
13 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
14 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
15 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
16 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
17 penalties were reduced by 90%.

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

20 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

26 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
27 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
28 *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.”); *a.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 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 34.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
3 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
4 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
5 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 35. “Avoiding such a trial and the
6 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$385,000.00 that is
11 roughly between approximately 43.5% of Defendant’s *class-wide* liability exposure for damages, and
12 approximately 14.2% of Defendant’s maximum class-wide liability exposure for damages and statutory
13 penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset
14 by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶
15 36.

16 **B. The Proposed Notice Informs the Class about the Case and Settlement**

17 The Settlement Class Members are entitled to the best practical notice under the circumstances.
18 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
19 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
20 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
21 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
22 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
23 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
24 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
25 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

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.

1 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
2 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
3 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
4 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
5 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
6 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
7 and scope of the Released Claims. Agreement at § 1.10. The Parties negotiated this method to ensure
8 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
9 administration of the Settlement. JCL Dec., ¶ 37.

10 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
11 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
12 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and
13 of the options open to dissenting class members.")) JCL Dec., ¶ 38.

14 **C. The Court Should Preliminarily Approve the Service Award**

15 Service Awards "are fairly typical in class action cases." (*Cellphone Termination Fee Cases*
16 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
17 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
19 UCLA L. Rev. 1303 (2006).) Service Awards "are intended to compensate class representatives for
20 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Service Award of \$10,000.00 to Plaintiff. The Service Award is
27 fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel
28 with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and

1 the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are
2 fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendant
3 a general release of all claims arising out of their employment. JCL Dec., ¶ 39.

4 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
5 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
6 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 40.

7 **D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs**

8 The purpose of a payment of Attorneys' Fees and Litigation Costs in class action litigation is to
9 reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
10 positive result for the class. California courts routinely award attorneys' fees equaling one-third or more
11 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
12 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the
13 percentage method or the lodestar method is used, fee awards in class actions average around one-third
14 of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
15 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
16 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
17 one-third fee is consistent with market rates).)

18 Class Counsel took this matter on a contingency fee basis and invested significant time and
19 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
20 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
21 Members. Considering the positive outcome for the Class Members, and in light of the supporting
22 authority, the proposed Attorneys' Fees and Litigation Costs are fair and reasonable. JCL Dec., ¶ 41.

23 Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once
24 preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above showing
25 is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 42.

26
27
28 ///

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

2 For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that
3 provisional certification of the Class is appropriate. JCL Dec., ¶ 43.

4 1. 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 is appropriate when there is an “ascertainable class and a well-defined community of
9 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
10 is appropriate even if class members at some point may be required to make an individual showing as
11 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
12 *Sav-On*, 34 Cal.4th at 333.)

13 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined
14 Community of Interest Among the Settlement Class Members.

15 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
16 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
17 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where
18 they may be readily identified without unreasonable expense or time by reference to official records.
19 (*Id.*)

20 The community of interest requirement embodies three factors: (1) predominant common
21 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
22 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

23 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
24 question” the element of predominance presents is whether “the issues which may be jointly tried, when
25 compared with those requiring separate adjudication, are so numerous or substantial that the
26 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
27 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

28 Because all Class Members are Defendant’s current and former employees, the class is readily

ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 44.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. JCL Dec., ¶ 45.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff allege that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 46.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 48-54, Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 47.

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Dated: November 20, 2023

By: Jaclyn Joyce
Jaclyn Joyce, Esq.