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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

VINCENT LESLIE, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

P.F.C. ENTERPRISES, INC. dba ALLEN
PROPERTIES, a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: CIVSB2207363

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

Date: January 4, 2024

Time: 8:30 a.m.

Judge: Hon. Jessica Morgan

Dept: S-26

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I. INTRODUCTION

Plaintiff VINCENT LESLIE (“Plaintiff”) seeks preliminary approval of the Stipulation of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 310 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by Defendant P.F.C. Enterprises, Inc. dba Allen Properties (“Defendant”) and performed work in California (“Class” and/or “Class Members”) during the period of April 1, 2018 to September 27, 2023 (“Class Period”). Agreement at §§ I(I); I(L). At the time of mediation there were approximately 310 Class Members who worked approximately 36,584 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The “**Settlement Class Member**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § I(NN).

3. The “**PAGA Employees**” and “**PAGA Period**” means “all non-exempt employees who are or previously were employed by Defendant and performed work in California (“PAGA Employees”) during the period of January 20, 2021 to September 27, 2023 (“PAGA Period”). Agreement at §§ I(B), I(CC). PAGA Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ III(L)(2)(a). At the time of mediation there were approximately 213 PAGA Employees who worked approximately 14,500 pay periods during the PAGA Period. JCL Dec., ¶ 9.

4. The “**Gross Settlement Amount**” is Seven Hundred, Seventy Thousand Dollars and Zero Cents (\$770,000.00). Agreement at § I(S). The Gross Settlement Amount is non-reversionary and includes the following:

a. An “**Class Representative Service Award**” in the amount of \$10,000 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at §§ I(N); III(M)(9);

b. A payment of “**Attorneys’ Fees and Attorneys’ Expenses**” in the amount not to

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

1 exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be
2 \$256,666.67 **and** litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel.
3 Agreement at §§ I(E), I(F), III(M)(10);

4 c. **“PAGA Penalties”** in the amount of \$40,000.00 shall be set aside from the Gross
5 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act
6 of 2004. The Settlement Administrator shall pay \$30,000.00 representing 75% of the PAGA Penalties
7 to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator
8 shall distribute \$10,000.00 representing 25% of the PAGA Penalties to the PAGA Employees (“PAGA
9 Employee Payment”). Agreement at §§ I(BB); III(M)(11); and

10 d. **“Claims Administration Expenses”** not to exceed \$8,500.00 payable to the
11 Claims Administrator, Apex Class Action LLC, for the costs of administration of the Settlement.
12 Agreement at §§ I(H); III(M)(12).

13 3. The **“Net Settlement Amount”** means the Gross Settlement Amount, less Attorneys’
14 Fees and Attorneys’ Expenses, Class Representative Service Award, PAGA Penalties, and Claims
15 Administration Expenses. Agreement at § I(V). The Net Settlement Amount is approximately
16 \$434,833.33, which will be allocated to all Settlement Class Members on a pro-rata basis according to
17 the number of Workweeks each Settlement Class Member worked during the Class Period. The entire
18 Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the
19 Settlement resulting in an average Individual Settlement Payment of approximately **\$1,402.69**.
20 Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 8.

21 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
22 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
23 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
24 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
25 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
26 not have to wait (possibly years) for relief. JCL Dec., ¶ 7.

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

the Settlement Class meets or exceeds awards in similar wage and hour class actions. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 10.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a real estate, rental, and leasing company, managing a number of residential properties in California, including in San Bernardino County where Plaintiff worked. This action asserts claims on behalf of all current and former non-exempt employees who worked for Defendant during the Class Period. Plaintiff worked for Defendant as a non-exempt employee in California from 2006 to February of 2021. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 11; Declaration of Vincent Leslie ("VL Dec.") at ¶¶ 1-5.

Generally, Plaintiff claims that Defendant failed to furnish accurate itemized wage statements that correctly identified the name of the employer, failed to provide compliant meal and rest periods, failed to pay for all time worked, and failed to pay all wages upon separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that it issued compliant wage statements, maintained facially compliant meal and rest period policies, paid for all hours worked, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 12.

On January 20, 2022, Plaintiff served Defendant 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 Defendant's 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., ¶ 13.

On April 1, 2022, Plaintiff filed a class action complaint in the San Bernardino County Superior

1 Court, Case Number CIVSB2207363 (“Action”). The Action alleged ten causes of action against
2 Defendant for: (1) Violation of California Business & Professions Code §§ 17200, *et seq.*; (2) Violations
3 of California Labor Code §§ 1194, 1197, 1197.1 (Unpaid Minimum Wages); (3) Violation of California
4 Labor Code §§ 510 and 1198 (Unpaid Overtime); (4) Violation of California Labor Code §§ 226.7 and
5 512(a) (Unpaid Meal Period Premiums); (5) Violation of California Labor Code §§ 226.7 (Unpaid Rest
6 Period Premiums); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage
7 Statements); (7) Violations of California Labor Code §§ 201, 202, 203 (Final Wages Not Timely Paid);
8 (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses); (9) Violations of
9 California Labor Code §§ 221 and 223 (Unlawful Deductions); and (10) Violation of the California
10 Labor Code §§ 2698 *et seq.* (Private Attorneys General Act). JCL Dec., ¶ 14.

11 Following some initial law and motion practice, including Defendant’s Motion for Change of
12 Venue, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
13 informally exchange additional documents and data points subject to the mediation privilege, including
14 but not limited to, employee handbooks, the Class Members’ time data, certain payroll data points, and
15 the Class Members’ wage statements. As discussed *infra*, Plaintiff’s counsel retained the forensic
16 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL
17 Dec., ¶ 15.

18 On May 1, 2023, the Parties participated in a full day mediation with mediator Jill R. Sperber,
19 Esq. At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive.
20 Mediator Sperber arrived at her mediator’s proposal after hearing arguments, reviewing evidence, and
21 evaluating the Parties’ respective claims and defenses. Once the Parties agreed to the Mediator’s
22 proposal, the negotiated and signed a Memorandum of Understanding. After reaching an agreement in
23 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of
24 the instant motion. JCL Dec., ¶ 16.

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

26 Months before filing the Action, Class Counsel began their pre-filing investigation into
27 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
28 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,

1 including his wage statements. At the conclusion of the interviews, Class Counsel determined that each
2 Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 17.

3 Class Counsel also requested Plaintiff's employee file from Defendant. In response, Defendant
4 produced various documents, including but not limited to, copies of Plaintiff's employment
5 agreements, payroll and time records, and separation documents. Class Counsel reviewed and analyzed
6 the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant
7 failed to, among other things, issue accurate itemized wage statements, provide compliant meal and
8 rest periods, and pay for all time worked. JCL Dec., ¶ 18.

9 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
10 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
11 documents and data points to further evaluate Plaintiff's claims, Defendant's liability exposure to the
12 Class Members, and Defendant's ability to pay any settlement. In response to Class Counsel's request,
13 Defendant produced time records for the Class Members, aggregate workweek and pay period data for
14 the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the
15 Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*,
16 compensation, timekeeping, and meal and rest period policies. In total, Defendant produced over
17 twenty-three thousand pages of time and payroll data, wage statements, and wage and hour policies for
18 Class Counsel to analyze. JCL Dec., ¶ 19.

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 services,
21 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
22 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
23 differently, BCG is well-qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 20.

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

unpaid overtime, meal period premiums and redeemed sick as a result of Defendant's failure to properly calculate the regular rate of pay. JCL Dec., ¶ 21.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 22.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's 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 Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. 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., ¶ 23.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, 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., ¶ 24.

C. The Parties Settled at Mediation

On May 1, 2023, the Parties conducted a full day of mediation with Jill R. Sperber, Esq., a mediator of wage and hour class and representative actions. Mediator Sperber 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 Sperber's assistance. Namely, the Parties exchanged

information regarding their respective claims and defense, including their respective evaluation of the damages. Although the mediation concluded without a settlement, the Parties' subsequently accepted a mediator's proposal, signed a Memorandum of Understanding, and entered into a long-form settlement agreement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all current and former non-exempt employees who worked for Defendant during the Class Period and who do not file a timely and valid request for exclusion. Agreement at § I(NN). In the data exchanged at the time the Agreement was executed, there were approximately 310 Class Members that worked approximately 36,584 workweeks. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$770,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) an Class Representative Service Award of \$10,000 to Plaintiff for his services on behalf of the Settlement Class; (3) PAGA Payment in the amount of \$40,000; (4) Claims Administration Expenses estimated at \$8,500; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$276,666.67 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$256,666.67 and an estimated \$20,000 for actually incurred litigation expenses. *See generally* Agreement at § I(V).

Subject to the Court approving the Class Representative Service Award, Attorneys' Fees and Attorneys' Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § III(M)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §§ I(S); III(A)(1).

3. The Funding Date

1 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$770,000.00
2 Gross Settlement Amount within fifteen (15) calendar days of the Effective Date. Agreement at § I(R).

3 4. Formula for Calculating Individual Settlement Payments

4 Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data
5 provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks
6 for each Settlement Class Member. The Individual Settlement Payments will be calculated by dividing
7 the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class
8 Members during the Class Period and multiplying the result by each Settlement Class Member's
9 Workweeks. Agreement at § III(M)(1). Each Individual Settlement Payment will be reduced by any
10 legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

11 Given that there are approximately 310 Settlement Class Members, the average gross recovery
12 is approximately \$1,402.69 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

13 ¶ 8.

14 5. Release by Class Members

15 Generally, as of the Funding Date, Plaintiff and the Class Members will agree to release the
16 Released Parties from the Released Class Claims. The Released Class Claims are defined as (a) all
17 claims asserted in Plaintiff's Complaint, and potential claims reasonably arising out of or in any way
18 relating to the same set of operative facts and/or theories pled therein, including the alleged failure of
19 Defendant to provide Class Members with compensation as required by federal and/or state law, and
20 including but not limited to Class Members' claims and potential claims concerning wages, expense
21 reimbursements, deductions, paid sick leave, record keeping, off the clock work, commissions,
22 incentive pay, bonuses, minimum wages, overtime, meal periods and premiums, rest periods and
23 premiums, timely payment of wages, itemized wage statement penalties and damages under California
24 and/or federal law, including the Fair Labor Standards Act, the failure to pay penalties and premiums
25 under the California Labor Code, including without limitation Labor Code § 201-203, 204, 210, 218.6,
26 221, 223, 224, 225.5, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
27 2802, Bus. and Prof. Code sections 17200, et seq., the Fair Labor Standards Act, the Wage Orders, and
28 any other claims whatsoever alleged in this action; and (b) the claims for relief asserted in the action.

1 Agreement at §§ I(II), III(B).

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

3 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
4 on behalf of the PAGA Employees, will release the Released Parties from the Released PAGA Claims.
5 The Released PAGA Claims include (a) all PAGA claims asserted in Plaintiff's Complaint and/or
6 Plaintiff's PAGA notice to the LWDA, and potential claims reasonably arising out of or reasonably
7 relating to the same set of operative facts and/or theories pled therein, including the alleged failure of
8 Defendant to provide PAGA Employees with compensation as required by federal and/or state law, and
9 including but not limited to PAGA Employees' claims and potential claims concerning wages, expense
10 reimbursements, deductions, paid sick leave, record keeping, off the clock work, commissions,
11 incentive pay, bonuses, minimum wages, overtime, meal periods and premiums, rest periods and
12 premiums, timely payment of wages, itemized wage statement penalties and damages under California
13 law, including the failure to pay penalties and premiums under the California Labor Code, including
14 without limitation Labor Code § 201-203, 204, 210, 218.6, 221, 223, 224, 225.5, 226, 226.3, 226.7,
15 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2698, et seq., 2802, the Wage Orders, the
16 Labor Code Private Attorneys General Act of 2004, and any other PAGA claims whatsoever alleged in
17 this action; and (b) the claims for relief asserted in the action. Agreement at §§ I(JJ); III(C).

18 **III. ARGUMENT**

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

20 The proposed Settlement, including a Gross Settlement Amount of \$770,000.00, meets the
21 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
22 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary
23 conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement
24 approval requires an early "preliminary" review by the trial court and a subsequent "final" review after
25 notice of the settlement has been distributed to class members for their comments and objections.
26 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court
27 first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into
28 the fairness of the proposed settlement").)

1 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
2 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
3 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
4 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
5 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
6 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
7 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
8 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
9 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
10 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
11 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
12 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
13 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
14 action litigation”).)

15 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
16 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
17 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
18 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
19 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
20 and adequate to all concerned.” (*Id.*)

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

23 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
24 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
25 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
26 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
27 § 11.51.)

28 The Parties participated in mediation with the highly respected mediator Jill R. Sperber, Esq.

1 Mediator Sperber managed the Parties' expectations and provided a useful, neutral analysis of the issues
2 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
3 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
4 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
5 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
6 proceedings were free of collusion and undue pressure.")) Prior to and during the mediation and
7 settlement discussions, the Parties exchanged information and engaged in a detailed discussion
8 regarding their evaluate of the case and various aspects of the matter. At all times, the Parties'
9 negotiations were at an arm's length, adversarial, and non-collusive. After agreeing to a mediator's
10 proposal and signing a Memorandum of Understanding, the Parties drafted and negotiated a long-form
11 settlement which is the subject of the instant motion. Objectively, the Settlement terms are fair,
12 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

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

15 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
16 the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis
17 and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases
18 are identical, this research provided Class Counsel with a marker to inform settlement discussions and,
19 ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically
20 assess the value of the claims and intelligently engage defense counsel in settlement discussions that
21 culminated in the proposed settlement now before the Court. JCL Dec., ¶ 27.

22 Class Counsel only agreed to enter the Settlement following their thorough investigation and
23 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace
24 for similar settlements, and considering the risk of significant delay, uncertainty associated with
25 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement
26 to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable,
27 and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 28.

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

1 The Gross Settlement Amount of \$770,000.00 is within the range of reasonableness. To
2 determine whether a settlement is fair and reasonable, the court should “consider enough information
3 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
4 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
5 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
6 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
7 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
8 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
9 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
10 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
11 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
12 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
13 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
14 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
15 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

18 The Gross Settlement Amount of \$770,000.00 is fair and reasonable considering the nature and
19 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
20 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
21 liability exposure while accounting for the uncertainties of continued litigation. The various models
22 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time

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 and payroll data. Class Counsel projected Defendant's liability exposure for *class claim* damages
2 (excluding statutory and PAGA Penalties) at \$1,962,965.33. Thus, the Gross Settlement Amount of
3 \$770,000.00 represents approximately 39.23% of Defendant's *class-wide* liability exposure for
4 damages as estimated by Class Counsel at the time of mediation. The following summarizes
5 Defendant's estimated exposure. JCL Dec., ¶ 29.

6 (1) Exposure for Meal Period Violations.

7 Plaintiff alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiff
8 alleges that as a result of Defendant's unlawful rounding policy and practice of automatically deducting
9 meal periods whether or not they were taken, Plaintiff and Class Members were not provided meal
10 period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 30.

11 Conversely, Defendant argued, among other things, that they did not engage in a practice of
12 automatically deducting meal periods and provided all of their employees with the opportunity to take
13 compliant meal periods. Defendant also argued that they maintained facially compliant meal period
14 policies. Plaintiff estimated Defendant's exposure for this claim at \$820,931. JCL Dec., ¶ 31.

15 (2) Exposure for Rest Period Violations

16 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
17 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
18 able to take timely and duty-free rest periods. JCL Dec., ¶ 32.

19 Again, Defendant denied liability and asserted that they maintained legally compliant rest period
20 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
21 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
22 on Class Member testimony, making it a riskier claim at class certification and liability stages.
23 Certification likely would have required depositions of Class Members who provided declarations, and
24 Defendants argued that they obtained opposing declarations stating either rest breaks were taken, or
25 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
26 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
27 that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
28 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.”). Notwithstanding the credible defenses, Plaintiff assumed a 25% violation rate and estimated Defendant’s exposure for this claim at \$820,931. JCL Dec., ¶ 33.

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

Plaintiff also alleged that Defendant required its employees to perform work, such as responding to work-related communications, before and after their scheduled shifts, in violation of California law requiring employees to be compensated for all time spent under an employer’s control. BCG estimated that Defendant’s failure to compensate Plaintiff and the Class Members for off-the-clock work resulted in \$145,943.33 in unpaid wages. Defendant denied liability and asserted that employees were paid all wages and that all work performed by Plaintiff and the Class Members was performed on-the-clock. JCL Dec., ¶ 34.

(4) Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Class Members to incur personal expenses for the use of their own personal cellular phones. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”). However, Defendant failed to fully reimburse Plaintiff and Class Members for the costs incurred for the use of their personal cellular phones in violation of California Labor Code section 2802. JCL Dec., ¶ 35.

Again, Defendant denied any liability for this claim. Defendant argued that most of its employees did not use cellphones as a part of the performance of their duties and on the rare occasion where employees did incur business expenses for the use of their cellphones, these expenses were fully reimbursed. Plaintiff estimated Defendant’s exposure for this claim at \$175,160. JCL Dec., ¶ 36.

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

Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Plaintiff’s primary claim alleged that Defendant issued wage statements that failed to identify the correct name and address of the legal entity that employed the Class Members,

1 in violation of Labor Code section 226(a)(8). Here, Class Members worked at various different
2 residential properties owned by Defendant. Plaintiff alleged that Defendant listed non-registered
3 fictitious business names on wage statements issued to the Class Members. Similarly, Plaintiff alleged
4 Defendant also listed the addresses of the respective properties where Class Members worked, rather
5 than Defendant's address as provided on the California Secretary of State. Plaintiff relied primarily
6 relied on the Court of Appeal's opinion in *Noori v. Countrywide Payroll & HR Solutions, Inc.* (2019)
7 43 Cal.App.5th 957, which held that an employer's use of unregistered fictitious business names on
8 wage statements violated Labor Code section 226(a)(8). Further, Plaintiff alleged that Defendant's
9 violations of other Labor Codes resulted in derivative violations of Labor Code section 226(a). Class
10 Counsel considered the arguable presence of various penalties and weighed the potential recoveries
11 against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the
12 "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
13 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because
14 of wage statement violations, as required by Labor Code section 226. Defendant could also argue that
15 that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to
16 pursue the derivative waiting time and itemized wage statement penalties. (*Naranjo v. Spectrum*
17 *Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not give the penalty claims great
18 weight given that they depended on proving the underlying claims, which had their own risks. Plaintiff
19 estimated Defendant's exposure for these claims at \$1,436,776, which is comprised of \$616,776 for
20 waiting time penalties and \$820,000 for wage statement penalties. JCL Dec., ¶ 37.

21 (6) Defendant's PAGA Exposure

22 In all, Class Counsel projected Defendant's liability exposure for PAGA claims at \$5,075,000 if
23 successful at trial. JCL Dec., ¶ 38. The proposed PAGA allocation of the Gross Settlement Amount is
24 fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
25 "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the
26 result of self-interest at the expense of class members," such amounts are generally considered
27 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
28 Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two

1 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
2 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
3 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
4 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
5 in the range of zero to two percent of the total settlement).

6 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of \$40,000
7 which is 5.2% of the Gross Settlement Amount. This amount falls well within the range of approved
8 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$30,000) will be paid to the
9 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties
10 (\$10,000) being distributed to the PAGA Employees, which is within the range of PAGA Penalties
11 approved by courts and should be approved. JCL Dec., ¶ 39.

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

20 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
21 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
22 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
23 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
24 defendant."). Here, Plaintiff would need to prove that each PAGA Employee suffered a violation for
25 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
26 threats to the claims of the Plaintiff and the PAGA Employees. In addition to those arguments discussed
27 *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43
28

Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 40.

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

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

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

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

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

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
3 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
4 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
5 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 42. “Avoiding such a trial and the
6 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$770,000.00 that is
11 approximately 39.23% of Defendant’s *class-wide* liability exposure for damages, and approximately
12 22.65% of Defendant’s maximum class wide liability exposure for damages and statutory penalties.
13 Given the amount of the settlement here, as compared to potential value of the claims, offset by the
14 various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 43.

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

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

25 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class

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.

Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. Agreement at § III(L)(2)(a). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 44.

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

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

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

The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The Class Representative Service Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the

1 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement
2 Class. JCL Dec., ¶ 45.

3 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
4 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
5 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
6 Class Representative Service Award. JCL Dec., ¶ 46.

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

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

18 Class Counsel took this matter on a contingency fee basis and invested significant time and
19 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
20 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
21 Members. Considering the positive outcome for the Class Members, and in light of the supporting
22 authority, the proposed Attorneys' Fees and Attorneys' Expenses payment is fair and reasonable. JCL
23 Dec., ¶ 47.

24 Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses
25 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
26 showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 48.

27 **E. Provisional Certification for Settlement Purposes is Appropriate**

28 For Settlement, Plaintiff contends, and Defendant does not dispute for settlement purposes only,

that provisional certification of the Class is appropriate. JCL Dec., ¶ 49.

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 Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement 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.” (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

Because all Class Members are Defendant’s current and former employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 50.

The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire

1 Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's
2 liability can be determined by facts common to all members of the class. The wage and hour issues are
3 both numerous and substantial, and a class action is the most advantageous method of dealing with the
4 claims of the Settlement Class. JCL Dec., ¶ 51.

5 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
6 from the same factual basis and are based on the same legal theories applicable to the other Class
7 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
8 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
9 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
10 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
11 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 52.

12 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
13 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
14 gained state court settlement approval of the same class-wide causes of action that are at issue in this
15 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
16 represent the interests of this Class. JCL Dec., ¶¶ 55-61, Declaration of Shani O. Zakay, ¶¶ 1-3.

17 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
18 each individual claim, the Class Members likely have little incentive to litigate their claims on an
19 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
20 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
21 adjudication. JCL Dec., ¶ 54.

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1 **IV. CONCLUSION**

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

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6 Dated: December 8, 2023

JCL LAW FIRM, APC

7
8 By:  _____

Jean-Claude Lapuyade, Esq.

9 Attorney for Plaintiffs
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