

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

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

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DAVID EZELL, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

DIAB LEASING, INC., a California
Corporation; and DOES 1-50, Inclusive.

Defendants.

Case No. 34-2021-00305329

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

Hearing Date: May 5, 2023
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Department: 28

Trial Date: None
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1 **I. INTRODUCTION**

2 Plaintiff DAVID EZELL (“Plaintiff”) respectfully submits this memorandum in support of
3 the motion for preliminary approval of the Stipulation of Settlement of Class Action Claims and
4 Release of Claims (the “Agreement”) in *Ezell v. Diab Leasing, Inc., et al.*, Case No. 34-2021-
5 00305329 (the “Action”) and seeks entry of an order: (1) preliminarily approving the proposed
6 settlement of the Action with Defendants Diab Leasing, Inc. and Farouk Diab (collectively
7 “Defendants”)¹; (2) approving the form and method for providing class-wide notice; (3) directing
8 that notice of the proposed settlement be given to the class; and (4) scheduling a final approval
9 hearing date to consider Plaintiff’s motion for final approval of the settlement and entry of the
10 Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

11 Plaintiff and Defendants have reached a full settlement of the Action, which is embodied in
12 the Agreement. A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
13 of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair, reasonable,
14 and adequate, and should be preliminarily approved. Plaintiff respectfully requests that this Court
15 grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

16 **II. DESCRIPTION OF THE SETTLEMENT**

17 The Maximum Settlement Amount to be paid by Defendants is One Million Seven Hundred
18 Thousand Dollars (\$1,700,000). Under the Settlement, the Maximum Settlement Amount consists
19 of the following elements: (1) the Individual Settlement Payments to Class Members, (2) the
20 Attorneys’ Fees and Attorneys’ Expenses, (3) Administration Costs, (4) the PAGA Settlement, and
21 (5) the Service Award to the Plaintiff. The Maximum Settlement Amount does not include
22 Defendants’ share of employer payroll taxes, which Defendants shall pay to the Administrator
23 separately. The Maximum Settlement Amount shall be all-in with no reversion to Defendants.
24 (Decl. Zakay at ¶ 13.)

25 After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in
26 the Agreement), Defendants will fund the Maximum Settlement Amount in thirty-three (33) equal
27

28 1. These defendants are included in the definition of “Released Parties” in the Agreement. (Agreement, section I., DD.)

1 Settlement Installment Payments in the amount of \$51,515.15 each, with the first installment to be
2 made fifteen (15) calendar days after Final Approval, and each subsequent installment every thirty
3 (30) calendar days thereafter until completion. No later than fifteen (15) days after Defendants fund
4 the Maximum Settlement Amount in an amount sufficient to support the Individual Settlement
5 Payments and Aggrieved Employees Payments, the Settlement Administrator will pay: the
6 Settlement Class Members their Individual Settlement Payments and the PAGA Class Members
7 their PAGA Class Member Payments. Thereafter, no later than five (5) days after Defendants fund
8 the balance of the Maximum Settlement Amount in full, the Settlement Administrator will pay:
9 Class Counsel their Attorneys' Fees and Attorneys' Expenses; the LWDA its share of the PAGA
10 Settlement; and the Settlement Administrator its Administration Costs, all in the amounts approved
11 by the Court. (Decl. Zakay at ¶ 14.)

12 The Net Settlement Amount shall equal the net amount available for Individual Settlement
13 Payments to Settlement Class Members from the Maximum Settlement Amount after deducting the
14 Court-approved amounts for the Service Award, the Attorneys' Fees and Attorneys' Expenses, the
15 PAGA Settlement, and the Administration Costs. The Settlement Administrator will pay an
16 Individual Settlement Payment from the Net Settlement Amount to each Settlement Class Member.
17 The submission of a claim form is not required for the Settlement Class Member to be paid his or
18 her Individual Settlement Payment. The Individual Settlement Payment for each Settlement Class
19 Member will be calculated by dividing the Net Settlement Amount by the total number of
20 workweeks worked by all Settlement Class Members during the Class Period and then multiplying
21 that amount (the "Payment Ratio") by the total number of workweeks worked by each Settlement
22 Class Member during the Class Period. The entire Net Settlement Fund shall be distributed. (Decl.
23 Zakay at ¶ 15-16.)

24 Class Members will have forty-five (45) days after the mailing of the Notice Packet to
25 exclude themselves or submit written objections by following the directions in the Notice Packet.
26 All Class Members who do not "opt out" will be deemed Settlement Class Members and will be
27 bound by the Settlement. The Notice will advise the Class Members of their right to object to the
28 Settlement. (Decl. Zakay at ¶ 17.)

1 If a check is returned to the Settlement Administrator, the Settlement Administrator will
2 make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-mail
3 the check to the Settlement Class Member at his or her correct address. If a Settlement Class
4 Member's Individual Settlement Payment check is not cashed within 180 days after the Settlement
5 Administrator's last mailing to the Settlement Class Member, the funds from such uncashed checks
6 will be transmitted to Bet Tzedek pursuant to California Code of Civil Procedure section 384. (Decl.
7 Zakay at ¶ 18.)

8 The Parties have agreed to use ILYM Group as the Settlement Administrator. Payment of
9 the expenses of the Settlement Administrator from the Maximum Settlement Amount shall be made
10 for the expenses of effectuating and administering the Settlement. The Settlement Administrator
11 shall receive payment for services estimated at \$25,000. (Decl. Zakay at ¶ 19.)

12 Subject to Court approval, the Agreement provides for Attorneys' Fees not to exceed 1/3 of
13 the Maximum Settlement Amount and Attorneys' Expenses in an amount not to exceed \$25,000. In
14 support of this request, Class Counsel will provide evidentiary support, including lodestar method
15 calculations. Subject to Court approval, the Agreement provides for payment of a Service Award
16 of no more than \$10,000 for Plaintiff or such lesser amount as may be approved by the Court at
17 Final Approval.² (Decl. Zakay at ¶ 20.)

18 Subject to Court approval, \$80,000 will be paid for settlement of civil penalties under
19 PAGA, Labor Code Section 2698 *et seq.* Pursuant to the requirements of Labor Code §2699(i), the
20 PAGA Settlement shall be allocated \$60,000.00 (75%) to the LWDA (the "LWDA Payment") as
21 the LWDA's share of the settlement of civil penalties and \$20,000.00 (25%) for distribution as
22 PAGA Class Member Payments to the PAGA Class Members. (Decl. Zakay at ¶ 21.)

23 **III. CASE BACKGROUND**

24 On May 25, 2021, Plaintiff filed a Notice of Violations with the LWDA and served the same
25 on Defendant Diab Leasing, Inc. On July 30, 2021, Plaintiff filed the class action complaint in this
26

27 ² Plaintiff will address the reasonableness of this award when filing his final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 Court, asserting claims for: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to
2 pay overtime wages; (4) failure to provide required meal breaks; (5) failure to provide required rest
3 breaks; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees
4 for required expenses; (8) failure to provide wages when due; and (9) violation of the Private
5 Attorneys General Act. (Decl. Zakay at ¶ 7.)

6 Plaintiff seeks to represent a putative class of all individuals who are or previously were
7 employed by Defendants in California and classified as a non-exempt employee during the period
8 of July 30, 2017, up to and including December 2, 2022 (the “Class Members”). The Complaint
9 generally alleges the causes of action listed above. The Action seeks unpaid wages, statutory and
10 PAGA penalties, attorneys’ fees, and litigation costs³. (Decl. Zakay at ¶ 8.)

11 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
12 information in connection with the Action. As part of this process, Defendants provided a
13 significant sample of time records and payroll records, as well as other documents and information,
14 to Class Counsel to review and analyze. On July 18, 2022, the Parties participated in an all-day
15 mediation presided over by Tripper Ortman, Esq., a mediator of wage and hour class actions. The
16 Parties and Mediator Ortman subsequently requested the assistance of Judge Mitchell Goldberg
17 (Ret.), a retired Federal Bankruptcy Judge after Defendant raised an inability to pay defense. As a
18 part of the mediation, Judge Goldberg reviewed Defendant’s financial documents, evaluated
19 Defendant’s financial standing, and conferred with Mediator Ortman. Subsequently, Mediator
20 Ortman made a mediator’s proposal based on Judge Goldberg’s evaluation. The Parties agreed to
21 the mediator’s proposal. The Parties documented the agreement in the form of a Settlement
22 Agreement, which was signed by the Parties and is now presented to this Court for preliminary
23 approval. (Decl. Zakay at ¶ 9.)

24 Although a resolution has been reached, Defendants deny that they have violated any
25 applicable law, committed any wrong against Plaintiff or any other current or former employee, or
26 that they have otherwise damaged Plaintiff or any other current or former employee in any way.

27
28 ³ Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the
final approval papers.

1 Further, Defendants contend that class certification would be inappropriate for any reason other
2 than for settlement. Plaintiff contends that Defendants violated California wage and hour laws.
3 Plaintiff further contends that the Action is appropriate for class certification on the basis that the
4 Plaintiff's claims meet the requisites for class certification. Without admitting that class certification
5 is proper, Defendants have stipulated that the above Class may be certified for settlement purposes
6 only. The Parties agree that certification for settlement purposes is not an admission that class
7 certification would be proper if the class certification issues were litigated. Further, the Agreement
8 is not admissible in this or any other proceeding as evidence that the Class could be certified absent
9 a settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the
10 requisites for establishing class certification with respect to the Class, as defined above, are
11 satisfied. (Decl. Zakay at ¶ 11.)

12 Class Counsel has conducted a thorough investigation into the facts of the action. Class
13 Counsel has diligently evaluated the Class Members' claims against Defendants. Prior to the
14 mediation, counsel for Defendants provided Class Counsel with access to the necessary data and
15 information to evaluate the claims by the Class. Class Counsel reviewed the production of
16 documents from the Defendants and conducted an extensive review of a significant sample of time
17 records and data with the assistance of an expert (Berger Consulting Group ("BCG")). Based on the
18 foregoing and their own independent investigation, evaluation and experience, Class Counsel
19 believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class
20 in light of all known facts and circumstances, including the risk of significant delay, defenses
21 asserted by Defendants, and potential appellate issues. (Decl. Zakay at ¶ 12.)

22 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 23 **COURT TO GRANT PRELIMINARY APPROVAL**

24 When a proposed class-wide settlement is reached, the settlement must be submitted to the
25 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
26 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
27 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
28 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are

1 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
2 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
3 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

4 The primary question presented on an application for preliminary approval of a proposed
5 class action settlement is whether the proposed settlement is “within the range of possible approval.”
6 (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
7 (7th Cir. 1982).) Preliminary approval is merely the prerequisite to giving notice so that “the
8 proposed settlement... may be submitted to members of the prospective Class for their acceptance
9 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
10 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
11 LEXIS 151997, *3 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed
12 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
13 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
14 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
15 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and
16 adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly
17 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).)
18 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
19 is made after notice of the settlement is given to the Class Members and a final settlement hearing
20 is held by the Court.

21 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

22 Approval of a proposed settlement of a class action suit is a matter within the broad
23 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
24 In considering a potential settlement for preliminary approval purposes, the trial court does not have
25 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
26 dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at 239-40;
27 *Dunk, supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a settlement
28 is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice*

1 v. *Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question
2 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and
3 evaluation by the attorneys for the parties based upon a comparison of “the terms of the
4 compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d
5 Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*
6 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
7 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
8 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With
9 regard to class action settlements, the opinions of counsel should be given considerable weight both
10 because of counsel’s familiarity with this litigation and previous experience with cases such as
11 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
12 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
13 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
14 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

15 **B. Factors To Be Considered In Granting Preliminary Approval**

16 In determining whether to grant preliminary approval, the court considers whether the “(1)
17 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
18 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
19 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
20 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
21 determinative. Here, the Settlement meets all of these criteria for preliminary approval.

22 **1. The Settlement is the Product of Serious, Informed and Arm’s Length**
23 **Negotiations by Experienced Counsel**

24 This Settlement is the result of extensive and hard-fought litigation and negotiations before
25 an experienced and well-respected mediator. Defendants denied and continue to deny any
26 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
27 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
28

1 Released Class Claims.⁴ (Decl. Zakay at ¶ 5.) Plaintiff and Class Counsel recognize the expense
2 and time involved in continuing to litigate and ultimately trying the Action against Defendants
3 through possible appeals which could take several years. Class Counsel have also taken into account
4 the uncertain outcome and risk of litigation, especially in complex actions such as the one here.
5 Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted
6 defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class
7 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
8 Class Members. (Decl. Zakay at ¶ 22.)

9 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
10 capable advocacy on both sides. The Parties were represented by experienced counsel who
11 zealously advocated their respective positions with the assistance of an experienced mediator.
12 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
13 vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash.*
14 *Public Power*, 720 F. Supp. at 1392.)

15 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of** 16 **Approval**

17 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
18 possible approval. All Class Members will receive an opportunity to participate in the Settlement
19 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
20 III(M)(2).)

21 Defendants’ total exposure for the alleged violations at the time this Settlement was
22 negotiated was calculated by BCG, Plaintiff’s damage expert. Plaintiff used BCG to analyze the
23 data and determine the potential damages for the employees. For the Class, Plaintiff estimates that
24 Defendants were subject to maximum liability for damages in the amount of \$4,276,782 consisting
25 of \$250,702 for unpaid wages, \$641,315 for rest periods, \$641,315 for meal periods, and \$110,030
26 for unreimbursed expenses. In addition, Plaintiff’s expert calculated \$1,795,470 in waiting time
27

28 ⁴ Released Class Claims are defined in the Settlement Agreement at ¶ I(BB).

1 penalties and \$837,950 for wage statement penalties.⁵ Finally, Plaintiff's expert calculated that
2 Defendants could be liable for PAGA penalties in an amount of \$3,006,500.⁶ Consequently, the
3 Settlement of \$1,700,000 represents approximately 39.7% of the maximum estimated *damages*, and
4 23.3% of the maximum combination of damages and penalties to the Class, assuming all of these
5 amounts could be proved at trial. Given the amount of the Settlement as compared to the potential
6 value of claims in this case, the Settlement is fair and reasonable. Clearly, the goal of this litigation
7 – to provide compensation to Class Members for unpaid time and for allegedly missed meal and
8 rest breaks – has been met. (Decl. Zakay at ¶ 6.)

9 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
10 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
11 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
12 consideration exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
13 ruled that the settlement which represented approximately 10% of the estimated loss to the class
14 was fair, reasonable, and adequate. As a result, this Settlement, which exceeds the percentage
15 approved in *Stovall-Gusman*, is entitled to preliminary approval.

16 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.
17 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, a number of defenses
18 asserted by Defendants presented serious threats to the claims of the Plaintiff and the other Class
19 Members. For instance, Defendants asserted that the employment practices complied with all
20 applicable Labor Laws. Specifically, Defendants argued that the Supreme Court decision in *Brinker*

21 ⁵ While Plaintiff alleged claims for statutory penalties, he recognizes that this claim is subject to various defenses
22 asserted by Defendants. Plaintiff's claims pursuant to Labor Code Section 226 and various PAGA penalties are also
23 subject to a good faith defense as to whether any premium wages for meal or rest periods or other wages were owed
24 given Defendants' position that Plaintiff and the Class were properly compensated. (*See Reber v. AIMCO/Bethesda*
Holdings, Inc., 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment
25 on claim for failure to provide accurate itemized wage statements "because a good faith dispute exists... [therefore,
26 defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements").)

25 ⁶ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by Defendants, including that
26 Class Members may not be able to recover subsequent penalties until, at a minimum, Plaintiff provided PAGA notice.
27 (*See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008) ("Until the employer has been notified that it is
28 violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer
cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties."))
In addition, Plaintiff recognizes that PAGA claims bear some risk. (*See Carrington v. Starbucks Corp.*, 30 Cal. App.
5th 504 (2018).) In *Carrington*, while the plaintiff prevailed on his PAGA claim at 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.)

1 *v. Superior Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on
2 liability, value, and class certifiability as to the meal and rest period claims. A major component of
3 the damages alleged to have been suffered by the Class Members are attributed to missed meal and
4 rest breaks. Before and during the mediation, Defendants aggressively argued that Defendants'
5 policies and culture afforded the Class Members an opportunity to take timely meal and rest breaks,
6 and that employees like the Plaintiff *chose* not to take compliant breaks. Defendants argued,
7 therefore, that under the *Brinker* decision they have no liability for the missed breaks whatsoever.
8 Defendants argued that they adopted and strictly enforced lawful policies, and afforded Plaintiff
9 and the Class Members compliant meal and rest breaks. If successful, these defenses could eliminate
10 or substantially reduce any recovery to the Class. While Plaintiff believes that these defenses, and
11 others, could be overcome, Defendants maintain these defenses have merit and therefore present a
12 serious risk to recovery for the Class. (Decl. Zakay at ¶¶ 23-24.)

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain class certification and thereby not recover on behalf of any employee other than himself.
15 Defendants argued that the individual experience of each employee varied with respect to the
16 alleged claims. While other cases have approved class certification of wage and hour claims, class
17 certification in this action would have been hotly disputed and was by no means a foregone
18 conclusion. Finally, even if class certification was successful, as demonstrated by the California
19 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
20 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
21 (Decl. Zakay at ¶ 25.) Here, the risk of further litigation is substantial. After arm's-length
22 negotiations between experienced and informed counsel, the Parties recognized the potential risks
23 and agreed on the Settlement.

24 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the** 25 **Class Representative or Segments of The Class**

26 The relief provided in the Settlement will benefit all Class Members who do not opt out.
27 The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of the
28 Class in any way. Each Class Member will be entitled to a cash payment based on the plan of

1 allocation described herein. Each Settlement Class Member's Individual Settlement Payment will
2 be determined based upon the weeks worked by that employee during the prescribed Class Period.
3 (Decl. Zakay at ¶ 4.) Plaintiff will apply to the Court for a Service Award in consideration for his
4 service, and for the risks undertaken on behalf of the Class. Plaintiff performed his duties admirably
5 by working with Class Counsel. The requested Plaintiff's service payment is within the accepted
6 range of awards for purposes of preliminary approval. (See Decl. Zakay at ¶ 27.)

7 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
8 **Preliminary Approval Of The Settlement**

9 The stage of the proceedings at which this Settlement was reached also militates in favor of
10 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
11 a thorough investigation into the facts of the class action. Class Counsel began investigating the
12 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel performed
13 significant review and analysis of Defendants' documents, time records and pay records. Class
14 Counsel engaged in a thorough research and analysis of the relevant claims and data. Class Counsel
15 are also experienced with the claims at issue here, as Class Counsel previously litigated and settled
16 similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class
17 Counsel possessed sufficient information to make an informed judgment regarding the likelihood
18 of success on the merits and results that could be obtained through further litigation. (Decl. Zakay
19 at ¶ 28.)

20 There can be no doubt that Counsel for both Parties possessed sufficient information to make
21 an informed judgment regarding the likelihood of success on the merits and the results that could
22 be obtained through further litigation.

23 In *Glass v. UBS Financial Services, Inc.*, the Northern District of California granted final
24 approval of an unpaid wages action although in *Glass* no formal discovery had been conducted prior
25 to the settlement:

26 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
27 observed, however, "[i]n the context of class action settlements, 'formal discovery
28 is not a necessary ticket to the bargaining table' where the parties have sufficient
information to make an informed decision about settlement." See *In re Mego*

1 *Financial Corp. Securities Litigation*, 213 F.3d [454,] 459. (*Glass*, 2007 WL
221862 at *4.)

2 Here, Class Counsel was in a strong position to evaluate the fairness of this Settlement
3 because Class Counsel had the same, if not more, sufficient information, as well as an informal
4 document production.

5 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

6 Plaintiff contends that the proposed Settlement meets all the requirements for class
7 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
8 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
9 should conditionally certify the Class for settlement purposes only, defined as follows: all
10 individuals who are or previously were employed by Defendants in California and classified as a
11 non-exempt employee at any time during the Class Period. “Class Period” means the period from
12 July 30, 2017, up to and including December 2, 2022. Defendants estimate the number of work
13 weeks during the Class Period to be approximately 56,669. (Decl. Zakay at ¶ 30.)

14 **A. California Code of Civil Procedure §382**

15 Plaintiff seeks certification of this Class for settlement purposes under California Code of
16 Civil Procedure section 382. While Defendants reserve all rights to dispute that the Plaintiff can
17 satisfy any of these requirements, Defendants will not dispute that these requirements may be
18 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
19 for purposes of settlement only.

20 **B. The Proposed Class Is Ascertainable and Numerous**

21 Here, the approximately 1,150 current and former employees that comprise the Class are
22 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
23 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
24 (1981) (class of 48 members satisfies numerosity requirement.)) All of these employees are
25 ascertainable because the Class Members can readily be determined through examination of
26 Defendants’ employment files. (Decl. Zakay at ¶ 30.) For purposes of settlement only, Defendants
27 will not oppose a finding of numerosity.

28 ///

1 **C. Common Issues of Law and Fact Predominate**

2 Predominance of common issues of law or fact does not require that the common issues be
3 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
4 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) “Predominance is a comparative
5 concept, and ‘the necessity for class members to individually establish eligibility and damages does
6 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
7 if there is a predominant common legal question regarding how an employer’s policies impact its
8 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) (“[T]he
9 common legal question remains the overall impact of Diva’s policies on its drivers.”).) Whether
10 Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the
11 question is “essentially a procedural one that does not ask whether an action is legally or factually
12 meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

13 Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i)
14 whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
15 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely
16 furnish accurate, itemized and legal wage statements; (iv) whether Defendants subjected Class
17 Members to unfair business practices; and (v) whether Defendants are liable for attorneys’ fees and
18 costs. (Decl. Zakay at ¶ 30.) Defendants will not oppose a finding of commonality for purposes of
19 settlement only.

20 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

21 The typicality requirement requires Plaintiff to demonstrate that the members of the class
22 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
23 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
24 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
25 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
26 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
27 need not be substantially identical.” (50 F.3d at 1020.)
28

1 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.
2 Plaintiff, like every other member of the Class was employed by Defendants and is a member of
3 the Class. Plaintiff was subject to the same employment practices, meal and rest periods, and
4 received similar wage statements. Thus, the claims of the Plaintiff and the Class Members arise
5 from the same course of conduct by the Defendants, involve the same employment policies, and are
6 based on the same legal theories. (Decl. Zakay at ¶ 30.) For purposes of settlement only, Defendants
7 will not oppose typicality.

8 **E. The Class Representative Fairly and Adequately Protected the Class**

9 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
10 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
11 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff is well aware of his
12 duties as a representative of the Class and has actively participated in the prosecution of this case
13 to date. First, Plaintiff effectively communicated with Class Counsel, provided documents to them
14 and participated investigation and negotiations in the Action. Second, Plaintiff retained competent
15 counsel who are experienced in employment class actions. Third, there is no antagonism between
16 the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek
17 monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶ 30.) Defendants
18 will not dispute such a finding for purposes of this settlement only.

19 **F. The Superiority Requirement Is Met**

20 To certify a class, the Court must determine that a class action is superior to other available
21 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
22 common issues will reduce litigation costs and promote greater efficiency, a class action may be
23 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
24 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
25 the Plaintiff. Defendants will not dispute such a finding for purposes of this settlement only.

26 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

27 The Court has broad discretion in approving a practical notice program. The Parties have
28 agreed upon procedures by which the Class Members will be provided with written notice of the

1 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice
2 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be
3 approved by the Court, includes all relevant information. (See Exhibit A to the Agreement.) The
4 Notice Packet will state that the Class Members shall have forty-five (45) days from the date that
5 the Notice Packet is mailed to them to request exclusion or to submit an objection. The Class
6 Members will be given an opportunity to object to the terms of the Agreement and/or the request
7 for attorneys' fees and costs and to participate at the final approval hearing, in accordance with the
8 instructions set forth in the Notice Packet. Class Members will be instructed to only contact the
9 Settlement Administrator and/or Class Counsel and not the Court. Class Members who do not opt
10 out will automatically receive an Individual Settlement Payment. This notice program was designed
11 to meaningfully reach the Class Members and advises them of all pertinent information concerning
12 the Settlement. The mailing and distribution of the Notice Packet satisfies the requirements of due
13 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
14 notice to all persons entitled thereto. The Notice Packet provides information on the terms and
15 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
16 time, and place of the final settlement approval hearing; and the procedure and deadline for
17 submitting comments, objections, and requests for exclusion. The Notice Packet complies with
18 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶ 32.)

19 VII. CONCLUSION

20 Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement
21 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
22 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
23 Preliminary Approval.

24 DATED: April 13, 2023

ZAKAY LAW GROUP, APLC

26 By: 
27 Shani O. Zakay, Attorney for Plaintiffs
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