

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff JESSICA HERRIGAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JESSICA HERRIGAN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CHILDREN'S SPECIALISTS OF SAN
DIEGO, A MEDICAL GROUP, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2021-00014044-CU-OE-CTL

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

Date: July 22, 2022

Time: 9:00 a.m.

Reservation No.: 2840069

Judge: Hon. Joel Wohlfeil

Dept.: 73

TABLE OF CONTENTS

I.	INTRODUCTION	1
	1. The “Class Members”, “Settlement Class Members” and “Settlement Class Period”	1
	2. The “Aggrieved Employees” and “PAGA Period”	1
	3. The “Gross Settlement Amount”	1
	a. A “Class Representative Service Award”	1
	b. A “Class Counsel Award”	1
	c. A “PAGA Settlement”	1
	d. “Settlement Administration Costs”	2
	4. The “Net Settlement Amount”	2
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	4
	C. The Parties Settled at Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiff’s Claims	6
	1. The Composition of the Settlement Class Members	6
	2. The Settlement Consideration	7

1	3. The Funding Date	7
2	4. Formula for Calculating Individual Settlement Payments	7
3	5. Release by Participating Settlement Class Members	8
4	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
5	III. ARGUMENT	8
6	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	8
7	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel	9
8	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	10
9	3. The Settlement Falls Within the Recognized Range of Reasonableness	11
10	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	12
11	(1) Estimated Damages for Off-the-Clock Work	12
12	(2) Estimated Damages for Meal Period Violations	13
13	(3) Estimated Damages for Rest Period Violations	14
14	(4) Estimated Exposure for Unreimbursed Business Expenses	14
15	(5) Exposure for Wage Statement Violations and Waiting Time Penalties	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(6) Defendant’s PAGA Exposure	16
b. Inherent Risks of Continued Litigation Support Preliminary Approval	17
B. The Proposed Notice Informs the Class about the Case and Settlement	18
C. The Court Should Preliminarily Approve the Class Representative Enhancement Award	19
D. The Court Should Preliminarily Approve the Class Counsel Award	21
E. Provisional Certification for Settlement Purposes is Appropriate	21
1. The Standard for Class Certification	22
2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members	22
IV. CONCLUSION	23

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	9
5	<i>Acheson v. Express, LLC</i>	
6	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	20
7	<i>Aguiar v. Cingular Wireless, LLC</i>	
8	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	20
9	<i>Ali v. U.S.A. Cab Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	17
11	<i>Alonzo v. Maximus, Inc.</i>	
12	832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011).....	15
13	<i>Baker v. LA. Fitness Int'l, LLC</i>	
14	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	20
15	<i>Barrett v. Doyon Security Services, LLC,</i>	
16	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	20
17	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
18	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	20
19	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
20	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	20
21	<i>Brinker</i>	
22	53 Cal. 4th at 1021-1022.....	22
23	<i>Brown v. Fed Express Corp.</i>	
24	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	17
25	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
26	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	20
27	<i>Bufile v. Dollar Financial Group, Inc.</i>	
28	(2008) 162 Cal.App.4th 1193, 1207.....	22
	<i>Cacho v. Eurostar, Inc.</i>	
	(2019) 43 Cal.App.5th 885.....	16
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	20
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	16
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	17
	<i>Carrington v. Starbucks Corp.,</i>	
	30 Cal. App. 5th 504 (2018).....	16-17
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	19
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010).....	9, 19
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	19
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	21
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	20

1	<i>Coleman v. Estes Express Lines, Inc.</i>	
2	No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013).....	20
3	<i>Contreras v. United Food Group, LLC</i>	
4	Case No. BC389253 (L.A. County Super. Ct.).....	20
5	<i>D'Amato v. Deutsche Bank</i>	
6	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
7	<i>Dunk v. Ford Motor Co.</i>	
8	(1996) 48 Cal.App.4th 1794, 1802.....	9
9	<i>Duran v. U.S. Bank National Association</i>	
10	(2014) 59 Cal.4th 1, 31.....	17
11	<i>Ethridge v. Universal Health Services, Inc.</i>	
12	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	20
13	<i>Fleming v. Covidien</i>	
14	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	16
15	<i>Fontana v. Elrod</i>	
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17	<i>Frank v. Eastman Kodak Co.</i>	
18	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	11
19	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
20	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	20
21	<i>Global Crossing Sec. and ERISA Litig.</i>	
22	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
23	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i>	
24	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	20
25	<i>Hill v. Sunglass Hut Int'l, Inc.</i>	
26	No. BC422934 (L.A. County Super. Ct. July 2, 2012).....	20
27	<i>Howard v. CVS Caremark Corp.,</i>	
28	2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014).....	15
	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	11
	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	16
	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	18
	<i>In re Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
	<i>In re Taco Bell Wage & Hour Action</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	16
	<i>Kabamba v. Victoria's Secret Stores. LLC,</i>	
	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	20
	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106).....	18-19
	<i>Kullar v. Foot Locker Retail, Inc.</i>	

	(2008) 168 Cal.App.4th 116, 133.....	11
1	<i>Kisliuk v. ADT Security Services, Inc.</i> ,	
2	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	20
	<i>Lee v. Dynamex, Inc.</i>	
3	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	22
	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
4	(N.D. Cal. 2017) 2017 WL 2797811, at *7.....	12
	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
5	(9 th Cir. 2021) 999 F.3d 668.....	17-18
	<i>Magee v. American Residential Services, LLC</i>	
6	No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	20
	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
7	(2018) 22 Cal.App.5th 1308.....	15
	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
8	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	20
9	<i>Misra v. Decision One Mortg. Co.</i>	
10	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	17
	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.</i> ,	
11	No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....	20
	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
12	(2010) 186 Cal.App.4th 399, 409.....	11
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
13	40 Cal.App.5 th 444 (2019).....	15
	<i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i>	
14	(C.D. Cal. 2004) 221 F.R.D. 523, 527.....	11, 18
	<i>Nevarez v. Trader Joe’s Co.</i> ,	
15	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	20
16	<i>Newman v. Stein</i>	
17	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i>	
18	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>O’Conner v. Uber Technologies, Inc.</i>	
19	(9 th Cir. 2018) 904 F.3d 1087.....	17
	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
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	<i>Ordonez v. Radio Shack, Inc.</i>	
21	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	14
	<i>Ordaz v. Rose Hills Mortuary, LP.</i> ,	
22	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	20
	<i>Rebney v. Wells Fargo Bank</i>	
23	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	18
	<i>Rodriguez v. West Publishing Corp.</i>	
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25	<i>Sav-On Drug Stores, Inc.</i>	
26	(2014) 34 Cal.4th 319, 326, 333.....	22
	<i>Sheldon v. AHMC Monterey Park Hospital LP</i>	
27	No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	20
	<i>Silva v. Catholic Moray Services, Inc.</i> ,	
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3	<i>State v. Levi Strauss & Co.</i>	
4	(1986) 41 Cal.3d 460, 482, 485.....	9, 19
5	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
6	(N.D. Cal. 2015) 2015 WL 3776765 at * 4.....	12
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8	(2012) 209 Cal.App.4th 1077, 1088.....	17
9	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
10	(1975) 48 Cal. App. 3d 143, 151-52.....	19
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12	(N.D. Cal. 2016) 2016 WL 5907869, at *3, 7.....	12
13	<i>Villa v. United Site Servs. of California, Inc.</i>	
14	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	14
15	<i>Weisbarth v. Banc West Investment Services, Inc.</i>	
16	No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	20
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I. INTRODUCTION

Plaintiff JESSICA HERRIGAN (collectively “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 127 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 “**Settlement Class Period**” shall mean “all non-exempt employees who are or previously were employed by CHILDREN’S SPECIALISTS OF SAN DIEGO, A MEDICAL GROUP, INC. (“Defendant”) in California (“Class”) between March 30, 2017 to January 18, 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(GG).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all employees who are or previously were employed by Defendant in California and who were classified as non-exempt employees (“Aggrieved Employees”) during the period between January 1, 2020 until January 18, 2022 (“PAGA Period”). Agreement at §§ I(B) and (U). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is Five Hundred Fifty Thousand Dollars (\$550,000). Agreement at § I(HH). 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 \$183,333.33 **and** litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §III(M)(10);

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

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

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

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

8 4. The “**Net Settlement Amount**” of approximately \$308,666.67 (Gross Settlement
9 Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA
10 Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class
11 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
12 worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class
13 Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
14 Share of **\$2,430.44**. Agreement at §III(M)(1); JCL Dec., ¶ 6.

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

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

27
28 ///

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides medical services and specializes in providing postpartum medical care to high-risk patients. Defendant operates facilities throughout California, including the San Diego, California location where Plaintiff worked. This action asserts claims on behalf of Defendant's non-exempt employees who are or previously were employed in California. Plaintiff worked for Defendant as a non-exempt employee in California since October of 2015. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Meal and Rest Period Policy" and "Timekeeping" policy. JCL Dec., ¶ 8; Declaration of Jessica Horrigan ("Horrigan Dec.") at ¶¶ 1-5.

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

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

On March 30, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021-00014044-CU-OE-CTL (the "Action"). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and

1 Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§
2 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et*
3 *seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512;
4 (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6)
5 Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure
6 to Reimburse Employees for Required Business Expenses in Violation of Cal. Lab. Code § 2802; and
7 (8) Violations of the Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”).
8 JCL Dec., ¶ 11.

9 Plaintiff commenced written discovery in May 2021. Defendant commenced written discovery
10 in June 2021. After answering each party’s respective written discovery, the Parties agreed to mediate
11 the Action. To prepare for mediation, the Parties agreed to informally produce additional documents
12 and data points subject to the mediation privilege, including but not limited to, the Class Members’
13 time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic
14 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL
15 Dec., ¶ 12.

16 On January 18, 2022 the Parties participated in a full day mediation with highly regarded wage
17 and hour mediator Hon. Steven Denton (Ret.). After arms-length negotiations and bargaining, the
18 Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an
19 agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is
20 the subject of the instant motion. JCL Dec., ¶ 13.

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

22 Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into
23 the Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
24 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
25 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
26 each of Plaintiff’s complaints appeared to substantiate Plaintiff’s claim that Defendant’s failed to,
27 among other things, pay for all time worked and to provide compliant meal and rest periods. JCL Dec.,
28 ¶ 14.

1 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
2 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
3 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims
4 and Defendant's liability exposure to the Class Members. In response to Class Counsel's request,
5 Defendant produced the time records for the Class Members, aggregate workweek and pay period data
6 for the Class Members, wage statements for the Class Members, and copies of applicable handbooks,
7 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
8 policies. In total, Defendant produced over 8,500 pages of pertinent policy documents, time records for
9 Class Members, and more than 690,000 unique cells of payroll data for Class Counsel to analyze. JCL
10 Dec., ¶ 15.

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

17 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
18 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
19 pay periods, average length of shift and average number of hours worked per week and pay periods
20 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
21 periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount
22 of off-the-clock work performed by the Class Members during the Class Period. BCG calculated and
23 created a damage model for Defendant's potential liability exposure while accounting for the
24 uncertainties of continued litigation. The damage model informed and guided Class Counsel during
25 the mediated settlement discussions. JCL Dec., ¶ 17.

26 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
27 Plaintiff's suitability as a putative class representative through interviews, background investigations,
28 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching

1 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
2 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
3 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
4 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
5 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
6 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
7 claims being settled, as well as the impediments to recovery, such as to make an independent
8 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 18.

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

10 On January 18, 2022, the Parties conducted a full day of mediation with Hon. Steven Denton
11 (Ret.), a highly regarded jurist and mediator of wage and hour class actions. Judge Denton helped
12 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
13 sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties
14 exchanged information regarding their respective claims and defense, including their respective
15 evaluation of the damages. At the conclusion of the mediation, the Parties reached a settlement, which
16 was subsequently memorialized in the form of a Memorandum of Understanding. The complete and
17 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
18 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL
19 Dec., ¶ 21.

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

21 1. The Composition of the Settlement Class Members

22 The proposed Settlement Class consists of all non-exempt employees who are or previously were
23 employed by Defendant in California between March 30, 2017 to January 18, 2022. The Settlement
24 Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged
25 prior to the Mediation, there were approximately 127 Class Members who worked an estimated 14,694
26 workweeks through the conclusion of the Class Period. Agreement at §III(A)(2).

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1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of \$550,000. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the
4 Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services on
5 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
6 Settlement in the amount of \$20,000; (4) Settlement Administration costs estimated at \$8,000; (5) Class
7 Counsel Award in the amount of \$183,333.33 comprised of attorneys' fees equal to one-third of the
8 Gross Settlement Amount and an estimated \$20,000 for actually incurred litigation expenses. See
9 generally Agreement at §III(M).

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

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$550,000 Gross
17 Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final approval
18 of this Settlement. Agreement at §I(N-O).

19 4. Formula for Calculating Individual Settlement Payments

20 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
21 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
22 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
23 the Settlement Administrator will include the number of Workweeks for each Class Member and the
24 number of PAGA Pay Periods worked during the relevant periods. Agreement at §I(F). Each
25 Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
26 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
27 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class
28 Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax

1 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the
2 Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement
3 Class Members who do not submit valid and timely requests for exclusion on a pro rata basis.
4 Agreement at §III(M)(1).

5 Given that there are approximately 127 Settlement Class Members, the average gross recovery
6 is approximately \$2430.44 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

7 ¶ 6.

8 5. Release by Participating Settlement Class Members

9 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
10 release the Released Parties from the Released Claims, which are all class claims alleged in the
11 operative complaint, including claims for violations of Labor Code section 203, which occurred during
12 the Class Period, and expressly excluding all other claims, including claims for vested benefits,
13 wrongful termination, unemployment insurance, disability, social security, workers' compensation, and
14 class claims outside of the Class Period. Agreement at §§I(AA) and III(B).

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

16 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of
17 California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA
18 claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred
19 during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
20 wrongful termination, unemployment insurance, disability, social security, workers' compensation, and
21 PAGA claims outside of the PAGA Period. Agreement at §§I(BB) and III(C).

22 **III. ARGUMENT**

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

24 The proposed Settlement, including a Gross Settlement Amount of \$550,000 meets the standards
25 for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy.
26 (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation
27 and settlement are the preferred means of dispute resolution.")) Class action settlement approval
28 requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of

1 the settlement has been distributed to class members for their comments and objections. (C.R.C.
2 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first
3 “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the
4 fairness of the proposed settlement”).)

5 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
6 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
7 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
8 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
9 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
10 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
11 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
12 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
13 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
14 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
15 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
16 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
17 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
18 action litigation”).)

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

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

27 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
28 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
3 § 11.51.)

4 The Parties participated in mediation the highly respected mediator Hon. Steven Denton (Ret.).
5 Judge Denton managed the Parties' expectations and provided a useful, neutral analysis of the issues
6 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
7 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
8 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
9 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
10 proceedings were free of collusion and undue pressure.")) At all times, the Parties' negotiations were
11 at an arm's length, adversarial and non-collusive. The matter resolved and the Parties reached a
12 settlement, which was memorialized in a Memorandum of Understanding after a full day of mediation.
13 JCL Dec., ¶ 21.

14 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
15 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written
16 terms of the class action settlement. The Parties maintained the arm's length, non-collusive and
17 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
18 product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
19 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

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

22 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
23 the factual and legal issues in dispute. In addition to formal and informal discovery, witness interviews,
24 document review, data analysis and legal research, Class Counsel also researched similar wage and
25 hour actions. The investigation allowed to Class Counsel to realistically assess the value of the claims
26 and intelligently engage defense counsel in settlement discussions that culminated in the proposed
27 settlement now before the Court. JCL Dec., ¶ 19.

28 Class Counsel only agreed to enter the Settlement following their thorough investigation and

1 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
2 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
3 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
4 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
5 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

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

7 The Gross Settlement Amount of \$550,000 is within the range of reasonableness. To determine
8 whether a settlement is fair and reasonable, the court should "consider enough information about the
9 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
10 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar*
11 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
12 is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of
13 reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit
14 statement of value; [they] require[] a record which allows an understanding of the amount that is in
15 controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling*
16 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement
17 is not dependent upon its actual value approaching the potential recovery plaintiffs might have received
18 if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is reasonable does not
19 involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak*
20 *Co.* (W.D.N.Y. 2005) 228 FRD.174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.*
21 (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 23.

22
23 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
24 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than
the individual component parts, that must be examined for overall fairness").

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

3 In conclusion, the settlement of \$550,000.00 represents approximately 19.08% of the value of
4 the maximum potential *damages* at issue. Even when including the penalties for Plaintiff’s claim for
5 wage statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the
6 settlement represents up to 15.5% of the maximum potential liability, assuming all of these amounts
7 could be proved at trial. This is well within the bounds of reasonableness. (*See Viceria v. Mistras Grp.,*
8 *Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement
9 where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC*
10 (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where
11 the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D.
12 Cal. 2015) 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement
13 where the class received approximately 7.3% of the estimated trial award was within the “range of
14 reasonableness.”).)The following summarizes Defendant’s estimated exposure. JCL Dec., ¶ 24.

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

16 Plaintiff’s primary claim in the Actions was that Defendant failed to pay for all hours worked.
17 Specifically, Plaintiff asserted that Defendant required Plaintiff to work while clocked out during what
18 was supposed to be Plaintiff’s off-duty meal break, as well as before Plaintiff’s shift started and after
19 it ended. Plaintiff contends that Defendant maintained a similar policy at its locations throughout
20 California during the Class Period. JCL Dec., ¶ 25.

21 Defendant vigorously denied liability for claim. In preparation for mediation, Defendant
22 produced several California specific operation manuals and policies. Collectively, Defendant asserted
23 that these written policies and procedures directed its respective department leadership to ensure all
24 work is conducted while on-the-clock. Defendant asserted that any deviation from these written
25 policies were location specific and, thus, created individualized issues of liability unsuitable for class
26 treatment. JCL Dec., ¶ 26.

27 Notwithstanding Defendant’s arguments, Plaintiff perceived the off-the-clock as the strongest
28 claim in the Actions. Assuming ten (10) minutes of unpaid compensable time per shift worked by the

1 Class Members during the Class Period, BCG estimated Defendant's exposure for this claim at
2 \$139,663. JCL Dec., ¶ 27.

3 (2) Estimated Damages for Meal Period Violations

4 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Plaintiff contended
5 that because of Plaintiff and Class Members' rigorous work requirements, the Class Members were
6 often denied complaint meal periods. JCL Dec., ¶ 28. Labor Code § 512 requires employers to provide
7 employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of
8 work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
9 thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may
10 not employ an employee for a work period of more than ten (10) hours, without providing the employee
11 with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not
12 be waived if the total hours worked is more than twelve (12) hours. California Lab. Code § 226.7(c) provides
13 that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a
14 state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the
15 employee one additional hour of pay at the employee's regular rate of compensation for each workday that
16 the meal or rest or recovery period is not provided."

17 Conversely, Defendant again argued that its policies and procedures required uninterrupted,
18 statutorily compliant meal breaks. Similarly, Defendant argued any divergence from these written
19 policies were not systematic and, if they existed at all, were location specific. Defendant also asserted
20 that it maintained facially compliant meal period policies and practices throughout the Class Period.
21 Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period
22 violations. JCL Dec., ¶ 29.

23 Plaintiff's meal period claim (together with the rest period claim) likely represented the most
24 factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the
25 arguably individualized nature of the claim, Plaintiff heavily discounted Defendant's potential liability
26 for meal period violations. Plaintiff estimated the damages for this claim at \$680,991. JCL Dec., ¶ 30.

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1 (3) Estimated Damages for Rest Period Violations

2 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff
3 alleged that because of their rigorous work schedule they were not able to take timely and duty-free rest
4 periods. JCL Dec., ¶ 31. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized rest period times
5 shall be counted as hours worked for which there shall be no deduction from wages." Lab. Code § 226.7(c)
6 provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance
7 with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the
8 employee one additional hour of pay at the employee's regular rate of compensation for each workday that
9 the meal or rest or recovery period is not provided."

10 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
11 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens
12 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
13 Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely
14 would have argued that only a small number of Class Members missed their rest breaks. Certification likely
15 would have required depositions of Class Members who provided declarations, and Defendant surely would
16 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
17 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
18 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an
19 illegal, written rest break policy is insufficient for this Court to find that common issues predominate.");
20 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed,
21 Plaintiff's own evidence confirms that the written policy does not generate uniform practices.").
22 Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case and was
23 estimated at \$1,749,774. JCL Dec., ¶ 32.

24 (4) Estimated Exposure for Unreimbursed Business Expenses

25 Plaintiff alleged that Defendant required the Settlement Class Members to incur personal
26 expenses for the use of their personal cell phones. California employers who require employees to
27 incur personal business expenses for work purposes must reimburse the employee for the cost incurred.
28 (See Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for

1 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
2 of his or her duties, or of his or her obedience to the directions of the employer...). Specifically,
3 Plaintiff alleged Defendant required Plaintiff and Class Members to use their personal cell phones in
4 order to perform work-related tasks, but Defendant failed to reimburse Plaintiff and Class Members for
5 the required business expenses in violation of Labor Code Section 2802. JCL Dec., ¶ 33.

6 Again, Defendant vigorously denied any liability for this claim. Defendant argued that on the
7 rare occasions where employees did incur business expenses, these expenses were fully reimbursed.
8 Defendant also offered evidence that it provides all supplies and equipment for employees to do their
9 jobs. This claim was also heavily discounted based on Defendant's defenses. Plaintiff estimated
10 Defendant's exposure for this claim at \$112,650. JCL Dec., ¶ 34.

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

12 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
13 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
14 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove
15 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
16 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because
17 of wage statement violations, as required by Labor Code section 226. Defendant could also argue that
18 that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to
19 pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum*
20 *Security Services, Inc.*, (2019) 40 Cal. App. 5th 444 (review granted); *Maldonado v. Epsilon Plastics,*
21 *Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiff would have to overcome precedent to prove the Class
22 deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406
23 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus,*
24 *Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or
25 actual injury). These claims represented Plaintiff's most legally precarious and uncertain claims.
26 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's *maximum* exposure
27 for these claims at approximately \$656,905 (approximately \$349,605 for waiting time and \$307,300
28 for wage statement). JCL Dec., ¶ 35.

1 (6) Defendant's PAGA Exposure

2 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
3 the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$2.9 million
4 dollars. JCL Dec., ¶ 36.

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

13 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
14 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
15 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
16 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
17 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
18 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
19 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that its
20 employment practices complied with all applicable Labor Laws. In addition to those arguments
21 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
22 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
23 rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 37.

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

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., ¶ 38.

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

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

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

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

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

21 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$550,000 that is roughly
22 19.08% of Defendants’ liability exposure for damages, and 15.5% of Defendants’ liability exposure for
23 damages and penalties. Given the amount of the settlement here, as compared to potential value of the
24 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
25 JCL Dec., ¶ 41.

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
15 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
16 effective administration of the Settlement. JCL Dec., ¶ 42.

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
28 to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for 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, responding to Defendant’s written discovery, 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., ¶ 44.

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

1 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
2 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
3 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
4 Class Representative Service Award. JCL Dec., ¶ 45.

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

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

16 Class Counsel took this matter on a contingency fee basis and invested significant time and
17 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
18 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
19 Members. Considering the positive outcome for the Class Members, and in light of the supporting
20 authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 46.

21 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
22 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
23 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 47.

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

25 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
26 of the Class is appropriate. JCL Dec., ¶ 48; Horrigan Dec. ¶¶ 6-9.

27
28 ///

1 1. The Standard for Class Certification

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

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

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

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

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

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

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

1 liability can be determined by facts common to all members of the class. The wage and hour issues are
2 both numerous and substantial, and a class action is the most advantageous method of dealing with the
3 claims of the Settlement Class. JCL Dec., ¶ 50.

4 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
5 from the same factual basis and are based on the same legal theories applicable to the other Class
6 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
7 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
8 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
9 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive
10 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 51.

11 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
12 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
13 gained state court settlement approval of the same class-wide causes of action that are at issue in this
14 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
15 represent the interests of this Class. JCL Dec., ¶¶ 53-60, Declaration of Shani Zakay, ¶¶ 1-3.

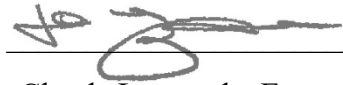
16 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
17 each individual claim, the Class Members likely have little incentive to litigate their claims on an
18 individual basis because the out-of-pocket expense and personal commitment necessary to litigate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

21 IV. CONCLUSION

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

25 Dated: June 15, 2022

JCL LAW FIRM, APC

26 By: 
27 Jean-Claude Lapuyade, Esq.
28