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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

DORCELI RIVAS, an individual, and on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SITAJI, a California Corporation; and DOES
1 through 50, Inclusive;

Defendants.

Case No. CVRI2101761

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

Date: March 27, 2023

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 10

Reservation #: 024153637746

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19

I. INTRODUCTION

Plaintiff DORCELI RIVAS (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 180 members of the Class and 94 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **“Class Members,” “Settlement Class Members” and “Class Period”** shall mean all non-exempt employees who are or previously were employed by SITAJI (hereinafter “Defendant”) and performed work in California (“Class” or “Class Members”) between April 15, 2017 to March 11, 2022 (“Class Period”). Agreement at §§ I(G) and (H). The “Settlement Class Members” exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(HH).

2. The **“Aggrieved Employees” and “PAGA Period”** means all non-exempt employees who are or previously were employed by Defendant and performed work in California (“Aggrieved Employees”) between February 8, 2020 until March 11, 2022 (“PAGA Period”). Agreement at §§ I(B) and (V). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The **“Gross Settlement Amount”** is Two Hundred Eighty-Five Thousand Dollars (\$285,000). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Service Award”** in the amount of \$10,000 to Plaintiff for her services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §III(M)(9);

b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$95,000 *and* litigation costs and expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §III(M)(10);

c. A **“PAGA Settlement”** of \$10,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the

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

Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §III(M)(11); and

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

3. The “**Net Settlement Fund**” of approximately \$147,000 (Gross Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members. Assuming a 100% participation rate, the average Individual Settlement Payment to each Settlement Class Member is estimated to be **\$816.66**. Agreement at §III(M)(1); JCL Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class Members is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant owns and operates multiple hotels in California. This action asserts claims on behalf

1 of Defendant's non-exempt employees working at those California hotel locations. Plaintiff worked
2 for Defendant as a non-exempt employee in California between September of 2019 to May of 2020.
3 At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally
4 compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
5 Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures.
6 JCL Dec., ¶ 8; Declaration of Doriceli Rivas ("Rivas Dec.") at ¶¶ 1-5.

7 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
8 compliant meal and rest periods, failed to reimburse employees for required expenses, failed to furnish
9 accurate itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies
10 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
11 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
12 including but not limited to, facially compliant meal and rest period policies, compliant wage statements,
13 and timely payment of all wages. JCL Dec., ¶ 9.

14 On February 8, 2021, Plaintiff served Defendant and the Labor and Workforce Development
15 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
16 the facts and theories supporting Defendant's alleged violations of various provisions of the California
17 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
18 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
19 2698 et seq ("PAGA"). JCL Dec., ¶ 10.

20 On April 15, 2021, Plaintiff filed a class action complaint in the Riverside Superior Court, Case
21 Number CVRI2101761 ("Action"). The Action alleged nine causes of action against Defendant for: (1)
22 Unfair Competition in Violation of California Business and Professions Code §§ 17200 *et seq.*; (2)
23 Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3)
24 Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to
25 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
26 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse
27 Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide
28 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §§ 226 and 226.2; (8) Failure to

1 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Violation of
2 the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 11.

3 The Parties agreed to mediate the Action with Kelly A. Knight, Esq., an experienced wage and
4 hour mediator. To prepare for mediation, the Parties agreed to informally additional documents and
5 data points subject to the mediation privilege, including but not limited to, the Class Members' time
6 data and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the forensic
7 consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL
8 Dec., ¶ 12.

9 On March 11, 2022, the Parties participated in a full day mediation with Mediator Knight. After
10 arms-length negotiations and bargaining, the mediation concluded in settlement after both sides agreed
11 to a mediator's proposal, which was subsequently memorialized in the form of a Memorandum of
12 Understanding. The Parties drafted and negotiated a long-form settlement agreement, which is the
13 subject of the instant motion. JCL Dec., ¶ 13.

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

15 Months before filing the Action, Class Counsel began its pre-filing investigation into the
16 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
17 Plaintiff. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints
18 justified further inquiry. JCL Dec., ¶ 14.

19 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
20 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
21 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims
22 and Defendant's liability exposure to the Class Members. In response to Class Counsel's request,
23 Defendant produced the time records for the Class Members, aggregate workweek and pay period data
24 for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
25 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
26 policies. In total, Defendant produced more than 1,000 pages of pertinent policy documents and time
27 and payroll data for Class Counsel to analyze. JCL Dec., ¶ 15.

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. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 16.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, pay periods, and average number of hours worked per shift during the Class Period. BCG also estimated the number of unpaid minimum wage hours, unpaid overtime hours, the number of meal and rest break violations, as well as the total damages due to unreimbursed business expenses during the Class Period. JCL Dec., ¶ 17.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 18.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's 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' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's 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., ¶ 19.

C. The Parties Settled at Mediation

On March 11, 2022, the Parties conducted a full day of mediation with Kelly Knight, Esq., an

1 experienced wage and hour mediator. Mediator Knight helped manage the Parties' expectations and
2 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
3 progress with Mediator Knight's assistance. Namely, the Parties exchanged information regarding their
4 respective claims and defense, including their respective evaluation of the damages. After nearly eight
5 hours of arm's length and adversarial negotiations, the mediation nearly concluded without a
6 settlement. However, at the conclusion of the mediation, Mediator Knight issued a proposal for
7 settlement that the Parties accepted. The complete and final terms of the Parties' settlement are now set
8 forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and
9 reasonable compromise of the claims at issue. JCL Dec., ¶¶ 20-21.

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

11 1. The Composition of the Class

12 The proposed Class consists of all non-exempt employees who are or previously were employed
13 by Defendant and performed work in California between April 15, 2017 and March 11, 2022. The
14 Settlement Class excludes any person who submits a timely and valid request for exclusion. Through
15 the conclusion of the Class Period, there are approximately 180 Class Members that worked an
16 estimated 5,104 Workweeks during the Class Period. Agreement at §III(A)(2).

17 2. The Settlement Consideration

18 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
19 Amount of \$285,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
20 the Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services
21 on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
22 Settlement in the amount of \$10,000; (4) Settlement Administration Costs estimated at \$8,000; (5)
23 Class Counsel Award in the amount of \$110,000, comprised of attorneys' fees equal to one-third of the
24 Gross Settlement Amount estimated to be \$95,000 and an estimated \$15,000 for actually incurred
25 litigation expenses. See generally Agreement at §III(M).

26 Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,
27 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
28 distributed to each member of the Settlement Class. Agreement at §III(N)(1). There is no reversion to

1 Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement
2 at §III(A)(1).

3 3. The Funding Date

4 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$285,000 Gross
5 Settlement Amount, plus any employer's share of payroll taxes, within sixty-five (65) calendar days of
6 the Court's entry of the order granting final approval of this Settlement. Agreement at §I(M-N).

7 4. Formula for Calculating Individual Settlement Payments

8 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
9 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
10 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
11 the Settlement Administrator will include the number of Workweeks for each Class Member and the
12 number of PAGA Workweeks worked during the relevant periods. Agreement at §I(F). Each Settlement
13 Class Member's final Individual Settlement Payment will be calculated by using a fraction, the
14 numerator of which is the Settlement Class Member's total number of Workweeks, and the denominator
15 of which is the total number of Workweeks of all Settlement Class Members. Each Individual
16 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
17 employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class
18 who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members
19 who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(N)(1).

20 Given that there are approximately 180 Settlement Class Members, the average gross recovery
21 is approximately \$816.66 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
22 ¶ 6.

23 For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 1/3
24 as wages ("Wage Portion"); 2/3 as penalties and interest ("Non-Wage Portion"). The Wage Portion is
25 subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not
26 be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at §III(M)(3). In
27 calculating Defendant's total exposure for damages and penalties, BCG determined that the vast
28 majority of damages are for meal and rest premiums, which can be classified as penalties and not wages.

Therefore, with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that an allocation of 1/3 as wages and 2/3 as penalties and interest is far and reasonable.

5. Formula for Calculating Individual Payments to the Aggrieved Employees

Each Aggrieved Employee will receive an Aggrieved Employee Settlement Payment. Using the Class Data, each Aggrieved Employee's final Aggrieved Employee Settlement Payment will be calculated by using a fraction, the numerator of which is the Aggrieved Employee's total number of PAGA Pay Periods, and the denominator of which is the total number of PAGA Pay Periods of all Aggrieved Employees. Agreement at §III(M)(2). For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099. Agreement at §III(M)(4).

6. Mailing of Individual Settlement Payments and Aggrieved Employee Payments

The Settlement Administrator will mail the Individual Settlement Payments and Aggrieved Employee Payments by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement at § III(M)(7). Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employee to request reissuance in the event the check was destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or Aggrieved Employee's individual share of the PAGA Settlement check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks will then be reallocated and redistributed by the Settlement Administrator to those Settlement Class Members and/or Aggrieved Employees who cashed their Individual Settlement Payment checks through a second distribution using the same allocation as the first distribution. The Parties agreed that under this procedure, there is no residue as the entire Gross Settlement Amount will be distributed.

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8. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from any all claims or causes of action *for civil penalties* arising under PAGA based on the facts and allegations contained in either the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period. Agreement at §§I(CC) and III(C).

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

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act

intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

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

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

The Parties participated in mediation with Kelly Knight, Esq. Mediator Knight managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-

collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session nearly concluded without a settlement. The matter resolved only when Mediator Knight issued a mediator's proposal that the Parties accepted. Mediator Knight only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 20.

Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 21.

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

The Gross Settlement Amount of \$285,000 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is reasonable does not

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

involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$285,000 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 Defendant’s 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 Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) at \$1,303,598 if successful at trial. Thus, the Gross Settlement Amount of \$285,000 represents approximately 21.6% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant’s estimated exposure. JCL Dec., ¶ 22.

(1) Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendant had in place a facially unlawful on-duty meal period policy. Specifically, Defendant relied on a meal period waiver that it requires its employees to sign to support its universal failure to provide Plaintiff and Class Members with meal periods. JCL Dec., ¶ 23. The California Division of Labor Standards Enforcement (“DLSE”) opinion letters constitute a body of experience and informed judgment addressing when the “nature of the work” exception allows employers to employ an on-duty meal period policy, to which courts and litigants may properly resort for guidance. First, DLSE emphasized that the “on duty” meal period is a limited alternative to the off-duty meal period requirement and also reaffirmed the Ninth Circuit’s ruling that “the burden is on the employer to prove that the nature of the work prevents an employee from being relieved of all duty because of the remedial nature of the off-duty meal period requirement and that any exception to the

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 general requirement must be narrowly construed.” DLSE Opinion, 2013-11-15. Second, DLSE listed
2 the following relevant non-exhaustive factors: (1) the type of work; (2) the availability of other
3 employees to provide relief to an employee during a meal period; (3) the potential consequences to the
4 employer if the employee is relieved of all duty; (4) the ability of the employer to anticipate and mitigate
5 these consequences such as by scheduling the work in a manner that would allow the employee to take
6 an off-duty meal period; (5) whether the work product or process will be destroyed or damaged by
7 relieving the employee of all duty. *Abdullah v. U.S. Security Associates*, 731 F.3d 952, 959-960 (9th
8 Cir. 2013).

9 Further, Plaintiff alleges that Defendant employed an unlawful meal period rounding policy.
10 Specifically, Defendant required Plaintiff and other Class Members to input exact thirty-minute meal
11 breaks on their timesheets. JCL Dec., ¶ 24. The California Supreme Court recently decided two
12 questions of law relating to meal periods and held:

13 First, employers cannot engage in the practice of rounding time punches –
14 that is, adjusting the hours that an employee has actually worked to the
15 nearest preset time increment – in the meal period context. The meal period
16 provisions are designed to prevent even minor infringements on meal
17 period requirements, and rounding is incompatible with that objective.
18 Second, ... time records showing noncompliant meal periods raise a
19 rebuttable presumption of meal period violations, including at the
20 summary judgment stage.

21 *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61.

22 Conversely, Defendant argued that its on-duty meal period policy is valid as it was signed by
23 each employee, confirming that they agreed to remain on-duty during their meal periods. Similarly,
24 Defendant argued it could rebut the presumption of noncompliant meal periods created by its rounding
25 policy by presenting evidence that employees had in fact been provided compliant meal periods during
26 which they chose to work, as evidenced by their signed on-duty meal waivers. Thus, Defendant argued
27 that there was no potential liability for Plaintiff’s alleged meal period violations. JCL Dec., ¶ 25.

28 Plaintiff’s meal period claim (together with the rest period claim) likely represented the most
factually contested claim in the Action. Accounting for the strength of Defendant’s defenses, and the
arguably individualized nature of the claim, Plaintiff heavily discounted Defendant’s potential liability
for meal period violations. Plaintiff estimated the damages for this claim at approximately \$422,000.

1 JCL Dec., ¶ 26.

2 (2) Estimated Damages for Rest Period Violations

3 Plaintiff also alleges that Defendant failed to provide compliant rest periods. Specifically, Plaintiff
4 alleges that because of Defendant's policy and practice, they were not able to take timely and duty-free rest
5 periods. JCL Dec., ¶ 27. Defendant's policy and practice runs afoul of the California Supreme Court's
6 decision in *Augustus v. ABM Security Services, Inc.*, in which the court held that "employers ... must
7 relinquish control over how employees spend their time" during rest periods. *Augustus, supra*, (2016) 2 Cal.
8 5th 257, 259. In *Augustus*, the California Supreme Court found that it could not "square the practice of
9 compelling employees to remain at the ready, tethered by time and policy to particular locations or
10 communications devices, with the requirement to relieve employees of all work duties and employer
11 control" during their rest period. *Id.* at 269. Accordingly, the court held that employees on rest periods must
12 "be freed from employer control over how they spend their time." *Id.* at 270.

13 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
14 policies and practices throughout the Class Period. Plaintiff estimated the damages for this claim at
15 approximately \$422,000. JCL Dec., ¶ 28.

16 (3) Exposure for Failure to Pay for All Hours Worked

17 Plaintiff alleges that Defendant failed to pay for all hours worked by maintaining unlawful
18 rounding and overtime policies. Specifically, Defendant's timesheets show exact, quarter-rounded
19 clock-in and clock-out times, resulting in the underpayment of Plaintiff and Class Members.
20 Additionally, Defendant had in place a policy and practice that failed to pay Plaintiff and Class
21 Members for all overtime worked. JCL Dec., ¶ 29. The Court of Appeal has held that time-rounding
22 policy is only allowed if it is "neutral, both facially and as applied...because its net effect is to permit
23 employers to efficiently calculate hours worked without imposing any burden on employees." *See's*
24 *Cany Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 903. More specifically, "an employer
25 is entitled to use [a rounding policy] if the rounding policy is fair and neutral on its face and 'it is used
26 in such a manner that will not result, over a period of time, in failure to compensate the employees
27 properly for all the time they have actually worked.'" *Id.* at 907, citing 29 C.F.R. § 785.48; DLSE
28 Manual, §§ 47.1, 47.2; see also *AHMC Healthcare, Inc. v. Superior Court* (2018) 24 Cal.App.5th 1014,

1 1028. However, “an employer’s rounding policy violated the DOL rounding regulation if it
2 ‘systematically undercompensate[s] employees.’” *Id.* at 901.

3 Defendant denied liability and asserted that its rounding policy was neutral, both facially and
4 applied. Plaintiff estimated the damages for this claim at approximately \$102,000. JCL Dec., ¶ 30.

5 (4) Exposure for Failure to Reimburse for Mandatory Business Expenses

6 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business
7 expenses. Specifically, Plaintiff and Class Members, as a business expense, were required by
8 Defendant to use their own personal cellular phones as a result of and in furtherance of their job duties
9 as employees for Defendant but were not reimbursed or indemnified by Defendant for the cost
10 associated with the use of their personal cellular phones for Defendant’s benefit. JCL Dec., ¶ 31.
11 California employers who require employees to use a personal cellular device for work purposes must
12 reimburse the employee for the cost incurred in furnishing the device, including voice and data service.
13 *See* Cal. Labor Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for
14 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
15 of his or her duties, or of his or her obedience to the directions of the employer...”

16 Plaintiff estimated Defendant’s exposure for this claim at approximately \$79,000. JCL Dec., ¶
17 32.

18 (5) Exposure for Waiting Time and Wage Statement Penalties

19 Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor
20 Code section 203 and 226. Although these *penalties* collectively represented Defendant’s largest dollar
21 amount of exposure, Class Counsel considered these penalties and weighed the potential recoveries
22 against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the
23 “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
24 Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because
25 of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome
26 precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014
27 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty
28 claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding

insufficient evidence of bad faith or actual injury). These claims represented Plaintiff's most legally precarious and uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's *maxim* exposure for these claims at approximately \$431,000. JCL Dec., ¶ 33.

(6) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$786,500. JCL Dec., ¶ 34.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 35.

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with

the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

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.)

With respect to the most immediate challenge, i.e., 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., ¶¶ 36-37.

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

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

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

11 Finally, continuing to litigate this action would require continued and extensive resources
12 coupled with significant Court time to proceed through trial and post-trial motions; which can often
13 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
14 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
15 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
16 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
17 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and the
18 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
19 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
20 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
21 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

22 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$285,000 that is roughly
23 21.6% Defendant’s maximum class wide liability exposure. Given the amount of the settlement here,
24 as compared to potential value of the claims, offset by the various inherent risks to continued litigation,
25 the settlement is fair and reasonable. JCL Dec., ¶ 39.

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

27 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
28 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient

1 information to decide whether they should accept the benefits offered, opt out and pursue their own
2 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
3 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
4 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
5 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
6 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
7 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

8 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
9 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
10 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
11 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
12 procedure and time period within which to requests for exclusions or objections to the Settlement, the
13 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
14 and scope of the Released Claims. Agreement at §III(L). This method was negotiated by the Parties to
15 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
16 effective administration of the Settlement. JCL Dec., ¶¶ 40-41.

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

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

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 ³ 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.

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 a Class Representative Service Award of \$10,000⁴ for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her 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 her employment. JCL Dec., ¶ 42.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class

⁴ 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).

Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 43.

D. The Court Should Preliminarily Approve the 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 Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Settlement Class Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 44.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 45.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 46; Rivas Dec. ¶¶ 6-9.

1. The Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the

1 court.” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
2 certification is appropriate when there is an “ascertainable class and a well-defined community of
3 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
4 is appropriate even if class members at some point may be required to make an individual showing as
5 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
6 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

22 Because all Class Members are Defendant’s current and former employees, the class is readily
23 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 47.

24 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
25 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
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., ¶ 48.

1 Plaintiff's 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, Plaintiff's interests are entirely coextensive with the interests of the Settlement
4 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
5 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
6 to advocate for the interests of the Class Member by initiating this litigation, undertaking discovery in
7 order to meaningfully mediate, and evaluating the proposed settlement to assure that it is fair. JCL Dec.,
8 ¶ 49.

9 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
10 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
11 gained state court settlement approval of the same class-wide causes of action that are at issue in this
12 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
13 represent the interests of this Class. JCL Dec., ¶¶ 51-58, Declaration of Shani Zakay, ¶ 3.

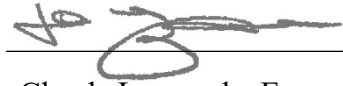
14 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
15 each individual claim, the Class Members likely have little incentive to litigate their claims on an
16 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
17 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
18 adjudication. JCL Dec., ¶ 50.

19 IV. CONCLUSION

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

23
24 Dated: February 2, 2023

JCL LAW FIRM, APC

25 By: 
26 Jean-Claude Lapuyade, Esq.