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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LATISHA SHACONNA ANDERSON, an
individual, on behalf of herself, and on behalf
of all persons similarly situated,

Plaintiff,

v.

BARTON MYERS ASSOCIATES, INC., a
California Corporation; BARTON
ASSOCIATES, INC., a California
Corporation; BARTON & ASSOCIATES,
INC., which will do business in California as
BARTON MEDICAL, INC., a Delaware
Corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 21STCV43314

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

Date: December 14, 2022

Time: 9:00 a.m.

Judge: Elihu M. Berle

Dept.: 6

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I. INTRODUCTION

Plaintiffs LATISHA SHACONNA ANDERSON, SARAH BAXLEY, JASON ANDERSON, and MELODY JAMES (collectively “Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 367 Class Members and 367 PAGA Settlement Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class,**” and “**Class Period,**” shall mean “all nurse practitioners and physician assistants who were classified as independent contractors by Defendant Barton & Associates, Inc. (hereinafter, “Barton”) and placed by Defendant Barton to perform services at the Pomona, California Border Crisis Covid-19 emergency response site (“Class”) during the period between April 15, 2021, to November 30, 2021 (“Class Period”). Agreement at §§ 1.4, 1.11.

2. The “**Participating Class Members**” mean any and all Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement. Agreement at § 1.36

a. The “**Class Size**” is comprised approximately 367 individuals who collectively worked approximately 4,005 Workweeks during the Class Period as estimated by Defendant Barton at the time of mediation. Agreement at § 4.1.

3. The “**PAGA Settlement Class Members**” and “**PAGA Period**” means all nurse practitioners and physician assistants who were classified as independent contractors by Defendant Barton and placed by Defendant Barton to perform work at the Pomona, California Border Crisis Covid-19 emergency response site (“PAGA Settlement Class Members”) from April 15, 2021, to November 30, 2021 (“PAGA Period”). Agreement at §§ 1.31, 1.35. PAGA Settlement Class Members do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.5.

a. At the time of mediation, there were approximately 367 PAGA Settlement Class Members during the PAGA Period. Agreement at § 4.1.

4. The “**Gross Settlement Amount**” is Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00). Agreement at § 1.22. The Gross Settlement Amount is non-reversionary and includes

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.

the following:

a. A “**Class Representative Service Payment**” in the amount of not more than \$40,000, with \$10,000 allocated to each named Plaintiff for their services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §§ 1.13, 3.2.1, 5.1;

b. An award of “**Class Counsel Fees Payment**” and “**Class Counsel Litigation Expenses Payment**” (collectively “Class Counsel Fees and Litigation Expenses Payment”) in the amount of not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be Three Hundred Thousand Dollars (\$300,000.00) (“Class Counsel Fees Payment”) and actually incurred costs not to exceed Thirty Thousand Dollars (\$30,000) (“Class Counsel Litigation Expenses Payment”), to be paid to Class Counsel. Agreement at §§ 1.6, 3.2.2;

c. “**PAGA Penalties**” of \$50,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Administrator shall pay 75% of the PAGA Penalties to the Labor and Workforce Development Agency (“LWDA PAGA Payment”). The Administrator shall distribute 25% of the PAGA Penalties to the PAGA Settlement Class Members as part of the Net Settlement Amount. Agreement at § 1.34; and,

d. “**Administration Expenses Payment**” not to exceed \$10,000.00 payable to the Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement at §§ 1.3, 3.2.3, 7.1.

3. The “**Net Settlement Amount**” of approximately \$470,000.00 (Gross Settlement Amount minus the Class Representative Service Payment, Class Counsel Fees and Litigation Expenses Payment, Administration Expenses Payment, and the PAGA Penalties) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$1,280.65**. Agreement at § 1.28; JCL Dec., ¶ 7.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.

1 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
2 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
3 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
4 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
5 denied or of Defendants prevailing at trial. JCL Dec., ¶ 7.

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

11 II. FACTS AND PROCEDURE

12 A. Overview of the Litigation

13 Defendants provided services at a federal Border Crisis Covid-19 emergency response facility
14 in Pomona, California that utilized a workforce of healthcare professionals to assist in emergency
15 intake and medical care of migrant children coming out of United States Customs and Border
16 Protection custody, in Los Angeles County, where Plaintiffs worked. Plaintiff Latisha Anderson
17 worked for Defendants from June of 2021 to July of 2021. Declaration of Latisha Anderson (“LA
18 Dec.”) at ¶ 4. Plaintiff Melody James worked for Defendants from April of 2021 to July of 2021.
19 Declaration of Melody James (“MJ Dec.”) at ¶ 4. Plaintiff Sarah Baxley worked for Defendants from
20 August of 2021 to July of 2021. Plaintiff Jason Anderson worked for Defendants from May of 2021
21 to July of 2021. Plaintiffs were paid hourly for their services. Plaintiffs allege that they were
22 employees of Defendants and were entitled to legally compliant meal and/or rest periods, minimum,
23 regular, and overtime wages, and legally compliant meal and rest periods. Plaintiffs also allege that
24 they were subject to Defendants’ written policies and procedures contained in, among other
25 documents, the “Client Services Agreement.” JCL Dec., ¶ 9; LA Dec., at ¶¶ 1-5; MJ Dec., at ¶¶ 1-5.

26 Defendants forcefully deny liability for each of Plaintiffs’ claims, including arguing that all of
27 the class members were properly classified as independent contractors. Defendants argue that Plaintiffs
28 cannot receive the benefit of California’s “ABC test” for worker classification—which is stricter than

1 the *Borello* and *Martinez* tests for employment—where, as here, they allege a joint-employer
2 relationship. Plaintiffs’ misclassification claim is governed by the joint-employer test stated in
3 *Martinez v. Combs* (2010) 49 Cal.4th 35. The ABC test does not apply. (See *Henderson v. Equilon*
4 *Enters., LLC* (2019) 40 Cal.App.5th 1111, 1125 [*Martinez*, not ABC, test applies in joint-employer
5 cases]; *Curry v. Equilon Enterprises, LLC* (2018) 23 Cal.App.5th 289 [same].) Under California’s
6 joint-employer test, to “employ” means (a) to exercise control over the wages, hours, or working
7 conditions, (b) to suffer or permit to work, or (c) to engage. (*Curry, supra*, 23 Cal.App.5th at p. 301.)
8 JCL Dec., ¶ 10. Defendants argue that Plaintiffs cannot satisfy any of those elements, as set forth
9 below:

10 *First*, Defendants argue that Barton did not control Plaintiffs’ “wages, hours, or conditions.”
11 Barton did not tell Plaintiffs what tasks to perform or how to perform them—nor could Barton have
12 done so, given that Barton has no medical licenses and had no personnel at the Pomona Site. Plaintiffs
13 cannot meet this test as a matter of law. (*Id.* at p. 303 [affirming summary judgment for Shell in part
14 because “the tasks Curry was made to perform, and the conditions in which she performed them, were
15 not controlled by Shell—they were controlled by ARS”].) JCL Dec., ¶ 11.

16 *Second*, Defendants argue that Plaintiffs cannot meet the “suffer or permit work” test, which
17 assesses “whether the principal has the right to control the manner and means by which the worker
18 accomplishes the work.” (*Id.* at p. 304.) Once again, Barton had no control over Plaintiffs’ work. The
19 relevant contracts stated that Barton had no right to control Plaintiffs’ work, and in practice Barton
20 exercised no control over the manner and means by which Plaintiffs worked. JCL Dec., ¶ 12.

21 *Third*, Defendants argue that Plaintiffs cannot prove that Barton “engaged” them, which turns
22 on whether Barton was responsible for Plaintiffs “hiring, firing, and daily tasks,” because Barton had
23 no responsibility for Plaintiffs’ day-to-day work. (*Id.* at p. 311.) JCL Dec., ¶ 13.

24 Defendants argue that no matter which test applies—the joint-employer test, right-to-control test,
25 or ABC test—Plaintiffs were not Barton’s employees. In fact, courts across the country have
26 overwhelmingly found that staffing companies do not employ *locum tenens* healthcare professionals *as*
27 *a matter of law*.² Importantly, many of these cases involved *registered* nurses, who are less independent
28

² *State Dept. of Employment v. Reliable Health Care Services of Southern Nevada, Inc.* (1999) 115 Nev. 253; *Health Care*

1 than the nurse practitioners at issue in this case. (See, e.g., *Trauma Nurses*, 242 N.J.Super. at p. 138
2 [“TNI primarily brokers the services of registered nurses”]; *Health Care Assocs.*, 2001 OK 50 [referring
3 only to “nurses”].) Barton has not identified any California case in which a plaintiff even *alleged* that
4 a staffing agency employed *nurse practitioners*. As shown above, the courts outside of California that
5 have addressed this claim with respect to healthcare professionals generally have applied a variety of
6 classification tests and have all come to the same conclusion: staffing agencies are not employers of
7 temporary healthcare professionals as a matter of law. No case suggests that a California court would
8 reach a different result.³ JCL Dec., ¶ 14.

9 Further, Defendants assert that they fully complied with all applicable employment laws and
10 raised several other significant defenses to Plaintiffs’ claims, including but not limited to, facially
11 compliant meal and rest period policies, compliant wage statements, and payment of all wages when
12 due. JCL Dec., ¶ 15.

13 On September 20, 2021, Plaintiff Latisha Anderson served Defendant Barton and the Labor and
14 Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff
15 Latisha Anderson’s PAGA Notice set forth the facts and theories supporting Defendant Barton’s
16 alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare
17 Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code
18 Private Attorneys General Act, Cal. Lab. Code sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 16.

19 On November 24, 2021, Plaintiff Latisha Anderson commenced this Action by filing a class
20 action complaint in the Los Angeles Superior Court, Case Number 20STCV43314 (the “Latisha
21 Anderson Action”). The Latisha Anderson Action alleged eight causes of action against Defendant
22 Barton for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200
23 *et seq*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq*.; (3) Failure to
24

25 *Assocs., Inc. v. Oklahoma Emp. Sec. Comm’n*, 2001 OK 50, ¶ 4, 26 P.3d 112, 113 (2001); *Daw’s Critical Care Registry,*
26 *Inc. v. Department of Labor* (Conn. Super. Ct. 1992) 42 Conn.Supp. 376, *aff’d* (1993) 225 Conn. 99; *Trauma Nurses, Inc.*
27 *v. Board of Review, New Jersey Dept. of Labor* (N.J. Super. Ct. App. Div. 1990) 242 N.J.Super. 135; *Prater v. Porter*, 737
28 So. 2d 102 (La. App. 1999); *Robison By and Through Bugera v. Faine*, 525 So.2d 903 (Fla. App. 1987); *Rhoney v. Fele*,
134 N.C.App. 614 (1999).

³ Further, a large percentage of Plaintiffs’ putative class are licensed physicians and physician assistants. Under Business & Professions Code section 2418, locum tenens physicians are independent contractors as a matter of law. Defendants thus argue that these members of Plaintiffs’ putative class have no misclassification claims.

1 Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide
2 Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required
3 Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized
4 Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in
5 Violation of Cal. Lab. Code §§ 201, 202, and 203; and (8) Violations of the Private Attorney General
6 Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). JCL Dec., ¶ 17. On January 5, 2022, Defendant
7 Barton filed a notice of removal of the action to the Central District of California, pursuant to the Class
8 Action Fairness Act of 2005, 28 U.S.C. sections 1332(d), 1453, and 1711. JCL Dec., ¶ 18. On August
9 29, 2022, the Parties stipulated to remand the Action to Los Angeles Superior Court for settlement
10 purposes only. The stipulation was granted and remand was ordered on August 31, 2022. JCL Dec., ¶
11 19.

12 On January 11, 2022, Plaintiff Baxley filed a class action complaint in the Los Angeles Superior
13 Court (“Baxley Action”) alleging six causes of action against Defendant Barton for: (1) Violation of
14 Cal. Lab. Code §§ 510, 1194, 1197.1 (Unpaid Overtime Wages); (2) Violation of Cal. Lab. Code §§
15 226.7, 226.7(b), and 512 (Meal Periods); (3) Violations of Cal. Lab. Code § 226.7 (Rest Breaks); (4)
16 Violation of Cal. Lab. Code § 226(a) (Wage Statements); (5) Violation of Cal. Lab. Code §§ 201 and
17 202 (Wages Not Timely Paid Upon Termination); (6) Violation of Cal. Bus. & Prof. Code §§ 17200,
18 *et. seq.* JCL Dec., ¶ 20. On February 14, 2022, Defendant Barton filed a notice of removal of the action
19 to the Central District of California, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.
20 sections 1332(d), 1453, and 1711. JCL Dec., ¶ 21.

21 On February 14, 2022, Plaintiff Jason Anderson filed an Action against Defendants Barton and
22 SMS (“Jason Anderson Action”) alleging a single cause of action for violation of PAGA. On May 20,
23 2022, Barton filed a Demurrer to the Complaint. On July 19, 2022, the Court sustained Barton’s
24 Demurrer with leave to amend. JCL Dec., ¶ 22.

25 On November 15, 2022, Plaintiffs filed a Second Amended Complaint (the “Operative
26 Complaint”) in the Latisha Anderson Action in the Los Angeles Superior Court to add Plaintiff Jason
27 Anderson, Plaintiff Sarah Baxley, and Plaintiff Melody James as named Plaintiffs, add Safety
28 Management Systems, LLC (hereinafter, “SMS”) as a Defendant, and add Plaintiffs’ Jason Anderson’s

1 and Sarah Baxley’s claims. JCL Dec., ¶ 23.

2 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties
3 agreed to informally produce additional documents and data points subject to the mediation privilege,
4 including but not limited to, all of the Class Members’ time data and certain payroll data points. As
5 discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group
6 (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 24.

7 On July 29, 2022, the Parties participated in a full day mediation with Tripper Ortman, Esq., a
8 highly regarded wage and hour class and representative action mediator. After arms-length negotiations
9 and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding.
10 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement
11 agreement, which is the subject of the instant motion. JCL Dec., ¶ 25.

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

13 Months before filing the Action, Class Counsel began their pre-filing investigation into the
14 Plaintiffs’ complaints. Class Counsel’s investigation started with several lengthy interviews with
15 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their
16 employment, including time and payroll records. At the conclusion of the interviews, Class Counsel
17 determined that each of Plaintiffs’ complaints appeared to substantiate Plaintiffs’ claims that
18 Defendants failed to, among other things, pay for all time worked, failed to issue accurate itemized
19 wage statements, failed to provide compliant meal and rest periods, and failed to pay all wages when
20 due. JCL Dec., ¶ 26.

21 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
22 Plaintiffs’ claims and Defendants’ liability exposure to the Class Members. In response to Class
23 Counsel’s request, Defendants produced, among other things, the time and payroll records for all of the
24 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
25 policies, and agreements. In total, Defendants produced several pages of pertinent policy documents,
26 time records for Class Members, and more than 6,500 unique cells of payroll data for Class Counsel to
27 analyze. JCL Dec., ¶ 27.

28 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class

Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. JCL Dec., ¶ 28.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 29.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 30.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel believe this Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 31.

///

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

2 On July 29, 2022, the Parties participated in a full day mediation with Tripper Ortman, Esq., a
3 highly regarded wage and hour class and representative action mediator. Mediator Ortman helped
4 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
5 sides. The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties
6 exchanged information regarding their respective claims and defense, including their respective
7 evaluation of the damages. At the conclusion of the mediation, the Parties reached a settlement, which
8 was subsequently memorialized in the form of a Memorandum of Understanding. The complete and
9 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
10 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL
11 Dec., ¶ 32.

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

13 1. The Composition of the Participating Class Members

14 The proposed Settlement Class Member consist of all nurse practitioners and physician's
15 assistants who were classified as independent contractors by Defendant Barton and placed by
16 Defendant Barton to perform work at the Pomona, California Border Crisis Covid-19 emergency
17 response site between April 15, 2021, to November 30, 2021. The Participating Class Members exclude
18 any person who submits a timely and valid request for exclusion. In the data exchanged prior to the
19 mediation, there were approximately 367 Class Members who worked an estimated 4,005 workweeks
20 through the conclusion of the Class Period. Agreement at § 4.1. Additionally, at the time of mediation,
21 Plaintiffs' expert estimated that there were approximately 367 PAGA Settlement Class Members who
22 worked approximately 2,219 pay periods during the PAGA Period. JCL Dec., ¶ 7.

23 2. The Settlement Consideration

24 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
25 Amount of \$900,000.00 The Gross Settlement Amount includes: (1) Individual Class Payments to the
26 Settlement Class; (2) the Class Representative Service Payments of \$40,000, with \$10,000 allocated to
27 each Plaintiff for their services on behalf of the Settlement Class and, equally important, for a general
28 release of claims; (3) PAGA Penalties in the amount of \$50,000; (4) Administration Expenses Payment

1 estimated at \$10,000.00; (5) a Class Counsel Fees and Litigation Expenses Payment in the amount of
2 \$330,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount currently
3 estimated to be \$300,000.00 ("Class Counsel Fees Payment"), and an estimated \$30,000 for actually
4 incurred litigation expenses ("Class Counsel Litigation Expenses Payment"). See generally Agreement
5 at § 3.

6 Subject to the Court approving the Class Representative Service Payments, PAGA Penalties,
7 Class Counsel Fees and Litigation Expenses Payment, and the Administration Expenses Payment, the
8 Net Settlement Amount will be distributed to each Participating Class Member as Individual Class
9 Payments. Agreement at § 1.28. There is no reversion to Defendant Barton. Agreement at §§ 1.22,
10 4.3.

11 3. The Funding Date

12 Assuming there are no objectors, and no appeal is filed, Defendant Barton will fund the Gross
13 Settlement Amount of \$900,000.00 within five (5) business days of the Court's entry of the order
14 granting final approval of this Settlement. Agreement at § 4.3.

15 4. Formula for Calculating Individual Class Payments

16 Each Participating Class Member will receive an Individual Class Payment. The Individual Class
17 Payment will be proportional to the number of Workweeks each Participating Class Member worked
18 for Defendants in California during the Class Period. Each Participating Class Member's final
19 Individual Class Payment for purposes of payment will be calculated by (a) dividing the Net Settlement
20 Amount by the total number of Workweeks worked by all Participating Class Members and
21 (b) multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4.

22 The Class Data provided by Defendant Barton to the Administrator will include the number of
23 pay periods worked during the PAGA Period and the number of workweeks worked during the Class
24 Period. Agreement at § 1.7. Each Participating Class Member's final Individual Class Payment for
25 purposes of payment will be calculated by using a fraction, the numerator of which is the Participating
26 Class Member's total number of Workweeks, and the denominator of which is the total number of
27 Workweeks of all Participating Class Members. Individual Class Payments for Settlement Class
28 Members who submit valid and timely requests for exclusion ("Non-Participating Class Members")

will be redistributed to Participating Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2.

Given that there are approximately 367 Class Members, the average gross recovery is approximately \$1,280.65 (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 7.

5. Release by Participating Class Members

Generally, as of the Funding Date, which is five (5) business days after the Effective Date, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims, which are all claims alleged in the *Latisha Anderson v. Barton* (L.A. Super.) Operative Complaint (or which could have been alleged based on the facts pleaded in the Operative Complaint) and which accrued during the Class Period. The release shall include all claims arising out of or relating to the alleged misclassification of Settlement Class Members, and all claims based on state, federal, local, or common law for unpaid wages, minimum wages, regular wages, overtime wages, working more than six days in seven, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave, final pay, timely payment of wages, waiting time penalties, and unfair business practices. The release shall extend to all forms of relief, including restitution, damages, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, penalties, equitable remedies, and pre or post judgment interest. The release shall also include all claims brought in *Sarah Baxley v. Barton*, Case No. 2:22-cv-01011 (C.D. Cal.) (or which could have been alleged based on the facts pleaded in the Baxley complaint), and all claims which could have been brought based on the facts pleaded in *Jason Anderson v. Barton & SMS*, No. 22STCV05355 (L.A. Super.). Agreement at §§ 1.40, 5.1.

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

Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the PAGA Settlement Class Members, will release the Released Parties from all Released PAGA Claims which include all PAGA claims alleged in the Operative Complaint (or which could have been alleged based on the facts pleaded in the Operative Complaint), and all PAGA

claims alleged in Latisha Anderson’s PAGA letter to the LWDA, which accrued during the PAGA Period. The release shall include all PAGA claims brought (or which could have been brought based on the facts pleaded) in *Sarah Baxley v. Barton*, Case No. 2:22-cv-01011 (C.D. Cal.) and *Jason Anderson v. Barton & SMS*, No. 22STCV05355 (L.A. Super.) and the PAGA letters sent to the LWDA by Sarah Baxley and Jason Anderson. Agreement at § 1.41.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$900,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

1 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
2 action litigation”).)

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

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

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

16 The Parties participated in mediation with Tripper Ortman, Esq., a highly regarded wage and
17 hour class and representative action mediator. Mediator Ortman managed the Parties’ expectations and
18 provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*
19 *Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
20 (mediator’s participation weighs considerably against any inference of a collusive settlement);
21 *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-
22 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
23 undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-
24 collusive. The mediation concluded with a settlement, after both sides reached an agreement, which
25 was subsequently memorialized in a Memorandum of Understanding (“MOU”). After reaching an
26 agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the
27 subject of the instant motion. The Agreement is the final product of these mediated negotiations.
28 Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the

1 claims at issue. JCL Dec., ¶ 32.

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

4 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
5 the factual and legal issues in dispute. Overall, Class Counsel thoroughly investigated the claims at
6 issue, including: (1) determining Plaintiffs' suitability as a putative class representative through
7 interviews, background investigations, and analysis of his employment files; (2) evaluating all of
8 Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought,
9 the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and
10 payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in
11 similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating
12 Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the
13 mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to
14 fully assess the nature and magnitude of the claims being settled, as well as the impediments to
15 recovery, such as to make an independent assessment of the reasonableness of the terms to which the
16 Parties have agreed. JCL Dec., ¶ 30.

17 Class Counsel only agreed to enter the Settlement following this thorough investigation and
18 evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace
19 for similar settlements, and considering the risk of significant delay, uncertainty associated with
20 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
21 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
22 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 31.

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

24 The Gross Settlement Amount of \$900,000.00 is within the range of reasonableness. To
25 determine whether a settlement is fair and reasonable, the court should "consider enough information
26 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
27 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
28 (*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.⁴ 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).) JCL Dec., ¶ 34.

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

The Gross Settlement Amount of \$900,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$3,338,658 (“Realistic Damages”) and \$6,691,956 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount represents a recovery of between

⁴ 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”).

1 approximately 27% and approximately 13.4% of Defendants' class-wide exposure – well within the
2 recognized range of reasonableness. The following summarizes Defendants' liability exposure. JCL
3 Dec., ¶ 34.

4 (1) Estimated Damages for Meal and Rest Period Violations

5 Plaintiffs' primary claim in this Action alleges that Defendants failed to provide compliant meal
6 and rest periods. Specifically, Plaintiffs allege that as a result of Defendants' misclassification of
7 Plaintiffs and other employees as independent contractors, Plaintiff, Class Members, and PAGA
8 Settlement Class Members were not able to take timely and duty-free meal and rest periods.
9 Consequently, Plaintiffs allege that they are owed meal and rest period premiums for meal and rest
10 period violations that occurred during the Class Period. JCL Dec., ¶ 35.

11 Conversely, Defendants argued, among other things, that it provided all their contractors, i.e.,
12 Class Members and PAGA Settlement Class Members, with the opportunity to take compliant meal
13 and rest periods. Defendants also argued that it maintained facially compliant meal and rest period
14 policies. Thus, Defendants argued that there was no potential liability for Plaintiffs' alleged meal and
15 rest period violations and any claimed violations required a highly individualized inquiry not suitable
16 to class treatment. As a result, Plaintiffs discounted this claim 50% to account for this risk. Plaintiffs
17 estimated that the damages for this claim ranged from approximately \$1,525,032 dollars to
18 approximately \$2,050,064 dollars. JCL Dec., ¶ 36.

19 (2) Defendants' Estimated Exposure for Unpaid Overtime Wages.

20 Plaintiffs also alleged that Defendants failed to accurately compensate Plaintiffs and Class
21 Members for overtime compensation. Specifically, Plaintiffs alleged that as a result of their
22 misclassification as independent contractors as opposed to non-exempt employees, Plaintiffs were not
23 paid overtime wages. Defendants denied liability for this claim asserting that they provide accurate
24 overtime compensation to Plaintiffs and Class Members. Plaintiffs estimated Defendants' exposure for
25 this claim ranged between \$1,524,996 dollars and \$3,049,992 dollars. JCL Dec., ¶ 37.

26 (3) Defendants' Estimated Exposure for Wage Statement Violations

27 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage
28 statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest

1 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
2 derivate wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93
3 (concluding that meal premiums are “wages” entitling employees to derivative wage statement
4 penalties). Further, Defendants argued that even it failed to furnish accurate wage statements, Plaintiffs
5 could not establish the injury requirement on a class-wide basis. As a result, Plaintiffs discounted this
6 claim 50% to account for this risk. Plaintiff estimated that Defendants’ exposure on this claim ranged
7 between \$286,800 dollars and \$573,600 dollars. JCL Dec., ¶ 38.

8 (4) Defendant’s Estimated Exposure for Waiting Time Penalties

9 Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative liability for
10 waiting time penalties. Although these *penalties* represented Defendants’ largest dollar amount of
11 exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendants argued that Plaintiff could
12 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
13 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant’s exposure for these
14 claims ranged between \$1,830 and \$18,300. However, Class Counsel’s Realistic Model discounted the
15 waiting time penalty claim by 90% to approximately \$1,830 because of the aforementioned risk factors.
16 JCL Dec., ¶ 39.

17 (5) Defendants’ PAGA Exposure

18 Class Counsel’s damage models also estimated Defendants’ exposure for PAGA penalties. At
19 the time of mediation, Plaintiffs estimated Defendants’ PAGA exposure ranged from approximately
20 \$24,600 dollars to approximately \$2,972,000 dollars. JCL Dec., ¶ 40.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

1 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
2 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
3 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
4 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
5 Defendants."). Here, Plaintiff would need to prove that each PAGA Group Member suffered a violation
6 for each pay period the employee worked. Again, Defendants raised several defenses that presented
7 serious threats to the claims of the Plaintiff and the PAGA Settlement Class Members. Defendants
8 asserted that its practices complied with all applicable Labor Laws. In addition to those arguments
9 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
10 (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the
11 rest period claims. JCL Dec., ¶ 41.

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

18 The proposed Settlement allocates \$50,000 to satisfy the PAGA claims. This amount represents
19 5.55% of the Gross Settlement Amount. This is well within the range of approved PAGA Penalties.
20 See, e.g., *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation);
21 *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation
22 in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving
23 \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010
24 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands,*
25 *Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)
26 JCL Dec., ¶ 42.

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

28 "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 *Magadia v. Wal-Mart Associates,*
7 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
8 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
9 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
10 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
13 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
14 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
17 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
20 certification of driver meal and rest period claims based on the predominance of individual issues).
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
23 settlement. JCL Dec., ¶ 43.

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

28 [N]othing is assured when litigating against commercial giants with vast

1 litigative resources, particular in such complex litigation as this, which
2 would strain the cognitive capacities of any jury. Defense judgments were
3 hardly beyond the realm of possibility. Accordingly, this factor weighs in
4 favor of preliminary approval.

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

6 Finally, continuing to litigate this action would require continued and extensive resources
7 coupled with significant Court time to proceed through trial and post-trial motions; which can often
8 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
9 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
10 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
11 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
12 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 44. “Avoiding such a trial and the
13 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
14 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
15 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
16 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

17 Given the amount of the settlement here, as compared to potential value of the claims, offset by
18 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 45.

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

20 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
21 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
22 information to decide whether they should accept the benefits offered, opt out and pursue their own
23 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
24 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
25 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
26 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
27 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
28

1 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁵

2 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
4 proposed Class Notice to all Class Members. The Notice will include information regarding the nature
5 of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure
6 and time period within which to requests for exclusions or objections to the Settlement, the date for the
7 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
8 the Released Class Claims. See generally Agreement at § 8.4. This method was negotiated by the
9 Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring
10 cost effective administration of the Settlement. JCL Dec., ¶ 46.

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
13 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
14 of the options open to dissenting class members.”).) JCL Dec., ¶ 47.

15 **C. The Court Should Preliminarily Approve the Class Representative Service Payments**

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

26
27 ⁵ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

(2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Payments of \$40,000, with \$10,000.00 allocated to each Plaintiff.⁶ The service payment is 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 Members, and agreeing to provide Defendants a general release of all claims arising out of his employment. JCL Dec., ¶ 48.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Payments 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 Payments. JCL Dec., ¶ 49.

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⁶ 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 (C.D. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 **D. The Court Should Preliminarily Approve Class Counsel’s Attorneys’ Fees and Litigation**
2 **Expenses Payment**

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

13 Class Counsel took this matter on a contingency fee basis and invested significant time and
14 expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
15 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
16 Members. Considering the positive outcome for the Class Members, and in light of the supporting
17 authority, the proposed award of Class Counsel’s Attorneys’ Fees and Expenses is fair and reasonable.
18 JCL Dec., ¶ 50.

19 Plaintiff will file a formal motion for the negotiated award of Class Counsel Fees and Litigation
20 Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
21 above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 51.

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

23 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
24 of the Class is appropriate. JCL Dec., ¶ 52.

25 1. The Standard for Class Certification

26 Class actions are statutorily authorized “when the question is one of common or general interest,
27 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
28 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class

1 certification is appropriate when there is an “ascertainable class and a well-defined community of
2 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
3 is appropriate even if class members at some point may be required to make an individual showing as
4 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
5 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

21 Because all Class Members performed services at the Pomona, California Border Crisis Covid-
22 19 emergency response site for Defendants, the class is readily ascertainable from Defendants’ regular
23 business records, i.e., payroll records. JCL Dec., ¶ 53.

24 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
25 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
26 liability can be determined by facts common to all members of the class. The wage and hour issues are
27 both numerous and substantial, and a class action is the most advantageous method of dealing with the
28 claims of the Settlement Class. JCL Dec., ¶ 54.

1 Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual basis and are based on the same legal theories applicable to the other Class
3 Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement
4 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
5 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
6 their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
7 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
8 55.

9 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
10 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
11 certified, and gained state court settlement approval of the same class-wide causes of action that are at
12 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
13 qualified to represent the interests of this Class. JCL Dec., ¶¶ 57-64, Declaration of Shani Zakay, ¶¶ 1-
14 3.

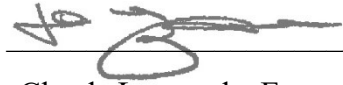
15 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
16 each individual claim, the Class Members likely have little incentive to litigate their claims on an
17 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
18 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
19 adjudication. JCL Dec., ¶ 56.

20 IV. CONCLUSION

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

24 Dated: November 15, 2022

JCL LAW FIRM, APC

26 By: 
27 Jean-Claude Lapuyade, Esq.