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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LASSEN

NATALIE CHRESTENSEN; DELORIS
RIDDLE, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

NORTHEASTERN RURAL HEALTH
CLINICS, a California Corporation; and
DOES 1-50, Inclusive;

Defendants.

Case No. 63703

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

Date: November 8, 2022

Time: 9:00 a.m.

Dept.: 2

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I. INTRODUCTION

Plaintiffs NATALIE CHRESTENSEN and DELORIS RIDDLE (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 227 Class Members and 154 PAGA Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**,” “**Class**,” and “**Class Period**” shall mean all employees who are or previously were employed by Defendant in California and who were classified as non-exempt employees (“Class Members”) during the period between June 24, 2017, to September 13, 2022 (“Class Period”). Agreement at §§ II(F), (G).

2. The “**Settlement Class Members**” and “**Settlement Class**” means all Class Members who have not submitted a timely and valid request for exclusion [by the Response Deadline]. Agreement at § II(II).

a. The “**Class Size**” is comprised of 227 individuals who collectively worked approximately 20,000 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § III(A)(2).

b. The “**PAGA Members**” shall mean employees who are or previously were employed by Defendant in California and who were classified as non-exempt employees during the PAGA Period. Agreement at § II(T). At the time of mediation, there were approximately 154 PAGA Members during the PAGA Period. (JCL Dec., ¶ 15).

3. The “**PAGA Period**” shall mean the period between April 19, 2020, to September 13, 2022. Agreement at §§ II (W). Class Members may not object to the PAGA Settlement. Agreement at § III(N)(8).

4. The “**Gross Settlement Amount**” is Two Hundred Seventy Thousand Dollars (\$270,000.00). Agreement at § II(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$15,000, with

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.

\$10,000 allocated to Plaintiff Chrestensen and \$5,000 allocated to Plaintiff Riddle in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at §§ II(H); III(O)(9);

b. An award of “**Class Counsel Award**” consisting of attorneys’ fees not to exceed one-third of the Gross Settlement Amount currently estimated to be \$90,000.00 out of \$270,000.00 *plus* costs of up to \$20,000.00 to be paid to Class Counsel. Agreement at § III(O)(10);

c. A “**PAGA Settlement**” of Ten Thousand Dollars (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Settlement (\$7,500.00) to the Labor and Workforce Development Agency (“LWDA Payment”) no later than fifteen (15) calendar days after the Funding Date. Twenty-five percent (25%) of the PAGA Settlement (\$2,500.00) will be distributed to the PAGA Members (“PAGA Member Payment”). Agreement at § III(O)(11); and

d. “**Settlement Administration Costs**” not to exceed \$8,500.00 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §§ II(HH), III(O)(12).

5. The “**Net Settlement Amount**” means the Gross Settlement Amount, less Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement Administration Costs. Agreement at § II(Q). The Net Settlement Amount is approximately \$126,500.00 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately **\$557.26**. JCL Dec., ¶ 7.

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

denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payments to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates community healthcare clinics which provide outpatient care, including family, maternal, and infant healthcare to its patients, including in Lassen County, California where Plaintiffs worked. Plaintiff Chrestensen worked for Defendant as a non-exempt employee from approximately April of 2019 to September of 2020. (Declaration of Natalie Chrestensen (“NC Dec.”) at ¶¶ 4; JCL Dec., ¶ 9. Plaintiff Riddle worked for Defendant as a non-exempt employee from approximately June of 2017 to February of 2021. (Declaration of Deloris Riddle (“DR Dec.”) at ¶¶ 4; JCL Dec., ¶ 9. Throughout their employment, Defendant failed to pay Plaintiffs wages for all hours worked, including overtime compensation, failed to provide legally compliant meal and rest periods, failed to issue accurate wage statements, failed to reimburse for required business expenses, and failed to pay all wages when due. Throughout their employment, Plaintiffs were subject to Defendant’s written policies and procedures contained in, among other documents, the “Northeastern Rural Health Clinics Employee Handbook.” JCL Dec., ¶ 9; NC Dec., ¶ 4; DR Dec., ¶ 4.

Defendant forcefully denies liability for Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to, compliant compensation policies and plans, complaint meal and rest practices, compliant wage statements, compliant reimbursement policies, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 10; NC Dec., ¶ 5; DR Dec., ¶ 5.

On April 19, 2021, Plaintiff Chrestensen served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA

1 Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions
2 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order
3 and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal.
4 Lab. Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 11.

5 On June 24, 2021, Plaintiff Chrestensen filed a class action complaint in the Lassen County
6 Superior Court, Case Number 63703 (“Action”). The Action alleged nine causes of action against
7 Defendant for: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq.*; (2)
8 Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1;
9 (3) Failure to pay overtime wages in violation of California Labor Code sections 510, *et seq.*; (4) Failure
10 to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the
11 applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor
12 Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate
13 itemized wage statements in violation of California Labor Code section 226; (7) Failure to reimburse
14 employees for required expenses in violation of California Labor Code section 2802; (8) Failure to
15 provide wages when due in violation of Cal. Lab. Code sections 201, 202 and 203; and (9) Violation
16 of the Private Attorneys General Act [Labor Code section 2698, *et seq.*]. JCL Dec., ¶ 12.

17 Plaintiff Chrestensen commenced written discovery in August 2021. After answering Plaintiff
18 Chrestensen’s discovery requests, the Parties agreed to mediation. To prepare for mediation, the Parties
19 agreed to informally produce documents and data points subject to the mediation privilege, including
20 but not limited to, employee handbooks, a sample of the Class Members’ time data, and certain payroll
21 data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger
22 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

23 On June 13, 2022, the Parties participated in a full day mediation with Jill Sperber, Esq., an
24 experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a
25 settlement, after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in
26 the long-form settlement, and which is the subject of the instant motion. As part of the settlement, the
27 Parties stipulated to the filing of a First Amended Complaint (“FAC”) to add Plaintiff Riddle as a named
28 Plaintiff in the Action, which was filed on August 18, 2022. JCL Dec., ¶ 14.

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

2 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff
3 Chrestensen's complaints. Class Counsel's investigation started with several lengthy interviews with
4 Plaintiff Chrestensen. As part of the interview process, Plaintiff Chrestensen produced documents
5 related to her employment, including portions of Defendant's handbooks, compensation policies, and
6 wage statements. At the conclusion of the interviews, Class Counsel determined that each Plaintiff
7 Chrestensen's complaints justified further inquiry. JCL Dec., ¶ 16.

8 Class Counsel subsequently requested Plaintiff Chrestensen's employee file from Defendant. In
9 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
10 Plaintiff's hiring documents, payroll and time records, performance reviews, and separation documents.
11 Class Counsel reviewed and analyzed the documents and determined the documents appeared to
12 substantiate Plaintiff Chrestensen's claim that Defendant failed to, among other things, provide
13 accurate wage statements and provide compliant meal and rest periods. JCL Dec., ¶ 17.

14 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
15 Plaintiff Chrestensen's claims and Defendant's liability exposure to the Class Members. In response
16 to Class Counsel's request, Defendant produced, among other things, time and payroll records for a
17 sample of Class Members, aggregate workweek and pay period data, and copies of applicable
18 handbooks, policies, and agreements. In total, Defendant produced over 269,000 unique cells of time
19 and payroll data for Class Counsel to analyze. JCL Dec., ¶ 18.

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

25 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
26 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
27 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
28 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal

1 and rest periods, the amount of missed meal and rest period premiums paid during the Class Period, the
2 amount of unpaid wages due to rounding, the amount of unpaid overtime, and the amount of
3 unreimbursed business expenses. JCL Dec., ¶ 20.

4 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
5 Plaintiffs' suitability as putative class representatives through interviews, background investigations,
6 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
7 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
8 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's
9 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
10 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's
11 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
12 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
13 claims being settled, as well as the impediments to recovery, such as to make an independent
14 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

15 Class Counsel only agreed to enter the Settlement following this thorough investigation and
16 evaluation of Plaintiffs' claims. Based on the investigation of the facts, applicable law, and marketplace
17 for similar settlements, and considering the risk of significant delay and uncertainty associated with
18 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
19 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
20 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

21 **C. The Parties Settled At Mediation**

22 On June 13, 2022, the Parties conducted a full day of mediation with Jill Sperber, Esq., an
23 experienced mediator of wage and hour class and PAGA actions. Mediator Sperber helped manage the
24 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
25 Parties made substantial progress with Mediator Sperber's assistance. Namely, the Parties exchanged
26 information regarding their respective claims and defense, including their respective evaluation of the
27 damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal.
28 Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of

the claims at issue. JCL Dec., ¶¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members and PAGA Members

The proposed Settlement Class consists of all employees who are or previously were employed by Defendant and who were classified as non-exempt employees during the period from June 24, 2017, to September 13, 2022, who do not file a timely and valid Request for Exclusion. In the data exchanged at the time the Agreement was executed, there were approximately 227 Class Members who worked approximately 20,000 workweeks. Agreement at § III(A)(2). Additionally, at the time of mediation, Plaintiffs' expert estimated that there were approximately 154 PAGA Members who worked approximately 3,103 pay periods. (JCL Dec., ¶ 15).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of Two Hundred Seventy Thousand Dollars (\$270,000.00). The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$15,000 with \$10,000 allocated to Plaintiff Chrestensen and \$5,000 allocated to Plaintiff Riddle for their services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$10,000; (4) Settlement Administration Costs estimated at \$8,5000; (5) Class Counsel Award in the amount of \$110,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$90,000 and an estimated \$20,000 for actually incurred litigation expenses. *See generally* Agreement at § III(O).

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

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount of \$270,000.00 within thirty (30) calendar days after the Effective Date. Agreement at § II(N).

1 4. Formula for Calculating Individual Settlement Payments

2 Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data
3 provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks
4 for each Settlement Class Member. The Individual Settlement Payment will be proportional to the
5 number of Workweeks each Settlement Class Member worked for Defendant during the Class Period.
6 Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
7 calculated by dividing the total number of Workweeks attributed to all Class Members by all
8 Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount.
9 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
10 withholdings (e.g., employee payroll taxes, etc.). Agreement at § III(O)(1).

11 Given that there are approximately 227 Settlement Class Members, the average gross recovery
12 is approximately \$557.26 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
13 ¶ 7.

14 5. Release by Participating Settlement Class Members

15 Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to
16 release the Released Parties from the Released Class Claims, including all class claims alleged or that
17 could have been alleged based on the factual allegations in the operative complaint in the Action and
18 Plaintiff Chrestensen's PAGA Letter, which occurred during the Class Period. Agreement at §§ II(CC);
19 III(B).

20 6. PAGA Release by the State of California on behalf of the PAGA Members

21 Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the
22 Gross Settlement Amount, Plaintiffs, acting as the representative of the State of California, on behalf
23 of the PAGA Members, will release the Released Parties from the Released PAGA Claims which means
24 all PAGA claims alleged or that could have been brought based on the factual allegations in the
25 operative complaint in the Action and Plaintiff Chrestensen's PAGA Letter, which occurred during the
26 PAGA Period. Agreement at §§ II(DD); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of Two Hundred Seventy Thousand Dollars (\$270,000.00), 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.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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 respected mediator Jill Sperber, Esq., Mediator
12 Sperber managed the Parties’ expectations and provided a useful, neutral analysis of the issues and
13 risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S.
14 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against
15 any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
16 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
17 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
18 at an arm’s-length, adversarial, and non-collusive. The mediation concluded with a settlement, after
19 both sides agreed to a Mediator’s proposal, which was subsequently memorialized in a long-form
20 settlement agreement, and which is the subject of the instant motion. The Agreement is the final
21 product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate, and
22 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23-24.

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. Overall, Class Counsel thoroughly investigated the claims at
27 issue, including: (1) determining Plaintiffs’ suitability as putative class representatives through
28 interviews, background investigations, and analysis of their employment files; (2) evaluating all of

1 Plaintiffs’ potential claims; (3) researching similar wage and hour class actions as to the claims brought,
2 the nature of the positions, and the type of employer; (4) analyzing the Settlement Class’s time and
3 payroll records; (5) analyzing Defendant’s labor policies and practices; (6) researching settlements in
4 similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating
5 Plaintiffs’ claims and estimating Defendant’s liability for purposes of settlement; (8) drafting the
6 mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to
7 fully assess the nature and magnitude of the claims being settled, as well as the impediments to
8 recovery, such as to make an independent assessment of the reasonableness of the terms to which the
9 Parties have agreed. JCL Dec., ¶ 21.

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

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

17 The Gross Settlement Amount of \$270,000.00 is within the range of reasonableness. To
18 determine whether a settlement is fair and reasonable, the court should “consider enough information
19 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
20 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
21 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
22 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
23 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
24 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
25 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
26 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
27 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
28

1 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
3 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
4 *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 \$270,000.00 is fair and reasonable considering the nature and
8 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
9 mediation, Class Counsel retained BCG to develop a damage model measuring Defendant’s liability
10 exposure while accounting for the uncertainties of continued litigation. The model was informed by
11 Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data.
12 Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties)
13 was approximately \$1.86 million dollars if successful at trial. This estimate reflects the uncertainty
14 regarding several of the claims, together with the uncertainty surrounding derivative liability for
15 inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of
16 \$270,000.00 represents approximately 14.5% of Defendant’s *class-wide* liability exposure as estimated
17 by Class Counsel at the time of mediation. The following summarizes Defendant’s estimated exposure.
18 JCL Dec., ¶ 25.

19 (1) Estimated Exposure for Unpaid Overtime Wages.

20 Plaintiffs’ first claim in this Action is that Defendant failed to accurately compensate Class
21 Members for overtime compensation. Specifically, Plaintiffs alleged that Defendant implemented an
22 unlawful alternative workweek schedule (“AWS”) without conducting the required vote of the affected

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

employees, without obtaining the required approval of at least two-thirds of the affected employees, and without reporting the results of any election to the Division of Labor Standards as required by California Labor Code section 511. Defendant enforced the invalid AWS until approximately August 18, 2020, when it held its most recent AWS election. As a result of the unlawful AWS, Class Members were required to work shifts greater than eight (8) hours in a workday, more than forty (40) hours in a workweek, or more than twelve (12) hours in a work shift without overtime compensation. JCL Dec., ¶ 26.

Plaintiffs estimated that Defendant's exposure for this claim is approximately \$80,436.92. JCL Dec., ¶ 27.

(2) Estimated Exposure for Rest Period Violations.

Additionally, Plaintiffs alleged that Defendant failed to provide Class Members with compliant rest periods. Specifically, Defendant had in place a written rest period policy that discourages employees from leaving the premises during rest periods in violation of *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal. 5th 257. Consequently, Plaintiffs alleged that they are owed rest period premiums for rest period violations that occurred during the Class Period. Defendant argued that the statement discouraging off-premises rest periods was made in recognition of the practical reality that each of Defendant's locations were remotely located and employees could not leave the premises and return to work within ten (10) minutes. Defendant also argued that some evidence of a uniform unlawful policy does not show that Defendant had a *practice* of denying rest breaks. (*See Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that "the existence of a uniform unlawful policy does not necessarily mean the employer has liability for violations that can be demonstrated with common proof.")). JCL Dec., ¶ 28.

Notwithstanding Defendant's arguments, Plaintiffs estimated that Defendant's exposure for this claim is approximately \$1.43 million dollars. JCL Dec., ¶ 29.

(3) Estimated Exposure for Meal Period Violations.

Further, Plaintiffs alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiffs alleged that as a result of their rigorous work schedules, Plaintiff, Class Members, and PAGA Members were not able to take timely and duty-free meal periods. Defendant

1 argued, among other things, that its policies and procedures required Class Members and PAGA
2 Members to take uninterrupted, statutorily compliant meal breaks. Similarly, Defendant argued that
3 any divergence from these written policies were not systematic and, if they existed at all, were location
4 specific. Defendant also asserted that it maintained facially complaint meal period policies and
5 practices throughout the Class Period. Further, Defendant argued that it had in place a timekeeping
6 system which automatically flagged any short or late meal periods and that it paid meal period
7 premiums when missed, late, or truncated meal periods were reported. Thus, Defendant argued that
8 there was no potential liability for Plaintiffs' alleged meal period violations. Plaintiffs estimated that
9 Defendant's exposure for this claim was approximately \$24,918.92. JCL Dec., ¶ 30.

10 (4) Estimated Exposure for Unpaid Wages due to Rounding.

11 Plaintiffs also alleged that Defendant's unlawful rounding policy and practice resulted in an
12 underpayment of wages to Plaintiffs, Class Members, and PAGA Members. Defendant denied liability
13 and argued, among other things, that its rounding policy was facially neutral and, as applied, favored
14 employees. Further, Defendant argue that, even if successful, this claim resulted in minimal actual
15 damage to the Class Members and PAGA Members, which was confirmed by Plaintiffs' expert.
16 Plaintiffs' expert also found that the rounding was, in fact, neutral as applied. Thus, Defendant's
17 estimated exposure for this claim is approximately \$15,110.90. JCL Dec., ¶ 31.

18 (5) Estimated Exposure for Unreimbursed Business Expenses.

19 Additionally, Plaintiffs alleged that Defendant required Class Members and PAGA Members to
20 incur personal expenses for the use of their own personal cellular phones. California employers who
21 require employees to incur personal business expenses for work purposes must reimburse the employee
22 for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his
23 or her employee for all necessary expenditures or losses incurred by the employee in direct consequence
24 of the discharge of his or her duties, or of his or her obedience to the directions of the employer...").
25 Specifically, Plaintiffs alleged Defendant required Plaintiffs, Class Members, and PAGA Members to
26 use their own cellular phones in order to perform work related tasks, but Defendant failed to reimburse
27 them for the costs related to the use of their personal cellular phones in violation of California Labor
28 Code section 2802. JCL Dec., ¶ 32.

1 Defendant argued, among other things, that when employees incurred business expenses, if any,
2 these expenses were fully reimbursed. Plaintiffs estimated that Defendant's exposure for this claim
3 was approximately \$31,560.00. JCL Dec., ¶ 33.

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

5 Plaintiffs allege that Defendant's alleged violations resulted in derivative violations of Labor
6 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
7 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue
8 that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor
9 Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class
10 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
11 226. JCL Dec., ¶ 34.

12 Plaintiffs' penalty claims depended on proving the underlying claims, which had their own risks.
13 Defendant's estimated exposure for this claim was approximately \$279,030.90 dollars (\$52,080.90 for
14 waiting time penalties and \$226,950.00 for wage statement penalties). JCL Dec., ¶ 35.

15 (7) Defendant's PAGA Exposure

16 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
17 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure was approximately \$633,050.00
18 dollars. JCL Dec., ¶ 36.

19 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
20 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
21 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
22 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
23 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
24 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
25 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
26 6, 2016) (PAGA penalties denied after trial).

27 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
28 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS

13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each PAGA Member suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiffs and the PAGA Members. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 37.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 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%.

The proposed Settlement allocates \$10,000 to satisfy the PAGA claims. This amount represents approximately 3.7% of the Gross Settlement Amount. This is well within the range *See, e.g., Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc.* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.) JCL Dec., ¶ 38.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

1 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

2 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
3 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
4 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
5 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
6 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
7 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
8 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
9 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
10 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
11 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
12 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
13 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
14 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
15 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
16 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
17 certification of driver meal and rest period claims based on the predominance of individual issues).
18 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
19 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
20 settlement. JCL Dec., ¶¶ 39.

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

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

1 favor of preliminary approval.

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

3 Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions, which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
7 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
8 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
9 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and
10 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
11 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
12 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
13 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

14 Given the amount of the settlement here, as compared to potential value of the claims, offset by
15 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

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

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

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

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

10 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
11 Packet satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
12 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed
13 compromise and of the options open to dissenting class members.")) JCL Dec., ¶ 43.

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

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

26 The Settlement provides for a Class Representative Service Awards of \$10,000 and \$5,000,⁴

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

1 with \$10,000 allocated to Plaintiff Chrestensen and \$5,000 allocated to Plaintiff Riddle. The service
2 awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting
3 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
4 of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure
5 that its terms are fair, and provide adequate relief for the Settlement Class. JCL Dec., ¶ 44.

6 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs
8 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
9 Representative Service Award. JCL Dec., ¶ 45.

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

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

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

1 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
2 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
3 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
4 with market rates).)

5 Class Counsel took this matter on a contingency fee basis and invested significant time and
6 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
7 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
8 Members. Considering the positive outcome for the Class Members, and in light of the supporting
9 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 46.

10 Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary
11 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
12 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 47.

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

14 For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional certification
15 of the Class is appropriate. JCL Dec., ¶ 48.

16 1. The Standard for Class Certification

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

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

27 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
28 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available

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

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

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

12 Because all Class Members are Defendant’s current and former non-exempt employees, the class
13 is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 49.

14 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
15 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
16 liability can be determined by facts common to all members of the class. The wage and hour issues are
17 both numerous and substantial, and a class action is the most advantageous method of dealing with the
18 claims of the Settlement Class. JCL Dec., ¶ 50.

19 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
20 from the same factual basis and are based on the same legal theories applicable to the other Class
21 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
22 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
23 proposed Class Members were subject to and seeks the same relief. Plaintiffs have already
24 demonstrated their ability to advocate for the interests of the Class Member by initiating this litigation,
25 participating in mediation, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
26 51.

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

1 certified, and gained state court settlement approval of the same class-wide causes of action that are at
2 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
3 qualified to represent the interests of this Class. JCL Dec., ¶¶ 53-60, Declaration of Shani Zakay, ¶¶ 1-
4 3.

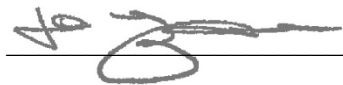
5 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
6 each individual claim, the Class Members likely have little incentive to litigate their claims on an
7 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
8 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
9 adjudication. JCL Dec., ¶ 52.

10 IV. CONCLUSION

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

14
15 Dated: October 6, 2022

JCL LAW FIRM, APC

16 By: 
17 Jean-Claude Lapuyade, Esq.