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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CLAUDIA NUNEZ PORCAYO, an
individual, on behalf of herself and on behalf
of all persons similarly situated,

Plaintiff,

vs.

THE WHOLE CHILD – MENTAL HEALTH
& HOUSING SERVICES., a California
Corporation; and DOES 1-50, Inclusive;

Defendants.

Case No. 21STCV25160

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

Date: August 3, 2022
Time: 9:00 a.m.

Judge: Hon. Maren Nelson
Dept.: 17

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1 I. INTRODUCTION

2 Plaintiff CLAUDIA NUNEZ PORCAYO (collectively “Plaintiff”) seeks preliminary approval
3 of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 195
5 members of the Class and 103 Aggrieved Employees. The basic terms of the Agreement provide for
6 the following:

7 1. The “**Class Members**” and “**Settlement Class Members**” shall mean “all individuals
8 who are or previously were employed by Defendant in California and classified as non-exempt
9 employees at any time during the Class Period. The Class Period is defined as the period between July
10 8, 2017 and May 1, 2022. Agreement at §§ I(G) and (H). The Settlement Class Members exclude any
11 Class Member that submitted a valid and timely request for exclusion. Agreement at §I(GG).

12 2. The “**Aggrieved Employees**” means all individuals who are or previously were employed
13 by Defendant in California and classified as non-exempt employees at any time during the PAGA
14 Period. The Class Period is defined as the period between April 30, 2020 and May 1, 2022. (“PAGA
15 Period”). Agreement at §§ I(B) and (V). Aggrieved employees do not have the ability to opt-out of the
16 PAGA portion of the settlement.

17 3. The “**Gross Settlement Amount**” is One Hundred Ninety-Five Thousand Dollars
18 (\$195,000). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the
19 following:

20 a. A “**Class Representative Service Award**” in the amount of \$10,000 to Plaintiff
21 for her services on behalf of the Class Members, and for agreeing to a broad release. Agreement at
22 §III(M)(9);

23 b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross
24 Settlement Amount for attorney’s fees, currently estimated to be \$65,000.00 *and* litigation costs and
25 expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §III(M)(10);
26

27
28 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations
to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise,
capitalized terms used herein have the same meaning as those defined by the Agreement.

1 c. A “**PAGA Settlement**” of \$10,000 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
3 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the
4 Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
5 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
6 Agreement at §III(M)(11); and,

7 d. “**Settlement Administration Costs**” not to exceed \$8,000 payable to the
8 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
9 and Individual Settlement Payments. Agreement at §III(M)(12).

10 4. The “**Net Settlement Amount**” of approximately \$87,000 (Gross Settlement Amount
11 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
12 Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-
13 rata basis according to the number of Workweeks each Settlement Class Member worked during the
14 Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do
15 not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$446.15**.
16 Agreement at §III(M)(1); Zakay Dec., ¶ 6.

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

24 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
25 approval and falls within the range of reasonableness. The average Individual Settlement Share to the
26 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
27 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff
28 respectfully requests the Court grant preliminary approval of the Settlement. Zakay Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides mental health, family housing, parent enrichment, and nutrition education services to families and children of vulnerable communities, including at the Los Angeles County location where Plaintiff worked. This action asserts claims on behalf of Defendant's non-exempt employees who are or previously were employed in California. Plaintiff worked for Defendant as a non-exempt employee in California between October of 2020 and February of 2021. At all times during her employment, Plaintiff earned an hourly wage and was entitled incentive compensation, and to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures and unwritten policies and practices. Zakay Dec., ¶ 8.

Generally, Plaintiff claims that Defendant failed to pay overtime at the correct regular rate of pay, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to reimburse for required business expenses. 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, facially compliant meal and rest period policies, compliant wage statements, and reimbursed for all required business expenses. Zakay Dec., ¶ 9.

On April 30, 2021, 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 her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). Zakay Dec., ¶ 10.

On July 8, 2021, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case Number 21STCV25160 (the "Action"). The Action alleged ten causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay

1 Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal
2 Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods
3 in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage
4 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Reimburse Employees for Required
5 Business Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to Provide Wages When Due in
6 Violation of Cal. Lab. Code §§ 201, 202 and 203; (9) Unpaid Sick Pay in Violation of Cal. Lab. Code
7 § 246; (“Class Claims”) and (10) Violations of the Private Attorney General Act at Lab. Code §§ 2698
8 *et. seq.* (“PAGA Claims”).

9 After the Action was commenced, the Parties agreed to mediate the Action. To prepare for
10 mediation, the Parties agreed to informally produce documents and data points subject to the mediation
11 privilege, including but not limited to, a 25% sample of the Class Members’ time data and certain
12 payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger
13 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

14 On March 15, 2022 the Parties participated in a full day mediation with highly regarded wage
15 and hour mediator Jeffrey Krivis, Esq. After arms-length negotiations and bargaining, the Parties
16 reached an agreement to settle and signed a Memorandum of Understanding. After reaching an
17 agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is
18 the subject of the instant motion. Zakay Dec., ¶ 13.

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

20 Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into
21 the Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
22 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
23 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
24 each of Plaintiff’s complaints appeared to substantiate Plaintiff’s claim that Defendant’s failed to,
25 among other things, pay for all time worked and to provide compliant meal and rest periods. Zakay
26 Dec., ¶ 14.

27 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
28 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for

1 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims
2 and Defendant's liability exposure to the Class Members. In response to Class Counsel's request,
3 Defendant produced the time records for the Class Members, aggregate workweek and pay period data
4 for the Class Members, wage statements for the Class Members, and copies of applicable handbooks,
5 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
6 policies. In total, Defendant produced approximately 1,000 pages of pertinent policy documents, time
7 records for Class Members, and thousands of unique cells of payroll and time data for Class Counsel
8 to analyze. Zakay Dec., ¶ 16.

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

15 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
16 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
17 pay periods, average length of shift and average number of hours worked per week and pay periods
18 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
19 periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of
20 underpayment of overtime resulting from the miscalculation of the regular rate, and the amount of off-
21 the-clock work performed by the Class Members during the Class Period. BCG calculated and created
22 a damage model for Defendant's potential liability exposure while accounting for the uncertainties of
23 continued litigation. The damage model informed and guided Class Counsel during the mediated
24 settlement discussions. Zakay Dec., ¶ 18.

25 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
26 Plaintiff's suitability as a putative class representative through interviews, background investigations,
27 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
28 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type

1 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
2 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
3 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
4 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
5 mediation. Zakay Dec., ¶ 19. This investigation allowed Class Counsel to fully assess the nature and
6 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
7 independent assessment of the reasonableness of the terms to which the Parties have agreed. Zakay
8 Dec., ¶ 20.

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

10 On March 15, 2022, the Parties conducted a full day of mediation with Jeffery Krivis, Esq. a
11 highly regarded mediator of wage and hour class actions. Mr. Krivis helped manage the Parties'
12 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
13 made substantial progress with Mr. Krivis' assistance. Namely, the Parties exchanged information
14 regarding their respective claims and defense, including their respective evaluation of the damages. At
15 the conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized
16 in the form of a Memorandum of Understanding. The complete and final terms of the Parties'
17 settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a
18 fair, adequate, and reasonable compromise of the claims at issue. Zakay Dec., ¶¶ 21-24.

19 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

20 1. The Composition of the Settlement Class Members

21 The proposed Settlement Class consists of all individuals who are or previously were employed
22 by Defendant in California and classified as non-exempt employees at any time between July 8, 2017
23 and May 1, 2022. The Settlement Class excludes any person who submits a timely and valid request
24 for exclusion. During the mediation and before the Parties entered into a settlement, Defendant
25 confirmed that there were approximately 195 Class Members who worked approximately 13,211
26 workweeks during the Class Period. Agreement at §III(A)(2).

27
28 ///

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of \$195,000. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the
4 Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services on
5 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
6 Settlement in the amount of \$10,000; (4) Settlement Administration costs estimated at \$8,000; (5) Class
7 Counsel Award in the amount of \$80,000.00 comprised of attorneys' fees equal to one-third of the
8 Gross Settlement Amount and an estimated \$15,000 for actually incurred litigation expenses. See
9 generally Agreement at §III(M).

10 Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,
11 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
12 distributed to each participating member of the Settlement Class. Agreement at §III(M)(1). There is
13 no reversion to Defendant and Defendant must separately pay for its share of the employer payroll
14 taxes. Agreement at §III(A)(1).

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$195,000 Gross
17 Settlement Amount within fifteen (15) days of the Effective Date, which, assuming no objections to
18 the settlements are filed, is the date of the Court's entry of the order granting final approval of this
19 Settlement. Agreement at §I(M-N).

20 4. Formula for Calculating Individual Settlement Payments

21 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
22 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
23 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
24 the Settlement Administrator will include the number of Workweeks for each Class Member and the
25 number of PAGA Pay Periods worked during the relevant periods. Agreement at §I(F). Each
26 Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
27 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
28 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class

Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(M)(1).

Given that there are approximately 195 Settlement Class Members, *the average gross recovery is approximately \$446.15* (Net Settlement Amount divided by Settlement Class Members). Zakay Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims, which are all class claims alleged in the operative complaint or that could have been alleged based on the facts alleged in the Action, including, but not limited to federal and state wage and hour claims (including claims under the California Labor Code and/or Fair Labor Standards Act) for unpaid wages, minimum wage, overtime, wages for off-the-clock work, meal periods, rest periods, wage statement violations, waiting time penalties, failure to maintain records, interest, penalties, and attorneys' fees, unfair competition and the related provisions of the Business & Professions Code including sections 17200 and 17203, Labor Code sections 201, 202, 203, 204, 206.5, 210, 226, 226.2, 226.7, 246 510, 512, 515, 558, 1194, 1197, 1197.1, 1198, and 2802 and all claims under the governing Wage Order(s), 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(BB).

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

Generally, upon 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 all PAGA claims for penalties and any other available relief pursuant to the PAGA alleged in the operative complaint and/or Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period including for violations of California Labor Code sections , 201, 202, 203, 204, 210, 226, 226.7, 510,

512, 558, 1194, 1197, 1197.1, 1198, 2802 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(CC).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$195,000 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”).)

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

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

9 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
10 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
11 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
12 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
13 § 11.51.)

14 The Parties participated in mediation the highly respected mediator Jeffrey Krivis, Esq. Mr.
15 Krivis managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks
16 to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist.
17 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
18 inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
19 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
20 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
21 at an arm’s length, adversarial and non-collusive. The matter resolved and the Parties reached a
22 settlement, which was memorialized in a Memorandum of Understanding after a full day of mediation.
23 Zakay Dec., ¶ 23.

24 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
25 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written
26 terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
27 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
28 product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and

1 represent a reasonable compromise of the claims at issue. Zakay Dec., ¶ 24.

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

4 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
5 the factual and legal issues in dispute. In addition to informal discovery, document review, data
6 analysis and legal research, Class Counsel also researched similar wage and hour actions. The
7 investigation allowed to Class Counsel to realistically assess the value of the claims and intelligently
8 engage defense counsel in settlement discussions that culminated in the proposed settlement now before
9 the Court. Zakay Dec., ¶ 20.

10 Class Counsel only agreed to enter the Settlement following their thorough investigation and
11 evaluation of Plaintiff’s claims. Based on their investigation of the facts, applicable law, and
12 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
13 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
14 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
15 reasonable, and adequate, the Court should preliminarily approve the Settlement. Zakay Dec., ¶ 22.

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

17 The Gross Settlement Amount of \$195,000 is within the range of reasonableness. To determine
18 whether a settlement is fair and reasonable, the court should “consider enough information about the
19 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
20 independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar*
21 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
22 is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of
23 reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit
24 statement of value; [they] require[] a record which allows an understanding of the amount that is in
25 controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling*
26 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement
27 is not dependent upon its actual value approaching the potential recovery plaintiffs might have received
28

1 if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not
2 involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak*
3 *Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.*
4 (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

5 **a. The Gross Settlement Amount Meets the Recognized Range of**
6 **Reasonableness.**

7 In conclusion, the settlement of \$195,000.00 represents approximately 26% of the value of the
8 maximum potential *damages* at issue. Even when including the penalties for Plaintiff’s claim for wage
9 statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement
10 represents more than 15% of the maximum potential liability, assuming all of these amounts could be
11 proved at trial. This is well within the bounds of reasonableness. (*See Vicerol v. Mistras Grp., Inc.*
12 (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where
13 the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D.
14 Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class
15 received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015)
16 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where the
17 class received approximately 7.3% of the estimated trial award was within the “range of
18 reasonableness.”).) The following summarizes Defendant’s estimated exposure. Zakay Dec., ¶ 25.

19 (1) Estimated Exposure for Off-the-Clock Work

20 Plaintiff’s first claim in the Action was that Defendant failed to pay for all hours worked.
21 Specifically, Plaintiff asserted that Defendant required Plaintiff to work while clocked out during what
22 was supposed to be Plaintiff’s off-duty meal break, as well as after Plaintiff’s shift ended. Plaintiff

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than
the individual component parts, that must be examined for overall fairness”).

1 contends that Defendant maintained a similar policy with respect to other employees California during
2 the Class Period. Zakay Dec., ¶ 26.

3 Defendant vigorously denied liability for claim. In preparation for mediation, Defendant
4 produced several California specific operation manuals and policies. Collectively, Defendant asserted
5 that these written policies and procedures directed employees to ensure all work is conducted while
6 on-the-clock. Defendant asserted that any deviation from these written policies were location specific
7 and, thus, created individualized issues of liability unsuitable for class treatment. Zakay Dec., ¶ 26.

8 Assuming ten (10) minutes of unpaid compensable time per week (80% of which calculated at
9 overtime rate) by the Class Members during the Class Period, BCG estimated Defendant's exposure
10 for this claim at \$54,145. Zakay Dec., ¶ 27.

11 (2) Estimated Damages for Regular Rate Miscalculation Resulting in
12 Underpayment of Overtime and Sick Time

13 Plaintiff's second claim in the Action was that Defendant failed to correctly calculate the regular
14 rate of pay for purposes of overtime and sick compensation when Defendant paid Plaintiff and Class
15 Members non-discretionary incentive compensation. Defendant denied liability. More importantly,
16 Defendant argued that any alleged miscalculation resulted in nominal damages, because only less than
17 10% of the pay periods were affected by to the alleged miscalculation. Plaintiff's expert confirmed
18 Defendant's contention, concluding that the alleged miscalculation resulted in underpayment of
19 overtime in the amount of \$1,319 and sick time in the amount of \$3,354. Zakay Dec., ¶ 28.

20 (3) Estimated Damages for Meal Period Violations

21 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Plaintiff contended
22 that because of Plaintiff and Class Members' rigorous work requirements, the Class Members were
23 often denied complaint meal periods. Plaintiff also argued that Defendant's time records reflected time-
24 rounding, which gave rise to a presumption of violations. Zakay Dec., ¶ 29.

25 Conversely, Defendant again argued that its policies and procedures required uninterrupted,
26 statutorily compliant meal breaks. Similarly, Defendant argued any divergence from these written
27 policies were not systematic and, if they existed at all, were location specific. Defendant also asserted
28 that it maintained facially compliant meal period policies and practices throughout the Class Period.

1 Finally, Defendant argued that it did not engage in time rounding, but that instead, employee manually
2 entered their meal break time-punches, resulting in artificial rounding by the employees themselves.
3 Moreover, many of the so-called “rounded” meal breaks were exactly 60-minute long (as opposed to
4 exactly 30-minute long), and therefore compliant. Thus, Defendant argued that there was no potential
5 liability for Plaintiff’s alleged meal period violations. Zakay Dec., ¶ 30.

6 Plaintiff’s meal period claim (together with the rest period claim) likely represented the most
7 factually contested claim in the Actions. Plaintiff estimated the damages for this claim at \$300,669.
8 Zakay Dec., ¶ 31.

9 (4) Estimated Damages for Rest Period Violations

10 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
11 Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and
12 duty-free rest periods.

13 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
14 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
15 burdens establishing this claim. Establishing Plaintiff’s rest period claim would rely, almost entirely,
16 on Class Member testimony, making it a riskier claim at class certification and liability stages.
17 Defendant likely would have argued that only a small number of Class Members missed their rest
18 breaks. Certification likely would have required depositions of Class Members who provided
19 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
20 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
21 Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court,
22 plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this
23 Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D.
24 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
25 written policy does not generate uniform practices.”). Accordingly, the rest break claim could be
26 heavily discounted in Plaintiff’s valuation of the case. Nevertheless, and because Defendant did not
27 maintain time records for rest breaks, Plaintiff assumed that a rest break violation occurred on every
28 shift where a meal break violation was identified in the records (including violations due to rounding),

1 resulting in estimated damages for this claim at \$300,669. Zakay Dec., ¶ 32.

2 (5) Estimated Exposure for Unreimbursed Business Expenses

3 Plaintiff alleged that Defendant required the Settlement Class Members to incur personal
4 expenses for the use of their personal cell phones.

5 Again, Defendant vigorously denied any liability for this claim. Defendant argued that on the
6 rare occasions where employees did incur business expenses, these expenses were fully reimbursed.
7 Defendant also offered evidence that it provides all supplies and equipment for employees to do their
8 jobs. Assuming \$50 in damages per employee, per month, Plaintiff estimated Defendant's exposure for
9 this claim at \$88,125. Zakay Dec., ¶ 33.

10 (6) Exposure for Wage Statement Violations and Waiting Time Penalties

11 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
12 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
13 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove
14 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
15 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because
16 of wage statement violations, as required by Labor Code section 226. Notwithstanding the uncertain
17 nature of the claims, Plaintiff estimated Defendant's *maximum* exposure for these claims at
18 approximately \$537,400 (approximately \$323,850 for waiting time and \$ 213,550 for wage statement).
19 Zakay Dec., ¶ 34.

20 (7) Defendant's PAGA Exposure

21 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
22 the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$1.1 million
23 dollars. Zakay Dec., ¶ 35.

24 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
25 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
26 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
27 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
28 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186

1 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
2 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
3 6, 2016) (PAGA penalties denied after trial).

4 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
5 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
6 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
7 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
8 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
9 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
10 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that its
11 employment practices complied with all applicable Labor Laws. In addition to those arguments
12 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
13 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
14 rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. Zakay Dec., ¶ 36.

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

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

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

27 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
28 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
2 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. *Zakay Dec.*, ¶¶ 37-38.

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

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

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

28 Finally, continuing to litigate this action would require continued and extensive resources

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

11 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$195,000 that is roughly
12 26% of Defendants’ liability exposure for damages, and 15% of Defendants’ liability exposure for
13 damages and penalties. Given the amount of the settlement here, as compared to potential value of the
14 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
15 Zakay Dec., ¶ 40.

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

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

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 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 (7th Cir. 1987) 826 F.2d 729, 732.

1 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
2 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
3 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
4 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
5 procedure and time period within which to requests for exclusions or objections to the Settlement, the
6 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
7 and scope of the Released Claims. Agreement at §III(L). This method was negotiated by the Parties
8 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
9 effective administration of the Settlement. Zakay Dec., ¶¶ 41-42.

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

14 **C. The Court Should Preliminarily Approve the Class Representative Enhancement Award**

15 Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee*
16 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
17 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
19 UCLA L. Rev. 1303 (2006).) Enhancement payments "are intended to compensate class representatives
20 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Class Representative Service Award of \$10,000⁴ for Plaintiff. The

27 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal
28 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement

1 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of her case and the strategies for prosecuting the claims, responding to Defendant's written
4 discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate
5 relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising
6 out of her employment. Zakay Dec., ¶ 43.

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

11 **D. The Court Should Preliminarily Approve the Class Counsel Award**

12 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
13 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
14 California courts routinely award attorneys' fees equaling one-third or more of the potential value of
15 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
16 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the

17 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
18 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
19 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
20 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
21 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
22 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528
23 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
24 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
25 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
26 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No.
27 BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
28 BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC
Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v.
Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
\$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
\$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
(C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-
cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No.
RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.
CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings,
Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security
Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

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 Class Counsel award is fair and reasonable. Zakay Dec., ¶ 45.

Plaintiff will file a formal motion for the negotiated Class Counsel Award 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., ¶ 46.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. Zakay Dec., ¶ 47; Porcayo Dec. ¶¶ 6-9.

1. The Standard for Class Certification

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

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

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is

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

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

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

13 Because all Class Members are Defendant’s current and former employees, the class is readily
14 ascertainable from Defendant’s regular business records, i.e., payroll records. *Zakay Dec.*, ¶ 48.

15 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
16 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
17 liability can be determined by facts common to all members of the class. The wage and hour issues are
18 both numerous and substantial, and a class action is the most advantageous method of dealing with the
19 claims of the Settlement Class. *Zakay Dec.*, ¶ 49.

20 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
21 from the same factual basis and are based on the same legal theories applicable to the other Class
22 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
23 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
24 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
25 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive
26 class discovery, and evaluating the proposed settlement to assure that it is fair. *Zakay Dec.*, ¶ 50.

27 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
28 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and

1 gained state court settlement approval of the same class-wide causes of action that are at issue in this
2 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
3 represent the interests of this Class. Zakay Dec., ¶¶53, Declaration of Jean-Claude Lapuyade, ¶¶ 1-3.

4 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
5 each individual claim, the Class Members likely have little incentive to litigate their claims on an
6 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
7 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
8 adjudication. Zakay Dec., ¶ 51.

9 IV. CONCLUSION

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

13
14 Dated: July 12, 2022

ZAKAY LAW GROUP, APLC

15 By:  _____

16 Shani O. Zakay, Esq.