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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

DINO DESANCTIS; TYRONE BARNES,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

DOUGLAS PRODUCTS & PACKAGING
COMPANY, LLC, a Missouri Limited
Liability Company; and DOES 1-50,
Inclusive,

Defendant.

Case No. C21-01874

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

Date: May 15, 2023

Time: 9:00 a.m.

Judge: Hon. Judge Charles S. Treat
Dept.: 39

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I. INTRODUCTION

Plaintiffs DINO DESANCTIS and TYRONE BARNES (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 52 Class Members and approximately 38 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or previously were employed by defendant DOUGLAS PRODUCTS & PACKAGING LLC, a Missouri limited liability company (“Defendant”), and performed work in California (“Class”) from September 8, 2017 to May 23, 2022 (“Class Period”). Agreement at §§ I(H) and (I). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(HH).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees who are or previously were employed by Defendant and performed work in California (“Aggrieved Employees”) during the period of June 29, 2020 to May 23, 2022 (“PAGA Period”). Agreement at §§ I(B) and (W). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is Three Hundred Seventy-Two Thousand Five Hundred Dollars (\$372,500.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Awards**” of not more than \$10,000 to Plaintiff Desanctis and \$10,000 to Plaintiff Barnes in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at §§ I(J), III(N)(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 \$124,166.66 *and* litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §III(N)(10);

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 c. A **“PAGA Settlement”** of Sixteen Thousand Dollars (\$16,000) shall be allocated
2 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
3 Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-
4 five (75%) of the PAGA Settlement (\$12,000) to the Labor and Workforce Development Agency
5 (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$4,000) will be distributed
6 to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §III(N)(11); and

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

10 4. The **“Net Settlement Amount”** of approximately \$187,333.34 (Gross Settlement
11 Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA
12 Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class
13 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
14 worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class
15 Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
16 Payment of **\$3,602.56**. Agreement at §§ I(R), III(N)(1); JCL Dec., ¶ 6.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant specializes in manufacturing and marketing specialty products in agriculture and structural pest control, including in California, where Plaintiffs worked. Plaintiff Desanctis worked for Defendant as a non-exempt warehouse worker in California between 2019 to March of 2021. Plaintiff Barnes has worked for Defendant as a non-exempt warehouse handler from March 18, 2018 to the present. At all times during their employment, Plaintiffs had a regular work schedule of three 12-hour shifts. In addition to their base hourly rates, Plaintiffs were also entitled to, among other things, overtime pay and meal and rest periods. Throughout their employment, Plaintiffs were subject to Defendant's written policies and general employment practices. JCL Dec., ¶ 8.

Generally, Plaintiffs claim 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 pay all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On June 29, 2021, Plaintiff Desanctis served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Desanctis' 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 his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10.

On September 8, 2021, Plaintiff Desanctis filed a class action complaint in the Contra Costa County Superior Court, Case No. C21-01874 ("Desanctis Action"). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in violation of *Bus. and Prof. Code* §§ 17200; (2) failure to pay overtime wages in violation of California *Labor Code* sections 510 *et seq.*; (3) failure to pay minimum wages in violation of California *Labor Code* sections 1194, 1197 and 1197.1; (4)

1 failure to provide required meal periods in violation of California *Labor Code* sections 226.7 and 512;
2 (5) failure to provide required rest periods in violation of California *Labor Code* sections 226.7 and
3 512; (6) failure to provide accurate itemized wage statements in violation of California *Labor Code*
4 section 226; (7) failure to provide wages when due in violation of California *Labor Code* sections 201,
5 202, and 203; and (8) violations of the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 11.

6 On February 18, 2022, Plaintiff Barnes filed a class action complaint in the Contra Costa County
7 Superior Court alleging similar claims (“Barnes Action”). JCL Dec., ¶ 11.

8 After engaging in written discovery, the Parties agreed to mediate this action. To prepare for
9 mediation, the Parties agreed to informally produce additional documents and data points subject to the
10 mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data
11 points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting
12 Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

13 On May 23, 2022, the Parties participated in a full day mediation with highly regarded wage and
14 hour mediator David Rotman, Esq. The mediation concluded with a settlement after both sides agreed
15 to a Mediator’s proposal. The agreement was memorialized in the form of a Memorandum of
16 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
17 is the subject of the instant motion. JCL Dec., ¶ 13.

18 To facilitate the settlement, the Parties have stipulated to the filing of a First Amended Class
19 Action Complaint in the Desanctis Action to incorporate the claims and factual allegations asserted in
20 the Barnes Action, as well as add Plaintiff Barnes as a named plaintiff and Mehrdad Bokhour, Esq. of
21 Bokhour Law Group, P.C., and Joshua Falakassa, Esq. of Falakassa Law P.C. as class counsel in the
22 Desanctis Action. JCL Dec., ¶ 13.

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

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

1 inquiry. JCL Dec., ¶ 14.

2 Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response,
3 Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiffs'
4 hiring documents, payroll and time records, performance reviews and separation documents. Class
5 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
6 Plaintiffs' claim that Defendant failed to, among other things, provide accurate wage statements and to
7 provide compliant meal and rest periods. JCL Dec., ¶ 15.

8 Prior to mediation, Defendant produced the time and payroll records for the Class Members,
9 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the
10 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
11 policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents and
12 thousands of unique cells of time and payroll data. JCL Dec., ¶ 16.

13 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
14 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
15 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
16 and experienced experts in their fields and have provided their expertise on thousands of cases. JCL
17 Dec., ¶ 17.

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

24 Prior to mediation, Class Counsel created several damage models predicated on BCG's analysis.
25 Class Counsel's models calculated Defendant's potential liability exposure while accounting for the
26 uncertainties of continued litigation. These damage models informed and guided Class Counsel during
27 the mediated settlement discussions. JCL Dec., ¶ 19.

C. The Parties Settled with the Assistance of the Mediator

On May 23, 2022, the Parties conducted a full day of mediation with David Rotman, Esq.. After more than eight hours of arm's length and adversarial negotiations, 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., ¶¶ 23-25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all non-exempt employees who are or previously were employed by Defendant and performed work in California between September 8, 2017 and May 23, 2022. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 52 individuals that worked approximately 4,000 workweeks during the Class Period. Agreement at §III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$372,500. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Awards of \$10,000 to Plaintiff Desanctis and \$10,000 to Plaintiff Barnes for their services on behalf of the Settlement Class; (3) a PAGA Settlement in the amount of \$16,000; (4) Settlement Administration costs estimated at \$5,000; (5) Class Counsel Award in the amount of \$144,166.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$124,166.66 and an estimated \$20,000 for actually incurred litigation expenses. See generally Agreement at §III(N).

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

1 3. The Funding Date

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

5 4. Formula for Calculating Individual Settlement Payments

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

18 Given that there are approximately 52 Settlement Class Members, *the average gross recovery is*
19 *approximately \$3,602.56* (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
20 ¶ 6.

21 5. Release by Participating Settlement Class Members

22 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
23 release the Released Parties from the Released Class Claims (those that were alleged in the operative
24 complaint, or that reasonably could have been alleged based on the facts alleged in the operative
25 complaint, which occurred during the Class Period, and expressly excluding all other claims, including
26 claims for vested benefits, wrongful termination, unemployment insurance, disability, social security,
27 workers' compensation, and class claims outside of the Class Period). Agreement at §§I(CC) and III(B).

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

1 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
2 on behalf of the Aggrieved Employees, will release the Released Parties from all claims *for civil*
3 *penalties* arising under PAGA alleged in the operative complaint and Plaintiffs' PAGA notice(s)
4 submitted to the LWDA which occurred during the PAGA Period, and expressly excluding all other
5 claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability,
6 social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at
7 §§ I(DD) and III(C).

8 III. ARGUMENT

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

10 The proposed Settlement, including a Gross Settlement Amount of \$372,500 meets the standards
11 for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy.
12 (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation
13 and settlement are the preferred means of dispute resolution.").) Class action settlement approval
14 requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of
15 the settlement has been distributed to class members for their comments and objections. (C.R.C.
16 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first
17 "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the
18 fairness of the proposed settlement").)

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

1 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*
2 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
3 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
4 action litigation”).)

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

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

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

18 The Parties participated in mediation the highly respected mediator David Rotman, Esq.
19 Mediator Rotman managed the Parties’ expectations and provided a useful, neutral analysis of the
20 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL),
21 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
22 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
23 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
24 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
25 at an arm’s length, adversarial and non-collusive. The matter resolved only when Mediator Rotman
26 issued a Mediator’s proposal that the Parties accepted. Mediator Rotman only arrived at his proposal
27 after hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims and
28 defenses. JCL Dec., ¶ 24.

1 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in protracted negotiations
2 regarding the written terms of the class action settlement. The Parties maintained the arm’s length, non-
3 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
4 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
5 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

6 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
7 Settlement’s Reasonableness.

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

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

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

23 The Gross Settlement Amount of \$372,500 is within the range of reasonableness. To determine
24 whether a settlement is fair and reasonable, the court should “consider enough information about the
25 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
26 independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar*
27 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
28 is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of

reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) at \$1,675,296 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 22.2% of Defendant’s class-wide exposure. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 26.

(1) Defendant’s Estimated Exposure for Failure to Pay for All Hours Worked

Plaintiffs’ primary claim in the Action alleged Defendant failed to pay its employees for all

² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for 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 hours worked. Specifically, Plaintiffs assert that Defendant adopted an alternative workweek schedule
2 (“AWS”) without following the proper procedures set forth in Labor Code section 511. As a result,
3 Plaintiff and other Class Members worked shifts greater than eight (8) hours in a workday or more
4 than forty (40) hours in a workweek without the payment of overtime compensation or more than
5 twelve (12) hours in a work shift without payment of overtime compensation at double their regular
6 rate of pay. Further, Plaintiffs assert Defendant employed an unlawful rounding policy pursuant to
7 which Defendant rounded Plaintiffs’ and Class Members’ time sheets to exact, quarter-rounded total
8 hours worked, despite recording accurate clock-in and clock-out times. As a result, Defendant’s
9 rounding policy systematically undercompensated Plaintiffs and Class Members for minimum and
10 overtime wages owed. Finally, Plaintiffs allege that Class Members weren’t permitted to clock-in
11 before their scheduled shift start time, but often needed to arrive early in order to have sufficient time
12 to complete all assigned tasks. This resulted in Class Members working approximately ten minutes
13 off-the-clock each day. JCL Dec., ¶ 27.

14 Defendant vigorously denied liability for this claim. Defendant argued that the AWS was
15 properly implemented, all Class Members were properly paid overtime and double-time compensation
16 when applicable. Further, Defendant argued that its rounding policy is facially neutral and in practice,
17 favors neither overpayment nor underpayment, and that Class Members were instructed not to work
18 off-the-clock. Plaintiffs estimated Defendant’s exposure for this claim at \$374,560. JCL Dec., ¶ 28.

19 (2) Estimated Damages for Meal Period Violations

20 Plaintiffs also allege that Defendant failed to provide compliant meal periods. Specifically,
21 Plaintiffs assert that Defendant regularly failed to provide a second meal period on all shifts of more
22 than ten (10) hours, and to a lesser extent, failed to provide compliant first meal periods on shifts
23 exceeding five (5) hours. Consequently, Plaintiffs allege that they are owed meal period premiums for
24 meal period violations that occurred during the Class Period. JCL Dec., ¶ 29.

25 Conversely, Defendant denied these claims. Defendant maintains that it fully complied with
26 California meal period laws and maintained legally compliant policies and practices. Courts have found
27 that where an employer’s meal period policies are compliant, individualized issues exist as to the
28 reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical*

Center, (2018) 19 Cal.App.5th 832, 851 (holding that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). If successful, Defendant availed itself to a complete defense of Plaintiff's meal period claim. Defendant also asserted that it paid meal period premiums to its employees in those pay periods when meal period violations occurred throughout the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 30.

Plaintiffs' meal period claim (together with the rest period claim) likely represented the most factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the arguably individualized nature of the claim, Plaintiffs estimated the damages for this claim at \$416,527. JCL Dec., ¶ 31.

(3) Estimated Damages for Rest Period Violations

Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs and Class Members were required to remain on the premises and on-call, and were unable to take timely and duty-free rest periods. JCL Dec., ¶ 32.

Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens in establishing this claim. Establishing Plaintiffs' rest period claim would depend, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that 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.”). Plaintiffs estimated Defendant’s exposure for this claim at \$438,844. JCL Dec., ¶ 33.

(4) Defendant’s Exposure for Failure to Include Non-Discretionary Bonuses in the Regular Rate of Pay for Purposes of Overtime Compensation

Plaintiffs also alleged that Defendant failed to include certain non-discretionary bonuses into the regular rate of pay for purposes of overtime compensation. Specifically, Plaintiffs assert that Defendant paid Class Members non-discretionary incentive compensation directly related to their performance. These incentives were not properly calculated into the regular rate for purposes of overtime calculation and compensation. JCL Dec., ¶ 34.

Defendant denied this claim, asserting that any bonuses paid to the Class Members were discretionary in nature and did not need to be calculated into the regular rate of pay. Plaintiffs estimated Defendant’s exposure for this claim at \$9,460. JCL Dec., ¶ 35.

(5) Defendant’s Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiffs also alleged that the Defendant’s labor code violations resulted in derivative liability for wage statement violations and waiting time penalties. Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant argued that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant argued that Plaintiff could not show that Class Members suffered an “injury” because of wage statement violations, as required by Labor Code section 226. *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant’s exposure for waiting time penalties to be approximately \$435,905 (\$303,505 for LC 203 penalties and \$132,400 for LC 226 penalties). JCL Dec., ¶ 36.

(6) Defendant’s PAGA Exposure

Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendant’s PAGA exposure at \$1,734,100. JCL Dec., ¶ 37. The proposed PAGA allocation of the Gross Settlement Amount is fair, just and reasonable. *Moniz v.*

1 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a good faith amount” for
2 PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense
3 of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No.
4 CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of
5 amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9
6 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA),
7 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie*
8 *v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23,
9 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent
10 of the total settlement).

11 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$16,000 which is
12 4.3% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
13 Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$4,000.00) will be paid to the
14 LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be distributed to the
15 Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be
16 approved. JCL Dec., ¶ 38.

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

25 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
26 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
27 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
28 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%.

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

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

1 settlement. JCL Dec., ¶¶ 39-40.

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

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

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

12 Finally, continuing to litigate this action would require continued and extensive resources
13 coupled with significant Court time to proceed through trial and post-trial motions; which can often
14 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
15 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
16 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
17 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
18 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 41. “Avoiding such a trial and
19 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
20 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
21 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
22 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

23 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$372,500 that is roughly
24 a recovery of 22.2% of Defendant’s class-wide exposure. Given the amount of the settlement here, as
25 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
26 the settlement is fair and reasonable. JCL Dec., ¶ 42.

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

28 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*

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

9 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
10 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
11 mail the proposed Notice Packet to all Class Members. The Notice will include information regarding
12 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
13 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
14 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
15 and scope of the Released Claims. Agreement at §III(M). This method was negotiated by the Parties
16 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
17 effective administration of the Settlement. JCL Dec., ¶¶ 43.

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

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

23 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
24 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
25 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)

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.

§ 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
(*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
named plaintiffs is that they should be compensated for the expense or risk they have incurred in
conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
(2009) 175 Cal.App.4th 785.)

The Settlement provides for Class Representative Service Awards of \$10,000 for Plaintiff
Desanctis and \$10,000 for Plaintiff Barnes. The service awards are fair and reasonable compensation
for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement,
regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the
claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out
of their employment. JCL Dec., ¶ 45.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
Representative Service Awards once preliminary approval of the Settlement is granted. Plaintiffs
respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
Representative Service Awards. JCL Dec., ¶ 46.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

1 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
2 with market rates).)

3 Class Counsel took this matter on a contingency fee basis and invested significant time and
4 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
5 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
6 Members. Considering the positive outcome for the Class Members, and in light of the supporting
7 authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 47.

8 Attorneys for Plaintiffs have entered a Fee Sharing Agreement, which is attached to the
9 Declarations of Class Counsel in compliance with Cal Rules of Court 3.769(b). Plaintiffs will file a
10 formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is
11 granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of
12 the negotiated attorneys' fees. JCL Dec., ¶ 48.

13 **E. Provisional Certification for Settlement Purposes is Appropriate**

14 For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional certification
15 of the Class is appropriate. JCL Dec., ¶ 49.

16 1. The Standard for Class Certification

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

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

27 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
28 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available

1 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where
2 they may be readily identified without unreasonable expense or time by reference to official records.
3 (*Id.*)

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

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

12 Because all Class Members are Defendant’s current and former employees, the class is readily
13 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 50.

14 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
15 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
16 liability can be determined by facts common to all members of the class. The wage and hour issues are
17 both numerous and substantial, and a class action is the most advantageous method of dealing with the
18 claims of the Settlement Class. JCL Dec., ¶ 51.

19 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
20 from the same factual basis and are based on the same legal theories applicable to the other Class
21 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
22 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
23 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
24 their ability to advocate for the interests of the Class Member by initiating this litigation, undertaking
25 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
26 52.

27 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
28 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,

1 certified, and gained state court settlement approval of the same class-wide causes of action that are at
2 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
3 qualified to represent the interests of this Class. JCL Dec., ¶¶ 54-61, Declaration of Shani Zakay, ¶¶ 1-
4 3, Declaration of Mehrdad Bokhour ¶¶ 18-23, and Declaration of Joshua Falakassa ¶¶ 1-11.

5 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
6 each individual claim, the Class Members likely have little incentive to litigate their claims on an
7 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
8 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
9 adjudication. JCL Dec., ¶ 53.

11 IV. CONCLUSION

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

15
16 Dated: April 20, 2023

JCL LAW FIRM, APC

17 By: 
18 Jean-Claude Lapuyade, Esq.