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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SERGIO ABUNDIS, on behalf of himself
and on behalf of all persons similarly
situated,

Plaintiffs,

v.

IMAGE 2000, a California Corporation; and
DOES 1-50, Inclusive,

Defendants

Case No. 21STCV19193

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

Judge: Hon. Yvette Palazuelos
Dept.: 9

Hearing Date: March 3, 2022
Hearing Time: 10:00 a.m.

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I. INTRODUCTION

Plaintiff SERGIO ABUNDIS (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 184 members of the Settlement Class. The basic terms of the Agreement provide for the following:

1. The “**Settlement Class**” and “**Settlement Class Period**” shall mean with respect to the class, all of defendant IMAGE 2000’s (“Defendant”) current and former non-exempt employees employed in California (“Settlement Class”) between May 20, 2017 and January 21, 2022 (“Settlement Class Period”). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(H) and (FF).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendant’s current and former non-exempt employees employed in California (“Aggrieved Employees”) between February 8, 2020 and January 21, 2022 (“PAGA Period”). Agreement at §§ I(B) and (T). Aggrieved Employees who submit a request for exclusion will remain bound by the PAGA Release and will nonetheless receive their portion of the PAGA Settlement.

3. The “**Total Settlement Amount**” is Four Hundred Seventy-Five Thousand Dollars (\$475,000). Agreement at §(GG). The releases granted to Defendant only becomes effective upon the funding of the Total Settlement Amount. §III(B). The Total Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$5,000 to Plaintiff for his services on behalf of the Settlement Class. Agreement at §III(L)(9).

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Total Settlement Amount for attorney’s fees, currently estimated to be \$158,333.33 **and** litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §III(L)(10).

c. A “**PAGA Settlement**” of \$20,000 shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004

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

1 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA
2 Payment”) the California Labor and Workforce Development Agency. The Settlement Administrator
3 shall distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to members of the
4 Aggrieved Employees. Agreement at §III(L)(11).

5 d. And “**Settlement Administration Costs**” not to exceed \$8,500 payable to the
6 proposed Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice
7 Packet and Individual Settlement Payments. Agreement at §III(L)(12).

8 3. The “**Net Settlement Fund**” of approximately \$263,166.67 (Total Settlement Amount
9 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
10 Settlement Administration Costs) which will be allocated to all participating members of the Settlement
11 Class on a pro-rata basis according to the number of Workweeks each Settlement Class member
12 performed during the Class Period. The entire Net Settlement Amount will be paid to all Settlement
13 Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
14 Share of **\$1,430.25**. Agreement at §III(L)(1); JCL Dec., ¶ 5.

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

22 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
23 approval under California law and falls within the range of reasonableness. The average Individual
24 Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions.
25 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,
26 Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement. JCL Dec.,
27 ¶ 6.

28 ///

1 II. FACTS AND PROCEDURE

2 A. Overview of the Litigation

3 Defendant provides printing/imaging services and has been in the office technology industry
4 for 30 years. Defendant is headquartered in Santa Clarita with employees spread across small branch
5 locations in Fresno, Bakersfield, Valencia, Ontario, Lakewood, and Orange County. JCL Dec., ¶ 7.

6 Plaintiff worked for Defendant as an hourly, non-exempt field service technician between
7 October 2012 and October 2020. As a non-exempt field service technician employee, Plaintiff
8 regularly worked long hours servicing business machines, like fax machines, copiers, and printers. At
9 all times during his employment, Plaintiff earned an hourly wage, some incentive compensation, and
10 was entitled to legally compliant meal and rest periods, and minimum, regular, and overtime wages
11 for all hours worked. Throughout his employment, Plaintiff was subject to Defendant’s written
12 policies and procedures contained in, among other documents, Defendant’s written Employee
13 Handbook. JCL Dec., ¶ 8.

14 Generally, Plaintiff claims that Defendant failed to pay him and the Class Members for all hours
15 worked, including overtime at the correct rate of pay, failed to provide compliant meal and rest periods,
16 failed to reimburse mandatory business expenses, and that he was wrongfully terminated. Further,
17 Defendant asserts that it fully complied with all applicable employment laws and raised several other
18 significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest
19 period policies, and written policies making the use of personal cell phones optional. JCL Dec., ¶ 9.

20 On February 8, 2021, Plaintiff served Defendant and the Labor and Workforce Development
21 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
22 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
23 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
24 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
25 2698 et seq (“PAGA”). JCL Dec., ¶ 10.

26 On May 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court for:
27 (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum
28 wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime

wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to reimburse employees for required business expenses in violation of California Labor Code section 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code sections 226 and 226.2; (8) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; (9) unpaid sick pay and failure to provide paid sick leave balance in violation of California Labor Code section 246; (10) retaliation in violation of California Labor Code section 1102.5; (11) wrongful termination in violation of public policy; and (12) violations of the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 11.

To prepare for mediation, the Parties agreed to informally produce certain documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting Group, to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

On November 19, 2021, the Parties participated in a full day mediation with Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the parties reached an agreement to settle based on Judge Walsh’s proposal, and signed a Memorandum of Understanding. After reaching an agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

In October 2020, Class Counsel began its pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced nearly 100 pages of documents related to his employment for Defendant, including portions of Defendant’s handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff’s employee file from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited to, copies of Plaintiff’s

1 hiring documents, payroll and time records, performance reviews, and separation documents. Class
2 Counsel reviewed and analyzed the documents and determined the documents substantiated Plaintiff's
3 claim that Defendant failed to, among other things, provide compliant meal and rest periods. Shortly
4 thereafter, Class Counsel summarized the known factual and legal issues in the PAGA Notice addressed
5 to the LWDA. Several weeks later, Class Counsel filed this class action. JCL Dec., ¶ 15.

6 Prior to serving any written discovery, the Parties agreed to mediate the action. To prepare for
7 mediation, Class Counsel requested several documents and data points to further evaluate Plaintiff's
8 claims and Defendant's liability exposure to the Settlement Class members. In response, Defendant
9 produced the time and payroll records for approximately 20% of the Settlement Class members,
10 aggregate workweek and pay period data for 100% of the Settlement Class, and copies of applicable
11 handbooks containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. In
12 total, Defendant produced approximately 265 pages containing nearly 41,000 unique cells of time and
13 payroll data for Class Counsel to analyze. JCL Dec., ¶ 16.

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

20 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
21 models. Among other things, BCG determined the approximate number of work shift, work weeks, pay
22 periods, average rate of pay, average length of shift and average number of hours worked per week and
23 pay period during the Class Period. BCG also estimated the number of missed, late or truncated meal
24 and rest periods, the amount of paid missed meal period premiums paid during the Class Period, the
25 amount underpaid due to regular rate miscalculation, and the amount of off-the-clock work performed
26 by the Settlement Class during the Class Period. JCL Dec., ¶ 18.

27 In advance of mediation, Class Counsel created a damage model predicated on BCG analysis.
28 Class Counsel's model calculated Defendant's potential liability exposure while accounting for the

1 uncertainties of continued litigation. These damage models informed and guided Class Counsel during
2 the mediated settlement discussions. JCL Dec., ¶ 19.

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

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

15 On November 19, 2021, the Parties conducted a full day of mediation with Brian C. Walsh, a
16 highly regarded mediator and former Santa Clara County Superior Court Judge. Judge Walsh helped
17 to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to
18 both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the parties
19 exchanged information regarding their respective claims and defense, including their respective
20 evaluation of the damages. After more than eight hours arm's length and adversarial negotiations, the
21 mediation nearly concluded without a settlement. However, at the conclusion of the mediation, Judge
22 Walsh issued a proposal for settlement that the Parties accepted. The complete and final terms of the
23 Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
24 constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

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

26 1. The Composition of the Settlement Class Members

27 The proposed Settlement Class consists of all Defendant's current and former non-exempt
28 employees employed in California between May 20, 2017 and January 21, 2022. The Settlement Class

excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(H) and (FF). There are approximately 184 members of the Settlement Class that worked an estimated 19,500 workweeks during the Class Period. Agreement at §III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Total Settlement Amount of \$475,000. The Total Settlement Amount Fund includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$5,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$20,000; (4) Settlement Administration costs estimated at \$20,000, (5) Class Counsel Award in the amount of \$261,666.66, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be at least \$158,333.33 and up to \$20,000 for actually incurred litigation expenses. Agreement at §III(L).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at §III(L)(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. Formula for Calculating Individual Settlement Payments

Each participating member of the Settlement Class will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each member of the Settlement Class worked for Defendants during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for the entire Settlement Class. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be calculated by 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(L)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at §III(L)(3). Individual Settlement

1 Payments for members of the Settlement Class who submit valid and timely requests for exclusion will
2 be redistributed to Settlement Class member who do not submit valid and timely requests for exclusion
3 on a pro rata basis. Agreement at §III(L)(1).

4 Given that there are approximately 184 Settlement Class Members, the average gross recovery
5 is approximately \$1,367.75 (Net Settlement Amount divided by Settlement Class Members). JCL
6 Dec., ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved
7 by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego
8 Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The*
9 *Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery
10 \$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No.
11 CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los
12 Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

13 4. Release by Participating Settlement Class Members

14 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
15 release the Released Parties from the Released Claims, defined as “all claims asserted in the operative
16 class complaint and all claims that could have been asserted in the operative complaint based on the
17 same operative facts alleged in the operative complaint, including state wage and hour claims for any
18 and all violation of California’s Labor code and Unfair Competition law based on Defendant’s failure
19 to pay all wages due (including minimum wages, straight time wages, and overtime wages), failure to
20 provide compliant meal periods, failure to authorize and permit compliant rest periods, failure to
21 provide accurate and itemized wage statements, failure to timely pay all wages due at the time of
22 termination, failure to reimburse employees for all business-related expenses, violations of the Business
23 and Professions Code section 17200 predicated on the Labor Code violations alleged in the operative
24 complaint, and all damages, interest, penalties, attorneys’ fees, costs, and other amounts recoverable
25 under said causes of action under California law, to the extent permissible, and expressly excluding all
26 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
27 disability, social security, workers’ compensation, and claims outside the Class Period. Agreement at
28 §§I(Z) and III(B).

5. Release by the LWDA and the Aggrieved Employees

Generally, upon the Funding Date the LWDA and the Aggrieved Employees will release all PAGA Claims alleged in the operative complaint and Plaintiff's notice to the LWDA which occurred 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 class claims outside the PAGA Period. Agreement at §§I(AA) and III(C).

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$475,000, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")) 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 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

The Parties participated in mediation with highly respected mediator and former Santa Clara County Superior Court Judge Hon. Brian C. Walsh (Ret.). Judge Walsh managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session nearly concluded without a settlement. The matter resolved only when Judge Walsh issued a mediator’s proposal that the Parties accepted. Judge Walsh only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims and defenses.

JCL Dec., ¶ 22.

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

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 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 to 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. JCL Dec., ¶¶ 14 - 20.

Class Counsel only agreed to enter the Settlement following his 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 Defendant, Class Counsel firmly believes this Agreement to be in the best interests of Settlement Class. Because the Settlement’s terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 24.

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

The Total Settlement Amount of \$475,000 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 recovery plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Total Settlement Amount of \$475,000 is fair and reasonable in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop a damage model measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The model were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for the Settlement Class for *damages* to be approximately \$1,926,959, and liability exposure for damages and penalties to be \$2,579,277 (“Damages Model”) if successful at trial. This reflects the uncertainty regarding several of Plaintiff’s claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties resulting from meal and rest period violations. Thus, the Total

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

Settlement Amount of \$475,000 represents approximately 24.65% of Defendant's liability exposure for damages, and 18.41% of Defendant's liability exposure for damages and penalties, as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 25.

(1) Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the Settlement Class Members were not able to take timely and duty-free meal periods. Labor Code 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. JCL Dec., ¶ 26.

Defendant argued that it fully complied with California meal period laws and maintained legally compliant policies and practices. Courts have found that where an employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). JCL Dec., ¶ 27.

Defendant also argued that it occasionally paid meal period premium when missed, late or truncated meal periods were reported. Again, if successful, Defendant availed itself to a complete defense of Plaintiff's meal period claim. Plaintiff estimated the damages for this claim to be approximately \$501,120. JCL Dec., ¶ 28.

(2) Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that as a result of their rigorous work schedules, Plaintiff and the Settlement Class Members were not able to take timely and duty-free rest periods. JCL Dec., ¶ 29.

Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices at all times throughout the Class Period. Moreover, Plaintiff recognizes the

evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members actually missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case. Plaintiff estimated the damages for this claim to be approximately \$1,191,652. Importantly, this amount is based on an unlikely assumption of a 100% violation rate. JCL Dec., ¶¶ 30 - 31.

(3) Defendant's Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required the Settlement Class Members to incur personal expenses for the use of Defendant's work-issued vehicles by way of a deduction from their wages. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..."). Specifically, Plaintiff alleged Defendant deducted money from the Settlement Class Members paychecks to compensate itself for the maintenance of the vehicles required unlawfully in violation of Labor Code Section 2802. JCL Dec., ¶ 32.

Again, Defendant vigorously denied any liability for this claim. Defendant argued that on the rare occasions where employees did incur business expenses, these expenses were fully reimbursed. Defendant also offered evidence that it provides all supplies and equipment for employees to do their jobs. This claim was also heavily discounted based on Defendant's defenses. Plaintiff estimated

1 Defendant's exposure for this claim ranged between \$110,792. JCL Dec., ¶ 33.

2 (4) Defendant's Estimated Exposure for Unpaid Wages Due to Rounding

3 Plaintiff alleged that because of Defendant's unlawful rounding policy, it failed to pay Plaintiff
4 and the Settlement Class Members all wages due for purposes of straight pay, overtime pay, and
5 double-time pay. Defendant denied liability and asserted that its employees were paid for all time
6 worked. Defendant argued that employees review and verify that their pay is correct, and they
7 understand how they are paid. Defendant also argued that its rounding policy, if any, was, for the
8 most part, neutral. Furthermore, Defendant argued that, even if successful, this claim resulted in
9 minimal actual damage to the Class Members—and Plaintiff's expert confirmed this to be true.
10 Plaintiff estimated Defendant's exposure for this claim to be approximately **\$22,368**. JCL Dec., ¶ 34.

11 (5) Exposure for Wage Statement Violations and Waiting Time Penalties

12 Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in derivative
13 violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of
14 various penalties and weighed the potential recoveries against probable defenses. Specifically,
15 Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time
16 penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show
17 that Class Members suffered an "injury" as a result of wage statement violations, as required by Cal.
18 Lab. Code § 226. Defendant could also argue that meal and rest period violations do not entitle
19 employees like Plaintiff and the Settlement Class Members to pursue the derivative waiting time and
20 itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40
21 Cal.App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Although the
22 Settlement Class arguably could have seen a payout of \$652,318 for these penalties if Plaintiff prevailed
23 on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the
24 underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class
25 deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406
26 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus,*
27 *Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or
28

actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. JCL Dec., ¶ 35.

(6) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at approximately \$3,252,0000. JCL Dec., ¶ 36.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the 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, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised a number of defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices complied with all applicable Labor Laws. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decisions in *Wesson v. Staples the Office Furniture Superstore, LLC* (2021) 68 Cal.App.5th 746 and *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 37.

b. Inherent Risks of Continued Litigation Supports Preliminary Approval.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot

1 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
2 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
3 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
4 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

5 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
6 certification of similar wage and hour claims are demonstrated by *Donohue v. AMN Services, LLC*
7 (2018) 29 Cal.App.5th 1068 (cert granted.) In *Donohue*, Fourth District Court of Appeal affirmed Hon.
8 Joel Pressman’s denial of class certification for missed meal and rest periods by call center employees.
9 (See also *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage
10 and hour misclassification action); see also *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
11 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
12 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not
13 take their breaks were predominantly individualized questions of fact not susceptible to class
14 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
15 certification because employees’ declarations attesting to having taken meal and rest breaks
16 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
17 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
18 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
19 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
20 period claims based on the predominance of individual issues.) Plaintiff is confident about the strength
21 of his claims. Nonetheless, Plaintiff recognizes that Defendant has factual and legal defenses that, if
22 successful, would potentially defeat or substantially impair the value of Plaintiff’s lawsuit.
23 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
24 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
25 settlement. JCL Dec., ¶ 38.

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

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

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

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

8 Finally, continuing to litigate this action would require continued and extensive resources
9 coupled with significant Court time to proceed through trial and post-trial motions; which can often
10 take years. Furthermore, wage and hour litigations are complex and expensive, as it often necessitates
11 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
12 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
13 Defendant would appeal any favorable judgment. JCL Dec., ¶ 39. “Avoiding such a trial and the
14 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
15 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
16 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
17 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

18 In this matter, Class Counsel negotiated a Total Settlement Amount of \$475,000 that is roughly
19 24.65% of Defendant’s liability exposure for damages, and 18.41% of Defendant’s liability exposure
20 for damages and penalties. Given the amount of the settlement here, as compared to potential value of
21 the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
22 reasonable. JCL Dec., ¶ 40.

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

24 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
25 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
26 information to decide whether they should accept the benefits offered, opt out and pursue their own
27 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
28 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class

1 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
2 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) In a case such as this involving a significant number
3 of class members, California authorities generally require service of the class notice by mail or similar
4 reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50
5 Cal.App.3d 960, 972.)³

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

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

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

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

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

Approximately 184 members of the Settlement Class will share in the estimated \$251,666.67 Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$5,000⁴ for Plaintiff. The service 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 Settlement Class. JCL Dec., ¶ 43.

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., ¶ 44.

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

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

⁴ The amount of the requested enhancement payment-\$5,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See 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).

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$20,000. Agreement at §III(L)(10). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 45.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

E. California Law Authorizes Provisional Certification for Settlement Purposes

For the purpose of Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Settlement Class is appropriate. JCL Dec., ¶ 47.

1. The California Standard for Class Certification

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

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

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

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

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

Generally, the proposed Settlement Class consists of all of Defendant’s current and former California non-exempt employees during the Class Period. Defendant’s records show that the Settlement Class Members consists of approximately 184 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Settlement Class Members are Defendant’s current and former employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 48.

The California statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be determined by facts common to all members of the class. 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 Settlement Class. JCL Dec., ¶ 49.

Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise from the same facts and are based on the same legal theories applicable to the other Class Members.

1 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class.
2 Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
3 Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability
4 to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive
5 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 50;
6 Plaintiff's declaration in support of his ability to meet these requirements is filed concurrently herewith.
7 Declaration of Sergio Abundis at ¶¶ 1- 3.

8 Additionally, Plaintiff is represented by competent Class Counsel who has extensive experience
9 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
10 gained state court settlement approval of the same class-wide causes of action that are at issue in this
11 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
12 represent the interests of this Class. JCL Dec., ¶¶ 52-60 and the Declaration of Shani Zakay filed
13 concurrently herewith.

14 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
15 each individual Settlement Class Member's claim, Class Settlement Members likely have little
16 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
17 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
18 is superior to individual, case-by-case adjudication. JCL Dec., ¶ 51.

19 IV. CONCLUSION

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

23 Dated: February 7, 2022

JCL LAW FIRM, APC

24 By: 
25 _____
26 Jean-Claude Lapuyade, Esq.