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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

CHRISTOPHER CHACON, an individual, on
behalf of himself and on behalf of all persons
similarly situated and the State of California,

Plaintiff,

v.

PANDA MOTORS, INC. a California Corporation;
EDGAR CASTELLANOS, an individual; and
DOES 2-50, Inclusive.

Defendants.

Case No. CIVDS2022220

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

Hearing Date: April 20, 2023
Hearing Time: 1:30 p.m.

Department: S17
Judge: Hon. Joseph Ortiz

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I. INTRODUCTION

Plaintiffs CHRISTOPHER CHACON, VYNZ PUNONGBAYAN, NICHOLAS CORDERO, and LUIS VEGA (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 762 members of the Class and approximately 622 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**California Class Members**” or “**California Class**” shall mean “all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period of October 14, 2016 to December 13, 2022. Agreement at § I(E).

2. The “**Settlement Class**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § I(II).

3. The “**Aggrieved Employees**” or “**PAGA Class Members**” refers to all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period of August 7, 2019 to December 13, 2022. Agreement at § I(S). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

4. The “**Gross Settlement Amount**” is Nine Hundred Fifty Thousand Dollars (\$950,000.00). Agreement at § I(N). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at §§ I(FF);

b. A “**Class Counsel Payment**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$316,666.66 **and** litigation costs and expenses not to exceed \$30,000, to be paid to Class Counsel. Agreement at §I(C)-(D);

c. A “**PAGA Payment**” of \$50,000 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay \$37,500 representing 75% of the PAGA

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

1 Payment to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement
2 Administrator shall distribute \$12,500 representing 25% of the PAGA Amount to the Aggrieved
3 Employees (“Aggrieved Employee Payment”). Agreement at §III(M)(11); and

4 d. “**Administrative Costs**” not to exceed \$15,500 payable to the Settlement
5 Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and Individual
6 Settlement Payments. Agreement at § III(M)(12).

7 3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount that
8 remains after accounting for any Class Representative Service Awards, the PAGA Payment,
9 Administrative Costs, and the Class Counsel Payment. Agreement at §1.24. The Net Settlement
10 Amount is approximately \$497,833.33 which will be allocated to all Settlement Class Members on a
11 pro-rata basis according to the number of Workweeks each Settlement Class Member worked during
12 the Settlement Period. The entire Net Settlement Amount will be paid to all Settlement Class Members
13 who do not opt out of the Settlement resulting in an average Individual Settlement Share of
14 approximately **\$653.32**. Declaration of Shani O. Zakay (“Zakay Dec.”), ¶ 6.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates car dealerships. This action asserts claims on behalf of Defendant's non-exempt employees, who performed work in California during the Class Period. Plaintiffs worked for Defendants as a non-exempt employees in California from at various times during the Class Period. At all times during their employment, Plaintiffs earned an hourly wage plus various commissions and other incentive compensation and were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendants' written policies and procedures. Zakay Dec., ¶ 8; *see also* Declarations of Plaintiffs.

Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to pay overtime and meal premiums at the correct rate of pay, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant forcefully 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 Plaintiff's 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. Zakay Dec., ¶ 9.

On August 11, 2020, Plaintiff Chacon filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. On October 14, 2020, Plaintiff Chacon filed the class action lawsuit for: Unfair competition (Bus. & Prof. Code § 17200 *et seq.*; Minimum wage violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); Failure to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); Meal period violations (Labor Code §§ 26.7, 512, 558); Rest period violations (Labor Code §§ 226.7, 516, 558); Failure to reimburse required expenses (Labor Code §2802); Wage statement violations (Labor Code § 226, *et seq.*); Failure to provide wages when due (Labor Code §§ 201, 202, 203 and; Violation of the Private Attorneys General Act (Labor Code §§ 2698 *et seq* Zakay Dec., ¶ 10.

1 On July 12, 2022, Plaintiff Chacon filed a Doe Amendment, adding Edgar Castellanos, an
2 individual, as Doe 1 Defendant to the Complaint. On February 8, 2023, Plaintiffs submitted for filing
3 the Parties' stipulation for leave to file a First Amended Complaint, which adds Class Representatives
4 Vynz Punongbayan, Nicholas Cordero, and Luis Vega. Zakay Dec., ¶ 11.

5 The Parties collectively agreed to mediate the Action, stay formal discovery, and continue
6 deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally
7 produce additional documents and data points subject to the mediation privilege, including but not
8 limited to, employee handbooks, the Class Members' time data, and certain payroll data points. As
9 discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group
10 ("BCG") to analyze Defendants' time and payroll data. Zakay Dec., ¶ 12.

11 On September 27, 2021, the Parties participated in mediation presided over by Hon. Judge Carl
12 West (Ret.), an experienced mediator of wage and hour class and PAGA actions. The mediation
13 concluded without a settlement, and the Parties proceeded with litigation, including extensive formal
14 discovery. On October 18, 2022, the Parties participated in a second session of mediation presided
15 over by Judge West. The mediation concluded with a settlement, which was subsequently
16 memorialized in the form of a Memorandum of Understanding. After reaching an agreement in
17 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of
18 the instant motion. Zakay Dec., ¶ 13.

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

20 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs'
21 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As
22 part of the interview process, Plaintiffs produced documents related to their employment, including
23 their wage statements, and portions of Defendant's handbooks. At the conclusion of the interviews,
24 Class Counsel determined that each Plaintiff's complaints justified further inquiry. Zakay Dec., ¶ 14.

25 Class Counsel subsequently requested Plaintiffs' employee file from Defendants. Class Counsel
26 reviewed and analyzed various documents and determined the documents appeared to substantiate
27 Plaintiffs' claim that Defendants failed to, among other things, pay for all time worked, pay at the
28

1 correct rate issue accurate itemized wage statements, and provide compliant meal and rest periods.
2 Zakay Dec., ¶ 15.

3 Considering the many anticipated factual disputes, the Parties agreed, that it would be in the best
4 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
5 documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to
6 the Class Members. In response to Class Counsel's request, Defendant produced time records for a
7 sample of the Class Members, aggregate workweek and pay period data for the Class Members,
8 aggregate meal premiums paid to the Class Members, and copies of applicable handbooks, policies,
9 applicable and agreements containing, *inter alia*, compensation, timekeeping, and meal and rest period
10 policies. Zakay Dec., ¶ 16.

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

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

24 In advance of mediation, Class Counsel created a damage model predicated on the BCG analysis.
25 Class Counsel's model calculated Defendants' potential liability exposure while accounting for the
26 uncertainties of continued litigation. These damage model informed and guided Class Counsel during
27 the mediated settlement discussions. Zakay Dec., ¶ 19.

1 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
2 Plaintiffs' suitability as a putative class representative through interviews, background investigations,
3 and analysis of her employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
4 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
5 of employer; (4) analyzing the Class' time and payroll records; (5) analyzing Defendant' labor policies
6 and practices; (6) researching settlements in similar cases as well as outstanding issues which could
7 affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for
8 purposes of settlement; (8) drafting the mediation brief; and (9) participating in two mediations. This
9 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
10 as well as the impediments to recovery, such as to make an independent assessment of the
11 reasonableness of the terms to which the Parties have agreed. Zakay Dec., ¶ 20.

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

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

19 On September 27, 2021, the Parties participated in mediation presided over by Hon. Judge Carl
20 West (Ret.), an experienced mediator of wage and hour class and PAGA actions. The mediation
21 concluded without a settlement, and the Parties proceeded with litigation, including extensive formal
22 discovery. On October 18, 2022, the Parties participated in a second session of mediation presided
23 over by Judge West. The mediation concluded with a settlement, the complete and final terms of which
24 are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair,
25 adequate, and reasonable compromise of the claims at issue. Zakay Dec., ¶ 22.

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

2 1. The Composition of the Settlement Class Members

3 The proposed Settlement Class consists of all non-exempt employees who are or previously were
4 employed by Defendant and performed work in California during the period of October 14, 2016 to
5 December 13, 2022, who do not file a timely and valid Request for Exclusion. In the data exchanged
6 at the time the Agreement was executed, there were approximately 762 Class Members that worked
7 approximately 34,000 workweeks. Agreement at §III(A)(2).

8 2. The Settlement Consideration

9 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
10 Amount of \$950,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
11 the Class; (2) a Class Representative Service Award of \$10,000 to each Plaintiff for their services on
12 behalf of the Settlement Class and for a broad release of claims; (3) a PAGA Payment in the amount of
13 \$50,000; (4) Administrative Costs estimated at \$15,500; (5) Class Counsel Payment in the amount of
14 \$346,666.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
15 to be \$316,666.66 and an estimated \$30,000 for actually incurred litigation expenses. *See generally*
16 Agreement at §III(M)(10).

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

22 3. The Funding Date

23 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$150,000 Gross
24 Settlement Amount within ten (10) calendar days of the Court's entry of the order granting final
25 approval of this Settlement. Agreement at §I(M).

26 4. Formula for Calculating Individual Settlement Payments

27 Each Class Member will receive an Individual Settlement Payment. The Class Data provided by
28 Defendant to the Settlement Administrator will include the number of eligible Workweeks for each

Class Member. The Individual Settlement Payment will be proportional to the number of Eligible Workweeks each Class Member worked for Defendant in California during the Class Period. Each Class Member's final Individual Settlement Share for purposes of payment will be calculated by dividing the number of Eligible Workweeks attributed to the Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Agreement at § III(M)(1). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

Given that there are approximately 762 Settlement Class Members, the average gross recovery is approximately \$653.32 (Net Settlement Amount divided by Settlement Class Members). Zakay Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Class Members will agree to release the Released Parties from the Released Claims, defined as all class claims alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(BB).

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

Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§ I(CC).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$950,000, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored

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

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

22 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
23 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
24 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
25 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
26 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
27 and adequate to all concerned.” (*Id.*)
28

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

3 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
4 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
5 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
6 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
7 § 11.51.)

8 The Parties participated in two mediations with the highly respected mediator and jurist Judge
9 Carl West (Ret.). Judge West managed the Parties’ expectations and provided a useful, neutral analysis
10 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF
11 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
12 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
13 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
14 ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
15 negotiations were at an arm’s length, adversarial, and non-collusive. Judge West only arrived at his
16 proposal after hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims
17 and defenses during two mediation sessions. Zakay Dec., ¶ 22.

18 Once the Parties agreed to the Mediator’s proposal, the parties subsequently executed a binding
19 and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated
20 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
21 compromise of the claims at issue. Zakay Dec., ¶ 22.

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

24 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
25 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
26 data analysis, and legal research, Class Counsel also researched similar wage and hour actions.
27 Although no two cases are identical, this research provided Class Counsel with a marker to inform
28 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed

1 to Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel
2 in settlement discussions that culminated in the proposed settlement now before the Court. Zakay Dec.,
3 ¶ 20.

4 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
5 Plaintiffs' suitability as a putative class representative through interviews, background investigations,
6 and analysis of her employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
7 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
8 of employer; (4) analyzing the Class' time and payroll records; (5) analyzing Defendant's labor policies
9 and practices; (6) researching settlements in similar cases as well as outstanding issues which could
10 affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's liability for
11 purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This
12 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
13 as well as the impediments to recovery, such as to make an independent assessment of the
14 reasonableness of the terms to which the Parties have agreed. Zakay Dec., ¶ 20.

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

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

22 The Gross Settlement Amount of \$950,000 is within the range of reasonableness. To determine
23 whether a settlement is fair and reasonable, the court should "consider enough information about the
24 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
25 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar*
26 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
27 is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of
28 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 of \$950,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop an economic damage model measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The model was informed by Class Counsel’s investigation, including the analysis of a sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$3,676,744 (for just damages) and \$7,229,904 (for damage sand statutory waiting time and wage statement penalties) if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of \$950,000 represents more than 25.8% of Defendant’s class-wide liability exposure for damages, and over 13.1% of Defendant’s

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 class-wide liability exposure for damages and statutory penalties, as estimated by Class Counsel at the
2 time of mediation. The following summarizes Defendants' estimated exposure. Zakay Dec., ¶ 23.

3 (1) Estimated Damages for Meal and Rest Period Violations.

4 Plaintiffs' primary claim in the Action alleged that Defendant failed to provide compliant meal
5 and rest periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff
6 and the Class Members were not able to take timely and duty-free meal periods and rest periods. Zakay
7 Dec., ¶ 24.

8 Conversely, Defendant argued, among other things, that its policies and procedures required
9 Class Members to take uninterrupted, statutorily compliant meal and rest breaks. Similarly, Defendant
10 argued that any divergence from these written policies were not systematic and, if they existed at all,
11 were department-specific. Defendant also asserted that it maintained facially compliant meal period
12 policies and practices throughout the Class Period. Notwithstanding Defendant's arguments, Plaintiffs
13 estimated the damages for these claims were approximately \$3,179,804 dollars. Zakay Dec., ¶ 25.

14 (2) Exposure for Unpaid Wages due to Off the Clock Work and Miscalculation
15 of the Regular Rate of Pay

16 Plaintiffs alleged that because of Defendant's unlawful meal break practice, employees often
17 had to work during their off-duty meal periods while clocked out and without compensation. Moreover,
18 Plaintiffs alleged that Defendants paid various commissions and non-discretionary bonuses, but failed
19 to calculate those payments into employees' regular rate of pay for purposes of overtime compensation,
20 resulting in underpayment of overtime. Zakay Dec., ¶ 26.

21 Defendants denied liability and asserted that its employees were paid for all time worked.
22 Defendants argued that their employees review and verify that their pay is correct, and they understand
23 how they are paid. Defendants also argued that its miscalculation of overtime, if any, resulted in very
24 minimal damages. Nevertheless, Plaintiffs estimated that Defendant's exposure for this claim to be
25 approximately \$340,000. Zakay Dec., ¶ 27.

26 (3) Exposure for Unreimbursed Business Expenses

27 Plaintiff alleged that Defendants required Class Members to incur personal expenses for the use
28 of their own personal cellular phones. California employers who require employees to incur personal

1 business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab.
2 Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary
3 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
4 duties, or of his or her obedience to the directions of the employer....”). Zakay Dec., ¶ 28.

5 Specifically, Plaintiffs alleged Defendant required Plaintiffs and Class Members to use their own
6 personal cellular phones in order to perform work-related tasks, but Defendants failed to reimburse
7 Plaintiff and Class Members for the required business expenses in violation of California Labor Code
8 section 2802. Zakay Dec., ¶ 29.

9 Again, Defendant denied any liability for this claim. Defendant argued, among other things, that
10 on the rare occasion where employees did incur business expenses, these expenses were fully
11 reimbursed. This claim was heavily discounted based on Defendant’s defenses. Plaintiffs estimated
12 Defendant’s exposure for this claim was approximately \$156,940. Zakay Dec., ¶ 30.

13 (4) Exposure for Wage Statement Violations and Waiting Time Penalties

14 Plaintiffs allege that Defendant’s alleged violations resulted in derivative violations of Labor
15 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
16 and weighed the potential recoveries against probable defenses. Zakay Dec., ¶ 31.

17 Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed to
18 obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that
19 Plaintiffs could not show that Class Members suffered an “injury” because of wage statement
20 violations, as required by Labor Code section 226. Plaintiffs acknowledge that these claims depended
21 on proving the underlying claims, which had their own risks. Plaintiffs estimated Defendants’ exposure
22 for these claims is approximately \$4,087,260 (\$2,895,360 for waiting time penalties, and \$1,191,900
23 for wage statement penalties). Zakay Dec., ¶ 32.

24 (5) Defendants’ PAGA Exposure

25 Class Counsel’s damage models also estimated Defendants’ exposure for PAGA penalties. At
26 the time of mediation, Plaintiff estimated Defendants’ PAGA exposure was approximately \$5,466,800.
27 Zakay Dec., ¶ 33.

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

9 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
10 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation
14 for each pay period the employee worked. Again, Defendant raised several defenses that presented
15 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Zakay Dec., ¶ 34.

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

22 The proposed Settlement allocates \$50,000 to satisfy the PAGA claims. This amount represents
23 approximately 5.2% of the Gross Settlement Amount. This is well within the range See, e.g., *Nordstrom*
24 *Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban*
25 *Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in \$5M
26 settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving \$3,000
27 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL
28

2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. *Zakay Dec.*, ¶¶ 37.

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

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

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

11 Finally, continuing to litigate this action would require continued and extensive resources
12 coupled with significant Court time to proceed through trial and post-trial motions; which can often
13 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
14 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
15 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
16 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
17 668, the risk of an appeal and subsequent reversal is real. Zakay Dec., ¶ 43. “Avoiding such a trial and
18 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
19 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
20 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
21 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

22 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$950,000 that is roughly
23 between 25.8% and 13.1% of Defendant’s maximum class wide liability exposure. Given the amount
24 of the settlement here, as compared to potential value of the claims, offset by the various inherent risks
25 to continued litigation, the settlement is fair and reasonable. Zakay Dec., ¶ 39.

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

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

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

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

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

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

22 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
23 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
24 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
25 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

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

The Settlement provides for Class Representative Service Awards of \$10,000⁴ for each Plaintiff. The service award is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his 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. Zakay Dec., ¶ 41.

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. Zakay Dec., ¶ 42.

D. The Court Should Preliminarily Approve the Class Counsel Payment

The purpose of a Class Counsel Payment 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*

⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See* Zakay Declaration at ¶ 50.

1 *Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
2 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
3 with market rates).)

4 Class Counsel took this matter on a contingency fee basis and invested significant time and
5 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
6 Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class
7 Members. Considering the positive outcome for the Class Members, and in light of the supporting
8 authority, the proposed Class Counsel Payment is fair and reasonable. Zakay Dec., ¶ 43.

9 Plaintiff will file a formal motion for the negotiated Class Counsel Payment once preliminary
10 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
11 for preliminary approval of the negotiated attorneys' fees. Zakay Dec., ¶ 44.

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

13 For Settlement, Plaintiffs contend, and Defendant do not dispute, that provisional certification
14 of the Class is appropriate. Zakay Dec., ¶ 45.

15 1. The Standard for Class Certification

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

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

26 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
27 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
28 for identifying class members." (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable

1 where they may be readily identified without unreasonable expense or time by reference to official
2 records. (*Id.*)

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

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

11 Because all Class Members are Defendant’s current and former employees, the class is readily
12 ascertainable from Defendant’s regular business records, i.e., payroll records. Zakay Dec., ¶ 54.

13 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
14 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
15 determined by facts common to all members of the class. The wage and hour issues are both numerous
16 and substantial, and a class action is the most advantageous method of dealing with the claims of the
17 Settlement Class. Zakay Dec., ¶ 47.

18 Plaintiffs’ wage and hour claims are typical of the proposed Class because they arise from the
19 same factual basis and are based on the same legal theories applicable to the other Class Members.
20 Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement Class.
21 Plaintiffs allege that they were injured by the same company-wide practices to which the proposed
22 Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their
23 ability to advocate for the interests of the Class by initiating this litigation, undertaking extensive class
24 discovery, and evaluating the proposed settlement to assure that it is fair. Zakay Dec., ¶ 48.

25 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
26 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
27 certified, and gained state court settlement approval of the same class-wide causes of action that are at
28 issue in this case. Class Counsel’s wage and hour class action experience establishes that they are well

1 qualified to represent the interests of this Class. Zakay Dec., ¶¶51, Declaration of Nicholas De Blouw,
2 ¶¶ 1-3, Declaration of Orion Robinson, ¶¶ 1-10.

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

8 IV. CONCLUSION

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

12
13 Dated: March 20, 2023

ZAKAY LAW GROUP, APLC

14 By: 

15 Shani O. Zakay, Esq.