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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN BERNARDINO**

MARQUAN NESBITT, an individual, on  
behalf of himself, and on behalf of all persons  
similarly situated,

Plaintiff,

vs.

AUTONOMOUS, INC. WHICH WILL DO  
BUSINESS IN CALIFORNIA AS  
AUTONOMOUS LABS INC., a Delaware  
Corporation; and DOES 1 through 50,  
Inclusive,

Defendants.

Case No. CIVSB2204742

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

Date: November 20, 2023

Time: 1:30 p.m.

Judge: Hon. Joseph T. Ortiz

Dept.: S-17

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## I. INTRODUCTION

Plaintiff MARQUAN NESBITT (“Plaintiff”) seeks preliminary approval of the Stipulation of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for approximately 62 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 Autonomous Inc. dba Autonomous Labs Inc. (“Defendant”) and performed work in California (“Class Members”) during the time period of March 28, 2018, through August 31, 2023 (“Class Period”). Agreement at §§ I(G); I(J). At the time of mediation there were approximately 62 Class Members who worked approximately 3,500 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(LL).

3. The “**Aggrieved Employees**” and “**PAGA Period**” means “all non-exempt employees who are or previously were employed by Defendant during the PAGA Period (“Aggrieved Employees”). Agreement at § I(C). The “PAGA Period” refers to the time period beginning January 18, 2021, to August 31, 2023. Agreement at § I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ III(M)(2)(a). At the time of mediation there were approximately 39 Aggrieved Employees who worked approximately 1,721 pay periods during the PAGA Period. Zakay Dec., ¶ 9.

4. The “**Gross Settlement Amount**” is Two Hundred Sixty-Two Thousand Five Hundred Dollars and Zero Cents (\$262,500). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the following:

a. An “**Enhancement 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(O); III(N)(9);

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

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<sup>1</sup> The Agreement is attached as Ex “1” to the Declaration of Shani O. Zakay (“Zakay Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the Zakay 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 \$87,500  
2 **and** litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §§  
3 I(E), I(F), III(N)(10);

4 c. **“PAGA Penalties”** in the amount of \$20,000 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 \$15,000 representing 75% of the PAGA Penalties to  
7 the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator  
8 shall distribute \$5,000 representing 25% of the PAGA Penalties to the Aggrieved Employees  
9 (“Aggrieved Employee Payment”). Agreement at §§ I(Z); III(N)(11); and

10 d. **“Administration Costs”** not to exceed \$4,500 payable to the Settlement  
11 Administrator, Apex Class Action LLC, for the costs of administration of the Settlement. Agreement  
12 at §§ I(B); III(N)(12).

13 3. The **“Net Settlement Amount”** means the Gross Settlement Amount, less Attorneys’  
14 Fees and Attorneys’ Expenses, Enhancement Award, PAGA Penalties, and Administration Costs.  
15 Agreement at § I(S). The Net Settlement Amount is approximately \$120,500, which will be allocated  
16 to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each  
17 Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be  
18 paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average  
19 Individual Settlement Payment of approximately **\$1,943.55**. Declaration of Shani O. Zakay (“Zakay  
20 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. Zakay 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. Zakay Dec., ¶ 10.

## II. FACTS AND PROCEDURE

### A. Overview of the Litigation

Defendant is a retailer of office furniture, operating facilities in San Bernadino 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 March 2017 to September 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.” Zakay Dec., ¶ 11; Declaration of Marquan Nesbitt (“MN Dec.”) at ¶¶ 1-5.

Generally, Plaintiff claims that Defendant failed to furnish accurate itemized wage statements, 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. Zakay Dec., ¶ 12.

On January 18, 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”). Zakay Dec., ¶ 13.

On March 28, 2022, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB220474 (“Action”). The Action alleged ten causes of action against

Defendant for: (1) Violation of California Business & Professions Code §§ 17200, *et seq.*; (2) Violations of California Labor Code §§ 1194, 1197, 1197.1 (Unpaid Minimum Wages); (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (4) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (5) Violation of California Labor Code §§ 226.7 (Unpaid Rest Period Premiums); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violations of California Labor Code §§ 201, 202, 203 (Final Wages Not Timely Paid); (8) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); (9) Violations of California Labor Code §§ 221 and 223 (Unlawful Deductions); and (10) Violation of the California Labor Code §§ 2698 *et seq.* (Private Attorneys General Act). Zakay Dec., ¶ 14.

The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members' time data, and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. Zakay Dec., ¶ 15.

On June 27, 2023, the Parties participated in a full day mediation with mediator and jurist Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. Zakay Dec., ¶ 16.

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

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including his wage statements. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. Zakay Dec., ¶ 17.

Class Counsel also requested Plaintiff's employee file from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff's employment agreements, payroll and time records, and separation documents. Class Counsel reviewed and analyzed

1 the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant  
2 failed to, among other things, issue accurate itemized wage statements, provide compliant meal and  
3 rest periods, and pay for all time worked. Zakay Dec., ¶ 18.

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

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

20         BCG analyzed Defendant's time and payroll data to assist in the development of various damage  
21 models. Among other things, BCG determined the approximate number of work shifts, workweeks,  
22 pay periods, average length of shift and average number of hours worked per week and pay periods  
23 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest  
24 periods, the amount of missed meal period premiums paid during the Class Period, and the amount of  
25 unpaid overtime, meal period premiums and redeemed sick as a result of Defendant's failure to properly  
26 calculate the regular rate of pay. Zakay Dec., ¶ 21.

27         In advance of mediation, Class Counsel created several damage models predicated on the BCG  
28 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting

1 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel  
2 during the mediated settlement discussions. Zakay Dec., ¶ 22.

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

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

#### 20 **C. The Parties Settled at Mediation**

21 On June 27, 2023, the Parties conducted a full day of mediation with Hon. Brian C. Walsh  
22 (Ret.), a jurist and mediator of wage and hour class and representative actions. Judge Walsh helped  
23 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both  
24 sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties  
25 exchanged information regarding their respective claims and defense, including their respective  
26 evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of  
27 which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair,  
28 adequate, and reasonable compromise of the claims at issue. Zakay 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(LL). In the data exchanged at the time the Agreement was executed, there were approximately 62 Class Members that worked approximately 3,500 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 \$262,500. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) an Enhancement Award of \$10,000 to Plaintiff for his services on behalf of the Settlement Class; (3) PAGA Penalties in the amount of \$20,000; (4) Administration Costs estimated at \$4,500; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$107,500 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$87,500 and an estimated \$20,000 for actually incurred litigation expenses. *See generally* Agreement at § I(Q).

Subject to the Court approving the Enhancement Award, Attorneys' Fees and Attorneys' Expenses, PAGA Penalties, and the Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § III(A)(3). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §§ I(Q); III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$262,500 Gross Settlement Amount within thirty (30) calendar days of the Effective Date. Agreement at § I(P).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks for each Settlement Class Member. The Individual Settlement Payments will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class

Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement at § III(N)(1). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

Given that there are approximately 62 Settlement Class Members, *the average gross recovery is approximately \$1,943.55* (Net Settlement Amount divided by Settlement Class Members). Zakay Dec., ¶ 8.

5. Release by Class Members

Generally, as of the Funding Date, Plaintiff and the Class Members will agree to release the Released Parties from the Released Class Claims. The Released Class Claims are defined as all class claims alleged in the operative Complaint, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(EE); III(B).

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

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

### III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$262,500, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after

notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is  
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,  
3 § 11.51.)

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

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

19 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into  
20 the factual and legal issues in dispute. In addition to informal discovery, document review, data  
21 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no  
22 two cases are identical, this research provided Class Counsel with a marker to inform settlement  
23 discussions and, ultimately, to measure this settlement against. The investigation allowed Class  
24 Counsel to realistically assess the value of the claims and intelligently engage defense counsel in  
25 settlement discussions that culminated in the proposed settlement now before the Court. Zakay Dec.,  
26 ¶ 27.

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

1 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
2 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this  
3 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,  
4 reasonable, and adequate, the Court should preliminarily approve the Settlement. Zakay Dec., ¶ 28.

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

6       The Gross Settlement Amount of \$262,500 is within the range of reasonableness. To determine  
7 whether a settlement is fair and reasonable, the court should “consider enough information about the  
8 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an  
9 independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar*  
10 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court  
11 is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of  
12 reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit  
13 statement of value; [they] require[] a record which allows an understanding of the amount that is in  
14 controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling*  
15 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement  
16 is not dependent upon its actual value approaching the potential recovery plaintiffs might have received  
17 if they had succeeded at trial.<sup>2</sup> Indeed, “[t]he determination whether a settlement is reasonable does not  
18 involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak*  
19 *Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.*  
20 (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

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23       <sup>2</sup> 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 The Gross Settlement Amount of \$262,500 is fair and reasonable considering the nature and  
2 magnitude of the claims being settled and the various potential impediments to recovery. Prior to  
3 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's  
4 liability exposure while accounting for the uncertainties of continued litigation. The various models  
5 were informed by Class Counsel's investigation, including the analysis of a significant sample of time  
6 and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding  
7 PAGA Penalties) at \$730,206. Thus, the Gross Settlement Amount of \$262,500 represents  
8 approximately 35.95% of Defendant's *class-wide* liability exposure for damages as estimated by Class  
9 Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. Zakay  
10 Dec., ¶ 29.

11 (1) Exposure for Rest Period Violations

12 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, since  
13 Defendant required its employees to clock in and out for their rest breaks, Plaintiff was able to evaluate  
14 Defendant's liability for rest break violations on a class-wide basis. Plaintiff alleged that Defendant  
15 failed to provide compliant, timely rest breaks to the Class Members, as supported by the time records  
16 Defendant produced for mediation. Zakay Dec., ¶ 30.

17 Defendant denied liability and asserted that they maintained legally compliant rest period  
18 policies and practices throughout the Class Period. Defendant aggressively argued that Defendant's  
19 policies and culture afforded the Class Members an opportunity to take timely rest breaks, and that to  
20 the extent that breaks were not taken, this was done at the election of the employee. Defendant argued,  
21 therefore, that under the *Brinker* decision they have no liability for the missed breaks whatsoever.  
22 Nevertheless, Plaintiff estimated Defendant's exposure for this claim at \$281,047. Zakay Dec., ¶ 31.

23 (2) Exposure for Failure to Pay for All Hours Worked

24 Plaintiff's primary claim in the Action alleged that Defendant failed to pay its employees for all  
25 hours worked. Specifically, Plaintiff asserts that Defendant failed to include bonuses and incentive  
26 compensation payments in the regular rate of pay for purposes of overtime, meal period premiums, and  
27 sick pay. Further, Plaintiff asserted Defendant engaged in an unlawful rounding policy that was not  
28 neutral as applied and, therefore, Class Members were not compensated for all their time worked.

1 Zakay Dec., ¶ 32.

2 Defendant vigorously denied liability for this claim. Defendant argued, among other things, that  
3 all Class Members were properly paid minimum and overtime compensation for all hours worked and  
4 any rounding policy was neutral in practice. Further, Defendant argued that all non-discretionary  
5 incentive compensation was properly included into the regular rate of pay. Plaintiff estimated  
6 Defendant's exposure for this claim at \$217,635. Zakay Dec., ¶ 33.

7 (3) Exposure for Meal Period Violations.

8 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,  
9 Plaintiff alleges that as a result of Defendant's unlawful rounding policy and practice of automatically  
10 deducting meal periods whether or not they were taken, Plaintiff and Class Members were not provided  
11 meal period premiums for meal period violations that occurred during the Class Period. Zakay Dec., ¶  
12 34.

13 Conversely, Defendant argued, among other things, that they did not engage in a practice of  
14 automatically deducting meal periods and provided all of their employees with the opportunity to take  
15 compliant meal periods. Defendant also argued that they maintained facially compliant meal period  
16 policies. Plaintiff estimated Defendant's exposure for this claim at \$178,024. Zakay Dec., ¶ 35.

17 (4) Exposure for Unreimbursed Business Expenses

18 Plaintiff alleged that Defendant required Class Members to incur personal expenses for the use  
19 of their own personal cellular phones and personal home internet. California employers who require  
20 employees to incur personal business expenses for work purposes must reimburse the employee for the  
21 cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her  
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence of  
23 the discharge of his or her duties, or of his or her obedience to the directions of the employer....").  
24 However, Defendant failed to fully reimburse Plaintiff and Class Members for the costs incurred for  
25 the use of their personal cellular phones and personal home internet in violation of California Labor  
26 Code section 2802. Zakay Dec., ¶ 36.

27 Again, Defendant denied any liability for this claim. Defendant argued that most of its  
28 employees did not use cellphones as a part of the performance of their duties and on the rare occasion

1 where employees did incur business expenses for the use of their cellphones and home internet, these  
2 expenses were fully reimbursed. Plaintiff estimated Defendant's exposure for this claim at \$53,500.  
3 Zakay Dec., ¶ 37.

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

5 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor  
6 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties  
7 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue  
8 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor  
9 Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class  
10 Members suffered an "injury" because of wage statement violations, as required by Labor Code section  
11 226. Defendant could also argue that that meal and rest period violations do not entitle employees like  
12 Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement  
13 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not  
14 give the penalty claims great weight given that they depended on proving the underlying claims, which  
15 had their own risks. Plaintiff estimated Defendant's exposure for these claims at \$343,268, which is  
16 comprised of \$195,268 for waiting time penalties and \$148,000 for wage statement penalties. Zakay  
17 Dec., ¶ 38.

18 (6) Defendant's PAGA Exposure

19 In all, Class Counsel projected Defendant's liability exposure for PAGA claims at \$749,600 if  
20 successful at trial. Zakay Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount  
21 is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements  
22 "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the  
23 result of self-interest at the expense of class members," such amounts are generally considered  
24 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*9 (N.D. Cal.  
25 Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two  
26 percent of the settlement. *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*  
27 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a  
28 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL

1 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements  
2 in the range of zero to two percent of the total settlement).

3 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of \$20,000  
4 which is 7.62% of the Gross Settlement Amount. This amount falls well within the range of approved  
5 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$15,000) will be paid to the  
6 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties  
7 (\$5,000) being distributed to the Aggrieved Employees, which is within the range of PAGA Penalties  
8 approved by courts and should be approved. Zakay Dec., ¶ 40.

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

17 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the  
18 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS  
19 13126, \*10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on  
20 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the  
21 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for  
22 each pay period the employee worked. Again, Defendant raised several defenses that presented serious  
23 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments  
24 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*  
25 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the  
26 rest period claims. Zakay Dec., ¶ 41.

27 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, illustrates the risk of PAGA claims.  
28 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the

1 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with  
2 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.  
3 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA  
4 penalties were reduced by 90%.

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

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

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

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

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

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

23 Finally, continuing to litigate this action would require continued and extensive resources  
24 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
25 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
26 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
27 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
28 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,

the risk of an appeal and subsequent reversal is real. Zakay Dec., ¶ 42. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$262,500 that is approximately 35.95% of Defendant’s *class-wide* liability exposure for damages, and approximately 24.45% of Defendant’s maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. Zakay Dec., ¶ 43.

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

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

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

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<sup>3</sup> Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to 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* (7<sup>th</sup> Cir. 1987) 826 F.2d 729, 732.

1 approval hearing, the formula used to calculate settlement payments, and the terms and scope of the  
2 Released Class Claims. Agreement at § III(M)(2)(a). The Parties negotiated this method to ensure  
3 delivering the most reasonable method of notice to the Class Members while ensuring cost effective  
4 administration of the Settlement. Zakay Dec., ¶ 44.

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

9 **C. The Court Should Preliminarily Approve the Enhancement Award**

10 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*  
11 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*  
12 *Publishing Corp.* (9<sup>th</sup> Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)  
13 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53  
14 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives  
15 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing  
16 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”  
17 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to  
18 named plaintiffs is that they should be compensated for the expense or risk they have incurred in  
19 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*  
20 (2009) 175 Cal.App.4th 785.)

21 The Settlement provides for an Enhancement Award of \$10,000 for Plaintiff. The Enhancement  
22 Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class  
23 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his  
24 case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that  
25 its terms are fair and provide adequate relief for the Settlement Class. Zakay Dec., ¶ 45.

26 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement  
27 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the  
28 above showing is sufficient for preliminary approval of the negotiated Enhancement Award. Zakay

Dec., ¶ 46.

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

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

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

Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Attorneys’ Expenses 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. Zakay Dec., ¶ 48.

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

For Settlement, Plaintiff contends, and Defendant does not dispute for settlement purposes only, that provisional certification of the Class is appropriate. Zakay 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

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

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

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

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

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

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

23 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire  
24 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s  
25 liability can be determined by facts common to all members of the class. The wage and hour issues are  
26 both numerous and substantial, and a class action is the most advantageous method of dealing with the  
27 claims of the Settlement Class. *Zakay Dec.*, ¶ 51.

28 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise

1 from the same factual basis and are based on the same legal theories applicable to the other Class  
2 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement  
3 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed  
4 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability  
5 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive  
6 class discovery, and evaluating the proposed settlement to assure that it is fair. Zakay Dec., ¶ 52.

7 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience  
8 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and  
9 gained state court settlement approval of the same class-wide causes of action that are at issue in this  
10 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to  
11 represent the interests of this Class. Zakay Dec., ¶¶ 53, 55, Declaration of Jean-Claude Lapuyade, ¶¶  
12 1-11.

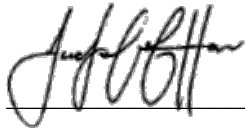
13 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
14 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
15 individual basis because the out-of-pocket expense and personal commitment necessary to litigate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

#### 18 IV. CONCLUSION

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

22 Dated: October 26, 2023

**ZAKAY LAW GROUP, APLC**

23  
24 By:  \_\_\_\_\_

25 Jackland K. Hom, Esq.

26 Attorney for Plaintiffs  
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