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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

VERONICA A. MARAVILLA, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

VENUS ET FLEUR LLC, a New Jersey Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: 22STCV05864

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

Date: November 27, 2023
Time: 11:00 a.m.

Judge: Hon. Jessica C. Kronstadt
Dept.: 7

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I. INTRODUCTION

Plaintiff Veronica A. Maravilla (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 101 Class Members and 64 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **“Class”** and **“Class Period”** shall mean “all current and former non-exempt employees who worked for Defendant in California (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification) during the period commencing February 16, 2018, through August 29, 2023 (“Class Period”). Agreement at §§ 1.9, 1.13.

a. The **“Settlement Class Members”** means a Class Member who does not submit a timely and valid Request for Exclusion from the Settlement. Agreement at § 1.52.

b. The **“Class Size”** is comprised of 101 individuals who collectively worked approximately 4,359 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 8.

2. The **“Aggrieved Employees”** and **“PAGA Period”** means all current and former non-exempt employees who worked for Defendant in California (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification) during the period commencing December 13, 2020, through August 29, 2023 (“PAGA Period”). Agreement at §§ 1.4, 1.34. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. At the time of mediation, there were approximately 64 Aggrieved Employees during the PAGA Period. Agreement at § 8.

3. The **“Gross Settlement Amount”** is Two Hundred, Ten Thousand Dollars and Zero Cents (\$210,000.00). Agreement at § 1.24. The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Payment”** of not more than \$10,000.00 to Plaintiff in

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

1 recognition of her efforts and risks in assisting with the prosecution of the Action, and in exchange for
2 executing a General Release. Agreement at § 3.2.1.

3 b. **“Attorneys’ Fees and Litigation Costs”** in the amount not of not more than
4 \$95,000.00, comprised of one-third of the Gross Settlement Amount for Attorney’s Fees, currently
5 estimated to be \$70,000.00 *and* litigation expenses not to exceed \$25,000.00, to be paid to Class
6 Counsel. Agreement at § 3.2.2;

7 c. A **“PAGA Payment”** of Ten Thousand Dollars and Zero Cents (\$10,000.00) shall
8 be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the
9 Private Attorneys General Act of 2004 (“PAGA Payment”). The Administrator shall pay seventy-five
10 (75%) of the PAGA Payment (\$7,500.00) to the Labor and Workforce Development Agency (“LWDA
11 Payment”). Twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will be distributed to the
12 Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ 3.2.5; and

13 d. **“Administration Expenses Payment”** not to exceed \$8,000.00 payable to the
14 Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice of Class Action
15 Settlement and Hearing Date for Final Court Approval (“Class Notice”) and costs associated with
16 administration of the settlement. Agreement at §§ 1.3, 3.2.3.

17 4. The **“Net Settlement Amount”** of approximately \$87,000.00 (Gross Settlement Amount
18 less the requested Attorneys’ Fees and Litigation Costs, Class Representative Payment, PAGA
19 Payment, and Administration Expenses Payment) which will be allocated to all Settlement Class
20 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
21 worked during the Class Period. Agreement at § 1.26. The entire Net Settlement Amount will be paid
22 to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
23 Class Payment of **\$861.39**. JCL Dec., ¶ 7.

24 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
25 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
26 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
27 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
28 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will

1 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
2 denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

3 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
4 approval and falls within the range of reasonableness. The average Individual Class Payment to the
5 Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the
6 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully request
7 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

8 II. FACTS AND PROCEDURE

9 A. Overview of the Litigation

10 Defendant operates a luxury floral arrangement company throughout California, including Los
11 Angeles county, where Plaintiff worked. Plaintiff was employed by Defendant from November of
12 2020 to May of 2021, as a non-exempt employee. Declaration of Veronica Maravilla (“Maravilla
13 Dec.”) at ¶ 4. Plaintiff alleges that she was denied legally compliant meal and rest periods, minimum
14 wages, and overtime compensation. Throughout her employment, Plaintiff was subject to Defendant’s
15 written policies and procedures contained in, among other documents, the “Venus ET Fleur LLC
16 Employee Handbook.” JCL Dec., ¶ 9.

17 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
18 failed to pay for all time worked, including time spent undergoing covid-19 screenings, failed to pay
19 overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized
20 wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon
21 separation. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it
22 fully complied with all applicable employment laws and raised several other significant defenses to
23 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
24 compliant wage statements, compliant reimbursement practices, and it timely paid all wages due upon
25 separation of employment. JCL Dec., ¶ 10.

26 On December 13, 2021, Plaintiff served Defendant and the Labor and Workforce Development
27 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
28 the facts and theories supporting Defendant’s alleged violations of various provisions of the California

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
3 2698 *et seq* (“PAGA”). JCL Dec., ¶ 11.

4 On February 16, 2022, Plaintiff filed a class and representative action complaint in the Los
5 Angeles County Superior Court, Case No. 22STCV05864 (“Action”). The Action alleged nine causes
6 of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§
7 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197,
8 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure
9 to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
10 IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7
11 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements
12 in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code
13 §§ 201, 202, and 203; (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
14 § 2802; (9) Violations of PAGA. JCL Dec., ¶ 12.

15 Plaintiff commenced written discovery in December of 2022. Prior to answering Plaintiff’s
16 written discovery, the Parties agreed to mediate the Action. The Parties also agreed to stay formal
17 discovery and agreed to informally produce data and documents to prepare for mediation. As discussed
18 *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
19 analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

20 On June 29, 2023, the Parties participated in a full day mediation with wage and hour and PAGA
21 mediator Steven Rottman, Esq. The mediation concluded with a settlement after both sides agreed to
22 a Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of
23 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
24 is the subject of the instant motion. JCL Dec., ¶ 14.

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

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

1 including portions of her hiring documents, payroll records, and Defendant's employee handbook. At
2 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
3 inquiry. JCL Dec., ¶ 15.

4 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
5 Defendant produced dozens of documents, including but not limited to, copies of Defendant's written
6 policies and Plaintiff's hiring documents and payroll and time records. Class Counsel reviewed and
7 analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that
8 Defendant's failed to, among other things, provide compliant meal and rest periods, to provide accurate
9 wage statements, to compensate overtime wages at the correct regular rate of pay, and to reimburse for
10 mandatory business expenses. JCL Dec., ¶ 16.

11 To prepare for mediation, Defendant produced the time and payroll records for the Class
12 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
13 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
14 handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents
15 and more than 380,000 unique cells of time and payroll data. JCL Dec., ¶ 17.

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

21 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
22 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
23 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
24 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
25 and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of
26 unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and
27 rest period premiums paid during the Class Period. JCL Dec., ¶ 19.

28 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining

1 Plaintiff's suitability as a putative class representative through interviews, background investigations,
2 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
3 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
4 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's
5 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
6 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
7 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
8 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
9 claims being settled, as well as the impediments to recovery, such as to make an independent
10 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20.

11 Class Counsel only agreed to enter the Settlement following this thorough investigation and
12 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
13 for similar settlements, and considering the risk of significant delay and uncertainty associated with
14 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement
15 to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable,
16 and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

18 On June 29, 2023, the Parties conducted a full day of mediation with Steven Rottman, Esq.
19 Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of
20 the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's
21 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
22 including their respective evaluation of the damages. The mediation concluded with a settlement, after
23 both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are
24 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,
25 and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 22-23.

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D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all current and former non-exempt employees who worked for Defendant in California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person's legal representative or successor in interest evidenced by reasonable verification) during the period commencing February 16, 2018, through August 29, 2023. Agreement at § 1.7, 1.13. The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § 1.52. At the time of mediation, Defendant estimated that the Class was comprised of 101 individuals that worked approximately 4,359 Workweeks during the Class Period. Agreement at § 8.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$210,000. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class Members; (2) a Class Representative Payment of not more than \$10,000.00 to Plaintiff for her services on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of \$10,000.00; (4) Administration Expenses Payment estimated at \$8,000.00; (5) Attorneys' Fees and Litigation Costs in the amount of \$95,000.00, comprised of Attorneys' Fees equal to one-third of the Gross Settlement Amount estimated to be \$70,000.00 and Litigation Costs in an amount not to exceed \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § 3.

Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § 1.31. There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within fourteen (14) days of the Effective Date. Agreement at § 4.3.

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1 4. Formula for Calculating Individual Class Payments

2 Settlement Class Members will receive an Individual Class Payment. The Individual Class
3 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
4 in California during the Class Period. Agreement at § 3.2.4. The Class Data provided by Defendant to
5 the Administrator will include the number of Workweeks for each Class Member and the number of
6 PAGA Pay Periods worked during the relevant periods. Agreement at § 1.8. The Administrator will
7 calculate each Class Member's final Individual Class Payment by dividing the Net Settlement Amount
8 by the total number of Workweeks worked by all Settlement Class Members during the Class Period
9 and multiply the result by each Settlement Class Member's Workweeks worked during the Class
10 Period. Agreement at § 3.2.4. Each Individual Class Payment will be reduced by any legally mandated
11 employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § 3.2.4.1. Individual
12 Class Payments for members of the Settlement Class Members who submit valid and timely requests
13 for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely
14 requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2.

15 Given that there are approximately 101 Class Members, the average gross recovery is
16 approximately \$861.39 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶
17 7.

18 5. Release by Settlement Class Members

19 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
20 release the Released Parties from the Released Class Claims that accrued during the Class Period.
21 Agreement at § 5.2.

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

23 Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, and the State of
24 California will release the Released Parties from the Released PAGA Claims that accrued during the
25 PAGA Period. Agreement at § 5.3.

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1 **III. ARGUMENT**

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

3 The proposed Settlement, including a Gross Settlement Amount of \$210,000.00 meets the
4 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
5 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
6 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
7 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
8 notice of the settlement has been distributed to class members for their comments and objections.
9 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
10 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
11 inquire into the fairness of the proposed settlement”).)

12 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
13 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
14 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
15 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
16 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
17 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
18 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
19 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
20 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
21 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
22 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
23 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
24 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
25 action litigation”).)

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

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

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

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

11 The Parties participated in mediation the mediator Steven Rottman, Esq. Mediator Rottman
12 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
13 sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
14 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
15 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
16 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
17 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties reached an
18 agreement and the mediation session concluded with a settlement. JCL Dec., ¶ 24.

19 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
20 the written terms of the class action settlement. The Agreement is the final product of the mediated
21 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
22 compromise of the claims at issue. JCL Dec., ¶ 25.

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

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

1 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
2 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
3 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
4 ¶ 26.

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

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

12 The Gross Settlement Amount of \$210,000.00 is within the range of reasonableness. To
13 determine whether a settlement is fair and reasonable, the court should "consider enough information
14 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
15 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
16 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
17 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
18 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
19 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
20 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
21 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
22 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
23 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

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

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

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

The Gross Settlement Amount of \$210,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$348,812.72 (“Realistic Damages”) and \$882,487.58 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 60.2% (“Realistic Damages”) and 23.80% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 28.

(1) Defendant’s Estimated Exposure for Unpaid Wages

Plaintiff’s primary claim in this Action alleges that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserted that Defendant failed to pay employees for time spent undergoing COVID-19 screenings and temperature checks before the start of their shifts. Based on Plaintiff’s testimony and Class Counsel’s investigation, BCG estimated that Class Members performed approximately five (5) minutes of unpaid work undergoing COVID-19 screenings and temperature checks before every shift. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendant’s control. JCL Dec., ¶ 29.

Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in place a written policy requiring its employees to accurately record all their time worked daily and

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 argued that such written policies and procedures directed its employees not to work while off the
2 clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment
3 because individualized issues predominated. For example, even assuming Plaintiff performed work
4 while off-the-clock, which Defendant dispute, the time spent would vary drastically from class
5 member to class member that it could not be established by common proof. Defendant also argued
6 that to the extent COVID-19 screenings and temperature checks were conducted off-the-clock, these
7 screenings took less than one (1) minute to complete. JCL Dec., ¶ 30.

8 Plaintiff recognized the risks and uncertainties of certifying this claim. Consequently, Plaintiff's
9 Realistic Damage model applied a 50% discount to this claim. Plaintiff estimated Defendant's
10 exposure for this claim ranged between \$13,239.21 and \$26,478.41. JCL Dec., ¶ 31.

11 (2) Defendant's Estimated Exposure of Rest Period Violations

12 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
13 Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved
14 Employees were not able to take timely and duty-free rest periods. Additionally, Plaintiff, Class
15 Members, and Aggrieved Employees were prohibited from leaving the premises during their off-duty
16 rest periods by Defendant's managers and supervisors. JCL Dec., ¶ 32.

17 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
18 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
19 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
20 on Class Member testimony, making it a riskier claim at class certification and liability stages.
21 Certification likely would have required depositions of Class Members who provided declarations, and
22 Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or
23 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
24 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
25 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
26 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
27 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
28 generate uniform practices."). Accordingly, Plaintiff's Realistic Damage model applied a 25% discount

1 to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between
2 approximately \$252,190.96 to approximately \$315,238.70. JCL Dec., ¶ 33.

3 (3) Estimated Damages for Meal Period Violations

4 Further, Plaintiff alleges that Defendant failed to provide compliant meal periods. In analyzing
5 this claim, Plaintiff's expert found that Defendant had a low violation rate with respect to first meal
6 periods. On average, approximately 1.3% of first meal periods were short, late, or missed. While
7 Defendant had a low violation rate with respect to first meal periods, Plaintiff's expert found that 64.9%
8 of shifts between ten (10) and twelve (12) hours were without a recorded second meal period.
9 Consequently, Plaintiff alleges that she is owed meal period premiums for meal period violations that
10 occurred during the Class Period. JCL Dec., ¶ 34.

11 Conversely, Defendant argued, among other things, that it provided all their employees, i.e.,
12 Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods,
13 including second meal periods during shifts longer than ten (10) hours. Defendant also argued that it
14 maintained facially compliant meal period policies and had attestations from its employees that they
15 took compliant meal periods. Thus, Defendant argued that there was no potential liability for Plaintiff's
16 alleged meal period violations and any claimed violations required a highly individualized inquiry not
17 suitable to class treatment. JCL Dec., ¶ 35.

18 Consequently, Plaintiff applied a 25% discount to this claim to account for the modest violation
19 rate with respect to first meal periods and facially compliant policies. Plaintiff estimated that the
20 damages for this claim ranged from approximately \$6,106.85 to approximately \$8,142.47. JCL Dec., ¶
21 36.

22 (4) Defendant's Estimated Exposure for Regular Rate Violations

23 Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and
24 commissions when calculating the regular rate of pay when paying overtime wages, double time wages,
25 and meal period premiums. Specifically, Defendant paid Class Members non-discretionary incentive
26 compensation in the form of "Bonus" and "Commissions" payments, which were not properly
27 calculated into the regular rate of pay for purposes of overtime, double time, and meal period premiums.
28 JCL Dec., ¶ 37. The regular rate of pay, which can change from pay period to pay period, includes

1 adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and
2 awards, shift differentials and the per-hour value of any non-hourly compensation the employee has
3 earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime
4 work, “an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.*
5 at 553. California law also requires meal period premiums and rest period premiums to be paid at an
6 employee’s regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

7 Conversely, Defendant denied liability and asserted that the additional compensation identified
8 by the expert were discretionary bonuses that did not need to be included in the regular rate calculation.
9 Plaintiff estimated the range of outcomes for this claim was between \$1,008 and \$2,016. JCL Dec., ¶
10 38.

11 (5) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

12 Plaintiff alleged that Defendant required Class Members and Aggrieved Employees to use their
13 personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by
14 Defendant. California employers who require employees to incur personal business expenses for work
15 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing
16 that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred
17 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
18 to the directions of the employer...”). Specifically, Plaintiff, Class Members, and Aggrieved
19 Employees were required to use their cell phone to send and receive work-related communications.
20 BCG estimated a reasonable \$10 monthly reimbursement rate for Class Members for the use of their
21 personal cell phones. JCL Dec., ¶ 39.

22 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
23 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
24 the employees’ duties or at Defendant’s direction. Thus, Defendant argued that even if Plaintiff were
25 successful in this claim only a small number – approximately half – of the Settlement Class Members
26 would be entitled to relief. This claim was also heavily discounted by 85% based on Defendant’s
27 defenses. Plaintiff estimated Defendant’s exposure for this claim ranged between approximately
28 \$2,640 and approximately \$10,560. JCL Dec., ¶ 40.

1 (6) Defendant’s Estimated Exposure for Wage Statement Violations

2 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
3 statements. Specifically, Plaintiff alleges that as a result of Defendant’s failure to provide meal and rest
4 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
5 derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93
6 (concluding that meal premiums are “wages” entitling employees to derivative wage statement
7 penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements, Plaintiff
8 could not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this
9 claim 50% to account for this risk. Plaintiff estimated that Defendant’s exposure on this claim ranged
10 between \$36,037.50 and \$144,150. JCL Dec., ¶ 41.

11 (7) Defendant’s Estimated Exposure for Waiting Time Penalties

12 Plaintiff also alleged that the Defendant’s labor code violations resulted in derivative liability for
13 waiting time penalties. Although these *penalties* represented Defendant’s largest dollar amount of
14 exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendant argued that Plaintiff could
15 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
16 Notwithstanding the uncertain nature of the claims, Class Counsel’s Realistic Model discounted the
17 waiting time penalty claim by 90% and estimated Defendant’s exposure for these claims ranged
18 between \$37,590.20 and \$375,902. JCL Dec., ¶ 42.

19 (8) Defendant’s PAGA Exposure

20 Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties. At
21 the time of mediation, Plaintiff estimated Defendant’s PAGA exposure ranged between \$9,085 and
22 \$521,800. JCL Dec., ¶ 43. The proposed PAGA allocation of the Gross Settlement Amount is fair, just,
23 and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate
24 a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of
25 self-interest at the expense of class members,” such amounts are generally considered reasonable.
26 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
27 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the
28 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.

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

Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000.00 which is 4.7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 44.

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

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

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

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

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

7 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
8 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
9 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
10 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
11 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
12 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
13 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
14 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
15 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
16 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
18 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
19 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
20 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
21 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
22 certification of driver meal and rest period claims based on the predominance of individual issues).
23 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
24 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
25 settlement. JCL Dec., ¶ 45.

26 “The Settlement eliminates these and other risks of continued litigation, including the very real
27 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
28 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is

1 inherently perilous regardless of the strengths of merits of the claims:

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

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

8 Finally, continuing to litigate this action would require continued and extensive resources
9 coupled with significant Court time to proceed through trial and post-trial motions; which can often
10 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
11 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
12 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
13 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
14 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 46. “Avoiding such a trial and the
15 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
16 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
17 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
18 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

19 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$210,000.00 that is
20 roughly between approximately 60.2% of Defendant’s *class-wide* liability exposure for damages, and
21 approximately 23.80% of Defendant’s maximum class wide liability exposure for damages and
22 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
23 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
24 JCL Dec., ¶ 47.

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

26 The Settlement Class Members are entitled to the best practical notice under the circumstances.
27 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
28 sufficient information to decide whether they should accept the benefits offered, opt out and pursue

1 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
2 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
3 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
4 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
5 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
6 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

7 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
8 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
9 proposed Class Notice to all Class Members. The Notice will include information regarding the nature
10 of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure,
11 and time period within which to requests for exclusions or objections to the Settlement, the date for the
12 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
13 the Released Claims. Agreement at § 7. The Parties negotiated this method to ensure delivering the
14 most reasonable method of notice to the Class Members while ensuring cost effective administration
15 of the Settlement. JCL Dec., ¶ 48.

16 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
17 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
18 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
19 of the options open to dissenting class members.”).) JCL Dec., ¶ 49.

20 **C. The Court Should Preliminarily Approve the Class Representative Payment**

21 Service awards “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases*
22 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
23 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
24 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
25 UCLA L. Rev. 1303 (2006).) Service awards “are intended to compensate class representatives for
26

27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
2 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
3 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
4 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
5 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
6 (2009) 175 Cal.App.4th 785.)

7 The Settlement provides for a Class Representative Payment of \$10,000.00 to Plaintiff. The
8 Class Representative Payment is fair and reasonable compensation for the Plaintiff’s efforts bringing
9 the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class
10 Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed
11 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class
12 Members, and agreeing to provide Defendant a general release of all claims arising out of her
13 employment. JCL Dec., ¶ 50.

14 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
15 Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully
16 submit that the above showing is sufficient for preliminary approval of the negotiated Class
17 Representative Payment. JCL Dec., ¶ 51.

18 **D. The Court Should Preliminarily Approve the Requested Attorneys’ Fees**

19 The purpose of payment of attorneys’ fees in class action litigation is to reward counsel who
20 took the risk of non-payment and invested in a case that achieved a substantial positive result for the
21 class. California courts routinely award attorneys’ fees equaling one-third or more of the potential value
22 of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008)
23 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method
24 or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”);
25 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
26 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
27 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
28 with market rates).)

1 Class Counsel took this matter on a contingency fee basis and invested significant time and
2 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
3 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class
4 Members. Considering the positive outcome for the Class Members, and in light of the supporting
5 authority, the requested payment for Attorneys' Fees and Litigation Costs is fair and reasonable. JCL
6 Dec., ¶ 52.

7 Plaintiff will file a formal motion for the negotiated the Attorneys' Fees and Litigation Costs
8 once preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above
9 showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 53.

10 **E. Provisional Certification for Settlement Purposes Is Appropriate**

11 For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional
12 certification of the Class is appropriate. JCL Dec., ¶ 54.

13 1. The Standard for Class Certification

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

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

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

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

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

9 Because all Class Members are Defendant’s current and former employees, the class is readily
10 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 55.

11 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
12 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
13 determined by facts common to all members of the class. The wage and hour issues are both numerous
14 and substantial, and a class action is the most advantageous method of dealing with the claims of the
15 Settlement Class Members. JCL Dec., ¶ 56.

16 Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the
17 same factual basis and are based on the same legal theories applicable to the other Class Members.
18 Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff allege
19 that she was injured by the same company-wide practices to which the proposed Class Members were
20 subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the
21 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
22 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 57.

23 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
24 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
25 gained state court settlement approval of the same class-wide causes of action that are at issue in this
26 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
27 represent the interests of this Class. JCL Dec., ¶¶ 58, 60-67; Declaration of Shani Zakay, ¶¶ 1-3.

28 A class action is superior to a multitude of individual lawsuits. Given the size and amount of

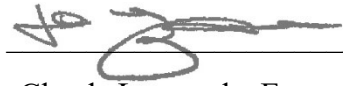
1 each individual claim, the Class Members likely have little incentive to litigate their claims on an
2 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
3 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
4 adjudication. JCL Dec., ¶ 59.

5 IV. CONCLUSION

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

9
10 Dated: October 6, 2023

JCL LAW FIRM, APC

11 By:  _____

12 Jean-Claude Lapuyade, Esq.