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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RODNEY STOVALL, on behalf of himself
and on behalf of all persons similarly
situated,

Plaintiff,

v.

JAVELIN LOGISTICS COMPANY, INC.,
CARSON CONSULTING CORP., and
DOES 1-50, inclusive,

Defendants.

Case No. RG20075705

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

Hearing Date: April 5, 2022

Hearing Time: 3:00 p.m.

Reservation ID: 783815354451

Judge: Seligman

Dept.: 23

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I. INTRODUCTION

Plaintiff RODNEY STOVALL (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 290 members of the Settlement Class. The basic terms of the Agreement provide for the following:

1. The “**Settlement Class**” and “**Settlement Class Period**” shall mean with respect to the class, all of Defendant JAVELIN LOGISTICS COMPANY, INC.’s (“Defendant Javelin”) current and former non-exempt employees employed in California, and/or employees employed by Defendant CARSON CONSULTING CORP. (“Defendant Carson”) and assigned to provide service to Defendant Javelin (collectively “Defendants”) (“Settlement Class”) between April 6, 2016 and October 15, 2021 (“Settlement Class Period”). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G), (H) and (FF).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendant Javelin’s current and former non-exempt employees employed in California and/or employees employed by Defendant Carson and assigned to provide service to Defendant Javelin (“Aggrieved Employees”) between April 6, 2019 and October 25, 2021 (“PAGA Period”). Agreement at §§ I(B) and (T). Aggrieved Employees who submit a request for exclusion will remain bound by the PAGA Release and will nonetheless receive their portion of the PAGA Settlement.

3. The “**Total Settlement Amount**” is Six Hundred Ninety-Nine Thousand Dollars (\$699,000). Agreement at §(GG). The releases granted to Defendants only becomes effective upon the funding of the Total Settlement Amount. §III(B). 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 his services on behalf of the Settlement Class. Agreement at §III(L)(9).

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 \$233,000 **and** litigation costs and

¹ The Agreement is attached as Ex “A” to the Declaration of Shani O. Zakay (“SOZ Dec.”) at ¶ 2. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 2. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §III(L)(10).

2 c. A “**PAGA Settlement**” of \$40,000 shall be allocated from the Total Settlement
3 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
4 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA
5 Payment”) the California Labor and Workforce Development Agency. The Settlement Administrator
6 shall distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to members of the
7 Aggrieved Employees. Agreement at §III(L)(11).

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

11 3. The “**Net Settlement Fund**” of approximately \$392,000 (Total Settlement Amount
12 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
13 Settlement Administration Costs) which will be allocated to all participating members of the Settlement
14 Class on a pro-rata basis according to the number of Workweeks each Settlement Class member
15 performed during the Class Period. The entire Net Settlement Amount will be paid to all Settlement
16 Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
17 Share of **\$1,351.72**. Agreement at §III(L)(1); SOZ Dec., ¶ 6.

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

25 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
26 approval under California law and falls within the range of reasonableness. The average Individual
27 Settlement Share to the Settlement Class meets or exceeds awards in similar wage and hour class
28 actions. Moreover, the proposed Settlement Class is appropriate for provisional certification.

Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant Javelin provides material management, logistics, and transportation services. Defendant Javelin is headquartered in Newark, California, but offers transportation and distribution logistics services to organizations across the United States and North America.

Plaintiff worked for Defendants as an hourly, non-exempt equipment operator and dock worker between August 2019 and April 2020 (August 2019 to January 202 through Defendant Carson and January 2020 to April 2020 directly with Defendant Javelin). As a non-exempt equipment operator and dock worker employee, Plaintiff regularly worked long hours loading and unloading trucks, inspecting and preparing trucks for shipments, and ensuring truck transportation schedules were met. At all times during his employment, Plaintiff earned an hourly wage, and was entitled to legally compliant meal and rest periods, and minimum, regular, and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, Defendants’ written Employee Handbook. SOZ Dec., ¶ 8.

Generally, Plaintiff claims that Defendants failed to pay him and the Class Members minimum wages, overtime wages, including overtime at the correct rate of pay, failed to provide compliant meal and rest periods, failed to provide accurate itemized wage statements, and failed to provide wages when due. Defendants assert that they 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. SOZ Dec., ¶ 9.

On July 24, 2020, Plaintiff served Defendants 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 Defendants’ alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). SOZ Dec., ¶ 10.

On September 30, 2020, Plaintiff filed a class action complaint in the Alameda Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California Labor Code sections 226 and 226.2; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and (8) violations of the Private Attorneys General Act (“PAGA”). SOZ Dec., ¶ 11.

To prepare for mediation, the Parties agreed to informally produce certain documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting Group, to analyze Defendants’ time and payroll data. SOZ Dec., ¶ 12.

On September 10, 2021, the Parties participated in a full day mediation with Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the mediation concluded without a settlement. However, Judge Walsh made a mediator’s proposal, which was accepted by all Parties, and was memorialized in the form of 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. SOZ Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

In June 2020, Class Counsel began its pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced numerous documents related to his employment for Defendants, including portions of Defendants’ handbooks, compensation policies, and time and payroll records. Shortly thereafter, Class Counsel summarized the known factual and legal issues in the PAGA Notice addressed to the LWDA. Several weeks later, Class Counsel filed this class action. SOZ Dec., ¶ 14

After engaging in preliminary written discovery, the Parties agreed to mediate the action. To prepare for mediation, Class Counsel requested several documents and data points to further evaluate

1 Plaintiff's claims and Defendants' liability exposure to the Settlement Class members. In response,
2 Defendants produced the pay statements for approximately 27% of the Settlement Class members. In
3 total, Defendants produced hundreds of pages for Class Counsel to analyze. SOZ Dec., ¶ 15.

4 Class Counsel then retained the statisticians and economists at Berger Consulting Group
5 ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides data
6 analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's
7 team of financial and data analysts are credentialed and experienced experts in their fields and have
8 provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to
9 analyze Defendants' time and payroll data. SOZ Dec., ¶ 16.

10 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
11 models. Among other things, BCG determined the approximate number of work shift, work weeks, pay
12 periods, average rate of pay, average length of shift and average number of hours worked per week and
13 pay period during the Class Period. BCG also estimated the number of missed, late or truncated meal
14 and rest periods, the amount of paid missed meal period premiums paid during the Class Period, the
15 amount underpaid due to regular rate miscalculation, the amount underpaid due to rounding, the amount
16 of off-the-clock work performed by the Settlement Class during the Class Period. SOZ Dec., ¶ 17.

17 In advance of mediation, Class Counsel created a damage model predicated on BCG analysis.
18 Class Counsel's model calculated Defendants' potential liability exposure while accounting for the
19 uncertainties of continued litigation. These damage models informed and guided Class Counsel during
20 the mediated settlement discussions. SOZ Dec., ¶ 18.

21 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
22 Plaintiff's suitability as a putative class representative through interviews, background investigations,
23 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
24 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
25 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
26 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
27 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
28 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the

mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the parties have agreed. SOZ Dec., ¶ 19.

C. The Parties Settled at Mediation

On September 10, 2021, the Parties conducted a full day of mediation with Brian C. Walsh, a highly regarded mediator and former Santa Clara County Superior Court Judge. Judge Walsh helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After more than eight hours arm's length and adversarial negotiations, the mediation concluded without a settlement. However, at the conclusion of the mediation, Judge Walsh issued a proposal for settlement that the Parties accepted. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 20.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all Defendant Javelin's current and former non-exempt employees employed in California, and/or employees employed by Defendant Carson and assigned to provide service to Defendant Javelin between April 6, 2016 and October 15, 2021. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G), (H) and (FF). There are approximately 290 members of the Settlement Class that worked an estimated 24,000 workweeks during the Class Period. Agreement at §III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Total Settlement Amount of \$699,000. The Total Settlement Amount Fund includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$40,000; (4) Settlement Administration costs estimated at

1 \$9,000, (5) Class Counsel Award in the amount of \$233,000, comprised of attorneys' fees equal to
2 one-third of the Total Settlement Amount, and up to \$15,000 for actually incurred litigation expenses.
3 Agreement at §III(L).

4 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
5 PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed
6 to each participating member of the Settlement Class Member. Agreement at §III(L)(1). There is no
7 reversion to Defendants and Defendants must separately pay for their share of the employer payroll
8 taxes. Agreement at §III(A)(1).

9 3. Formula for Calculating Individual Settlement Payments

10 Each participating member of the Settlement Class will receive an Individual Settlement
11 Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each
12 member of the Settlement Class worked for Defendants during the Class Period. Using the Class Data,
13 the Settlement Administrator shall add up the total number of Workweeks for the entire Settlement
14 Class. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment
15 will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is
16 the Settlement Class Member's total number of Workweeks, and the denominator of which is the total
17 number of Workweeks of all Settlement Class Members. Agreement at §III(L)(1).

18 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
19 withholdings (e.g., employee payroll taxes, etc.). Agreement at §III(L)(1). Individual Settlement
20 Payments for members of the Settlement Class who submit valid and timely requests for exclusion will
21 be redistributed to Settlement Class members who do not submit valid and timely requests for exclusion
22 on a pro rata basis. Agreement at §III(L)(1).

23 Given that there are approximately 290 Settlement Class Members, **the average gross recovery**
24 **is approximately \$1,351.72** (Net Settlement Amount divided by Settlement Class Members). SOZ
25 Dec., ¶ 23. This average net recovery exceeds many wage and hour class action settlements approved
26 by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego
27 Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The*
28 *Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery

\$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

4. 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, defined as “all class claims alleged, or wage-and-hour class claims which could have been alleged based on the facts, in the operative complaint which occurred during the Class Period (including, but not limited to, claims for failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1, failure to pay overtime wages in violation of Labor Code section 510, failure to provide meal periods in violation of Labor Code section 226.7 and 512 and applicable Wage Orders, failure to provide rest breaks in violation of Labor Code sections 226.7 and 512 and applicable Wage Orders, failure to provide wage statements in violation of Labor Code section 226, failure to pay wages when due in violation of Labor Code sections 201, 202, and 203, and violation of Business & Professions Code section 17200 arising from these labor code violations) 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(Z) and III(B).

5. Release by the LWDA and the Aggrieved Employees

Generally, upon the Funding Date the LWDA and the Aggrieved Employees will release all PAGA Claims alleged in the operative complaint and Plaintiff’s 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 class claims outside 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 \$699,000, 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

1 and settlement are the preferred means of dispute resolution.”.) In California, class action settlement
2 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
3 notice of the settlement has been distributed to class members for their comments and objections.
4 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
5 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
6 inquire into the fairness of the proposed settlement”).)

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

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

27
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 mediation with highly respected mediator and former Santa Clara
9 County Superior Court Judge Hon. Brian C. Walsh (Ret.). Judge Walsh managed the Parties'
10 expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple*
11 *Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal.
12 Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive
13 settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator's involvement in
14 pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and
15 undue pressure.”).) At all times, the Parties' negotiations were at an arm's length, adversarial and non-
16 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the
17 mediation session concluded without a settlement. The matter resolved only when Judge Walsh issued
18 a mediator's proposal that the Parties accepted. Judge Walsh arrived at his proposal after hearing
19 arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses. SOZ Dec.,
20 ¶ 26.

21 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
22 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
23 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
24 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
25 fair, adequate and represent a reasonable compromise of the claims at issue. SOZ Dec., ¶ 27.

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

28 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into

1 the factual and legal issues in dispute. In addition to informal discovery, document review, data
2 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
3 two cases are identical, this research provided Class Counsel with a marker to inform settlement
4 discussions, and ultimately, to measure this settlement against. The investigation allowed to Class
5 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
6 in settlement discussions that culminated in the proposed settlement now before the Court. SOZ Dec.,
7 ¶ 28.

8 Class Counsel only agreed to enter the Settlement following thorough investigation and
9 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
10 marketplace for similar settlements, and in light of the risk of significant delay, uncertainty associated
11 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
12 Agreement to be in the best interests of Settlement Class. Because the Settlement's terms are fair,
13 reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 29.

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

15 The Total Settlement Amount of \$699,000 is well within the range of reasonable settlement for
16 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
17 "consider enough information about the nature and magnitude of the claims being settled, as well as
18 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
19 which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
20 In making this determination, the court is "not to try the case" but rather "satisfy itself that the class
21 action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis,
22 courts do "not require any such explicit statement of value; [they] require[] a record which allows an
23 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.
24 " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
25 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
26 recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination

27 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
28 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.

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 Total Settlement Amount Meets the Recognized Range of Reasonableness.

The Total Settlement Amount of \$699,000 is fair and reasonable in light of 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 a 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 significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for the Settlement Class for *damages* to be approximately \$2,914,141, and liability exposure for damages and penalties to be \$7,113,534 (“Damages Model”) if successful at trial. This reflects the uncertainty regarding several of Plaintiff’s claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties resulting from meal and rest period violations. Thus, the Total Settlement Amount of \$699,000 represents approximately 24% of Defendants’ liability exposure for damages, and approximately 10% of Defendants’ liability exposure for damages and penalties, as estimated by Class Counsel at the time of mediation. The following summarizes Defendants’ estimated exposure. SOZ Dec., ¶ 31.

(1) Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the Settlement Class Members were not able to take timely and duty-free meal periods. Labor Code 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours

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”).

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.

Defendants argued that they fully complied with California meal period laws and maintained legally compliant policies and practices. Courts have found that where an employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). SOZ Dec., ¶ 32.

Defendants also argued that they occasionally paid meal period premium when missed, late or truncated meal periods were reported. If successful, Defendants availed themselves to a complete defense of Plaintiff's meal period claim. Plaintiff estimated the damages for this claim to be approximately \$1,232,849. SOZ Dec., ¶ 32.

(2) Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that as a result of their rigorous work schedules, Plaintiff and the Settlement Class Members were not able to take timely and duty-free rest periods.

Again, Defendants denied liability and asserted that they maintained legally compliant rest period policies and practices at all times 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. Defendants likely would have argued that only a small number of Class Members actually missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.*

(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, the rest break claim was heavily discounted in Plaintiff’s valuation of the case. Plaintiff estimated the damages for this claim to be approximately \$1,286,307. Importantly, this amount is based on an unlikely assumption of a 100% violation rate. SOZ Dec., ¶ 33.

(3) Defendant’s Estimated Exposure for Unpaid Wages due to Rounding

Plaintiff alleged that because of Defendants’ unlawful rounding policy, it failed to pay Plaintiff and the Settlement Class Members all wages due for purposes of straight pay, overtime pay, and double-time pay. Defendants denied liability and asserted that their employees were paid for all time worked. Defendants argued that employees use an electronic timekeeping system to record their hours of work, and were paid according to their own reported time. Defendants also argued that their rounding policy, if any, was, for the most part, neutral. Furthermore, Defendants argued that, even if successful, this claim resulted in minimal actual damage to the Class Members—and Plaintiff’s expert confirmed this to be true. Plaintiff estimated Defendants’ exposure for this claim to be approximately **\$20,692**. SOZ Dec., ¶ 34.

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

Generally, Plaintiff alleges that Defendants’ aforementioned violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Cal. Lab. Code § 203. Additionally, Defendants could argue that Plaintiff could not show that Class Members suffered an “injury” as a result of wage statement violations, as required by Cal. Lab. Code § 226. Defendants could also argue that meal and rest period violations do not entitle employees like Plaintiff and the Settlement Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Although the Settlement Class arguably could have seen a payout of \$1,330,543 (\$921,493 in waiting time penalties and \$409,050 in wage statement penalties) for these penalties if Plaintiff prevailed on every penalty

claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. SOZ Dec., ¶ 35.

(5) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure at approximately \$2,868,800. SOZ Dec., ¶ 35.

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 also 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, Defendants raised a number of defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendants asserted that their employment practices complied with all applicable Labor Laws. In addition to those arguments discussed *supra*, Defendants 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. SOZ Dec., ¶ 35.

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 *Donohue v. AMN Services, LLC* (2018) 29 Cal.App.5th 1068 (cert granted.) In *Donohue*, Fourth District Court of Appeal affirmed Hon. Joel Pressman's denial of class certification for missed meal and rest periods by call center employees. (*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).) Plaintiff is confident about the strength of his claims. Nonetheless, Plaintiff recognizes that Defendants have factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiff's lawsuit. Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring

1 settlement. SOZ Dec., ¶ 36.

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

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

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

12 Finally, continuing to litigate this action would require continued and extensive resources
13 coupled with significant Court time to proceed through trial and post-trial motions; which can often
14 take years. Furthermore, wage and hour litigations are complex and expensive, as it often necessitates
15 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
16 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
17 Defendants would appeal any favorable judgment. SOZ Dec., ¶¶ 36. “Avoiding such a trial and the
18 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 Total Settlement Amount of \$699,000 that is roughly
23 24% of Defendants’ liability exposure for damages, and 10% of Defendants’ liability exposure for
24 damages and penalties. Given the amount of the settlement here, as compared to potential value of the
25 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
26 SOZ Dec., ¶ 37.

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

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient 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.) In a case such as this involving a significant number of class members, California 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 Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Settlement Class. 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 submit 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(K). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement. SOZ Dec., ¶¶ 38.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. (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.”).)

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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.

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 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.)

Approximately 290 members of the Settlement Class will share in the estimated \$392,000 Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$10,000⁴ for Plaintiff. The service award is fair and reasonable compensation for Plaintiff’s 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. SOZ Dec., ¶ 39.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class 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. SOZ Dec., ¶ 42.

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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 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).

D. The Court Should Preliminarily Approve the Negotiated 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. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(L)(10). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. SOZ Dec., ¶ 40.

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. SOZ Dec., ¶ 39.

E. California Law Authorizes Provisional Certification for Settlement Purposes

For the purpose of Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Settlement Class is appropriate. SOZ Dec., ¶ 42.

1. The California 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 court." (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class

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

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

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

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

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

21 Generally, the proposed Settlement Class consists of all of Defendants’ current and former
22 California non-exempt employees during the Class Period. Defendants’ records show that the
23 Settlement Class Members consists of approximately 290 individuals, making joinder of all Settlement
24 Class Members impracticable. Further, because all Settlement Class Members are Defendants’ current
25 and former employees, the class is readily ascertainable from Defendants’ regular business records,
26 i.e., payroll records. SOZ Dec., ¶ 42.

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

1 Defendants' liability can be determined by facts common to all members of the class. The wage and
2 hour issues are both numerous and substantial, and a class action is the most advantageous method of
3 dealing with the claims of the Settlement Class. SOZ Dec., ¶ 42.

4 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
5 from the same facts and are based on the same legal theories applicable to the other Class Members.
6 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class.
7 Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
8 Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability
9 to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive
10 class discovery, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 42.
11 Plaintiff's declaration in support of his ability to meet these requirements is filed concurrently herewith.

12 Additionally, Plaintiff is represented by competent Class Counsel who has extensive experience
13 in litigating wage and hour class action cases. Class Counsel has successfully briefed, argued, certified,
14 and gained state court settlement approval of the same class-wide causes of action that are at issue in
15 this case. Class Counsel's wage and hour class action experience establishes that they are well qualified
16 to represent the interests of this Class. SOZ Dec., ¶¶ 42 and the Zakay Dec.

17 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
18 each individual Settlement Class Member's claim, Class Settlement Members likely have little
19 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
20 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
21 is superior to individual, case-by-case adjudication. SOZ Dec., ¶ 42.

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1 IV. CONCLUSION

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

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6 Dated: March 11, 2022

ZAKAY LAW GROUP, APLC

7 By: 

8 Shani O. Zakay, Esq.