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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

MICHAEL HILLSTROM, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

CONSTELLATION BRANDS, INC., a Delaware
Corporation; TPWC, INC., a Delaware
Corporation; ROBERT MONDAVI WINERY, a
California Corporation; CONSTELLATION
BRANDS U.S. OPERATIONS, INC., a New York
Corporation; FRANCISCAN VINEYARDS, INC.,
a Delaware Corporation; CONSTELLATION
WINES U.S., INC., a Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22CV000006

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

Date: November 30, 2023

Time: 8:30 a.m.

Judge: Hon. Cynthia P. Smith

Dept.: A

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I. INTRODUCTION

Plaintiff Michael Hillstrom (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 756 Class Members. The basic terms of the Agreement provide for the following:

1. The **“Class”** and **“Class Period”** shall mean all current and former non-exempt employees of Defendants Constellation Brands, Inc. and TPWC, Inc. (collectively “Defendants”) in the State of California at any time during the during the period between January 3, 2018 through July 27, 2023 (“Class Period”). Agreement at §§ 1.2, 1.7.

a. The **“Settlement Class”** or **“Settlement Class Members”** means all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.31.

b. The **“Class Size”** is comprised of approximately 756 individuals as of December 31, 2022 who collectively worked approximately 66,717 Workweeks during the Class Period through April 27, 2023, as estimated by Defendants at the time of mediation. Agreement at § 4.2.

2. The **“PAGA Members”** and **“PAGA Period”** means all current and former non-exempt employees of Defendants in the State of California at any time during the period of October 30, 2020 through July 27, 2023 (“PAGA Period”). Agreement at §§ 1.17, 1.19. PAGA Members do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 16.2.

3. The **“Gross Settlement Amount”** is Two Million, Five Hundred Thousand Dollars and Zero Cents (\$2,500,000.00). Agreement at § 1.14. The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Service Award”** of not more than \$12,500.00 to Plaintiff 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 §§ 1.14, 1.27, 7, 13.3;

b. **“Class Counsel Fees and Costs”** in the amount not of not more than

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.

\$868,333.33, comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$833,333.33 **and** litigation expenses not to exceed \$35,000.00, to be paid to Class Counsel. Agreement at §§ 1.4, 6;

c. A “**PAGA Amount**” in the amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Amount (\$75,000.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Amount (\$25,000.00) will be distributed to the PAGA Members (“PAGA Member Payment”). Agreement at §§ 1.14, 1.18, 8; and

d. “Costs of **Settlement Administration**” not to exceed \$13,000.00 payable to the Settlement Administrator, Atticus Administration, for, *inter alia*, the administration of the Class Notice and Settlement Administration Expenses. Agreement at § 1.14, 1.30, 9.

4. The “**Net Settlement Amount**” of approximately \$1,506,166.67. (Gross Settlement Amount less the requested Class Counsel Fees and Costs, Service Award, PAGA Amount, and Costs of Settlement Administration) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ 1.16, 5.1, 5.1.1, 5.1.1.1. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an estimated average Individual Class Payment of **\$1,992.28**. JCL Dec., ¶ 6.

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

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

Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants produce and market beer, wine and spirits, including in Napa County, where Plaintiff worked. Plaintiff was employed by Constellation Brands, Inc. from February of 2018 to approximately May 2, 2021, as a non-exempt employee. Declaration of Michael Hillstrom at ¶ 4. Plaintiff alleges that during the Class Period, he and the Class were denied legally compliant meal and rest periods, that Defendants failed to pay minimum wages and overtime wages, that Defendants miscalculated he and Class Members' regular rate of pay for purposes of overtime, sick pay and meal period premiums, that he and the Class did not receive compliant wage statements, that he and the Class were not reimbursed for necessary business expenses, and that they were not timely paid all wages due upon separation of employment. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 8.

Defendants deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, compliant reimbursement practices, and they maintain that they timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

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

On January 3, 2022, Plaintiff filed a class action complaint in the Napa County Superior Court,

Case No. 22CV000006 (“Action”). The Action alleged ten causes of action against Defendants for: (1) unfair competition in violation of California Business & Professions Code §§ 17200 et seq; (2) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Labor Code §§ 510 et seq., (4) failure to provide required meal periods in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; (5) failure to provide required rest period in violation of California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order, (6) failure to provide accurate itemized statements in violation of California Labor Code § 226, (7) failure to provide wages when due in violation of California Labor Code §§ 201, 202 and 203, (8) failure to reimburse employees for required expenses in violation of California Labor Code § 2802, (9) unpaid sick pay in violation of California Labor Code § 246, and (10) violation of the Private Attorneys General Act [Labor Code §§ 2698 et seq.]. JCL Dec., ¶ 11.

The Parties attended an initial mediation on February 27, 2023, with mediator Jeffrey Ross, an experienced mediator who has mediated numerous wage-hour class actions. The mediation was not successful. The Parties agreed to attend a second mediation, which took place on April 27, 2023. In preparation for the mediations, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to relevant wage and hour policies and procedures, such as meal and rest break policies, and sample time and payroll records for the Class. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

After the April 27, 2023 mediation session, the Parties reached the basic terms of a settlement, and thereafter signed a binding Memorandum of Understanding and agreed to prepare this formal settlement agreement, subject to Court approval. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its 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 his employment, including his timecard reports and wage statements. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 14.

1 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,
2 Defendants produced over one hundred pages of documents, including but not limited to, copies of
3 Plaintiff's payroll and time records and data related to bonus payments. Class Counsel reviewed and
4 analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that
5 Defendants failed to, among other things, provide accurate wage statements, provide compliant meal
6 and rest periods, and miscalculated Plaintiff's regular rate of pay. JCL Dec., ¶ 15.

7 To prepare for mediation, Defendants produced the time and payroll records for the Class
8 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
9 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
10 handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents
11 and multiple spreadsheets consisting of aggregate time and payroll data. JCL Dec., ¶ 16.

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

17 BCG analyzed Defendants' time and payroll data to assist in the development of various damages
18 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
19 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
20 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
21 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of underpaid
22 meal period premiums, sick pay and overtime, and the amount of missed meal and rest period premiums
23 paid during the Class Period. JCL Dec., ¶ 18.

24 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
25 Plaintiff's suitability as a putative class representative through interviews, background investigations,
26 and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching
27 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
28 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants'

labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation briefs; and (9) participating in the mediations. This investigation allowed Class Counsel to fully assess the nature and magnitude of the 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 Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

C. The Parties Settled at Mediation

On February 27, 2023, and again on April 27, 2023, the Parties conducted full day mediations with Jeff Ross. Esq. Mediator Ross 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 Ross' assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After the second mediation session, the Parties reached the basic terms of a settlement, and thereafter signed a binding Memorandum of Understanding. 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., ¶¶ 21-22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of current and former non-exempt employees of Defendants in the State of California at any time during the Class Period (January 3, 2018 through July 27, 2023). Agreement at § 1.2, 1.7. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § 1.32, 16. At the time of mediation, Defendants estimated that

the Class was comprised of 756 individuals that worked approximately 66,717 workweeks during the Class Period. Agreement at § 4.2.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$2,500,000. The Gross Settlement Amount includes: (1) Individual Class Member Payments to the Settlement Class Members; (2) a Service Award of not more than \$12,500 to Plaintiff for his services on behalf of the Class and, equally important, for a general release of claims; (3) the PAGA Amount in the amount of \$100,000; (4) Settlement Administration Costs estimated at \$13,000; (5) Attorneys' Fees and Costs in the amount of \$868,333.33, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be \$833,333.33 and an estimated \$35,000.00 for actually incurred litigation expenses. See generally Agreement at §§ 1.14, 6, 7, 8.

Subject to the Court approving the Service Award, Attorneys' Fees and Costs, PAGA Amount, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § 1.16. There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § 4.1.

3. The Funding Date

Defendants will fund the settlement within ten (10) business days of the Effective Date of the t Agreement at § 10.1.

4. Formula for Calculating Individual Class Payments

Settlement Class Members will receive an individual Class Member Payment. The individual Class Member Payment will be proportional to the number of Workweeks each Class Member worked for Defendants in California during the Class Period. Agreement at § 5.1.1.1. The Class Data provided by Defendants to the Settlement Administrator will include the data necessary to calculate the number of Workweeks worked by each Class Member during the Class Period, and the number of PAGA Pay Periods worked by each PAGA Member during the PAGA Period. Agreement at § 14.2. Each Class Member's final individual Class Member Payment will be calculated by dividing the total number of Workweeks worked during the Class Period into the Net Settlement Amount to arrive at a value per Workweek for each eligible Settlement Class Member. The value per Workweek shall be multiplied

by the number of Workweeks worked by each Settlement Class Member during the Class Period. For purposes of payment, Workweeks shall be determined based on hire dates, termination dates, and re-hire dates, as applicable. Agreement at § 5.1 For purposes of these calculations, A Class Member that works any time in a Workweek will be credited for a full workweek of employment for that Workweek. Agreement at § 1.32. In the event that a Class Member Payment check is not cashed within 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall escheat to the State and shall be sent by the Settlement Administrator to the State Controller’s Office, Unclaimed Property Division, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). Agreement at § 10.5.

Given that there are approximately 756 Class Members, the average gross recovery is approximately \$1,992.28 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims that accrued during the Class Period. Released Claims excludes claims brought against Constellation Brands U.S. Operations, Inc. by the putative class in the pending action of *Gregoria Cruz v. Constellation Brands U.S. Operations, Inc.* pending in the California Superior Court, County of San Joaquin, Case No. STK-CV-UDE-2022-5208. Agreement at §§ 1.26; 13.1, 13.2.

6. PAGA Release by the State of California on behalf of the PAGA Members

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the PAGA Members, will release the Released Parties from all claims for penalties under PAGA during the PAGA Period that were or could have been alleged in the Action based on the facts or claims alleged in any version of the complaint or enumerated in the LWDA Letter irrespective of the underlying theory of recovery supporting the claim for PAGA penalties. This release excludes claims brought against Constellation Brands U.S. Operations, Inc. by the putative class in the pending action of *Georgia Cruz v. Constellation Brands U.S. Operations*, pending in the California Superior Court, County of San Joaquin, Case No. STK-CV-UDE-2022-5208. Agreement at §14.

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$2,500,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

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

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

11 The Parties participated in mediations with the highly respected mediator Jeff Ross, Esq.
12 Mediator Ross managed the Parties’ expectations and provided a useful, neutral analysis of the issues
13 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008
14 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
15 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
16 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
17 proceedings were free of collusion and undue pressure.”).) After two full-day mediations, the Parties
18 reached the basic terms of a settlement and thereafter signed a binding Memorandum of Understanding.
19 JCL Dec., ¶ 23.

20 The Parties then engaged in negotiations regarding the written terms of the class action
21 settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement
22 terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

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

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

1 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
2 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
3 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
4 ¶ 25.

5 Class Counsel only agreed to enter the Settlement following their thorough investigation and
6 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
7 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
8 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
9 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
10 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

12 The Total Settlement Amount of \$2,500,000.00 is within the range of reasonableness. To
13 determine whether a settlement is fair and reasonable, the court should "consider enough information
14 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
15 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
16 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
17 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
18 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such
19 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
20 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
21 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
22 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
23 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

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

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

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

The Total Settlement Amount of \$2,500,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damages models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA Penalties) was approximately \$7,598,237 if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of approximately 32.9% of Defendants’ class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants’ liability exposure. JCL Dec., ¶ 27.

(1) Estimated Damages for Failure to Pay Minimum and Overtime Wages

Plaintiff alleged that Defendants failed to pay their employees for all hours worked. Specifically, Plaintiff asserted that Defendants: a) paid Class Members non-discretionary incentive compensation and failed to account for these forms of compensation when calculating the regular rate of pay for purposes of overtime, meal period premiums and sick pay; b) failed to pay employees for time spent undergoing required COVID-19 screenings before the start of their shifts; and (c) maintained an invalid alternative workweek schedule (“AWS”) under which it failed to pay Class Members overtime wages.

First, Defendants paid Plaintiff and Class Members various non-discretionary compensation in the form of bonuses, commissions, and other incentive payments. These payments should have been included in Defendants’ calculations in determining employees’ regular rate of pay for purposes of paying overtime, meal period premiums and sick pay, but were not. Plaintiff estimated Defendants’

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 exposure for this claim due to a failure to pay Class Members at the correct regular rate of pay to be
2 \$411,344 in underpaid overtime, meal period premiums, and sick pay. JCL Dec., ¶ 28.

3 Second, Plaintiff alleges that he and Class Members were required to undergo mandatory
4 COVID-19 screenings prior to the start of their shifts, and they were not paid for this time. Defendants
5 required employees to arrive prior to the start of their shifts, have their temperature taken, log their
6 temperature into an app on their personal cell phones, and further use the app to answer questions
7 related to possible COVID-19 symptoms. Employees could not clock in until this process was
8 completed. Defendants denied this claim and maintained that while Class Members were required to
9 undergo a pre-shift COVID-19 screening, Defendants began compensating Class Members for an
10 additional 15 minutes per week in October of 2020, pursuant to a written policy, which eliminated or
11 substantially limited its liability. Plaintiff estimated Defendants' exposure for this claim due to off-
12 the-clock COVID screenings to be \$309,225. JCL Dec., ¶ 29.

13 Third, Plaintiff alleges that certain Class Members worked pursuant to an invalid AWS, under
14 which they worked four ten-hour shifts, but were not paid any overtime for the time worked each day
15 that exceeded eight hours. Defendants denied these allegations and maintained that it held valid AWS
16 elections for the California locations, thus eliminating or substantially reducing any liability. Plaintiff
17 estimated Defendants' exposure for this claim due to failure to pay overtime under an invalid AWS to
18 be \$1,402,964. JCL Dec., ¶ 30.

19 (2) Estimated Damages for Meal Period Violations

20 Plaintiff alleged that Defendants failed to provide compliant meal periods. Specifically,
21 Plaintiff alleged that he was instructed by Defendants to clock out at 12:00 p.m., set a timer for thirty
22 minutes, and clock back in at 12:30 p.m., in order to create a paper trail that would evidence that a
23 compliant, timely meal break was taken. However, Plaintiff and other Class Members were instructed
24 to work through this 30-minute period, and did in fact work through this period. Plaintiff alleges that
25 he and other Class Members did not actually take a meal break until after 3:00 p.m., when the tasting
26 lounge where they worked was not busy, and that this break was not recorded. Plaintiff also alleges
27 that in instances in which he did not record a meal period of thirty minutes before the fifth hour of his
28 shift, his time records were manipulated by Defendants in order to evidence timely, compliant meal

breaks. Plaintiff believes that Plaintiff's allegations related to fabricated meal periods and time record manipulation are bolstered by the data provided by Defendants, which shows that 72.4% of meal breaks entered were *exactly* thirty minutes in length. Moreover, in 2020 and 2021, Plaintiff did not receive any meal period premiums (and received only 6 meal period premiums total in 2018 and 2019). Lastly, of the meal breaks recorded that Plaintiff does not believe to be fabricated, 28.6% reflect a late, missed or short meal period was taken. Defendants denied Plaintiff's allegations of time record fabrication and manipulation, and maintained that it provided all Class Members with the opportunity to take compliant meal periods. Defendants also argued that they maintained facially compliant meal period policies and that they paid meal period premiums. Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Plaintiff estimated Defendants' exposure for this claim to be \$2,009,141. JCL Dec., ¶ 31.

(3) Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that Class Members were often not afforded the opportunity to take a compliant rest period during their work shifts due to the busy work environment and/or were interrupted. Defendants denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognized the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks 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."). Accordingly, Plaintiff's Realistic Damage model mirrored the 28.6% non-

1 compliance rate recorded in Class Members' meal periods. Plaintiff estimated Defendants' exposure
2 for this claim to be \$2,216,669. JCL Dec., ¶ 32.

3 (4) Estimated Penalties for Defendants' Allegedly Inaccurate Wage Statements

4 Plaintiff alleges that Defendants failed to comply with Labor Code Section 226(a). Specifically,
5 Plaintiff alleges that his wage statements, along with the wage statements of the Class, failed to list
6 Constellation Brands, Inc. as the legal employer. Instead, Plaintiff alleges that the wage statements
7 listed "Franciscan Vineyards, Inc.", a corporation located in Victor, NY, as the legal employer, until
8 approximately January 2021. At that time, the wage statements then listed "TPWC, Inc." as the legal
9 employer. Defendants deny liability for this claim, alleging that the wage statements accurately
10 reflected the name of the employer at the time of issuance and also included, at all times during the
11 Class Period, the Constellation Brands logo along with the text "Constellation Brands" which satisfies
12 the requirements of Labor Code Section 226(a). Plaintiff further alleged that as a result of Defendants'
13 failure to provide meal and rest periods as required by the California Labor Code, Plaintiff and other
14 Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security*
15 *Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to
16 derivative wage statement penalties). Here, Defendants argued that even if they failed to furnish
17 accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. In
18 light of the defenses asserted by Defendants related to this claim, Plaintiff discounted this claim 50%
19 to account for the risks. In light of this, Plaintiff estimated Defendants' exposure for this claim to be
20 \$722,400. JCL Dec., ¶ 33.

21 (5) Estimated Damages for Defendants' Alleged Failure to Reimburse Necessary
22 Business Expenses

23 Lastly, Plaintiff alleged that Defendants failed to reimburse Plaintiff and other Class Members
24 for mileage and personal cell phone use tied to necessary business tasks. Plaintiff alleges he and other
25 Class Members were required at times to travel to pick up food and other items at the store that were
26 to be used to prepare orders for patrons. Plaintiff was not reimbursed for mileage. Again, Defendants
27 denied any liability for this claim. Defendants argued that its written policies provide for
28 reimbursement to employees for necessary business expenses incurred in the discharge of the

employees’ duties or at Defendants’ direction. Plaintiff also alleges that he and other Class Members were required to use an application on their personal cell phones for purposes of completing their mandatory COVID-19 screening before clocking in for their shift. Plaintiff and others did not receive reimbursement for their cell-phone use. Plaintiff estimated Defendants’ exposure for this claim to be \$100,000. JCL Dec., ¶ 34

(6) Estimated Damages for Derivative Waiting Time Penalties

Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative liability for waiting time penalties. Although these penalties represented Defendants’ largest dollar amount of exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendants argued that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel’s damages model discounted the waiting time penalty claim by 85% and estimated Defendants’ exposure for these claims to be \$426,494. JCL Dec., ¶ 35.

(7) Defendants’ PAGA Exposure

Class Counsel’s damage models also estimated Defendants’ exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants’ PAGA exposure to be \$2,940,600 in civil penalties. JCL Dec., ¶ 36. The proposed PAGA allocation of the Total Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

///

1 Here, the Parties negotiated a good faith PAGA Settlement Amount in the amount of \$100,000.00
2 which is 4% of the Total Settlement Amount. This amount falls well within the range of approved
3 PAGA Settlement Amount. Seventy-Five percent (75%) of the PAGA Settlement Amount (\$75,000.00)
4 will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%)
5 of the PAGA Settlement Amount (\$25,000.00) will be distributed to the PAGA Members, which is
6 within the range of PAGA Settlement Amount approved by courts and should be approved. JCL Dec.,
7 ¶ 37.

8 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
9 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
10 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
11 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
12 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
13 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
14 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
15 6, 2016) (PAGA penalties denied after trial).

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

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

24 b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

1 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

2 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
3 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
4 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
5 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
6 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
7 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
8 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
9 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
10 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
11 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
12 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
13 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
14 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
15 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
16 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
17 certification of driver meal and rest period claims based on the predominance of individual issues).
18 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
19 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
20 settlement. JCL Dec., ¶ 38.

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

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

1 favor of preliminary approval.

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

3 Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions; which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
7 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
8 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
9 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. “Avoiding such a trial and the
10 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
11 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
12 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
13 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

14 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$2,500,000.00 that is
15 approximately 32% of Defendants’ *class-wide* liability exposure for damages and statutory penalties,
16 excluding PAGA penalties. Given the amount of the settlement here, as compared to potential value of
17 the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
18 reasonable. JCL Dec., ¶ 40.

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

20 The Settlement Class Members are entitled to the best practical notice under the circumstances.
21 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
22 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
23 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
24 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
25 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
26 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
27 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
28

1 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

2 The Parties jointly drafted the Class Settlement Notice which fairly and neutrally informs the
3 Class Members of their rights and remedies. The Settlement Administrator will first verify addresses,
4 then mail the proposed Class Notice to all Class Members. The Class Settlement Notice will include
5 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,
6 the class definition, the procedure, and time period within which to requests for exclusions or objections
7 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
8 payments, and the terms and scope of the Released Claims. *See* Class Settlement Notice, attached as
9 Ex. A to the Settlement Agreement. The Parties negotiated this method to ensure delivering the most
10 reasonable method of notice to the Class Members while ensuring cost effective administration of the
11 Settlement. JCL Dec., ¶ 41.

12 Accordingly, both the method of disseminating the Class Settlement Notice and content of the
13 Class Settlement Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*
14 (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the terms of the
15 proposed compromise and of the options open to dissenting class members.”).) JCL Dec., ¶ 42.

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

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

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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 have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential*
2 *Services LLC* (2009) 175 Cal.App.4th 785.)

3 The Settlement provides for a Service Award of \$12,500.00 to Plaintiff. The service award is
4 fair and reasonable compensation for Plaintiff’s efforts bringing the action, assisting Class Counsel
5 with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and
6 the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are
7 fair and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendants
8 a general release of all claims arising out of his employment. JCL Dec., ¶ 43.

9 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
10 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
11 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 44.

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

13 The purpose of a payment of Attorneys’ Fees and Costs in class action litigation is to reward
14 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
15 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
16 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix,*
17 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
18 percentage method or the lodestar method is used, fee awards in class actions average around one-third
19 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
20 *Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
21 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
22 one-third fee is consistent with market rates).)

23 Class Counsel took this matter on a contingency fee basis and invested significant time and
24 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
25 Individual Class Member Payment illustrates the demonstrably positive outcome for the Settlement
26 Class Members. Considering the positive outcome for the Class Members, and in light of the supporting
27 authority, the proposed Attorneys’ Fees and Costs are fair and reasonable. JCL Dec., ¶ 45.

28 Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Costs once preliminary

approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 47.

1. The Standard for Class Certification

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

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

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

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

In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.”

1 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

2 Because all Class Members are Defendants' current and former employees, the class is readily
3 ascertainable from Defendants' regular business records, i.e., payroll records. JCL Dec., ¶ 48.

4 The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire
5 Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be
6 determined by facts common to all members of the class. The wage and hour issues are both numerous
7 and substantial, and a class action is the most advantageous method of dealing with the claims of the
8 Participating Class Members. JCL Dec., ¶ 49.

9 Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the
10 same factual basis and are based on the same legal theories applicable to the other Class Members.
11 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges
12 that he was injured by the same company-wide practices to which the proposed Class Members were
13 subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the
14 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
15 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 50.

16 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
17 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
18 gained state court settlement approval of the same class-wide causes of action that are at issue in this
19 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
20 represent the interests of this Class. JCL Dec., ¶¶ 51-59, Declaration of Shani Zakay, ¶¶ 1-3.

21 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
22 each individual claim, the Class Members likely have little incentive to litigate their claims on an
23 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
24 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
25 adjudication. JCL Dec., ¶ 60.

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Dated: November 1, 2023

By: Jaclyn Joyce
Jaclyn Joyce, Esq.