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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

OMAR VEJAR, on behalf of himself and on  
behalf of all persons similarly situated,

Plaintiff,

vs.

FINELINE WOODWORKING, INC., a  
California Corporation, FINELINE  
ARCHITECTURAL MILLWORK, INC., a  
California Corporation; and DOES 1-50,  
Inclusive,

Defendants.

Case No. 30-2021-01208607-CU-OE-CXC

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

Dept.: CX105

Judge: Randall J. Sherman

Date: April 15, 2022

Time: 10:00 A.M.

Reservation ID: 73712866

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## I. INTRODUCTION

Plaintiff OMAR VEJAR (“Plaintiff”) seeks preliminary approval of the Stipulation for Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for approximately 185 members of the Class. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean with respect to the class, all employees who are or previously were employed by defendant Fineline Woodworking, Inc., or Fineline Architectural Millwork, Inc., in California, and who were classified as non-exempt employees during the Class Period. The Class Period means the period between June 29, 2017 to the earlier of March 26, 2022 or Preliminary Approval of this Settlement by the Court. Agreement at §§ I(G)-(H). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(FF).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all employees who are or previously were employed by defendant Fineline Woodworking, Inc., or Fineline Architectural Millwork, Inc., and who were classified as non-exempt employees during the PAGA Period. The PAGA Period means the period between April 23, 2020 to March 26, 2022 (“PAGA Period”). Agreement at § I(T).

3. The “**Gross Settlement Amount**” is Two Hundred Sixty-Four Thousand Dollars (\$264,000.00). Agreement at §§I (GG). The releases granted to Defendants only become effective upon the funding of the Gross Settlement Amount. §III(B)-(D). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of Ten Thousand Dollars (\$10,000.00) to Plaintiff for his services on behalf of the Class, and for agreeing to a broad general release of California *Civil Code* section 1542. Agreement at § III(M)(9).

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be Eighty-Eight Thousand Dollars (\$88,000.00) **and** litigation costs and expenses not to exceed Fifteen-Thousand Dollars (\$15,000.00),

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<sup>1</sup> 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 to be paid to Class Counsel. Agreement at § III(M)(10).

2 c. A “**PAGA Settlement**” of Ten Thousand Dollars (\$10,000) shall be allocated  
3 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private  
4 Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of  
5 the PAGA Settlement (\$7,500.00) (“LWDA Payment”) to the California Labor and Workforce  
6 Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Amount  
7 (\$2,500.00) (“Aggrieved Employee Payment”) to members of the Aggrieved Employees. Agreement  
8 at §III(M)(11).

9 d. And “**Settlement Administration Costs**” not to exceed Eight Thousand Five  
10 Hundred Dollars (\$8,500.00) payable to the proposed Settlement Administrator, ILYM Group, Inc.,  
11 for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement  
12 at §III(M)(12).

13 4. The “**Net Settlement Fund**” of approximately One Hundred Thirty-Two Thousand and  
14 Five Hundred Dollars (\$132,500.00) (Gross Settlement Amount minus the requested Class  
15 Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement  
16 Administration Costs) which will be allocated to all participating members of the Class, i.e., Settlement  
17 Class Members, on a pro-rata basis according to the number of Workweeks each Settlement Class  
18 member performed during the Class Period. The entire Net Settlement Amount will be paid to all  
19 Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual  
20 Settlement Share of **\$716.22**. Agreement at §I(P); JCL Dec., ¶ 5.

21 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the  
22 Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length.  
23 The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is  
24 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage  
25 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will  
26 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being  
27 denied or of Defendants prevailing at trial. JCL Dec., ¶ 5.

28 The proposed Settlement satisfies all criteria for preliminary settlement approval under

1 California law and falls within the range of reasonableness. The average Individual Settlement Share  
2 to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the  
3 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests  
4 that this Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

## 5 **II. FACTS AND PROCEDURE**

### 6 **A. Overview of the Litigation**

7 Defendants are California corporations that provide complete interior finish carpentry packages  
8 to builders, designers, and homeowners, including in Orange County, California, where Plaintiff  
9 worked. JCL Dec. ¶ 7. Plaintiff worked for Defendants as an hourly, non-exempt employee between  
10 September of 2019 and July of 2020. Plaintiff worked as a driver and shop worker. As part of his job  
11 duties, Plaintiff was responsible for traveling to various job sites in order to deliver merchandise for  
12 Defendants' clientele. At all times during his employment, Plaintiff earned an hourly wage, and was  
13 entitled to legally compliant meal and rest periods, and minimum, regular, and overtime wages for all  
14 hours worked. As a non-exempt employee, Plaintiff was subject to Defendants' written policies and  
15 procedures and general employment practices. JCL Dec., ¶ 8.

16 Generally, Plaintiff claims that Defendants failed to pay him and the Class Members for all hours  
17 worked, failed to provide compliant meal and rest periods, failed to provide accurate itemized wage  
18 statements, failed to reimburse mandatory business expenses, and failed to pay all wages due at the  
19 time of his separation. Defendants deny liability for each of Plaintiff's claims. Defendants assert that  
20 they fully complied with all applicable employment laws. Defendants assert that they had clear,  
21 compliant policies and procedures for taking rest and meal periods. Defendants raised several other  
22 significant defenses to Plaintiff's claims, including but not limited to, lack of any evidence of overtime  
23 and minimum wage violations. JCL Dec., ¶ 9.

24 On April 23, 2021, Plaintiff served Defendants and the Labor and Workforce Development  
25 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth  
26 the facts and theories supporting Defendants' alleged violations of various provisions of the California  
27 *Labor Code* and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to  
28 pursue claims under the California *Labor Code* Private Attorneys General Act, Sections 2698 et seq

1 (“PAGA”). JCL Dec., ¶ 10.

2 On June 29, 2021, Plaintiff filed a class action complaint in the Orange County Superior Court  
3 for: (1) Unfair Competition in Violation of *Bus. and Prof. Code* §§ 17200; (2) failure to pay minimum  
4 wages in violation of California *Labor Code* sections 1194, 1197 and 1197.1; (3) failure to pay overtime  
5 wages in violation of California *Labor Code* sections 510 *et seq.*; (4) failure to provide required meal  
6 periods in violation of California *Labor Code* sections 226.7 and 512; (5) failure to provide required  
7 rest periods in violation of California *Labor Code* sections 226.7 and 512; (6) failure to provide accurate  
8 itemized wage statements in violation of California *Labor Code* section 226; (7) failure to reimburse  
9 employees for required expenses in violation of California *Labor Code* section 2802; (8) failure to  
10 provide wages when due in violation of California *Labor Code* sections 201, 202, and 203; and (9)  
11 violations of the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 11.

12 Plaintiff prepared written discovery to Defendants, and after serving the discovery, the Parties  
13 agreed to mediate this action, as deemed in the best interest of the parties, in particular in light of the  
14 many anticipated factual disputes. To prepare for mediation, the Parties agreed to informally produce  
15 certain documents and data points subject to the mediation privilege, including but not limited to, a  
16 sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained  
17 the Berger Consulting Group, to analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

18 On January 26, 2022, the Parties participated in a full day mediation with Hon. Carl J. West  
19 (Ret.), a respected jurist experienced in wage and hour class and PAGA actions. After arms-length  
20 negotiations and bargaining, the mediation concluded with a settlement, after both sides agreed to a  
21 Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of  
22 Understanding (“MOU”). Thereafter, the parties drafted and negotiated a long-form settlement  
23 agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

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

25 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s  
26 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As  
27 part of the interview process, Plaintiff produced documents related to his employment for Defendants,  
28 including portions of Defendants’ handbooks, compensation policies and time and payroll records. At

1 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further  
2 inquiry. JCL Dec., ¶ 14.

3 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,  
4 Defendants produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's  
5 hiring documents, payroll and time records, performance reviews, and separation documents. Class  
6 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate  
7 Plaintiff's claim that Defendants failed to, among other things, pay for all time worked and to provide  
8 compliant meal and rest periods. Shortly thereafter, Class Counsel initiated the actions which are before  
9 the Court now. JCL Dec., ¶ 15.

10 In light of the many anticipated factual disputes, the parties agreed early in the litigation that it  
11 would be in the best interest of both parties to mediate the matter. To prepare for mediation, Class  
12 Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendants'  
13 liability exposure to the Class Members. In response to Class Counsel's request, Defendants produced  
14 the time and payroll records for the Class Members, and aggregate workweek and pay period data for  
15 the Settlement Class. In total, Defendants produced approximately 5,532 pages containing unique time  
16 and payroll data for Class Counsel to analyze. JCL Dec., ¶ 16.

17 Class Counsel then retained the statisticians and economists at Berger Consulting Group  
18 ("BCG"), to evaluate the Class Members' payroll and time data. BCG provides data analysis and  
19 damage modeling consulting services specializing in wage and hour class actions. BCG's team of  
20 financial and data analysts are credentialed and experienced experts in their fields and have provided  
21 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze  
22 Defendants' time and payroll data. JCL Dec., ¶ 17.

23 BCG analyzed Defendants' time and payroll data to assist in the development of various damage  
24 models. Among other things, BCG determined the approximate number of work shift, work weeks,  
25 pay periods, average rate of pay, average length of shift and average number of hours worked per week  
26 and pay period during the Class Period. BCG also estimated the number of missed or late meal and  
27 rest periods, the amount of paid missed meal period premiums paid during the Class Period. JCL Dec.,  
28 ¶ 18.

1 In advance of mediation, Class Counsel created a damage model predicated on BCG analysis.  
2 Class Counsel's model calculated Defendants' potential liability exposure while accounting for the  
3 uncertainties of continued litigation. This damage model informed and guided Class Counsel during  
4 the mediated settlement discussions. JCL Dec., ¶ 19.

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

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

17 On January 26, 2022, the Parties participated in mediation presided over by Hon. Carl J. West  
18 (Ret.), a respected jurist experienced in wage and hour class and PAGA actions. Judge West helped to  
19 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both  
20 sides. The Parties made substantial progress with Judge West's assistance. Namely, the parties  
21 exchanged information regarding their respective claims and defense, including their respective  
22 evaluation of the damages. After nearly eight hours of arm's length and adversarial negotiations, the  
23 mediation concluded with a settlement after both sides agreed to Judge West's proposal, which was  
24 memorialized in the form of a Memorandum of Understanding. Thereafter, the parties drafted and  
25 negotiated a long-form settlement agreement, which is the subject of the instant motion. Class Counsel  
26 submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at  
27 issue. JCL Dec., ¶ 21.

28 ///

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

2             1.     The Composition of the Class

3             The proposed Class consists of all Defendants' current and former non-exempt employees  
4 employed in California between June 29, 2017 and March 26, 2022. The Settlement Class excludes any  
5 person who submits a timely and valid request for exclusion. Agreement at § III(L)(7). There are  
6 approximately 185 members of the Settlement Class that worked an estimated 13,108 workweeks  
7 during the Class Period. Agreement at §III(A)(2).

8             2.     The Settlement Consideration

9             The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement  
10 Amount of \$264,000.00. The Gross Settlement Amount funds: (1) Individual Settlement Payments to  
11 the Settlement Class; (2) a Class Representative Service Award of \$10,000.00 to Plaintiff for his  
12 services on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA  
13 Settlement in the amount of \$10,000.00; (4) Settlement Administration costs estimated at \$8,500.00,  
14 (5) a Class Counsel Award in the amount of \$103,000.00, comprised of attorneys' fees equal to one-  
15 third of the Gross Settlement Amount, estimated to be at least \$88,000.00, and an estimated \$15,000.00  
16 for actually incurred litigation expenses. Agreement at §III(M)(9)-(12).

17             Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,  
18 PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed  
19 to each participating Class Member, i.e., Settlement Class Members. Agreement at §III(M)(1). There  
20 is no reversion to Defendants and Defendants must separately pay for their share of the employer  
21 payroll taxes. Agreement at §III(A)(1).

22             3.     Formula for Calculating Individual Settlement Payments

23             Each Settlement Class Member will receive an Individual Settlement Payment. The Individual  
24 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member  
25 worked for Defendants during the Class Period. Using the Class Data, the Settlement Administrator  
26 shall add up the total number of Workweeks for the entire Settlement Class. Each Settlement Class  
27 Member's final Individual Settlement Payment for purposes of payment will be calculated by  
28 multiplying the NSF by a fraction, the numerator of which is the Settlement Class Member's total

number of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class Members. Agreement at §III(M)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at §III(M)(1). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class member 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 185 Settlement Class Members, and assuming there are no opt-outs from the Settlement, **the average gross recovery is approximately \$716.22** (Net Settlement Amount divided by Settlement Class Members). This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (*See, e.g., Shachno et al. v. KT Hotels, LLC, et al.*, San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35)).

4. Release by Settlement Class Members

Generally, as of the Effective Date, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Claims including all class claims alleged in the operative complaint which accrued 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(Z), III(B).

5. Release by the LWDA and the Aggrieved Employees

Generally, upon the Effective Date, the LWDA and the Aggrieved Employees will release the Released Parties from the Released PAGA Claims, including all PAGA claims alleged in the operative Complaint and Plaintiff's PAGA notice to the LWDA which accrued during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, Social Security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§ I(AA), III(C).

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### III. DISCUSSION

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

The proposed Settlement, including the Gross Settlement Amount of \$264,000.00, 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.”).) In California, 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 California 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) (“Newberg”).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

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 with highly respected mediator of wage and hour class  
12 actions, Hon. Carl J. West (Ret.). Judge West managed the Parties’ expectations and provided a useful,  
13 neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No.  
14 C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation  
15 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.  
16 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps  
17 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’  
18 negotiations were at an arm’s length, adversarial and non-collusive. The mediation concluded with a  
19 settlement, after both sides agreed to a Mediator’s proposal which was subsequently memorialized in  
20 the form of a Memorandum of Understanding (“MOU”). Judge West only arrived at his proposal after  
21 hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims and defenses.

22 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in protracted negotiations  
23 regarding the written terms of the class action settlement. The Parties maintained the arm’s length, non-  
24 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The  
25 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are  
26 fair, adequate, and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

27  
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2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness.

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

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

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

The Gross Settlement Amount of \$264,000.00 is well within the range of reasonable for preliminary approval. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential

1 recovery plaintiff might have received if he had succeeded at trial.<sup>2</sup> Indeed, “[t]he determination  
2 whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a  
3 particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In*  
4 *re Michael Milken and Assoc. Sec. Litig.* (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 The Gross Settlement Amount of \$264,000.00 is fair and reasonable, considering the nature and  
8 magnitude of the claims being settled and the various factual and legal issues in dispute and potential  
9 impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop varied economic  
10 damages models measuring Defendants’ liability exposure while accounting for the uncertainties of  
11 continued litigation. The various models were informed by Class Counsel’s investigation, including the  
12 analysis of time and payroll data. Class Counsel projected Defendants’ liability exposure for the Class  
13 for *damages* to be approximately \$1,858,112, and liability exposure for damages and penalties  
14 (excluding PAGA penalties) to be \$2,554,612 (“Damages Model”), if successful at trial. This reflects  
15 the uncertainty regarding several of Plaintiff’s claims, together with the uncertainty surrounding  
16 derivative liability for inaccurate wage statements and waiting time penalties resulting from meal and  
17 rest period violations. Thus, the Gross Settlement Amount of \$264,000.00 represents approximately  
18 14.2% of Defendants’ liability exposure for damages, and 10.3% of Defendants’ liability exposure for  
19 damages and penalties, as estimated by Class Counsel at the time of mediation. The following  
20 summarizes Defendants’ estimated exposure if Plaintiff was to prevail. JCL Dec., ¶ 24.

21 (1) Estimated Damages for Meal Period

22 Plaintiff alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff

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23 <sup>2</sup> Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a  
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs  
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*  
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.  
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to  
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y. 2004) 225 F.R.D. 436,  
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration  
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184  
 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in  
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers*  
*for Justice v. Civil Serv. Comm.* (9<sup>th</sup> 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 alleges that as a result of their rigorous work schedules, Plaintiff and the Class Members were not able  
2 to take timely and duty-free meal periods. Consequently, Plaintiff alleges that he is owed meal period  
3 premiums for non-compliant meal periods for every day during that time period. JCL Dec., ¶ 25.

4 California *Labor Code* 512 requires employers to provide employees with a thirty (30) minute  
5 uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee  
6 who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute  
7 uninterrupted and duty-free meal period. Pursuant to *Labor Code* § 512, an employer may not employ  
8 an employee for a work period of more than ten (10) hours, without providing the employee with a  
9 second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be  
10 waived if the total hours worked is more than twelve (12) hours. *Labor Code* § 226.7(c) provides that  
11 "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a  
12 state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the  
13 employee one additional hour of pay at the employee's regular rate of compensation for each workday  
14 that the meal or rest or recovery period is not provided."

15 Defendants have denied these claims. Defendants maintain that they fully complied with  
16 California meal period laws and maintained legally compliant policies and practices. Courts have found  
17 that where an employer's meal period policies are compliant, individualized issues exist as to the  
18 reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical*  
19 *Center*, (2018) 19 Cal.App.5th 832, 851, (holding that although only 11.1% of the employees' time  
20 punches for meal periods were within the first 5 hours, the claim was not certifiable because  
21 individualized issues existed as to the reasons for the late meal periods). If successful, Defendants  
22 availed themselves to a complete defense of Plaintiff's meal period claim. Defendants further argued  
23 that they had a written policy which required a waiver of Plaintiff's second meal period to be in writing.  
24 Finally, Defendants argued that they occasionally paid meal period premiums when missed, late, or  
25 truncated meal periods were reported. Again, if successful, Defendants availed themselves to a  
26 complete defense of Plaintiff's meal period claim. Plaintiff estimated the exposure for this claim to be  
27 approximately **\$361,838**, if substantiated. JCL Dec., ¶ 26.

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1 (2) Estimated Damages for Rest Period Violations

2 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, this  
3 claim assumed an unlikely 100% violation rate based on Defendants' alleged policy requiring  
4 employees to remain on the premises during their rest breaks.

5 Again, Defendants denied liability and asserted that they maintained legally compliant rest  
6 period policies and practices at all times throughout the Class Period. Moreover, Plaintiff recognizes  
7 the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,  
8 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability  
9 stages. Defendants likely would have argued that only a small number of Class Members actually  
10 missed their rest breaks. Certification likely would have required depositions of Class Members who  
11 provided declarations, and Defendants surely would have obtained opposing declarations stating either  
12 rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*  
13 (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 ("Because of the competing testimony before the  
14 Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient  
15 for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.*  
16 (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 ("Indeed, Plaintiff's own evidence confirms that  
17 the written policy does not generate uniform practices."). Accordingly, the rest break claim was subject  
18 to significant defenses. If successful, Defendants availed themselves to a complete defense of Plaintiff's  
19 rest period claim. Plaintiff estimated the exposure for this claim to be approximately **\$1,239,520**, if  
20 substantiated. Importantly, this amount is based on an unlikely assumption of a 100% violation rate.  
21 JCL Dec., ¶ 27.

22 (3) Defendants' Estimated Exposure for Unpaid Minimum Wages

23 Plaintiff alleged that Defendants subjected him and other employees to mandatory pre-shift  
24 COVID screenings, which were done off-the-clock. Specifically, Defendants' managers/supervisors  
25 required employees to undergo mandatory COVID-19 screenings *before* being allowed to begin their  
26 shift. Defendants argued, however, that those screenings were not always off-the-clock. Similarly,  
27 Plaintiff and Class Members performed work off-the-clock for which they were not compensated.  
28 Specifically, Plaintiff and Class Members had to help load and unload delivery trucks before and after

clocking in or out. Again, Defendants vigorously denied any liability for this claim. Plaintiff estimated the exposure for this claim to be approximately **\$256,754**, if substantiated. JCL Dec., ¶ 28.

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

Generally, Plaintiff alleges that Defendants' aforementioned violations resulted in derivative violations of California *Labor Code* sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under *Labor Code* § 203. Additionally, Defendants could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by *Labor Code* § 226. Defendants could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (See *Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444 (review granted); *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Class arguably could have seen a significant payout for these penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if he failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which according to Defendants were not supported by the facts. Nevertheless, Plaintiff estimated the potential exposure for these claims, if substantiated, to be approximately **\$696,500** (\$466,900 for waiting time penalties and \$229,600 for wage statement penalties). JCL Dec., ¶ 29.

(5) Total Damages and Penalties

In conclusion, the settlement of \$264,00.00 represents approximately 14.2% of the value of the maximum potential *damages* at issue. Even when including the penalties for Plaintiff's claim for wage statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement

1 represents up to 10.3% of the maximum potential liability, assuming all of these amounts could be  
2 proved at trial. This is well within the bounds of reasonableness. (*See Vicerat v. Mistras Grp., Inc.*  
3 (N.D. Cal. 2016) 2016 WL 5907869, at \*3, 7 (approving a California wage and hour settlement where  
4 the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D.  
5 Cal. 2017) 2017 WL 2797811, at \*7 (Approving a California wage and hour settlement where the class  
6 received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015)  
7 2015 WL 3776765 at \* 4 (Approving California wage and hour misclassification settlement where the  
8 class received approximately 7.3% of the estimated trial award was within the “range of  
9 reasonableness.”).) JCL Dec., ¶ 30.

10 (6) Defendants’ PAGA Exposure

11 Class Counsel’s damage models also estimated Defendants’ exposure for PAGA penalties arising  
12 from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendants’ PAGA  
13 exposure to be approximately \$1,659,200. JCL Dec., ¶ 31.

14 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*  
15 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties  
16 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties  
17 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no  
18 civil penalties, even when *Labor Code* violations are established. *See also In re Nordstrom Com. Cases*,  
19 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class  
20 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, \*40-43 (E.D. Cal. Apr.  
21 6, 2016) (PAGA penalties denied after trial).

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

1 employment practices complied with all applicable Labor Laws. In addition to those arguments  
2 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*  
3 (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the  
4 rest period claims. In all, Plaintiff’s PAGA liability exposure is hotly contested. JCL Dec., ¶ 31.

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

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

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

17 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the  
18 certification of similar wage and hour claims are demonstrated by *Donohue v. AMN Services, LLC*  
19 (2018) 29 Cal.App.5th 1068 (cert granted.) In *Donohue*, Fourth District Court of Appeal affirmed Hon.  
20 Joel Pressman’s denial of class certification for missed meal and rest periods by call center employees.  
21 (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage  
22 and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th  
23 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*  
24 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not  
25 take their breaks were predominantly individualized questions of fact not susceptible to class  
26 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of  
27 certification because employees’ declarations attesting to having taken meal and rest breaks  
28 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*

1 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of  
2 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*  
3 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest  
4 period claims based on the predominance of individual issues.) Plaintiff is confident about the strength  
5 of his claims. Nonetheless, Plaintiff recognizes that Defendants have factual and legal defenses that, if  
6 successful, would potentially defeat or substantially impair the value of Plaintiff's lawsuit.  
7 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
8 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
9 settlement. JCL Dec., ¶ 32.

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

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

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

20 Finally, continuing to litigate this action would require continued and extensive resources  
21 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
22 take years. Furthermore, wage and hour litigations are complex and expensive, as it often necessitates  
23 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
24 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
25 Defendants would appeal any favorable judgment. JCL Dec., ¶ 33. "Avoiding such a trial and the  
26 subsequent appeals in this complex case strongly militates in favor of settlement rather than further  
27 protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221  
28 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are

1 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

2 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$264,000 that is roughly  
3 **14.2%** of Defendants’ maximum liability exposure for damages, and up to **10.3%** when including wage  
4 statement and waiting time penalties. Given the amount of the settlement here, as compared to potential  
5 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and  
6 reasonable. JCL Dec., ¶ 34.

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

8 The Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977)  
9 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to  
10 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object  
11 to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-  
12 52.) The notice must advise class members “that they may be excluded from the class if they so request  
13 and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.”  
14 (*Kass*, 67 Cal.App.3d at 106.) In a case such as this involving a significant number of class members,  
15 California authorities generally require service of the class notice by mail or similar reliable means.  
16 (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)<sup>3</sup>

17 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class of their  
18 rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail  
19 the proposed Class Notice to entire Class. The Notice will include information regarding the nature of  
20 the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure  
21 and time period within which to requests for exclusions or objections to the Settlement, the date for the  
22 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of  
23 the Released Claims. This method was negotiated by the Parties to ensure delivering the most  
24 reasonable method of notice to the Class while ensuring cost effective administration of the Settlement.

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

1 JCL Dec., ¶ 35.

2 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice  
3 satisfy due process and the requirements of California law. JCL Dec., ¶ 36. (See C.R.C. 3.776(e)-(f);  
4 *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class  
5 members of the terms of the proposed compromise and of the options open to dissenting class  
6 members.”).)

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

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

19 Approximately 185 members of the Class will share in the estimated \$132,500 Net Settlement  
20 Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore,  
21 the Settlement provides for a Class Representative Service Award of \$10,000<sup>4</sup> for Plaintiff. The service

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22 <sup>4</sup> The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts  
23 that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour  
24 class action settlements: See *Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct.  
25 Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*  
26 *Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011)  
27 (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A.  
28 County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff);  
*Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding  
\$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A.  
County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast*  
*Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding  
\$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct.

award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class, and agreeing to provide Defendants a general release of all claims arising out of his employment. JCL Dec., ¶ 37.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 38.

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July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. 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); *Aguir 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).

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

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

12            Class Counsel took this matter on a contingency fee basis and invested significant time and  
13    expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average  
14    Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The  
15    Agreement provides for a Class Counsel Award in the amount of one-third of the Gross Settlement  
16    Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(M)(10). In light  
17    of the positive outcome for the Class, and in light of the supporting authority, the proposed Class  
18    Counsel award is fair and reasonable. JCL Dec., ¶ 39.

19            Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary  
20    approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient  
21    for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 40.

22     **E.     California Law Authorizes Provisional Certification for Settlement Purposes**

23            For the purpose of Settlement only, Plaintiff contends, and Defendants do not dispute, that  
24    provisional certification of the Class is appropriate. JCL Dec., ¶ 41.

25            1.     The California Standard for Class Certification

26            California Rules of Court, Rule 3.769(d). provides that the Court may make an order approving  
27    certification of a provisional settlement class at the preliminary approval stage. It is well-established  
28    that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a

1 settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794,  
2 1807 at n. 19. Class actions are statutorily authorized “when the question is one of common or general  
3 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all  
4 before the court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4<sup>th</sup> 1325,  
5 1332.) Class certification is appropriate when there is an “ascertainable class and a well-defined  
6 community of interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4<sup>th</sup> 319, 326.)  
7 Class treatment is appropriate even if class members at some point may be required to make an  
8 individual showing as to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162  
9 Cal.App.4<sup>th</sup> 1193, 1207; *Sav-On*, 34 Cal.4<sup>th</sup> at 333.)

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

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

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

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

25 Generally, the proposed Class consists of all of Defendants’ current and former non-exempt  
26 California employees during the Class Period. Defendants’ records show that the Settlement Class  
27 Members consists of approximately 185 individuals, making joinder of all Settlement Class Members  
28 impracticable. Further, because all Class Members are Defendants’ current and former non-exempt

employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. JCL Dec., ¶ 42.

The California statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. While Defendants dispute whether the class would be appropriate if the litigation were to continue, they agree to class certification for purposes of this settlement only. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class. JCL Dec., ¶ 43.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class by initiating this litigation, undertaking class discovery, and evaluating the proposed settlement to assure that it is fair. Again, the Defendants dispute whether Plaintiff's claims are typical of the Class for purposes of any continued litigation of the Action, but agree for the purposes of this settlement only that Plaintiff asserts claims that are typical of the Class, including claims for meal and rest break practices and unpaid wages. JCL Dec., ¶ 44.

Additionally, Plaintiff is represented by competent Class Counsel who has extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 45.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 46.

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Dated: March 4, 2022

By: Jean-Claude Lapuyade  
Jean-Claude Lapuyade, Esq.