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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

MONSERRAT LOPEZ, an individual, on
behalf of herself, on behalf of all persons
similarly situated, and in her representative
capacity on behalf of the State of California
and fellow Aggrieved Employees,

Plaintiffs,

vs.

ADIDAS AMERICA, INC., an Oregon
corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 56-2021-00549844-CU-OE-VTA

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

Date: November 22, 2021

Time: 8:30 a.m.

Reservation No. 2582394

Judge: Hon. Mark Borrell

Dept.: 4

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I. INTRODUCTION

Plaintiff MONSERRAT LOPEZ (collectively “Plaintiff”) seeks 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 3,826 members of the Class and 1,689 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**”, “**Settlement Class Members**” and “**Settlement Class Period**” shall mean “all non-exempt retail store employees who are or previously were employed by and performed work for ADIDAS AMERICA, INC. (“Defendant”) in California (“Class”) between September 16, 2017 and October 1, 2021 (“Class Period”). Agreement at §§ I(G) and (H). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(FF).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendant’s current and former non-exempt employees employed by and who performed work for ADIDAS AMERICA, INC. in California (“Aggrieved Employees”) between October 27, 2019 and September 21, 2021 (“PAGA Period”). Agreement at §§ I(B) and (S). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Total Settlement Amount**” is One Million Five Hundred Thousand Dollars (\$1,500,000). Agreement at § I(GG). The Total Settlement Amount is non-reversionary and includes the following:

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

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Total Settlement Amount for attorney’s fees, currently estimated to be \$500,000 **and** litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at §III(N)(11);

c. A “**PAGA Settlement**” of \$80,000 shall be allocated from the Total Settlement

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.

Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §III(N)(2); and

d. “**Settlement Administration Costs**” not to exceed \$20,000 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §III(N)(12).

3. The “**Net Settlement Fund**” of approximately \$865,000 (Total Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$226.08**. Agreement at §III(N)(1); JCL Dec., ¶ 6.

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

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

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II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is the American subsidiary of the international sports apparel, footwear and lifestyle brand Adidas. Defendant operates approximately thirty retail stores throughout California. This action asserts claims on behalf of Defendant’s non-exempt employees working at those California retail store locations. Plaintiff worked for Defendant as a non-exempt retail store employee in California between August of 2019 to August of 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant’s written policies and procedures contained in, among other documents, the “Adidas Global Stores Operation Manual” and the Adidas “Ready to Go Play Book.” JCL Dec., ¶ 8; Declaration of Monserrat Lopez (“Lopez Dec.”) at ¶¶ 1-5.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, including, time spent waiting for and undergoing mandatory loss prevention security checks, failed to provide compliant meal and rest periods, failed to provide suitable seating, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation failure. Defendant forcefully denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, written policies requiring all loss prevention security checks to take place while on-the-clock, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On October 27, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 10.

On December 4, 2020, Plaintiff filed a class action complaint in the Ventura Superior Court,

Case Number 56-2020-00547592-CU-OE-VTA (“Class Action”). The Class Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Violation of California Labor Code § 1198 and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating) (“Class Claims”). On January 15, 2021, Defendant removed the Class Action to the United States District Court, Central District of California. JCL Dec., ¶ 11

On January 27, 2021, Plaintiff separately filed a representative action in Ventura County Superior Court, Case Number 56-2021-00549844-CU-OE-VTA, alleging a single cause of action for Violations of PAGA (“Representative Action”). JCL Dec., ¶ 12.

On March 11, 2021, United States District Court Judge Mark C. Scarsi denied Plaintiff’s motion to remand the Class Action. JCL Dec., ¶ 13.

Plaintiff commenced written discovery in both the Class Action and the Representative Action in March 2021. After answering Plaintiff’s written discovery, producing thousands of pages of documents, and taking Plaintiff’s deposition, the Parties agreed to collectively mediate the Class Action and the Representative Action (collectively “Actions”). In anticipation of mediation, the Parties agreed to stay additional formal discovery and continue deadlines for class certification in the Actions. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 14.

On July 1, 2021 the Parties participated in a full day mediation with highly regarded wage and hour mediator Jeff Ross, Esq. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in

principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. As part of the Agreement, the Parties stipulated to the filing of a First Amended Complaint adding the Class Claims to the Representative Action, to dismiss, without prejudice, the Class Action pending in federal court, and to seek approval of the entire Agreement in the amended Representative Action. JCL Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

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

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

Class Counsel retained a private investigator to visually observe eleven of Defendant's retail store locations in California. Again, this investigation substantiated Plaintiff's claims. JCL Dec., ¶ 18.

Additionally, during the pre-litigation meetings with Class Counsel, Plaintiff provided the names and contact information for several Class Members. During the litigation, as result of Plaintiff's formal discovery requests, Defendant produced the names and contact information for the Class Members. During the litigation, Class Counsel interviewed hundreds of Class Members to further investigate the allegations asserted in the Actions. As a result, Class Counsel obtained dozens of declarations from putative class members in preparation for Plaintiff's motion for class certification. Ultimately, Class Counsel used these declarations to great affect at the time of mediation. JCL Dec., ¶ 19.

Considering the many anticipated factual disputes, the Parties agreed, relatively early in the

litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced the time records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period policies. In total, Defendant produced approximately 4,500 pages of pertinent policy documents and more than 4.1 million unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 20.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 21.

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

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 23.

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

1 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
2 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
3 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
4 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
5 liability for purposes of settlement; (8) holding phone interviews with hundreds of putative class
6 members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation
7 allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as
8 the impediments to recovery, such as to make an independent assessment of the reasonableness of the
9 terms to which the Parties have agreed. JCL Dec., ¶ 25.

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

11 On July 1, 2021, the Parties conducted a full day of mediation with Jeff Ross, Esq., a highly
12 regarded wage and hour mediator. Mediator Ross helped manage the Parties' expectations and
13 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
14 progress with Mediator Ross's assistance. Namely, the Parties exchanged information regarding their
15 respective claims and defense, including their respective evaluation of the damages. After nearly eight
16 hours of arm's length and adversarial negotiations, the mediation nearly concluded without a
17 settlement. However, at the conclusion of the mediation, Mediator Ross issued a proposal for
18 settlement that the Parties accepted. The complete and final terms of the Parties' settlement are now
19 set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and
20 reasonable compromise of the claims at issue. JCL Dec., ¶¶ 27-28.

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

22 1. The Composition of the Settlement Class Members

23 The proposed Settlement Class consists of all Defendant's current and former non-exempt retail
24 store employees who are or previously were employed by Defendant and performed work in California
25 between September 16, 2017 and October 1, 2021. The Settlement Class excludes any person who
26 submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there
27 were approximately 3,596 Class Members that worked an estimated 153,620 workweeks through
28 March 31, 2021. Through the conclusion of the Class Period, there are approximately 3,826 Class

Members that worked an estimated 169,946 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 Total Settlement Amount of \$1,500,000. The Total Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$80,000; (4) Settlement Administration costs estimated at \$20,000; (5) Class Counsel Award in the amount of \$500,000, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be \$500,00 and an estimated \$25,000 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).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$1.5 Million Dollar Total Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final approval of this Settlement. Agreement at §I(M-N).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. The Class Data provided by Defendant to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Workweeks worked during the relevant periods. Agreement at §I(F). Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the Settlement Class Member's total number

of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(N)(1).

Given that there are approximately 3,826 Settlement Class Members, **the average gross recovery is approximately \$226.08** (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims (those that were asserted in the Actions, or could have been asserted in the Actions, based on the facts, claims and theories plead in the operative complaint) that accrued during the Class Period. Agreement at §§I(Z) and III(B).

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

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

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$1,500,000 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections.

(C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

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

1 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
2 § 11.51.)

3 The Parties participated in mediation the highly respected mediator Jeff Ross, Esq. Mediator
4 Ross managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks
5 to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist.
6 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
7 inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
8 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure.")) At all times, the Parties' negotiations were
10 at an arm's length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations,
11 the Parties reached an impasse and the mediation session nearly concluded without a settlement. The
12 matter resolved only when Mediator Ross issued a mediator's proposal that the Parties accepted.
13 Mediator Ross only arrived at his proposal after hearing arguments, reviewing evidence and evaluating
14 the Parties' respective claims and defenses. JCL Dec., ¶ 27.

15 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
16 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
17 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
18 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
19 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 28.

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

22 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
23 the factual and legal issues in dispute. In addition to formal and informal discovery, witness interviews,
24 document review, data analysis and legal research, Class Counsel also researched similar wage and
25 hour actions. Here, Class Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United
26 States District Court, Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage
27 and hour class action against Defendant. In that case, Defendant resolved the class claims asserted on
28 behalf of 3,700 class members (a number similar to class members covered by this Settlement) for the

period between October 11, 2012 and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed to Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 24.

Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

The Total Settlement Amount of \$1,500,000 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is reasonable does not

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

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 Total Settlement Amount Meets the Recognized Range of Reasonableness.

The Total Settlement Amount of \$1,500,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$6,246,168 million (“Conservative Model”) and \$16,766,311 million (“Aggressive Model”) 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 Total Settlement Amount of \$1,500,000 represents approximately between 9% and 24% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant’s estimated exposure. JCL Dec., ¶ 29.

(1) Estimated Exposure for Off-the-Clock Loss Prevention Security Checks

Plaintiff’s primary claim in the Actions was that Defendant failed to pay for all hours worked. Specifically, Plaintiff asserted that Defendant failed to pay for all time spent waiting for and undergoing mandatory loss prevention security checks, and for a brief period, COVID-19 screening. Recently, the California Supreme Court in *Frlekin v. Apple, Inc.* 8 Cal.5th 1038 (2020) concluded that “[the] plaintiffs’ time spent on [the defendant’s] premises waiting for, and undergoing, mandatory exit searches ... is compensable as ‘hours worked.’ ” (*Id.* at 1058.) Plaintiff contends that Defendant maintained a similar policy at its retail store locations in California during the Class Period. JCL Dec.,

(“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”).

¶ 30.

Defendant vigorously denied liability for claim. In discovery, Defendant produced several California specific operation manuals and policies first published in 2017. Collectively, Defendant asserted that these written policies and procedures directed its California retail store managers to conduct all loss prevention security checks while on-the-clock and further directed all California retail stores to discontinue all loss prevention security checks in or about mid-March 2020 due to the COVID-19 pandemic. Defendant asserted that any deviation from these written policies were location specific and, thus, created individualized issues of liability unsuitable for class treatment. JCL Dec.,

¶ 31.

Notwithstanding Defendant's arguments, Plaintiff perceived the off-the-clock as the strongest claim in the Actions. Assuming five (5) minutes of unpaid compensable time per shift worked by the Class Members during the Class Period, BCG estimated Defendant's exposure for this claim at \$624,988. JCL Dec., ¶ 32

(2) Estimated Damages for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that the Class Members were periodically required to undergo loss prevention security checks, while off-the-clock, prior to taking a required meal period. Plaintiff asserted this practice resulted in truncating meal periods. Additionally, Plaintiff contended that because of their rigorous work requirements, the Class Members were often denied complaint meal periods. JCL Dec., ¶ 33. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours. California Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's

regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Conversely, Defendant again argued that its loss prevention policies and procedures required all security checks to be done while on-the-clock until these security checks were wholly discontinued in or about mid-March 2020 due to the COVID-19 pandemic. Similarly, Defendant argued any divergence from these written policies were not systematic and, if they existed at all, were store specific. Defendant also asserted that it maintained facially compliant meal period policies and practices throughout the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 34.

Plaintiff's 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, Plaintiff heavily discounted Defendant's potential liability for meal period violations. Plaintiff estimated the damages for this claim ranged between approximately \$2.1 million dollars and \$4.2 million dollars. JCL Dec., ¶ 35.

(3) Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and duty-free rest periods. JCL Dec., ¶ 36. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized rest period times shall be counted as hours worked for which there shall be no deduction from wages." Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, 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

1 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
2 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
3 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an
4 illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”);
5 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed,
6 Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”).
7 Accordingly, the rest break claim was heavily discounted in Plaintiff’s valuation of the case and ranged
8 between approximately \$2.1 and \$1 million dollars. JCL Dec., ¶ 37.

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

10 Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor
11 Code sections 203 and 226(a). Although these *penalties* collectively represented Defendant’s largest
12 dollar amount of exposure, Class Counsel considered these penalties and weighed the potential
13 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove
14 the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
15 Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because
16 of wage statement violations, as required by Labor Code section 226. Defendant could also argue that
17 that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to
18 pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum*
19 *Security Services, Inc.*, (2019) 40 Cal. App. 5th 444 (review granted); *Maldonado v. Epsilon Plastics,*
20 *Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiff would have to overcome precedent to prove the Class
21 deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406
22 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus,*
23 *Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or
24 actual injury). These claims represented Plaintiff’s most legally precarious and uncertain claims.
25 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant’s *maxim* exposure
26 for these claims at approximately \$9.8 million (approximately \$7.5 million for waiting time and \$2.3
27 million for wage statement). However, Class Counsel’s Conservative Model discounted these claims
28

by 75% (approximately \$2.45 million dollars) because of the aforementioned risk factors. JCL Dec., ¶ 38.

(5) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$12.9 million dollars. JCL Dec., ¶ 39.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 40.

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

Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶ 41-42.

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

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

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

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

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

21 In this matter, Class Counsel negotiated a Total Settlement Amount of \$1,500,000 that is roughly
22 between 9% and 24% Defendant’s maximum class wide liability exposure. Given the amount of the
23 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
24 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 44.

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

26 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
27 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
28 information to decide whether they should accept the benefits offered, opt out and pursue their own

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(M). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 45-46.

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

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

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

³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain 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.

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

The Settlement provides for a Class Representative Service Award of \$10,000⁴ for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, preparing and sitting for deposition, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of her employment. JCL Dec., ¶ 47.

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

⁴ The amount of the requested enhancement payment—\$10,000—is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int’l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 48.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 49.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 50.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 51; Lopez Dec. ¶¶ 6-9.

1. The Standard for Class Certification

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

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

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

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

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

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

22 Because all Class Members are Defendant’s current and former employees, the class is readily
23 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 52.

24 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
25 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
26 liability can be determined by facts common to all members of the class. The wage and hour issues are
27 both numerous and substantial, and a class action is the most advantageous method of dealing with the
28 claims of the Settlement Class. JCL Dec., ¶ 53.

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual basis and are based on the same legal theories applicable to the other Class
3 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
4 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
5 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
6 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
7 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 54.

8 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
9 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
10 gained state court settlement approval of the same class-wide causes of action that are at issue in this
11 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
12 represent the interests of this Class. JCL Dec., ¶¶56-63, Declaration of Shani Zakay, ¶¶ 1-3.

13 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
14 each individual claim, the Class Members likely have little incentive to litigate their claims on an
15 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
16 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
17 adjudication. JCL Dec., ¶ 55.

18 IV. CONCLUSION

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

22 Dated: October 27, 2021

JCL LAW FIRM, APC

24 By: 
25 Jean-Claude Lapuyade, Esq.