

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

BRITTANI POWELL, MELANIE
MCCONNAUGHY, and ROSCOE SIMPSON
individuals, on behalf of themselves, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

CORE COMMUNITY ORGANIZED RELIEF
EFFORT, a California Nonprofit Corporation and
DOES 1 through 50, Inclusive,

Defendants.

Case No. CGC-21-596527

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

Date: September 4, 2023
Time: 9:30 a.m.

Judge: Hon. Samuel K. Feng
Dept.: 302

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled at Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiffs' Claims	7
	1. The Composition of the Participating Class Members	7
	2. The Settlement Consideration	7
	3. The Funding Date	8
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Participating Class Members	8
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	9
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	10

///

1	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	11
2	.....	11
3	3. The Settlement Falls Within the Recognized Range of Reasonableness	11
4	.....	11
5	a. The Total Settlement Amount Meets the Recognized Range of Reasonableness	12
6	.....	12
7	(1) Estimated Damages for Meal Period Violations	12
8	.....	12
9	(2) Defendant’s Estimated Exposure of Rest Period Violations	13
10	.....	13
11	(3) Defendant’s Estimated Exposure for Unpaid Wages	14
12	.....	14
13	(4) Defendant’s Estimated Exposure for Unreimbursed Business Expenses	14
14	.....	14
15	(5) Defendant’s Estimated Exposure for Wage Statement Violations	15
16	.....	15
17	(6) Defendant’s Estimated Exposure for Waiting Time Penalties	15
18	.....	15
19	(7) Defendant’s PAGA Exposure	16
20	.....	16
21	b. Inherent Risks of Continued Litigation Support Preliminary Approval	17
22	.....	17
23	B. The Proposed Notice Informs the Class about the Case and Settlement	19
24	.....	19
25	C. The Court Should Preliminarily Approve the Enhancement Payment	20
26	.....	20
27	D. The Court Should Preliminarily Approve the Attorneys’ Fees and Costs	21
28	.....	21
	E. Provisional Certification for Settlement Purposes is Appropriate	21
	.....	21
	1. The Standard for Class Certification	21
	.....	21

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

2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined
Community of Interest Among the Participating Class Members22

IV. CONCLUSION23

///

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>Apple Computer, Inc. Derivative Litig.</i>	
6	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
7	<i>A.S.A Cal Ltd.</i>	
8	(2009) 176 Cal.App.4th 1333, 1341.....	18
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	22
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	18
13	<i>Bufile v. Dollar Financial Group, Inc.</i>	
14	(2008) 162 Cal.App.4th 1193, 1207.....	22
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	18
17	<i>Carrington v. Starbucks Corp.,</i>	
18	30 Cal. App. 5th 504, 517, 539 (2018).....	17
19	<i>Cart v. Super. Ct.</i>	
20	(1975) 50 Cal.App.3d 960, 972.....	19
21	<i>Cellphone Termination Fee Cases</i>	
22	180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010)	9-10, 20
23	<i>Chance v. Super. Ct.</i>	
24	(1962) 58 Cal.2d 275, 290.....	19
25	<i>Chavez v. Netflix, Inc.</i>	
26	(2008) 162 Cal.App.4th 43, 66 n.11.....	21
27	<i>Clark v. American Residential Services LLC</i>	
28	(2009) 175 Cal.App.4th 785.....	20
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	9
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	17
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	16
	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	19
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	16
	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	16

1	<i>Kass v. Young</i>	
2	(1977) 67 Cal.App.3d 100, 106).....	19
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	(2008) 168 Cal.App.4th 116, 133.....	11
5	<i>Lee v. Dynamex, Inc.</i>	
6	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	22
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	17-18
9	<i>McKenzie v. Fed. Express Corp.</i>	
10	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	16
11	<i>Michael Milken and Assoc. Sec. Litig.</i>	
12	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	12
13	<i>Misra v. Decision One Mortg. Co.</i>	
14	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	17
15	<i>Moniz v. Adecco USA, Inc.</i>	
16	(2021) 72 Cal.App.5th 56, 77.....	16
17	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
18	(2010) 186 Cal.App.4th 399, 409.....	11
19	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
20	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	12, 19
21	<i>Naranjo v. Spectrum Security Services</i>	
22	(2022) 13 Cal. 5th 93.....	15
23	<i>Newman v. Stein</i>	
24	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
25	<i>Nordstrom Com. Cases</i>	
26	186 Cal.App.4th 576, 589 (2010).....	17
27	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
28	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	18
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	17
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9 th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	13
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	18
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	20
	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 319, 326, 333.....	22
	<i>Stambaugh v. Super. Ct</i>	
	(1976) 62 Cal.App.3d 231, 236.....	9
	<i>State v. Levi Strauss & Co.</i>	
	(1986) 41 Cal.3d 460, 482, 485.....	10, 20
	///	

1	<i>Taco Bell Wage & Hour Actions</i>	
2	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
3	<i>Tien v. Tenet Healthcare Corp.</i>	
4	(2012) 209 Cal.App.4th 1077, 1088.....	17-18
5	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
6	(1975) 48 Cal. App. 3d 143, 151-52.....	19
7	<i>Villa v. United Site Servs. of California, Inc.</i>	
8	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	13-14

STATUTES, RULES AND CODES

9	<i>Cal.Civ.Proc.</i> Code § 382.....	22
10	<i>Cal. Lab.</i> Code § 2698.....	4
11	<i>Bus. and Prof. Code</i> § 17200.....	4
12	<i>Cal. Lab.</i> Code § 1194,	4
13	<i>Cal. Lab.</i> Code § 1197.....	4
14	<i>Cal. Lab.</i> Code § 1197.1	4
15	<i>Cal. Lab.</i> Code § 510	4
16	<i>Cal. Lab.</i> Code § 226.7	4
17	<i>Cal. Lab.</i> Code § 512.....	4
18	<i>Cal. Lab.</i> Code § 226.....	4
19	<i>Cal. Lab.</i> Code § 226.2.....	4
20	<i>Cal. Lab.</i> Code § 2802.....	4
21	<i>Cal. Lab.</i> Code § 201.....	4
22	<i>Cal. Lab.</i> Code § 202.....	4
23	<i>Cal. Lab.</i> Code § 203.....	4, 16
24	<i>Cal. Lab.</i> Code § 2802(a).....	15
25	Cal. Rules of Court, rule 3.769.....	9
26	Cal. Rules of Court, rule 3.786.....	19

SECONDARY SOURCES

27	Conte & Newberg, <i>Newberg on Class Actions</i> , § 1 1:38, §§ 11.26, 11.51 (4th ed. 2002)	
28	.....	9-10, 20
29	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
30	53 UCLA L. Rev. 1303 (2006)	
31	.....	20
32	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
33	<i>Study, J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
34	.....	21
35	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
36	.....	19

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

I. INTRODUCTION

Plaintiffs Brittany Powell, Melanie McConnaughy, and Roscoe Simpson (“Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 2,027 Class Members and 1,977 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all persons who worked for Defendant as non-exempt employees in California (“Class”) during the period from November 8, 2017, to January 10, 2023 (“Class Period”). Agreement at §§ 1.5, 1.11.

a. The “**Participating Class Members**” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.23.

b. The “**Class Size**” is comprised of 2,027 individuals who collectively worked approximately 64,629 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 4.1.

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all persons who worked for Defendant as non-exempt, hourly paid employees in California (“Aggrieved Employees”) during the period of September 2, 2020, to January 10, 2023 (“PAGA Period”). Agreement at §§ 1.3, 1.19. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. At the time of mediation, there were approximately 1,907 Aggrieved Employees during the PAGA Period. JCL Dec., ¶ 6.

3. The “**Total Settlement Amount**” is Two Million, Thirty Thousand Dollars and Zero Cents (\$2,030,000.00). Agreement at § 1.1. The Total Settlement Amount is non-reversionary and includes the following:

a. An “**Enhancement Payment**” of not more than \$37,500.00, with \$12,500.00 allocated to each named Plaintiff in recognition of their efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ 1.13, 6.1.

b. “**Attorneys’ Fees and Costs**” in the amount not of not more than \$701,666.66,

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.

comprised of one-third of the Total Settlement Amount for attorney’s fees, currently estimated to be \$676,666.66 **and** litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at §§ 1.7, 3.2.2;

c. A “**PAGA Settlement Amount**” of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement Amount”). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Settlement Amount (\$75,000.00) to the Labor and Workforce Development Agency (“LWDA PAGA Payment”). Twenty-five percent (25%) of the PAGA Settlement Amount (\$25,000.00) will be distributed to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at §§ 1.22, 3.2.5; and

d. “**Settlement Administration Expenses**” not to exceed \$23,000.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Expenses. Agreement at § 3.2.3.

4. The “**Net Settlement Amount**” of approximately \$1,167,833.34 (Total Settlement Amount less the requested Attorneys’ Fees and Costs, Enhancement Payment, PAGA Settlement Amount, and Settlement Administration Expenses) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at §§ 1.29, 3.2.4. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of **\$576.14**. JCL Dec., ¶ 6.

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

1 approval and falls within the range of reasonableness. The average Individual Class Payment to the
2 Participating Class Members meets awards in similar wage and hour class actions. Moreover, the
3 proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request
4 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

5 **II. FACTS AND PROCEDURE**

6 **A. Overview of the Litigation**

7 Defendant provides crisis responses services throughout California, including in San Francisco,
8 where Plaintiffs worked. Plaintiff Powell was employed by Defendant from January of 2021 to
9 approximately May 26, 2021 as a non-exempt employee. Declaration of Brittany Powell at ¶ 4.
10 Plaintiff McConnaughy was employed by Defendant from April of 2020 to January 2, 2021 as a non-
11 exempt employee. Declaration of Melanie McConnaughy at ¶ 4. Plaintiff Simpson was employed by
12 Defendant from November of 2021 to April of 2022 as a non-exempt employee. Plaintiffs allege that
13 they were denied legally compliant meal and rest periods, and minimum wages and overtime
14 compensation at all times during their employment. Throughout their employment, Plaintiffs were
15 subject to Defendant's written policies and procedures contained in, among other documents, the
16 "Employee Handbook." JCL Dec., ¶ 8.

17 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, including reporting
18 time pay and split shift premiums, failed to provide compliant meal and rest periods, failed to reimburse
19 for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay
20 all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant
21 asserts that it fully complied with all applicable employment laws and raised several other significant
22 defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period
23 policies, compliant wage statements, compliant reimbursement practices, and it timely paid all wages
24 due upon separation of employment. JCL Dec., ¶ 9.

25 On September 2, 2021, Plaintiff Powell served Defendant and the Labor and Workforce
26 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Powell's
27 PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various
28 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC")

1 Wage Order and of their intent to pursue claims under California Labor Code Private Attorneys General
2 Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

3 On November 8, 2021, Plaintiff Powell filed a class action complaint in the San Francisco
4 County Superior Court, Case No. CGC-21-596527 (“Action”). The Action alleged nine causes of action
5 against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*;
6 (2) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*, (3) Failure to Pay
7 Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required
8 Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)
9 Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the
10 Applicable IWC Wage Order; (6) Failure to Reimburse for Required Expenses in violation of Cal. Lab.
11 Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code
12 §226; (8) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (9)
13 Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et. seq.* (“PAGA”). JCL Dec., ¶
14 11.

15 On July 22, 2022, Plaintiff Simpson served Defendant and the LWDA with a PAGA Notice. On
16 January 9, 2023, Plaintiff Simpson filed a representative action complaint in the Los Angeles Superior
17 Court, Case No. 23STCV00412 (“*Simpson Action*”). The Simpson Action alleged a single cause of
18 action for violation of PAGA. JCL Dec., ¶ 12.

19 The Parties agreed relatively early to mediate this action. To prepare for mediation, the Parties
20 agreed to informally produce additional documents and data points subject to the mediation privilege,
21 including but not limited to, the Class Members’ time data and certain payroll data points. As discussed
22 *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
23 analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

24 On October 11, 2022, the Parties participated in a full day mediation with highly regarded wage
25 and hour and PAGA mediator Tripper Ortman, Esq. The mediation concluded with a settlement after
26 both sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a
27 Memorandum of Understanding. After the Parties reached a settlement in the *Powell Action*, the Parties
28 subsequently renegotiated the terms of the settlement for purposes of reaching a global settlement in

both the *Powell* Action and the *Simpson* Action. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

On June 21, 2023, Plaintiffs filed a First Amended Complaint in the Action for the purpose of adding Plaintiff McConnaughy and Plaintiff Simpson to the Action and to add allegations for Defendant's failure to provide personnel files, failure to provide reporting time pay, and failure to compensate for split shifts. JCL Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their employment, including portions of Defendant's handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 16.

Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiffs' hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendant's failed to, among other things, provide accurate wage statements and to provide compliant meal and rest periods. JCL Dec., ¶ 17.

To prepare for mediation, Defendant produced the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed more than 200 pages of documents and more than 4 million unique cells of time and payroll data. JCL Dec., ¶ 18.

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

1 cases. JCL Dec., ¶ 19.

2 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
3 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
4 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
5 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
6 and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of
7 unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and
8 rest period premiums paid during the Class Period. JCL Dec., ¶ 20.

9 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
10 Plaintiffs' suitability as a putative class representative through interviews, background investigations,
11 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
12 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
13 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's
14 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
15 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's
16 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
17 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
18 claims being settled, as well as the impediments to recovery, such as to make an independent
19 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

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

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

27 On October 11, 2022, the Parties conducted a full day of mediation with Tripper Ortman, Esq.
28 Mediator Ortman helped manage the Parties' expectations and provided a useful, neutral analysis of

the issues and risks to both sides. The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 23-24.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Participating Class Members

The proposed Class consists of all persons who worked for Defendant as non-exempt employees in California at any time during the Class Period (November 8, 2017, to January 10, 2023), excluding Rose Valenzuela.² Agreement at § 1.5. The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § 1.8. At the time of mediation, Defendant estimated that the Class was comprised of 2,027 individuals that worked approximately 64,629 workweeks during the Class Period. Agreement at § 4.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Total Settlement Amount of \$2,030,000. The Total Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Enhancement Payment of not more than \$12,500.00 to each Plaintiff for their services on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA Settlement Amount in the amount of \$100,000.00; (4) Settlement Administration Expenses estimated at \$23,000.00; (5) Attorneys' Fees and Costs in the amount of \$701,666.66, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be \$676,666.66 and an estimated \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § 3.

Subject to the Court approving the Enhancement Payment, Attorneys' Fees and Costs, PAGA Settlement Amount, and the Settlement Administration Expenses, the Net Settlement Amount will be distributed to each Participating Class Member. Agreement at § 1.28. There is no reversion to

² Rose Valenzuela signed a settlement and release agreement in connection with claims she brought against the Defendant individually ("Valenzuela Agreement"). Class Counsel reviewed a copy of the Valenzuela Agreement and determined that Ms. Valenzuela was properly excluded as a Class Member.

1 Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement
2 at § 3.1.

3 3. The Funding Date

4 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Total Settlement
5 Amount within thirty (30) days of the Court's entry of the order granting final approval of this
6 Settlement. Agreement at § 4.3.

7 4. Formula for Calculating Individual Class Payments

8 Participating Class Members will receive an Individual Class Payment. The Individual Class
9 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
10 in California during the Class Period. Agreement at § 3.2.4. 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 Pay Periods worked during the relevant periods. Agreement at § 1.7. Each Class
13 Member's final Individual Class Payment for purposes of payment will be calculated by using a
14 fraction, the numerator of which is the Class Member's total number of Workweeks, and the
15 denominator of which is the total number of Workweeks of all Class Members. Agreement at § 3.2.4.
16 For purposes of these calculations, a Workweek shall mean any week during which a Class Member
17 worked for Defendant for at least one day during the Class Period. Agreement at § 1.46. Each
18 Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
19 employee payroll taxes, etc.). Individual Class Payments for members of the Participating Class
20 Members who submit valid and timely requests for exclusion will be redistributed to Participating Class
21 Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at
22 § 3.4.2.

23 Given that there are approximately 2,027 Participating Class Members, the average gross
24 recovery is approximately \$576.14 (Net Settlement Amount divided by Participating Class Members).
25 JCL Dec., ¶ 6.

26 5. Release by Participating Class Members

27 Generally, as of the Funding Date, Plaintiffs and the Participating Class Members will agree to
28 release the Released Parties from the Settled Class Claims that accrued during the Class Period.

1 Agreement at §§ 1.42; 5.2.

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

3 Generally, as of the Funding Date, Plaintiffs, acting as the representative of the State of
4 California, on behalf of the Aggrieved Employees, will release the Released Parties from the Settled
5 PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.43; 5.3.

6 **III. ARGUMENT**

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

8 The proposed Settlement, including a Total Settlement Amount of \$2,030,000.00 meets the
9 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
10 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
11 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
12 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
13 notice of the settlement has been distributed to class members for their comments and objections.
14 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
15 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
16 inquire into the fairness of the proposed settlement”).)

17 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
18 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
19 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
20 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
21 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
22 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
23 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
24 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
25 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
26 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
27 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*
28 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and

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

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

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

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

16 The Parties participated in mediation the highly respected mediator Tripper Ortman, Esq.
17 Mediator Ortman managed the Parties’ expectations and provided a useful, neutral analysis of the issues
18 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008
19 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
20 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
21 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
22 proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations,
23 the Parties reached an agreement and the mediation session concluded with a settlement. JCL Dec., ¶
24 23.

25 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
26 the written terms of the class action settlement. The Agreement is the final product of the mediated
27 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
28 compromise of the claims at issue. JCL Dec., ¶ 24.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 21.

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

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

The Total Settlement Amount of \$2,030,000.00 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

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

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

6 The Total Settlement Amount of \$2,030,000.00 is fair and reasonable considering the nature and
7 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s
9 liability exposure while accounting for the uncertainties of continued litigation. The various models
10 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
11 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
12 PAGA Penalties) ranged between \$4,152,115.80 (“Realistic Damages”) and \$17,642,229.00
13 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of
14 the claims. Thus, the Total Settlement Amount represents a recovery of between 48.89% (“Realistic
15 Damages”) and 11.51% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the
16 recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL
17 Dec., ¶ 25.

18 (1) Estimated Damages for Meal Period Violations

19 Plaintiffs’ primary claim in this Action alleges that Defendant failed to provide compliant meal
20 periods. Specifically, Plaintiffs alleges that as a result of their rigorous work schedules, Plaintiffs, Class
21 Members, and Aggrieved Employees were not able to take timely and duty-free meal periods.
22 Consequently, Plaintiffs allege that they are owed meal period premiums for meal period violations

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

1 that occurred during the Class Period. An analysis of the Class Members' time and payroll date revealed
2 a modest 58% meal period violation rate. JCL Dec., ¶ 26.

3 Conversely, Defendant argued, among other things, that it provided all their employees, i.e.,
4 Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods.
5 Defendant also argued that it maintained facially compliant meal period policies and that it paid
6 automatic meal period premiums. Thus, Defendant argued that there was no potential liability for
7 Plaintiffs' alleged meal period violations and any claimed violations required a highly individualized
8 inquiry not suitable to class treatment. JCL Dec., ¶ 27.

9 Consequently, Plaintiffs applied a 50% discount to this claim to account for the modest violation
10 rate, facially compliant policies, and payment of meal period premiums. Plaintiffs estimated that the
11 damages for this claim ranged from approximately \$1,018,148.40 dollars to approximately
12 \$2,036,296.80 dollars. JCL Dec., ¶ 28.

13 (2) Defendant's Estimated Exposure of Rest Period Violations

14 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
15 Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs, Class Members, and
16 Aggrieved Employees were not able to take timely and duty-free rest periods. Like the meal period
17 violations, BCG assumed an identical 58% violation rate for rest periods based on Plaintiffs' testimony
18 and investigation. JCL Dec., ¶ 29.

19 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
20 policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary
21 burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely,
22 on Class Member testimony, making it a riskier claim at class certification and liability stages.
23 Certification likely would have required depositions of Class Members who provided declarations, and
24 Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or
25 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
26 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
27 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
28 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)

2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, Plaintiffs’ Realistic Damage model applied a 50% discount to the rest break claim. Plaintiffs estimated the range of potential outcomes for this claim was between approximately \$1,279,972.80 dollars to approximately \$2,559,945.60 dollars. JCL Dec., ¶ 30.

(3) Defendant’s Estimated Exposure for Unpaid Wages

Plaintiffs also alleged that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiffs asserted that Defendant failed to pay employees for time spent taking physical COVID-19 tests before the start of their shifts. Based on Plaintiffs’ testimony and Class Counsel’s investigation, BCG estimated that Class Members performed approximately five (5) minutes of unpaid work taking COVID-19 tests before every shift. Additionally, Plaintiffs alleged that Defendant failed to pay reporting time pay during those shifts when employees reported to work as scheduled but were not put to work for at least half of their scheduled day’s work. Further, Plaintiffs alleged that Defendant failed to pay split shift premiums on days when employees worked more than one shift in a given day. As a result, Plaintiffs, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendant’s control. JCL Dec., ¶ 31.

Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in place a written policy requiring its employees to accurately record all their time worked daily and argued that such written policies and procedures directed its employees not to work while off the clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because individualized issues predominated. For example, even assuming Plaintiffs performed work while off-the-clock, which Defendant disputes, the time spent would vary drastically from class member to class member that it could not be established by common proof. Plaintiffs recognized the risks and uncertainties of certifying this claim. Consequently, Plaintiffs’ Realistic Damage model applied a 75% discount to this claim. Plaintiffs estimated Defendant’s exposure for this claim ranged between \$94,802.40 dollars and \$379,209.60 dollars. JCL Dec., ¶ 32.

(4) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

Plaintiffs alleged that Defendant required Class Members and Aggrieved Employees to use their personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by

1 Defendant. California employers who require employees to incur personal business expenses for work
2 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing
3 that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred
4 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
5 to the directions of the employer...”). Specifically, Plaintiffs, Class Members, and Aggrieved
6 Employees were required to download the mobile application “ADP” on their personal cell phone to
7 record their hours worked. BCG estimated a reasonable \$15 monthly reimbursement rate for Class
8 Members for the use of their personal cell phones. JCL Dec., ¶ 33.

9 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
10 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
11 the employees’ duties or at Defendant’s direction. Thus, Defendant argued that even if Plaintiffs were
12 successful in this claim only a small number – approximately half – of the Participating Class Members
13 would be entitled to relief. This claim was also heavily discounted by 85% based on Defendant’s
14 defenses. Plaintiffs estimated Defendant’s exposure for this claim ranged between approximately
15 \$218,332.50 dollars and approximately \$873,330.00 dollars. JCL Dec., ¶ 34.

16 (5) Defendant’s Estimated Exposure for Wage Statement Violations

17 Plaintiffs also alleged that Defendant failed to furnish its employees with accurate itemized wage
18 statements. Specifically, Plaintiffs alleges that as a result of Defendant’s failure to provide meal and
19 rest periods as required by the California Labor Code, Plaintiffs and other Class Members are entitled
20 to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th
21 93 (concluding that meal premiums are “wages” entitling employees to derivative wage statement
22 penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements,
23 Plaintiffs could not establish the injury requirement on a class-wide basis. As a result, Plaintiffs
24 discounted this claim 50% to account for this risk. Plaintiffs estimated that Defendant’s exposure on
25 this claim ranged between \$602,525.00 dollars and \$2,410,100 million dollars. JCL Dec., ¶ 35.

26 (6) Defendant’s Estimated Exposure for Waiting Time Penalties

27 Plaintiffs also alleged that the Defendant’s labor code violations resulted in derivative liability
28 for waiting time penalties. Although these *penalties* represented Defendant’s largest dollar amount of

1 exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendant argued that Plaintiffs could
2 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
3 Notwithstanding the uncertain nature of the claims, Class Counsel's Realistic Model discounted the
4 waiting time penalty claim by 85% and estimated Defendant's exposure for these claims ranged
5 between \$938,334.70 dollars and \$9,383,347 million dollars. JCL Dec., ¶ 36.

6 (7) Defendant's PAGA Exposure

7 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
8 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure ranged between \$126,675.00
9 dollars and \$8,304,200 million dollars. JCL Dec., ¶ 37. The proposed PAGA allocation of the Total
10 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
11 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication
12 that this amount was the result of self-interest at the expense of class members," such amounts are
13 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
14 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
15 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
16 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
17 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
18 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
19 PAGA claim settlements in the range of zero to two percent of the total settlement).

20 Here, the Parties negotiated a good faith PAGA Settlement Amount in the amount of \$100,000.00
21 which is 4.9% of the Total Settlement Amount. This amount falls well within the range of approved
22 PAGA Settlement Amount. Seventy-Five percent (75%) of the PAGA Settlement Amount (\$75,000.00)
23 will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%)
24 of the PAGA Settlement Amount (\$25,000.00) will be distributed to the Aggrieved Employees, which
25 is within the range of PAGA Settlement Amount approved by courts and should be approved. JCL Dec.,
26 ¶ 38.

27 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
28 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties

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

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

13 For the aforementioned reasons, the PAGA allocation of the Total Settlement Amount is fair, just,
14 and reasonable.

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

16 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
17 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
18 the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a
19 relatively weak case or a sell-out of an extraordinary strong case.'" (*Misra v. Decision One Mortg. Co.*
20 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

21 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
22 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
23 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
24 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
25 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
26 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
27 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
28 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th

1 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
2 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
4 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
5 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
6 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
7 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
10 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
11 settlement. JCL Dec., ¶ 39.

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

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

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

22 Finally, continuing to litigate this action would require continued and extensive resources
23 coupled with significant Court time to proceed through trial and post-trial motions; which can often
24 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
25 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
26 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
27 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
28 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and

1 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
2 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
3 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
4 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

5 In this matter, Class Counsel negotiated a Total Settlement Amount of \$2,030,000.00 that is
6 roughly between approximately 48.89% of Defendant’s *class-wide* liability exposure for damages, and
7 approximately 11.51% of Defendant’s maximum class wide liability exposure for damages and
8 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
9 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
10 JCL Dec., ¶ 41.

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

12 The Participating Class Members are entitled to the best practical notice under the circumstances.
13 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
14 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
15 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
16 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
17 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
18 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
19 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
20 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁴

21 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
22 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
23 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
24 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
25 procedure, and time period within which to requests for exclusions or objections to the Settlement, the

26
27 ⁴ 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.

1 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
2 and scope of the Released Claims. Agreement at § 1.10. The Parties negotiated this method to ensure
3 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
4 administration of the Settlement. JCL Dec., ¶ 42.

5 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
6 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
7 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
8 of the options open to dissenting class members.”).) JCL Dec., ¶ 43.

9 **C. The Court Should Preliminarily Approve the Enhancement Payment**

10 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
11 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
12 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
13 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
14 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
15 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
16 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
17 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
18 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
19 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
20 (2009) 175 Cal.App.4th 785.)

21 The Settlement provides for an Enhancement Payment of \$12,500.00 to each Plaintiff. The
22 service award is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action,
23 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
24 the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement
25 to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and
26 agreeing to provide Defendant a general release of all claims arising out of their employment. JCL
27 Dec., ¶ 44.

28 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Enhancement

1 Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the
2 above showing is sufficient for preliminary approval of the negotiated Enhancement Payment. JCL
3 Dec., ¶ 45.

4 **D. The Court Should Preliminarily Approve the Attorneys' Fees and Costs**

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

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

20 Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Costs once preliminary
21 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
22 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 47.

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

24 For Settlement purposes only, Plaintiffs contend, and Defendant does not dispute, that
25 provisional certification of the Class is appropriate. JCL Dec., ¶ 48.

26 1. The Standard for Class Certification

27 Class actions are statutorily authorized "when the question is one of common or general interest,
28 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 Participating Class is Ascertainable and there is a Well-Defined
8 Community of Interest Among the Participating 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., ¶ 49.

24 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
25 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
26 determined by facts common to all members of the class. The wage and hour issues are both numerous
27 and substantial, and a class action is the most advantageous method of dealing with the claims of the
28 Participating Class Members. JCL Dec., ¶ 50.

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

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

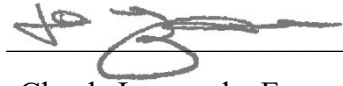
14 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
15 each individual claim, the Class Members likely have little incentive to litigate their claims on an
16 individual basis because the out-of-pocket expense and personal commitment necessary to litigate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

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 preliminary approval, the Parties request that
22 the Court preliminarily approve the settlement.

23
24 Dated: July 28, 2023

JCL LAW FIRM, APC

25 By: 
26 Jean-Claude Lapuyade, Esq.