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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

AMANDA HERNANDEZ, KIMBERLY
CONLEY, GRAVIELA VALENCIA, and
SERENA VELASQUEZ, individuals, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

PARENTING NETWORK, INC., a California
Corporation, a California Corporation; and
DOES 1-50, Inclusive,

Defendant.

Case No. VCU287027

Action Filed: April 26, 2021

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

Date: August 16, 2022
Time: 8:30 a.m.

Dept.: 7
Judge: Hon. Brett Hillman

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SECONDARY SOURCES

19	Conte & Newberg, <i>Newberg on Class Actions</i> , §§11.26, 11.51 (4th ed. 2002)	
20		9-10, 20
21	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
22	53 UCLA L. Rev. 1303 (2006)	
23		20, 22
24	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
25		20

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I. INTRODUCTION

Plaintiffs AMANDA HERNANDEZ (“Plaintiff Hernandez”), KIMBERLY CONLEY (“Plaintiff Conley”), GRAVIELA VALENCIA (“Plaintiff Valencia”), and SERENA VELASQUEZ (“Plaintiff Velasquez”) (collectively, hereinafter, “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement” or “Settlement”)¹, which if approved, would provide valuable monetary relief for approximately 92 members of the Settlement Class and 32 allegedly Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. **“Class Members”** or **“Class”** and **“Class Period”** means “all of PARENTING NETWORK, INC.’S (“Defendant”) current and former non-exempt employees employed in California during the Class Period.” The Class Period is the period between May 19, 2017 to January 19, 2022. Agreement at §§ I(G) and (H).

2. The **“Aggrieved Employees”** and **“PAGA Period”** means “all employees who are or previously were employed by Defendant in California and who were classified as non-exempt employees during the PAGA Period.” The PAGA Period is the period between February 19, 2020 and January 19, 2022. Agreement at §§I(B) and (U).

3. The **“Gross Settlement Amount”** is Two Hundred Twenty-Five Thousand Dollars (\$225,000). Agreement at §I(II). The Gross Settlement Amount is non-reversionary and includes the following:

a. **“Class Representative Service Awards”** in the amount of \$7,500 to Plaintiff Hernandez, \$7,500 to Plaintiff Conley, \$5,000 to Plaintiff Valencia, and \$5,000 to Plaintiff Velasquez for their services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §§ I(CC), III(D) and III(M)(9).

b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be Seventy-Five Thousand Dollars (\$75,000) out of \$225,000 plus costs and expenses not to exceed Fifteen Thousand Dollars (\$15,000),

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 to be paid to Class Counsel. Agreement at §III(M)(10).

2 c. A “**PAGA Settlement**” of Five Thousand Dollars (\$5,000) shall be allocated
3 from the Gross Settlement Amount for settlement of claims for civil penalties under the Labor Code
4 Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay
5 75% of the PAGA Settlement (\$3,750) (“LWDA Payment”) the California Labor and Workforce
6 Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Settlement
7 (\$1,250) (“Aggrieved Employee Payment”) to the Aggrieved Employees. Agreement at §III(M)(11).

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

11 4. The “**Net Settlement Amount**” of approximately \$97,000 (Gross Settlement Amount
12 minus the requested Class Representative Service Awards, Class Counsel Award, PAGA Settlement
13 and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a
14 pro-rata basis according to the number of Workweeks each Settlement Class Member performed work
15 in California during the Class Period. The entire Net Settlement Amount will be paid to all Settlement
16 Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
17 Payment of ***\$1,054.34***. Agreement at §III(M)(1); JCL Dec., ¶ 5.

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

25 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
26 approval under California law and is within the range of reasonableness. The average Individual
27 Settlement Payment to the Settlement Class meet or exceeds awards in similar wage and hour class
28 actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly,

Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides child care services in Tulare County where Plaintiffs worked. JCL Dec., ¶ 7.

Plaintiff Hernandez worked for Defendant between January of 2019 to November of 2020. Plaintiff Conley worked for Defendant between March of 2019 to November of 2020. Plaintiff Valencia worked for Defendant between March of 2019 to November of 2020. Plaintiff Velasquez worked for Defendant between December of 2016 to November of 2020. Throughout their employment, Plaintiffs worked for Defendant in California and were classified as non-exempt hourly employees. Plaintiffs are members of the Class and during their employment were subject to Defendant's Employee Handbook and the other employment policies generally applicable to all non-exempt employees. JCL Dec., ¶ 8; Declaration of Amanda Hernandez ("Hernandez Dec."), ¶¶ 1-7; Declaration of Kimberly Conley ("Conley Dec."), ¶¶ 1-7; Declaration of Graviela Valencia ("Valencia Dec."), ¶¶ 1-7; Declaration of Serena Velasquez ("Velasquez Dec."), ¶¶ 1-7.

Generally, Plaintiffs claim that Defendant (1) maintained unlawful meal and rest period policies and practices that failed to provide duty free meal and rest periods; (2) failed to pay for time spent working off-the-clock; (3) failed to pay reporting time pay; (4) issued inaccurate itemized wage statements; (5) failed reimburse for required business expenses; and (6) failed to pay all wages when due. JCL Dec., ¶ 9. Defendant completely denies any liability or wrongdoing associated with these allegations, but is settling this matter to buy its peace from this litigation.

On February 19, 2021, Plaintiffs served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiffs' PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10.

On May 19, 2021, Plaintiffs filed a class action complaint in the Tulare County Superior Court

for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §§ 226 and 226.2; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Violations of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]. JCL Dec. ¶ 11.

Prior to conducting any formal discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties agreed to stay formal discovery. To prepare for mediation, the Parties agreed to informally exchange relevant documents and data points subject to the mediation privilege. Pursuant to that agreement, Defendant produced a sample of the Class Members' time and payroll data along with itemized wage statements and relevant policies applicable to Class Members. As discussed *infra*, Plaintiffs' counsel retained Berger Consulting Group to analyze Defendant's time and payroll data. JCL Dec., ¶ 12.

On January 19, 2022, the Parties participated in a full day mediation with a respected and experienced jurist and wage and hour class action and PAGA mediator, Hon. Carl J. West (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of 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 November of 2020, Class Counsel began its pre-filing investigation into Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with the Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment for Defendant, including portions of Defendant's employment policies, itemized wage statements, and time

1 and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs'
2 complaints justified further inquiry. JCL Dec., ¶ 14.

3 Next, Class Counsel reviewed and analyzed the documents and believed the documents support
4 Plaintiffs' claim that Defendant furnished inaccurate wage statements, maintained unlawful meal and
5 rest period policies and practices that failed to provide duty free meal and rest periods, and failed to
6 pay all wages when due. Shortly thereafter, Class Counsel summarized the known factual and legal
7 issues in the PAGA Notice addressed to the LWDA. Several months later, Class Counsel filed this
8 action. JCL Dec., ¶ 15.

9 To prepare for mediation, Class Counsel requested several documents and data points to further
10 evaluate Plaintiffs' claims and Defendant's potential liability exposure to the Class Members. In
11 response to Class Counsel's request, Defendant produced a sample of time and payroll records,
12 itemized wage statements, data for the Class, full and complete copies of applicable handbooks
13 containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. JCL Dec., ¶ 16.

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

20 Berger analyzed Defendant's time and payroll data to assist in the development of various
21 damage models. Among other things, Berger determined the approximate number of work shifts,
22 workweeks, pay periods, average rate of pay, average length of shift and average number of hours
23 worked shift during the Class Period. Additionally, Berger estimated the number of allegedly unpaid
24 wages, reporting time premiums, missed, late or truncated meal and rest periods, the amount of meal
25 period premiums paid during the Class Period, and the amount of off-the-clock work performed by the
26 Class Members during the Class Period. JCL Dec., ¶ 18.

27 Berger calculated and created a damage model for Defendant's potential liability exposure while
28 accounting for the uncertainties of continued litigation. This damage model informed and guided Class

1 Counsel during the mediated settlement discussions. JCL Dec., ¶ 19.

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

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

14 On January 19, 2022, the Parties participated in mediation presided over by Hon. Carl. J. West
15 (Ret.). Judge West is renowned for managing the expectations of the parties and providing a useful,
16 neutral analysis of the issues and risks to both sides. Prior to mediation, the parties exchanged
17 information regarding their respective claims and defenses, including their respective evaluation of the
18 damages. While the Parties attended the mediation voluntarily, it was always at arm's length and
19 adversarial. Without revealing any confidential information about the mediation itself, the Parties
20 believe that a settlement could not have been reached without the specific action of Judge West. At the
21 conclusion of the mediation, each side, represented by its respective counsel, agreed to settle the Action
22 based on a Mediator's proposal which was memorialized in the form of a Memorandum of
23 Understanding. The complete and final terms of the Parties' settlement are now set forth in the
24 Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable
25 compromise of the claims at issue. JCL Dec., ¶ 21.

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1 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

2 1. The Composition of the Settlement Class Members

3 The proposed Settlement Class consists of all of Defendant's current and former non-exempt
4 employees employed in California during the Class Period. The Settlement Class excludes any person
5 who submits a timely and valid request for exclusion. Agreement at §§ I(HH). There are approximately
6 92 members of the Settlement Class who collectively worked an estimated 5,618 Workweeks during
7 the Class Period. Agreement at §III(A)(2).

8 2. The Settlement Consideration

9 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
10 Amount of \$225,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
11 the Class Members; (2) Class Representative Service Awards in the amounts of \$7,500 to Plaintiff
12 Hernandez, \$7,500 to Plaintiff Conley, \$5,000 to Plaintiff Valencia, and \$5,000 to Plaintiff Velasquez
13 for their services on behalf of the Class Members and, equally important, for a general release of claims,
14 *except* as provided for in the Agreement at §§ I(CC), III(D) and III(M)(9); (3) a PAGA Settlement in
15 the amount of \$5,000; (4) Settlement Administration costs estimated at \$8,000, (5) Class Counsel
16 Award in the amount of \$90,000 comprised of attorneys' fees not to exceed one-third of the Gross
17 Settlement Amount, estimated to be \$75,000, and actual litigation expenses not to exceed \$15,000.
18 Agreement at §III(M).

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

23 3. Formula for Calculating Individual Settlement Payments

24 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
25 Settlement Payment will be proportional to the number of Workweeks each member of the Settlement
26 Class Member worked for Defendant in California during the Class Period. Using the Class Data, the
27 Settlement Administrator shall add up the total number of Workweeks for the entire Settlement Class.
28 Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be

1 calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the
2 Settlement Class Member's total number of Workweeks, and the denominator of which is the total
3 number of Workweeks of all Settlement Class Members. Agreement at §III(M)(1).

4 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
5 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for any Class
6 Member who submits valid and timely requests for exclusion will be redistributed to Settlement Class
7 on a pro rata basis. Agreement at §III(M)(1).

8 Given that there are approximately 92 Settlement Class Members, the average gross recovery is
9 approximately \$1,054.34 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
10 ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by
11 California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego
12 Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The*
13 *Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery
14 \$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No.
15 CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los
16 Angeles Superior Court Case No. BC617160 (average net recovery \$333.98)).

17 4. Settlement Payment

18 Defendant will pay, via wire transfer, the Gross Settlement Amount in two installments as
19 follows: \$112,500 on Funding Date #1 and \$112,500 on Funding Date #2.² Defendant's share of
20 employer side payroll taxes is in addition to the Gross Settlement Amount and will be paid together
21 with the Gross Settlement Amount on Funding Date #1. Agreement at §§ III(A)(3)-(4).

22 5. Release by Participating Settlement Class Members

23 Generally, as of the funding in full of the Gross Settlement Amount on Funding Date #2,
24 Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the
25 Released Claims (all class claims alleged in the operative complaint which occurred during the Class
26 Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
27

28 ² "Funding Date #1" will occur five (5) calendar days after the Effective Date, which is the date of entry by the Court of an order and judgment finally approving the Settlement. "Funding Date #2" will occur six (6) months after the Effective Date. Agreement at §I(N)-(O).

1 termination, unemployment insurance, disability, social security, workers' compensation, and class
2 claims outside of the Class Period). Agreement at §§I(AA).

3 6. Release by the LWDA and the Aggrieved Employees

4 Generally, as of the funding in full of the Gross Settlement Amount on Funding Date #2, the
5 LWDA and the allegedly Aggrieved Employees will release the Released Parties from any all PAGA
6 claims alleged in the operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred
7 during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
8 wrongful termination, unemployment insurance, disability, social security, workers' compensation, and
9 PAGA claims outside of the PAGA Period. Agreement at §§I(BB).

10 **III. ARGUMENT**

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

12 The proposed Settlement, including a Gross Settlement Amount of \$225,000, meets the
13 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
14 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary
15 conciliation and settlement are the preferred means of dispute resolution.").) In California, class action
16 settlement approval requires an early "preliminary" review by the trial court and a subsequent "final"
17 review after notice of the settlement has been distributed to class members for their comments and
18 objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118
19 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval
20 hearing to inquire into the fairness of the proposed settlement").)

21 Although California Rule of Court Rule 3.769 does not provide detail as to the scope of review
22 of the proposed settlement, preliminary approval is warranted if the settlement falls within a
23 "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27
24 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002)
25 ("Newberg").) Reasonableness and fairness are presumed where: (1) the settlement is reached through
26 "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court
27 to act intelligently;" (3) counsel is "experienced in similar litigation. . . ." (*Dunk v. Ford Motor Co.*
28 (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public

1 policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law
2 wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118
3 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners
4 for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation
5 and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
6 action litigation”).)

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

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

15 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
16 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
17 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
18 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
19 § 11.51.)

20 On January 19, 2022, the Parties agreed to conduct a full day of mediation with Hon. Carl J.
21 West (Ret.). Judge West is renowned for managing the expectations of the parties and providing a
22 useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative
23 Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s
24 participation weighs considerably against any inference of a collusive settlement); *D’Amato v.
25 Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification
26 settlement negotiations helps to ensure that the proceedings were free of collusion and undue
27 pressure.”).) JCL Dec., ¶ 21.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to the extensive exchange of documents and data for mediation, 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 Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶¶ 14-21.

Class Counsel only agreed to enter the Settlement after comprehensively investigating and evaluating Plaintiffs' claims. Based on Class Counsel's investigation of the facts, applicable law, and marketplace for similar settlements, and considering 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 Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

The Gross Settlement Amount of \$225,000 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.*) 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

1 have received if they had succeeded at trial.³ Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
3 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
4 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 22.

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

7 In conclusion, the settlement of \$225,000 represents approximately 41.65% of the value of the
8 maximum potential *damages* at issue. Even when including the penalties for Plaintiffs’ claim for wage
9 statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement
10 represents up to 28.54% of the maximum potential liability, assuming all of these amounts could be
11 proved at trial. This is well within the bounds of reasonableness. (See *Viceral v. Mistras Grp., Inc.*
12 (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where
13 the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D.
14 Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class
15 received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015)
16 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where the
17 class received approximately 7.3% of the estimated trial award was within the “range of
18 reasonableness.”).) The following summarizes Defendant’s estimated exposure. JCL Dec., ¶ 23.

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

20 One of Plaintiffs’ claims in the Actions was that Defendant failed to pay for all hours worked.
21 Specifically, Plaintiffs asserted that Defendant required Plaintiffs to work while clocked out during
22 what was supposed to be Plaintiffs’ off-duty meal break, as well as before Plaintiffs’ shift started and

23 ³ Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than
the individual component parts, that must be examined for overall fairness”).

1 after it ended. JCL Dec., ¶ 24.

2 Defendant vigorously denied liability for claim. Defendant asserted that its written policies and
3 procedures directed its employees to ensure all work is conducted while on-the-clock. Defendant
4 asserted that any deviation from these written policies were employee specific and, thus, created
5 individualized issues of liability unsuitable for class treatment. JCL Dec., ¶ 25.

6 Assuming thirty (30) minutes of unpaid compensable time between projects for Class Members
7 employed in Respite job positions, and 30 minutes of unpaid compensable time per pay period for all
8 other Class Members, during the Class Period, BCG estimated Defendant's exposure for this claim at
9 \$33,882. JCL Dec., ¶ 26.

10 (2) Estimated Damages for Meal Period Violations

11 Plaintiffs also allege that Defendant failed to provide compliant meal periods. Plaintiffs
12 contended that because of Plaintiffs' and Class Members' rigorous work requirements, the Class
13 Members were often denied complaint meal periods. JCL Dec., ¶ 27. Labor Code § 512 requires
14 employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within
15 the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is
16 entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. California Lab.
17 Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery
18 period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission,
19 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
20 compensation for each workday that the meal or rest or recovery period is not provided."

21 Conversely, Defendant again argued that its policies and procedures required uninterrupted,
22 statutorily compliant meal breaks. Similarly, Defendant argued any divergence from these written
23 policies were not systematic and, if they existed at all, were employee specific. Defendant also asserted
24 that it maintained facially compliant meal period policies and practices throughout the Class Period.
25 Thus, Defendant argued that there was no potential liability for Plaintiffs' alleged meal period
26 violations. JCL Dec., ¶ 28.

27 Plaintiffs' meal period claim (together with the rest period claim) likely represented the most
28 factually contested claim in the Action. Accounting for the strength of Defendant's defenses, and the

1 arguably individualized nature of the claim, Plaintiffs discounted Defendant's potential liability for
2 meal period violations. Plaintiffs estimated the damages for this claim at \$167,810. JCL Dec., ¶ 29.

3 (3) Estimated Damages for Rest Period Violations

4 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
5 Plaintiffs alleged that because of their rigorous work schedule they were not able to take timely and
6 duty-free rest periods. JCL Dec., ¶ 30. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized
7 rest period times shall be counted as hours worked for which there shall be no deduction from wages."
8 Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or
9 recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare
10 Commission, the employer shall pay the employee one additional hour of pay at the employee's regular
11 rate of compensation for each workday that the meal or rest or recovery period is not provided."

12 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
13 policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary
14 burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely,
15 on Class Member testimony, making it a riskier claim at class certification and liability stages.
16 Defendant likely would have argued that only a small number of Class Members missed their rest
17 breaks. Certification likely would have required depositions of Class Members who provided
18 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
19 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
20 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
21 plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this
22 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
23 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
24 written policy does not generate uniform practices."). Accordingly, the rest break claim was discounted
25 in Plaintiffs' valuation of the case and was estimated at \$264,811. JCL Dec., ¶ 31.

26 (4) Estimated Exposure for Unreimbursed Business Expenses

27 Plaintiffs alleged that Defendant required the Class Members to incur personal expenses for the
28 use of their personal cell phones. California employers who require employees to incur personal

1 business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal.
2 Labor Code § 2802(a), providing that “An employer shall indemnify his or her employee for all
3 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
4 his or her duties, or of his or her obedience to the directions of the employer...”). Specifically, Plaintiffs
5 alleged Defendant required Plaintiffs and Class Members to use their personal cell phones in order to
6 perform work-related tasks, but Defendant failed to reimburse Plaintiffs and Class Members for the
7 required business expenses in violation of Labor Code Section 2802. JCL Dec., ¶ 32.

8 Again, Defendant vigorously denied any liability for this claim. Defendant argued that on the
9 rare occasions where employees did incur business expenses, these expenses were fully reimbursed.
10 Plaintiffs estimated Defendant’s exposure for this claim at \$40,800. JCL Dec., ¶ 33.

11 (5) Exposure for Reporting Time Pay Violations

12 Plaintiffs allege that Defendant required the Class Members to report for work by, for example,
13 remaining on standby and available to work. However, Defendant, at times, failed to put Class Members
14 to work and/or failed to furnish them with work for at least half of their scheduled shift. More
15 specifically, Defendant required Plaintiffs and Class Members to remain on standby and available to
16 work ***on the same day, up 2 hours before they were expected to show up for work***, when Defendant
17 needed Plaintiffs and Class Members to work. However, if Plaintiffs and Class Members were not
18 furnished with work for at least half of their scheduled shift, Defendant would not compensate Plaintiffs
19 and Class Members for the scheduled shift. JCL Dec., ¶ 34. The applicable Wage Order requires that
20 on each workday that an employee reports for work, as scheduled, but is not put to work or is furnished
21 less than half of the employee’s usual or scheduled day’s work, the employee shall be paid for half the
22 usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours,
23 at the employee’s regular rate of pay, which shall not be less than the minimum wage. (See e.g., Wage
24 Order 7-2001 (Cal. Code. Regs. Tit. 8, § 11070.) The applicable Wage Order denominates this as
25 “Reporting Time Pay.” Additionally, the Court of Appeal in *Ward v. Tilly’s* (2019) 31 Cal.App.5th
26 1167 reversed a trial court’s decision in favor of the employer holding that an employee must physically
27 appear at the workplace to “report to work.” The Court of Appeal defined “report to work” within Wage
28 Order 7 to mean “presenting oneself as ordered” and when an “employer directs employees to present

1 themselves for work by logging on to a computer remotely, or by appearing at a client’s job site, or by
2 setting out on a trucking route[.]” (*Id.* at p. 1185.) Accordingly, the practice of requiring employees to
3 “call in” two hours prior to their shift triggered the reporting time pay requirement of Wage Order 7.
4 (*Id.*)

5 Defendant denied any liability for this claim. Defendant argued that any reporting time pay, if
6 any, was paid to Plaintiffs and Class Members. Further, Defendant argued any determination of
7 whether a Class Member was entitled to reporting time pay required a highly individualized analysis.
8 Accounting for the strength of Defendant’s defenses, and the arguably individualized nature of the
9 claim, Plaintiffs estimated the damages for this claim at \$32,905. JCL Dec., ¶ 35.

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

11 Plaintiffs allege that Defendant’s alleged violations resulted in derivative violations of Labor
12 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
13 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not
14 prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
15 Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an
16 “injury” because of wage statement violations, as required by Labor Code section 226. Defendant
17 could also argue that that meal and rest period violations do not entitle employees like Plaintiffs and
18 the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See*
19 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiffs would have to overcome
20 precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014
21 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty
22 claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding
23 insufficient evidence of bad faith or actual injury). These claims represented Plaintiffs’ most legally
24 precarious and uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiffs
25 estimated Defendant’s *maximum* exposure for these claims at approximately \$248,143 (approximately
26 \$154,243 for waiting time and \$93,900 for wage statement). JCL Dec., ¶ 36.

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1 (7) Defendant's PAGA Exposure

2 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
3 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure was approximately \$751,200.
4 JCL Dec., ¶ 37.

5 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
6 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
7 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
8 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
9 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
10 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
11 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
12 6, 2016) (PAGA penalties denied after trial).

13 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
14 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
15 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
16 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
17 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation
18 for each pay period the employee worked. Again, Defendant raised several defenses that presented
19 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Defendant asserted that its
20 employment practices complied with all applicable Labor Laws. In addition to those arguments
21 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
22 (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the
23 rest period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested. JCL Dec., ¶ 38.

24 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
25 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
26 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
27 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
28

Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

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

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

“The Settlement eliminates these and other risks of continued litigation, including the very real

1 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
2 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
3 inherently perilous regardless of the strengths of merits of the claims:

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

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

10 Finally, continuing to litigate this action would require continued and extensive resources
11 coupled with significant Court time to proceed through trial and post-trial motions; which can often
12 take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates
13 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
14 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation and expects that
15 Defendant would appeal any unfavorable judgment. JCL Dec., ¶ 40. “Avoiding such a trial and the
16 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
17 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
18 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
19 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

20 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$225,000 that is roughly
21 41.65% of Defendant’s liability exposure for damages, and 28.54% of Defendant’s liability exposure
22 for damages and penalties. Given the amount of the settlement here, as compared to potential value of
23 the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
24 reasonable. JCL Dec., ¶ 40.

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

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

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

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

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

21 **C. The Court Should Preliminarily Approve the Class Representative Service Awards**

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

26
27 ⁴ 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.

UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing 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.)

The Settlement provides for Class Representative Service Awards of \$7,500⁵ to Plaintiff Hernandez, \$7,500 to Plaintiff Conley, \$5,000 to Plaintiff Valencia, and \$5,000 to Plaintiff Velasquez. The service awards are fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their 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, and agreeing to provide Defendant a general release of all claims arising out of their employment, *except* as provided

⁵ The amount of the requested enhancement payment—\$10,000—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 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 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *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).

for in the Agreement at §§ I(CC), III(D) and III(M)(9). JCL Dec., ¶ 43.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Awards. 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."); 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 Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a Class Counsel Award in the amount of up to one-third of the Gross Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(M)(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.

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

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

2 For the purpose of Settlement, Plaintiffs contend, and Defendant does not dispute, that
3 provisional certification of the Settlement Class is appropriate. JCL Dec., ¶ 47.

4 1. The California Standard for Class Certification

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

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

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

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

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

28 Generally, the proposed Class consists of all of Defendant’s current and former non-exempt

1 employees employed in California during the Class Period. Defendant's records show that the Class
2 consists of approximately 92 individuals, making joinder of all Class Members impracticable. Further,
3 because all Class Members are Defendant's current and former employees, the class is readily
4 ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 48.

5 The California statutes relating to each of Plaintiffs' claims apply with equal force and effect to
6 the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and
7 Plaintiffs contend that Defendant's liability can be determined by facts common to all members of the
8 class. The wage and hour issues are both numerous and substantial, and a class action is the most
9 advantageous method of dealing with the claims of the Class Members. JCL Dec., ¶ 49.

10 Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise
11 from the same factual basis and are based on the same legal theories applicable to the other Class
12 Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement
13 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
14 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
15 their ability to advocate for the interests of the Class Members by initiating this litigation, assisting in
16 the investigation of claims alleged in the action, and evaluating the proposed settlement to assure that
17 it is fair. JCL Dec., ¶ 50.

18 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
19 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
20 certified, and gained state court settlement approval of the same class-wide causes of action that are at
21 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
22 qualified to represent the interests of this Class. JCL Dec., ¶¶ 51, 54-61, Declaration of Shani Zakay,
23 ¶¶ 1-3.

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

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Dated: July 25, 2022

By: 
Jean-Claude Lapuyade, Esq.