

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

Attorneys for Plaintiff ALISSA WHITNEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALISSA WHITNEY, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

PLAINTIFF,

vs.

FIVE J'S FAMILY ENTERPRISES L.P., a
California Limited Partnership, and Does 1
through 50, Inclusive,

DEFENDANTS.

Case No. CIVSB2129063

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

Date: June 7, 2023

Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

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 Mediaion	6
	D. The Proposed Settlement Fully Resolves Plaintiff's Claims	7
	1. The Composition of the Participating Class Members	7
	2. The Settlement Consideration	7
	3. The Funding Date	7
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Participating Class Members	8
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	10

///

1	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	11
2	.....	11
3	3. The Settlement Falls Within the Recognized Range of Reasonableness	11
4	.....	11
5	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	12
6	.....	12
7	(1) Exposure for Failure to Pay for All Hours Worked	13
8	.....	13
9	(2) Exposure for Meal Period Violations	13
10	.....	13
11	(3) Exposure for Rest Period Violations	14
12	.....	14
13	(4) Exposure for Unreimbursed Business Expenses	14
14	.....	14
15	(5) Exposure for Wage Statement Violations and Waiting Time Penalties	15
16	.....	15
17	(6) Defendant’s PAGA Exposure	15
18	.....	15
19	b. Inherent Risks of Continued Litigation Support Preliminary Approval	17
20	.....	17
21	B. The Proposed Notice Informs the Class about the Case and Settlement	19
22	.....	19
23	C. The Court Should Preliminary Approve the Class Representative Service Payment	20
24	.....	20
25	D. The Court Should Preliminarily Approve the Attorneys’ Fees and Costs	21
26	.....	21
27	E. Provisional Certification for Settlement Purposes Is Appropriate	21
28	.....	21
	1. The Standard for Class Certification	21
	.....	21

///

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 Participating Class Members22

IV. CONCLUSION23

///

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.....	10
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	18
7	<i>Bufile v. Dollar Financial Group, Inc.</i>	
8	(2008) 162 Cal.App.4th 1193, 1207.....	22
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	18, 22
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	18
13	<i>Cacho v. Eurostar, Inc.</i>	
14	(2019) 43 Cal.App.5th 885.....	17
15	<i>Campbell v. Best Buy Stores, L.P.</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	18
17	<i>Cardenas v. McLane Foodservice, Inc.</i>	
18	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	16
19	<i>Carrington v. Starbucks Corp.</i>	
20	(2018) 30 Cal.App.5th 504.....	17
21	<i>Cart v. Super. Ct.</i>	
22	(1975) 50 Cal.App.3d 960, 972.....	19
23	<i>Cellphone Termination Fee Cases</i>	
24	180 Cal.App.4th 1110, 1118, 1380, 1389, 1393 (2010).....	9-10, 20
25	<i>Chance v. Super. Ct.</i>	
26	(1962) 58 Cal.2d 275, 290.....	19
27	<i>Chavez v. Netflix, Inc.</i>	
28	(2008) 162 Cal.App.4th 43, 66 n.11	21
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	20
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
	<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.....	17
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	16
	<i>Fontana v. Elrod</i>	
	(7th Cir. 1987) 826 F.2d 729, 732.....	19
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	16
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12

1	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
2	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
3	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	16
4	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	18
5	<i>In re Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
6	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	16
7	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	16
8	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106.....	19
9	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
10	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	21-22
11	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9th Cir. 2021) 999 F.3d 668.....	17
12	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	16
13	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	17
14	<i>Moniz v. Adecco USA, Inc.</i>	
	(2021) 72 Cal.App.5th 56, 77.....	15
15	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	12
16	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	(2023) 88 Cal.App.5th 927.....	15
17	<i>Nat'l Rural Telecomms. Coop v. DirecTV</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 527.....	12, 19
18	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
19	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
20	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	17
21	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
22	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	14
23	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	18
24	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	20
25	<i>Sav-On Drug Stores, Inc.</i>	

1	(2014) 34 Cal.4th 319, 326, 333.....	21-22
2	<i>Stambaugh v. Super. Ct</i>	
3	(1976) 62 Cal.App.3d 231, 236.....	10
4	<i>State v. Levi Strauss & Co.</i>	
5	(1986) 41 Cal.3d 460, 482, 485.....	10, 20
6	<i>Tien v. Tenet Healthcare Corp.</i>	
7	(2012) 209 Cal.App.4th 1077, 1088.....	17
8	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
9	(1975) 48 Cal.App.3d 143, 151-52.....	19
10	<i>Villa v. United Site Servs. of California, Inc.</i>	
11	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	14

RULES, CODES AND STATUTES

12	<i>Cal. Bus. & Prof. Code</i> §§ 17200 et seq.....	4
13	<i>Cal. Code of Civ. Proc.</i> § 382.....	21-22
14	<i>Cal. Code of Regulations</i> Title 8, Section 1 1070(14).....	4, 9
15	<i>Cal. Code of Regulations</i> Title 8, Section 1 1070(14).....	4, 9
16	<i>Cal. Lab. Code</i> § 200.....	9
17	<i>Cal. Lab. Code</i> § 201.....	4
18	<i>Cal. Lab. Code</i> § 201.3.....	9
19	<i>Cal. Lab. Code</i> § 201.5.....	9
20	<i>Cal. Lab. Code</i> § 202.....	4, 9
21	<i>Cal. Lab. Code</i> § 203.....	4, 9, 15
22	<i>Cal. Lab. Code</i> § 204.....	9
23	<i>Cal. Lab. Code</i> § 210.....	9
24	<i>Cal. Lab. Code</i> § 218.5.....	9
25	<i>Cal. Lab. Code</i> § 218.6.....	9
26	<i>Cal. Lab. Code</i> § 226 et seq.....	4, 9, 15
27	<i>Cal. Lab. Code</i> § 226(a).....	15
28	<i>Cal. Lab. Code</i> § 226.2.....	9
29	<i>Cal. Lab. Code</i> § 226.3.....	9
30	<i>Cal. Lab. Code</i> § 226.7.....	4, 9
31	<i>Cal. Lab. Code</i> § 246.....	9
32	<i>Cal. Lab. Code</i> § 510 et seq.....	4, 9
33	<i>Cal. Lab. Code</i> § 512.....	4, 9
34	<i>Cal. Lab. Code</i> § 515.....	9
35	<i>Cal. Lab. Code</i> § 558.....	9
36	<i>Cal. Lab. Code</i> § 1174(d).....	9
37	<i>Cal. Lab. Code</i> § 1174.5.....	9
38	<i>Cal. Lab. Code</i> § 1182.12.....	9
39	<i>Cal. Lab. Code</i> § 1194.....	4, 9
40	<i>Cal. Lab. Code</i> § 1197.....	9
41	<i>Cal. Lab. Code</i> § 1197.1.....	9
42	<i>Cal. Lab. Code</i> § 1197.14.....	9
43	<i>Cal. Lab. Code</i> § 1198 et seq.....	4, 9
44	<i>Cal. Lab. Code</i> § 1198.5.....	9
45	<i>Cal. Lab. Code</i> § 1199.....	9
46	<i>Cal. Lab. Code</i> § 2695 et seq.....	9
47	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	3-4, 9

1	<i>Cal. Lab. Code</i> § 2699.....	9
2	<i>Cal. Lab. Code</i> § 2699.3.....	9
3	<i>Cal. Lab. Code</i> § 2802.....	9
4	<i>Cal. Lab. Code</i> § 2802(a).....	14
5	<i>Cal. Lab. Code</i> § 2804.....	9
6	<i>Rule of Court</i> Rule 3.769(c)-(g).....	9
7	<i>Rule of Court</i> Rule 3.776(e)-(f).....	20
8	<i>Wage Order</i> 4-2001, Section 14.....	9

SECONDARY SOURCES

9	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 11.26, 11.51 (4th ed. 2022) § 1 1:38	9-10, 20
10	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. Rev. 1303 (2006)	20
11	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorneys Fees in Class Action Settlements: An Empirical Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	21
12	Write, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	19

I. INTRODUCTION

Plaintiff ALISSA WHITNEY (“Plaintiff”) seeks preliminary approval of the Class, Collective, and Representative Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 1,293 Class Members and 710 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all of Defendant’s [Five J’s Family Enterprises L.P.] current and former non-exempt employees, employed in California (“Class Members”) during the time period beginning October 12, 2017 up to and including April 7, 2023 (“Class Period”). Agreement at §§ 1.8, 1.11. At the time of mediation there were approximately 1,293 Class Members who worked approximately 47,200 Workweeks during the Class Period.

2. The “**Participating Class Member**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § 1.32.

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all individuals who are or previously were employed as non-exempt employees by Defendant in California during the PAGA Period (“Aggrieved Employee”). Agreement at § 1.2. The “PAGA Period” refers to the time period from August 3, 2020 up to and including April 7, 2023. Agreement at § 1.29. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 8.5.4; 5.1. At the time of mediation there were approximately 710 Aggrieved Employees who worked approximately 8,577 pay periods during the PAGA Period. JCL Dec., ¶ 17.

4. The “**Gross Settlement Amount**” is Nine Hundred and Fifty Thousand Dollars and Zero Cents (\$950,000.00). Agreement at § 1.19. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Payment**” in the amount of \$10,000 to Plaintiff for her services on behalf of the Class Members. Agreement at §§ 1.13, 3.2.1;

b. A payment of “**Attorneys’ Fees and Costs**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$316,666.66 *and*

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.

litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at § 1.3;

c. A payment of “**PAGA Penalties**” in the amount of \$50,000.00 shall be set aside 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 \$37,500.00 representing 75% of the PAGA Penalties to the Labor and Workforce Development Agency (“LWDA PAGA Payment”). The Settlement Administrator shall distribute \$12,500.00 representing 25% of the PAGA Penalties to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at §§ 1.22, 1.24, 1.31; and

d. “**Claims Administration Costs**” not to exceed \$20,000.00 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement at § 1.5.

3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount that remains after accounting for any Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Attorneys’ Fees and Costs, and the Claims Administration Costs. Agreement at §1.25. The Net Settlement Amount is approximately \$528,333.34 which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of approximately **\$408.61**. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 7.

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 Defendant prevailing at trial. JCL Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the

1 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
2 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff
3 respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

4 II. FACTS AND PROCEDURE

5 A. Overview of the Litigation

6 Defendant operates a chain of McDonald's franchised restaurants throughout California,
7 including Twentynine Palms, where Plaintiff worked. This action asserts claims on behalf of all of
8 Defendant's current and former non-exempt employees, employed in California at any time during the
9 Class Period. Plaintiff worked for Defendant as a non-exempt employee in California during 2020.
10 At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally
11 compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
12 Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures
13 contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 9; Declaration of
14 Alissa Whitney ("AW Dec.") at ¶¶ 1-5.

15 Generally, Plaintiff claims that Defendant failed to pay for all time worked, including, time spent
16 undergoing mandatory covid-19 health questionnaires, failed to provide compliant meal and rest
17 periods, failed to reimburse for required business expenses, failed to furnish accurate itemized wage
18 statements, failed to provide suitable seating, and failed to pay all wages upon separation. Defendant
19 forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied
20 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
21 including but not limited to, asserting that it maintained compliant reimbursement policies, maintained
22 facially compliant meal and rest period policies, issued compliant wage statements, and timely paid all
23 wages due upon separation of employment. JCL Dec., ¶ 10.

24 On August 3, 2021, Plaintiff served Defendant and the Labor and Workforce Development
25 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
26 the facts and theories supporting Defendant's alleged violations of various provisions of the California
27 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
28 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections

2698 *et seq.* (“PAGA”). JCL Dec., ¶ 11.

On October 12, 2021, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB2129063 (“Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (3) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (5) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (6) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (7) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203; (8) Failure to Provide Suitable Seating in Violation of Cal. Lab. Code § 1198 and Cal. Code of Regulations, Title 8, section 11070(14); and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] (“Class Claims”). JCL Dec., ¶ 12.

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

On February 7, 2023, the Parties participated in a full day mediation with retired jurist and mediator Hon. Carl J. West (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her wage statements and Defendant’s employee handbook. At the conclusion of the

1 interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. JCL
2 Dec., ¶ 15.

3 Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response,
4 Defendant produced various documents, including but not limited to, copies of Plaintiff's employment
5 agreements, performance evaluations, timekeeping policies, payroll and time records, and separation
6 documents. Class Counsel reviewed and analyzed the documents and determined the documents
7 appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time
8 worked, issue accurate itemized wage statements, and provide compliant meal and rest periods. JCL
9 Dec., ¶ 16.

10 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
11 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
12 documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to
13 the Class Members. In response to Class Counsel's request, Defendant produced time records for the
14 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal
15 premiums paid to the Class Members, average hourly rate for the Class Members, and copies of
16 applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping, and
17 meal and rest period policies. In total, Defendant produced approximately 3,402 pages of time and
18 payroll data for Class Counsel to analyze. JCL Dec., ¶ 17.

19 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
20 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
21 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
22 credentialed and experienced experts in their fields and have provided their expertise on thousands of
23 cases. Stated differently, the BCG is well-qualified to analyze Defendant's time and payroll data. JCL
24 Dec., ¶ 18.

25 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
26 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
27 pay periods, average length of shift and average number of hours worked per week and pay periods
28 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest

1 periods, the amount of missed meal period premiums paid during the Class Period, the amount of
2 unpaid wages due to rounding, the amount of unreimbursed business expenses, and the amount of off-
3 the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 19.

4 In advance of mediation, Class Counsel created several damage models predicated on the BCG
5 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting
6 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
7 during the mediated settlement discussions. JCL Dec., ¶ 20.

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

19 Class Counsel only agreed to enter the Settlement following his thorough investigation and
20 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
21 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
22 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this
23 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
24 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

25 **C. The Parties Settled at Mediation**

26 On February 7, 2023, the Parties conducted a full day of mediation with Hon. Carl J. West
27 (Ret.), a respected jurist and mediator of wage and hour class and representative actions. Judge West
28 helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks

1 to both sides. The Parties made substantial progress with Judge West’s assistance. Namely, the Parties
2 exchanged information regarding their respective claims and defense, including their respective
3 evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of
4 which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair,
5 adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

6 **D. The Proposed Settlement Fully Resolves Plaintiff’s Claims**

7 1. The Composition of the Participating Class Members

8 The proposed Settlement Class consists of all of Defendant’s current and former non-exempt
9 employees, employed in California at any time during the period beginning October 12, 2017 up to and
10 including April 7, 2023, who do not file a timely and valid Request for Exclusion. Agreement at § 4.1.
11 In the data exchanged at the time the Agreement was executed, there were approximately 1,293 Class
12 Members that worked approximately 47,200 workweeks. JCL Dec., ¶ 17.

13 2. The Settlement Consideration

14 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
15 Amount of \$950,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the
16 Settlement Class; (2) a Class Representative Service Payment of \$10,000.00 to Plaintiff for her services
17 on behalf of the Settlement Class; (3) PAGA Penalties in the amount of \$50,000.00; (4) Claims
18 Administration Costs estimated at \$20,000.00; (5) Attorneys’ Fees and Costs in the amount of
19 \$341,666.66, comprised of attorneys’ fees equal to one-third of the Gross Settlement Amount estimated
20 to be \$316,666.66 and an estimated \$25,000.00 for actually incurred litigation expenses. *See generally*
21 Agreement at § 3.

22 Subject to the Court approving the Class Representative Service Payment, Attorneys’ Fees and
23 Costs, PAGA Penalties, and the Claims Administration Costs, the Net Settlement Amount will be
24 distributed to each participating member of the Participating Class Member. Agreement at § 1.25.
25 There is no reversion to Defendant and Defendant must separately pay for its share of the employer
26 payroll taxes. Agreement at §§ 1.19; 3.1.

27 3. The Funding Date

28 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$950,000.00

1 Gross Settlement Amount within ten (10) calendar days of the Court's entry of the order granting final
2 approval of this Settlement. Agreement at § 4.3.

3 4. Formula for Calculating Individual Class Payments

4 Each Participating Class Member will receive an Individual Class Payments. The Class Data
5 provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks
6 for each Participating Class Member. The Individual Class Payments will be calculated by dividing
7 the Net Settlement Amount by the total number of Workweeks worked by all Participating Class
8 Members during the Class Period and multiplying the result by each Participating Class Member's
9 Workweeks. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally
10 mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

11 Given that there are approximately 1,293 Participating Class Members, the average gross
12 recovery is approximately \$408.61 (Net Settlement Amount divided by Participating Class Members).
13 JCL Dec., ¶ 7.

14 5. Release by Participating Class Members

15 Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to
16 release the Released Parties from the Released Class Claims. The Released Class Claims are defined
17 as any and all claims, wage and hour claims, rights, demands, liabilities and causes of action of any
18 nature or description alleged/asserted in the Action arising from and/or related to the facts and claims
19 alleged/asserted in the Action, that could have been alleged/asserted in the Action based on the facts
20 and claims alleged in the Action, and the facts and claims asserted in, arising from or related to, or
21 could have been alleged in the PAGA Notice identified on the LWDA's website as LWDA-CM-
22 840158-21. Agreement at §§ 5.2.

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

24 Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the
25 Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of
26 the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims. The
27 Released PAGA Claims include any and all claims for PAGA penalties asserted in the Action and
28 arising from or reasonably related to the facts and claims alleged in the Action, or that could have been

alleged in the Action based on the facts and claims alleged in the Action, and/or Plaintiff's PAGA Notice identified on the LWDA's website as LWDA-CM-840158-21, including, without limitation, claims for PAGA penalties arising from Labor Code sections 200, 201, 201.3, 201.5, 202, 203, 204, 205.5, 210, 218.5, 218.6, 226, et seq., 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515, 558, 1174(d), 1174.5, 1182.12, 1194, 1197, 1197.1, 1197.14, 1198, et seq., 1198.5, 1199, 2695, et seq., 2698, et seq., 2699, 2699.3, 2802, 2804, Cal. Code of Regulations, Title 8, Section 11070(14), Cal. Code of Regulations, Title 8, Section 11070(14)(failure to provide suitable seating), and the applicable Industrial Welfare Commission Wage Order(s), including Wage Order 4-2001, Section 14. Agreement at §§ 5.1.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$950,000.00, 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 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 with the highly respected mediator Judge Carl J. West. Judge West 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.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive. Judge West only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims and defenses. JCL Dec.,

¶ 24.

Once the Parties agreed to the Mediator's proposal, the parties subsequently executed a binding and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data 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 the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 26.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on his 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 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., ¶ 27.

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

The Gross Settlement Amount of \$950,000.00 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

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**
11 **Reasonableness.**

12 The Gross Settlement Amount of \$950,000.00 is fair and reasonable considering the nature and
13 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
14 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
15 liability exposure while accounting for the uncertainties of continued litigation. The various models
16 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
17 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
18 PAGA Penalties) ranged between \$2,961,338.34 million dollars (“Conservative Model”) and
19 \$5,971,819.18 million dollars (“Aggressive Model”) if successful at trial. This range reflects the
20 uncertainty regarding several of the claims, together with the uncertainty surrounding derivative
21 liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount
22 of \$950,000.00 represents approximately between 15.91% (“Aggressive Model”) and 32.08%

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 (“Conservative Model”) of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at
2 the time of mediation. The following summarizes Defendant’s estimated exposure. JCL Dec., ¶ 28.

3 (1) Exposure for Failure to Pay for All Hours Worked

4 Plaintiff’s primary claim in the Action alleged that Defendant failed to pay its employees for all
5 hours worked. Specifically, Plaintiff asserts that Defendant failed to pay employees for time spent
6 undergoing COVID-19 questionnaires before being able to clock in for their shifts. Further, Plaintiff
7 asserted Defendant employed an unlawful rounding practice pursuant to which Defendant rounded
8 Plaintiff’s and Class Members’ total hours worked. JCL Dec., ¶ 29.

9 Defendant vigorously denied liability for this claim. Defendant argued, among other things, that
10 all Class Members were properly paid minimum and overtime compensation for all hours worked and
11 that Class Members were instructed not to work off-the-clock. Further, Defendant argued that its
12 rounding policy is facially neutral and in practice, favors neither overpayment nor underpayment.
13 Plaintiff estimated Defendant’s exposure for this claim ranged from \$46,481.24 and approximately
14 \$72,354.98. JCL Dec., ¶ 30.

15 (2) Exposure for Meal Period Violations.

16 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
17 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
18 Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff
19 alleges that she is owed meal period premiums for meal period violations that occurred during the Class
20 Period. Additionally, an analysis of the Class Members’ time and payroll data revealed that 65.6% of
21 all meal period were rounded to exactly 30 minutes. JCL Dec., ¶ 31.

22 Conversely, Defendant argued, among other things, that they did not engage in meal rounding
23 and provided all their employees, i.e., Class Members and Aggrieved Employees, with the opportunity
24 to take compliant meal periods. Defendant also argued that they maintained facially complaint meal
25 period policies. Further, Defendant argued that they began paying missed meal premiums in 2021 after
26 this litigation was commenced. Thus, Defendant argued that there was no potential liability for
27 Plaintiff’s alleged meal period violations and any claimed violations required a highly individualized
28 inquiry not suitable to class treatment. JCL Dec., ¶ 32. Consequently, Plaintiff applied a 50% discount

1 to this claim and estimated Defendant's exposure for this claim ranged from \$875,347.80 to
2 approximately \$1,750,695.60 dollars. JCL Dec., ¶ 33.

3 (3) Exposure for Rest Period Violations

4 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
5 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
6 able to take timely and duty-free rest periods. Specifically, Plaintiff argued that Defendant maintained
7 a rest period policy that required employees to remain on premises during their rest periods. JCL Dec.,
8 ¶ 34.

9 Again, Defendants denied liability and asserted that they maintained legally compliant rest
10 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the
11 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,
12 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
13 stages. Certification likely would have required depositions of Class Members who provided
14 declarations, and Defendant argued that they obtained opposing declarations stating either rest breaks
15 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
16 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
17 plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this
18 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
19 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
20 written policy does not generate uniform practices."). Accordingly, Plaintiff's Conservative Model
21 applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for
22 this claim was between approximately \$132,459.30 dollars to approximately \$264,918.60 dollars. JCL
23 Dec., ¶ 35.

24 (4) Exposure for Unreimbursed Business Expenses

25 Plaintiff alleged that Defendant required Class Members to incur personal expenses for the use
26 of their own personal cellular phones. California employers who require employees to incur personal
27 business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab.
28 Code § 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary

1 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
2 duties, or of his or her obedience to the directions of the employer....”). Specifically, Plaintiff alleged
3 Defendant required Plaintiff and Class Members to clean and maintain their work uniforms. However,
4 Defendant failed to reimburse Plaintiff and Class Members for the costs incurred for the maintenance
5 of their uniforms in violation of California Labor Code section 2802. JCL Dec., ¶ 36.

6 Again, Defendant denied any liability for this claim. Defendant argued, among other things, that
7 on the rare occasion where employees did incur business expenses, these expenses were fully
8 reimbursed. This claim was heavily discounted based on Defendant’s defenses. Plaintiff estimated
9 Defendant’s exposure for this claim ranged from \$34,875 to approximately \$139,500 dollars. JCL Dec.,
10 ¶ 37.

11 (5) Exposure for Wage Statement Violations and Waiting Time Penalties

12 Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor
13 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
14 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue
15 that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor
16 Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class
17 Members suffered an “injury” because of wage statement violations, as required by Labor Code section
18 226. Defendant could also argue that that meal and rest period violations do not entitle employees like
19 Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement
20 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not
21 give the penalty claims great weight given that they depended on proving the underlying claims, which
22 had their own risks. Plaintiff estimated Defendant’s exposure for this claim to be between \$1,872,175
23 and approximately \$3,744,350 dollars. JCL Dec., ¶ 38.

24 (6) Defendant’s PAGA Exposure

25 In all, Class Counsel projected Defendant’s liability exposure for PAGA claims ranged between
26 \$568,550 dollars (“Conservative Model”) and \$3,668,650 million dollars (“Aggressive Model”) if
27 successful at trial. JCL Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is
28 fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements

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

10 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$50,000 which is 5.26%
11 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.
12 Seventy-Five percent (75%) of the PAGA Payment (\$37,500.00) will be paid to the LWDA (“LWDA
13 PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$12,500.00)
14 will be distributed to the PAGA Class Members, which is within the range of PAGA Payment approved
15 by courts and should be approved. JCL Dec., ¶ 40.

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

24 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
25 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
26 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on
27 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
28 defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for

1 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
2 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
3 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
4 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
5 rest period claims. JCL Dec., ¶ 41.

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

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

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

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

20 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
21 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
22 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
23 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
24 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
25 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
26 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
27 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
28 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.”); *Ali v. 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 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., ¶ 42.

“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 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 43. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further

1 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
2 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
3 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

4 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$950,000.00 that is
5 roughly between 15.91% (“Aggressive Model”) and 32.08% (“Conservative Model”) of Defendant’s
6 maximum class wide liability exposure for damages and statutory penalties. Given the amount of the
7 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
8 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 44.

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

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

19 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
20 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
21 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
22 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time
23 period within which to requests for exclusions or objections to the Settlement, the date for the final
24 approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
25 Released Class Claims. Agreement at § 1.10, 8.4.2. This method was negotiated by the Parties to

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 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
2 effective administration of the Settlement. JCL Dec., ¶¶ 45-46.

3 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
4 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
5 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
6 of the options open to dissenting class members.”).)

7 **C. The Court Should Preliminarily Approve the Class Representative Service Payment**

8 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
9 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
10 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
11 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
12 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
13 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
14 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
15 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
16 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
17 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
18 (2009) 175 Cal.App.4th 785.)

19 The Settlement provides for a Class Representative Service Payment of \$10,000.00 for Plaintiff.
20 The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
21 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
22 the status of her case and the strategies for prosecuting the claims, and reviewing the proposed
23 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL
24 Dec., ¶ 47.

25 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
26 Representative Service Payment once preliminary approval of the Settlement is granted. Plaintiff
27 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
28 Class Representative Service Payment. JCL Dec., ¶ 48.

1 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Costs**

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

12 Class Counsel took this matter on a contingency fee basis and invested significant time and
13 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
14 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
15 Members. Considering the positive outcome for the Class Members, and in light of the supporting
16 authority, the proposed Attorneys’ Fees and Costs payment is fair and reasonable. JCL Dec., ¶ 49.

17 Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Costs once preliminary
18 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
19 for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 50.

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

21 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
22 of the Class is appropriate. JCL Dec., ¶ 51.

23 1. The Standard for Class Certification

24 Class actions are statutorily authorized “when the question is one of common or general interest,
25 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
27 certification is appropriate when there is an “ascertainable class and a well-defined community of
28 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment

1 is appropriate even if class members at some point may be required to make an individual showing as
2 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
3 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

19 Because all Class Members are Defendant’s current and former employees, the class is readily
20 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 52.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
23 liability can be determined by facts common to all members of the class. The wage and hour issues are
24 both numerous and substantial, and a class action is the most advantageous method of dealing with the
25 claims of the Settlement Class. JCL Dec., ¶ 53.

26 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
27 from the same factual basis and are based on the same legal theories applicable to the other Class
28 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement

1 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
2 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
3 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
4 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 54.

5 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
6 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
7 gained state court settlement approval of the same class-wide causes of action that are at issue in this
8 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
9 represent the interests of this Class. JCL Dec., ¶¶ 55, 57-63, Declaration of Shani Zakay, ¶¶ 1-3.

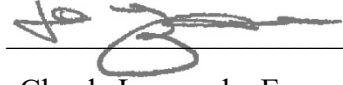
10 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
11 each individual claim, the Class Members likely have little incentive to litigate their claims on an
12 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
13 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
14 adjudication. JCL Dec., ¶ 56.

15 IV. CONCLUSION

16 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
17 presented the materials and information necessary for preliminarily approval, the Parties request that
18 the Court preliminarily approve the settlement.

19 Dated: May 15, 2023

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.