

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

GABRIEL MENDEZ, GEORGE GOSCH, JOHN
DIAN, MICHAEL KNIGHTON, individuals, on
behalf of themselves an on behalf of all persons
similarly situated,

Plaintiffs,

v.

BONDZ, INC., a California Corporation; and
DOES 1-50, Inclusive.

Defendants.

Case No. STK-CV-UOE-2020-0007486

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

Hearing Date:
Hearing Time: 9:00 a.m.

Judge: Hon. George J. Abdallah
Dept.: 10A

Action Filed: September 9, 2020

TABLE OF CONTENTS

I.	INTRODUCTION	1
1.	The “Action”	1
2.	The “Class Member(s)” or the “Settlement Class,” and “Class Period”	1
3.	The “PAGA Settlement Members” or “Aggrieved Employees” and “PAGA Period”	1
4.	The “Class Counsel”	1
5.	The “Class Settlement Amount”	1
(a)	A “Class Representative Enhancement Payment”	2
(b)	An “Attorneys’ Fees and Costs”	2
(c)	A “PAGA Settlement Amount”	2
(d)	“Settlement Administration Costs”	2
(e)	The “Individual Settlement Payment to Class Members”	2
II.	FACTS AND PROCEDURE	3
A.	Overview of the Litigation	3
B.	Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
C.	The Parties Settled at Mediation	6
D.	The Proposed Settlement Fully Resolves Plaintiff’s Claims	7

1	1. The Composition of the Settlement Class Members and Aggrieved Employees	7
2	.....	7
3	2. The Settlement Consideration	7
4	.....	7
5	3. The Funding Date	8
6	.....	8
7	4. The Formula for Calculating Individual Settlement Payments	8
8	.....	8
9	5. Release by Participating Settlement Class Members	8
10	.....	8
11	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
12	.....	8
13	III. ARGUMENT	9
14	.....	9
15	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
16	.....	9
17	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by	
18	Experienced Counsel	10
19	.....	10
20	2. Class Counsel’s Investigation Provided an Objective Measurement of the	
21	Settlement’s Reasonableness	10
22	.....	10
23	3. The Settlement Falls Within the Recognized Range of Reasonableness.	11
24	.....	11
25	(a) Defendant’s Estimated Exposure for Failure to Pay All Hours Worked	12
26	.....	12
27	(b) Defendant’s Estimated Exposure for Wage Statement Violations	13
28	.....	13
	(c) Defendant’s Estimated Exposure for Meal and Rest Period Violations	13
	.....	13
	(d) Defendant’s Estimated Exposure for Waiting Time Penalties	14
	.....	14
	(e) Defendant’s PAGA Exposure	

1	.....	14
2	(f) Inherent Risks of Continued Litigation Support Preliminary Approval	
3	.....	15
4	B. The Proposed Notice Informs the Class about the Case and Settlement	
5	.....	17
6	C. The Court Should Preliminarily Approve the Class Representative Enhancement Payment	
7	.....	18
8	D. The Court Should Preliminarily Approve the Class Counsel’s Class Counsel Award	
9	.....	19
10	E. Provisional Certification for Settlement Purposes Is Appropriate	
11	.....	19
12	1. The Standard for Class Certification	
13	.....	19
14	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined	
15	Community of Interest Among the Settlement Class Members	
16		20
17	IV. CONCLUSION	
18		21

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TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	9
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	16
7	<i>Berry v. Urban Outfitters</i>	
8	(N.D. Cal. Lead Case No. 13-cv-02628-JSW).....	15
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	16, 20
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13	<i>Bufile v. Dollar Financial Group, Inc.</i>	
14	(2008) 162 Cal.App.4th 1193, 1207.....	20
15	<i>Campbell v. Best Buy Stores, L.P.</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
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18	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	14
19	<i>Carrington v. Starbucks Corp.,</i>	
20	30 Cal. App. 5th 504, 517, 539 (2018).....	15
21	<i>Cart v. Super. Ct.</i>	
22	(1975) 50 Cal.App.3d 960, 972.....	17
23	<i>Cellphone Termination Fee Cases</i>	
24	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	9, 18
25	<i>Chance v. Super. Ct.</i>	
26	(1962) 58 Cal.2d 275, 290.....	17
27	<i>Chavez v. Netflix, Inc.</i>	
28	(2008) 162 Cal.App.4th 43, 66 n.11.....	19
	<i>Clark v. American Residential Services LLC</i>	
	175 Cal. App. 4th 785 (2009).....	18
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
	<i>Dunk v. Ford Motor Co.</i>	
	48 Cal. App. 4th 1794, 1802 (1996).....	9
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	16
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	14
	<i>Fontana v. Elrod</i>	
	(7th Cir. 1987) 826 F.2d 729, 732.....	17
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Garcia v. Superior Court of Los Angeles County</i>	
	.....	13
	<i>Gonzalez v. Downtown LA Motors</i>	
	(2013) 215 Cal.App.4th 36.....	12
	<i>Hopson v. Hanesbrands, Inc</i>	
	(N.D. Cal. 2009) 2009 WL 928133 * 9.....	15

1	<i>In re Apple Computer, Inc. Derivative Litig</i>	
2	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
3	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
4	(S.D.N.Y. 2004) 225 F.R.D. 436, 460.....	12
5	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
6	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
7	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
8	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
9	<i>In re Nordstrom Com. Cases</i>	
10	186 Cal.App.4th 576, 589 (2010).....	14-15
11	<i>In re Nvidia Derivs. Litig.</i>	
12	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	16
13	<i>In re Omnivision Tech, Inc.</i>	
14	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
15	<i>In re Taco Bell Wage & Hour Actions</i>	
16	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	14
17	<i>Jack v. Hartford Fire Ins. Co.</i>	
18	(S.D. Cal. 2011) 2011 WL 4899942 * 6.....	15
19	<i>Kass v. Young</i>	
20	(1977) 67 Cal.App.3d 100, 106.....	17
21	<i>Kullar v. Foot Locker Retail, Inc.</i>	
22	(2008) 168 Cal.App.4th 116, 133.....	11
23	<i>Lee v. Dynamex, Inc.</i>	
24	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	20
25	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
26	(9th Cir. 2021) 999 F.3d 668.....	15, 17
27	<i>Misra v. Decision One Mortg. Co.</i>	
28	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	15
	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11
	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	12, 17
	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
	<i>Noori v. Countrywide Payroll & HR Solutions, Inc.</i>	
	(2019) 43 Cal.App.5th 957, 964-966.....	13
	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9th Cir. 2018) 904 F.3d 1087.....	16
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
	<i>Price v. Starbucks Corp.</i>	
	(2011) 192 Cal.App.4th 1136.....	13
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	16
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9th Cir. 2009) 563 F.3d 948, 958-59.....	18

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2	(2014) 34 Cal. 4th 319, 326, 333.....	20
3	<i>Singer v. Becton Dickinson & Co.</i>	
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7	<i>State v. Levi Strauss & Co.</i>	
8	(1986) 41 Cal.3d 460, 482, 485.....	10, 18
9	<i>Tien v. Tenet Healthcare Corp.</i>	
10	(2012) 209 Cal.App.4th 1077, 1088.....	16
11	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
12	(1975) 48 Cal.App.3d 143, 151-52.....	17

RULES, CODES, AND STATUTES

13	<i>Bus. & Prof. Code</i> § 17200 et seq.....	4
14	<i>Cal. Civ. Proc. Code</i> § 382.....	20
15	<i>Cal. Lab. Code</i> § 201.....	4
16	<i>Cal. Lab. Code</i> § 202.....	4
17	<i>Cal. Lab. Code</i> § 203.....	14
18	<i>Cal. Lab. Code</i> § 226.....	4
19	<i>Cal. Lab. Code</i> § 226.2.....	12
20	<i>Cal. Lab. Code</i> § 226.7.....	4
21	<i>Cal. Lab. Code</i> § 226(a)(8).....	13
22	<i>Cal. Lab. Code</i> § 510 et seq.....	4
23	<i>Cal. Lab. Code</i> § 512.....	4
24	<i>Cal. Lab. Code</i> § 1194.....	4
25	<i>Cal. Lab. Code</i> § 1197.....	4
26	<i>Cal. Lab. Code</i> § 1197.1.....	4
27	<i>Cal. Lab. Code</i> § 2698 et seq.....	4
28	<i>Cal. Lab. Code</i> § 2699(i).....	2
29	<i>C.R.C. 3.769(c)-(g)</i>	9
30	<i>C.R.C. 3.776(e)-(f)</i>	18
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I. INTRODUCTION

Plaintiffs GABRIEL MENDEZ, GEORGE GOSCH, JOHN DIAN, and MICHAEL KNIGHTON (hereinafter collectively referred to as “Plaintiff” and/or “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 77 members of the Class and 41 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Action**” means the case entitled Gabriel Mendez v. Bondz, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2020-0007486.

2. The “**Class Member(s)**” or the “**Settlement Class,**” and “**Class Period,**” shall mean all individuals who are or were employed by Bondz, Inc. (“Defendant”) as truck driver employees in California at any time from September 9, 2016 through November 9, 2020 (“Class Period”). Agreement at §§ I(E), I(F). The Settlement Class is comprised of approximately 77 individuals who collectively worked approximately 5,594 Workweeks during the Class Period.

3. The “**PAGA Settlement Members**” or “**Aggrieved Employees**” and “**PAGA Period**” means all individuals who were employed by Defendant as truck driver employees in California at any time from July 1, 2019 through November 9, 2020 (“PAGA Period”). Agreement at §I(V). PAGA Settlement Members, regardless of whether they opt-out of the Settlement Agreement, will still release the PAGA Released Claims for the PAGA Period. Agreement at §V(11). At the time of mediation, there were approximately 41 Aggrieved Employees during the PAGA Period who worked approximately 1,717 pay periods during the PAGA Period. (JCL Dec., ¶ 7).

4. The “**Class Counsel**” shall mean Shani Zakay of Zakay Law Group, APLC, and Jean-Claude Lapuyade of JCL Law Firm, APC. Agreement at §I(C).

5. The “**Class Settlement Amount**” is One Hundred Eighty Thousand Dollars (\$180,000.00). Agreement at § I(H). The Class Settlement Amount is non-reversionary and includes the following:

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

1 a. A **“Class Representative Enhancement Payment”** in the amount of \$10,000.00
2 to Plaintiff Gabriel Mendez, \$5,000.00 to Plaintiff George Gosch, \$5,000.00 to Plaintiff John Dian, and
3 \$5,000.00 to Plaintiff Michael Knighton in recognition of their effort and work in prosecuting the
4 Action on Behalf of Class Members and for their general release of claims. Agreement at §I(G).

5 b. An **“Attorneys’ Fees and Costs”** in the amount not to exceed one-third of the
6 Class Settlement Amount for attorney’s fees, currently estimated to be Sixty Thousand Dollars
7 (\$60,000.00) and actually incurred litigation costs not to exceed Fifteen Thousand Dollars (\$15,000),
8 to be paid to Class Counsel. Agreement at §§ I(B).

9 c. A **“PAGA Settlement Amount”** of \$5,000 shall be allocated from the Class
10 Settlement Amount to the resolution of any PAGA Settlement Members’ claims arising under the
11 Private Attorneys General Act of 2004. Agreement at § I(O). Per Labor Code § 2699(i), seventy-five
12 percent (75%) of such penalties, or \$3,750.00, will be payable to the LWDA (“LWDA Payment”), and
13 the remaining twenty-five percent (25%), or \$1,250.00, of the PAGA Settlement Amount will be
14 payable to the PAGA Settlement Members (“Individual PAGA Payment”). Agreement at §I(O).

15 d. **“Settlement Administration Costs”** currently estimated to be \$4,500.00 payable
16 to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice
17 Packet and Individual Settlement Payments; and,

18 e. The **“Individual Settlement Payments to Class Members”** means each Class
19 Member’s share of the Net Settlement Amount, which shall be distributed to the Class Members, less
20 employee portions of state and federal withholding taxes, including the employee FICA, FUTA, and
21 SDI contributions and any other applicable payroll deductions required by law as a result of the
22 payment of the amount allocated to such Class Member as set forth herein. Agreement at §I(M). The
23 Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount
24 based on the number of workweeks a Class Member worked in the Class Period, and the pay periods
25 worked by the PAGA Settlement Members during the PAGA Period. Specific calculations of Individual
26 Settlement Payments are set forth herein. Agreement at §IV(1).

27 The Net Settlement Amount of approximately \$70,500 (Class Settlement Amount minus the
28 Class Representative Service Awards, Attorneys’ Fees and Costs, Settlement Administration Costs,

1 and the PAGA Settlement Amount). The entire Net Settlement Amount will be paid to all Settlement
2 Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
3 Share of **\$915.58**. JCL Dec., ¶ 6.

4 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
5 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
6 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
7 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
8 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
9 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
10 denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

11 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
12 approval and falls within the range of reasonableness. The average Individual Settlement Payments to
13 the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
14 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs
15 respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

16 **II. FACTS AND PROCEDURE**

17 **A. Overview of the Litigation**

18 Defendant is a trucking contractor for FedEx, Ground, and has operations in multiple states.
19 Plaintiffs at all relevant time periods mentioned herein worked and drove a truck in California, as non-
20 exempt employees, at various times from November of 2016 to October of 2020. Throughout their
21 employment, Plaintiffs were classified as non-exempt employees and were entitled to minimum and
22 regular wages. Additionally, Plaintiffs were subject to Defendant's written policies and procedures.
23 JCL Dec., ¶ 9;

24 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to provide
25 compliant meal and rest periods, failed to pay vacation wages due, failed to furnish accurate itemized
26 wages statements, failed to pay all wages when due, and unlawfully deducted wages. Defendant
27 forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied
28 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,

1 including but not limited to, facially compliant meal and rest period policies, compliant wage
2 statements, and payment of all wages upon separation. JCL Dec., ¶ 9;

3 On July 1, 2020, Plaintiff Mendez served Defendant and the Labor and Workforce Development
4 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
5 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
6 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
7 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
8 2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

9 On September 9, 2020, Plaintiff Mendez filed a class action complaint in the San Joaquin County
10 Superior Court, Case Number STK-CV-UOE-2020-7486. JCL Dec., ¶ 11.

11 On May 18, 2022, Plaintiffs filed a First Amended Complaint. JCL Dec., ¶ 11.

12 On February 8, 2023, Plaintiffs filed a Second Amended Complaint, the operative complaint,
13 against Defendant. The Action alleged ten causes of action against Defendant for: (1) Unfair
14 Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et. seq.*; (2) Failure to Pay Minimum
15 Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Provide Meal Periods in
16 Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (4) Failure to
17 Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC
18 Wage Order; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code
19 § 226; (6) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202; (7) Failure
20 to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (8) Failure to Pay Vacation Wages Due;
21 (9) Unlawful Deductions; and (10) Violations of the Private Attorneys General Act under California
22 Labor Code §§ 2698, *et seq.* (“Class Claims”).

23 The Parties agreed to mediate the Action after engaging in significant written discovery. To
24 prepare for mediation, the Parties agreed to informally produce additional documents and data points
25 subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time
26 data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic
27 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL
28 Dec., ¶ 12.

1 On October 6, 2022, the Parties participated in a full day mediation with Hon. Steven R. Denton,
2 a highly regarded jurist and experienced mediator. After arms-length negotiations and bargaining, the
3 Parties reached an agreement to settle based on Judge Denton's proposal and signed a Memorandum
4 of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
5 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

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

7 Months before filing the Action, Class Counsel began their pre-filing investigation into the
8 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
9 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to his
10 employment, including time and payroll records. At the conclusion of the interviews, Class Counsel
11 determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claim that Defendant
12 failed to, among other things, pay for all time worked, failed to issue accurate itemized wage statements,
13 failed to provide compliant meal and rest periods, and failed to pay all wages when due. JCL Dec., ¶
14 13.

15 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
16 Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to Class
17 Counsel's request, Defendant produced, among other things, the time and payroll records for all of the
18 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
19 policies, and agreements. In total, Defendant produced several pages of pertinent policy documents,
20 time and payroll records for Class Members for Class Counsel to analyze. JCL Dec., ¶ 14.

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

26 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
27 models. Among other things, BCG estimated the amount of unpaid wages, number of workweeks, pay
28 periods, average length of shifts and average number of hours worked per week. BCG also estimated

the amount of unpaid wages due to off-the-clock work, the number of missed, late, or truncated meal and rest periods, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 16.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) conducting interviews with class members; (9) drafting the mediation brief; and (10) 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. JCL Dec., ¶ 17.

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

C. The Parties Settled at Mediation

On October 6, 2022, the Parties conducted a full day of mediation with Hon. Steven R. Denton. Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. At the conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding.

The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 19.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members and Aggrieved Employees

The proposed Settlement Class consists of all truck drivers who are or previously were employed by Defendant and performed work in California between September 9, 2016 and November 9, 2020. The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there were approximately 77 Class Members who worked an estimated 5,594 workweeks through the conclusion of the Class Period. Additionally, at the time of mediation, Plaintiff's expert estimated that there were approximately 41 Aggrieved Employees who worked approximately 1,717 pay periods during the PAGA Period. (JCL Dec., ¶ 21.)

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Class Settlement Amount of \$180,000.00. The Class Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) Individual PAGA Payments; (3) Class Representative Enhancement Payments of \$10,000.00 to Plaintiff Gabriel Mendez, \$5,000.00 to Plaintiff George Gosch, \$5,000.00 to Plaintiff John Dian, and \$5,000.00 to Plaintiff Michael Knighton for their services on behalf of the Settlement Class and, equally important, for a general release of claims; (4) Settlement Administration Costs estimated to be \$4,500.00; (5) LWDA Payment of \$3,750.00; and (6) Attorneys' Fees of \$75,000.00 comprised of attorneys' fees equal to one-third of the Class Settlement Amount currently estimated to be \$60,000.00, and an estimated \$15,000 for actually incurred litigation expenses. See generally Agreement at §I(H).

Subject to the Court approving the Class Representative Enhancement Payments, Settlement Administration Costs, LWDA Payment, and Attorneys' Fees and Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. There is no reversion to Defendant.

///

1 3. The Funding Date

2 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Class Settlement
3 Amount of \$180,000.00 within fourteen (30) calendar days of the Effective Date of the Settlement.
4 Agreement at §III.

5 4. Formula for Calculating Individual Settlement Payments

6 Each Class Member will receive an Individual Settlement Payment. Individual Settlement
7 Payments will be calculated and apportioned from the Net Settlement Amount based on the number of
8 workweeks a Class Member worked in the Class Period, and pay periods worked by the PAGA
9 Settlement Members during the PAGA Period. Agreement at § IV.

10 The Individual Settlement Payment will be reduced by any required deductions for each
11 Class Member as set forth herein, including employee-side tax withholdings or deductions. Twenty
12 percent (20%) of each Class Member's Individual Settlement Payment shall constitute payment in the
13 form of wages and eighty percent (80%) of each Class Member's Individual Settlement Payment shall
14 constitute penalties and interest. The Individual PAGA Payment will not be reduced by any deductions.
15 One hundred percent (100%) of each PAGA Settlement Member's individual payment amount shall
16 constitute penalties. Agreement at §IV.

17 Given that there are approximately 77 Settlement Class Members, *the average gross recovery is*
18 *approximately \$915.58* (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶
19 7.

20 5. Release by Participating Settlement Class Members

21 Upon the Final Approval by the Court of this Settlement Agreement and funding in full of the
22 Gross Settlement Amount by Defendant, all Class Members who do not exclude themselves shall fully
23 release and discharge the Released Parties from any and all Released Class Claims, as defined in the
24 Agreement, for the entire Class Period. Agreement at §X.

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

26 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of
27 California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA
28 Released Claims, as defined in the Agreement, which occurred during the PAGA Period.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$180,000.00 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

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

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

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation with Hon. Steven R. Denton, a highly respected jurist and
12 mediator. Judge Denton managed the Parties’ expectations and provided a useful, neutral analysis of
13 the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF
14 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
15 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
16 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
17 ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
18 negotiations were at an arm’s length, adversarial, and non-collusive. The mediation concluded with a
19 settlement, after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in
20 a Memorandum of Understanding (“MOU”). After reaching an agreement in the principle, the Parties
21 drafted and negotiated a long-form settlement which is the subject of the instant motion. The
22 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
23 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

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

26 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
27 the factual and legal issues in dispute. Overall, Class Counsel thoroughly investigated the claims at
28 issue, including: (1) determining Plaintiffs’ suitability as a putative class representative through

1 interviews, background investigations, and analysis of his employment files; (2) evaluating all of
2 Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought,
3 the nature of the positions, and the type of employer; (4) analyzing the Class's time and payroll records;
4 (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as
5 well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and
6 estimating Defendant's liability for purposes of settlement; (8) interviewing the Class Members; (9)
7 drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class
8 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments
9 to recovery, such as to make an independent assessment of the reasonableness of the terms to which
10 the Parties have agreed. JCL Dec., ¶ 23.

11 Class Counsel only agreed to enter the Settlement following this thorough investigation and
12 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace
13 for similar settlements, and considering the risk of significant delay, uncertainty associated with
14 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
15 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
16 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 25.

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

18 The Gross Settlement Amount of \$180,000.00 is within the range of reasonableness. To
19 determine whether a settlement is fair and reasonable, the court should "consider enough information
20 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
21 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
22 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
23 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
24 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
25 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
26 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
27 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
28 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

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

5 The Gross Settlement Amount of \$180,000.00 is fair and reasonable considering the nature and
6 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
7 mediation, Class Counsel retained BCG to develop an economic damage model measuring Defendant’s
8 liability exposure while accounting for the uncertainties of continued litigation. The model were
9 informed by Class Counsel’s investigation, including the analysis of a significant sample of time and
10 payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA
11 Penalties) ranged between \$776,102 for damages and \$1,191,462 for damages and statutory penalties
12 if successful at trial. Thus, the Gross Settlement Amount of \$180,000.00 represents approximately
13 23.2% of Defendant’s *class-wide* liability exposure for damages, and approximately 15.1% of
14 Defendant’s *class-wide* liability exposure for damages and statutory penalties, as estimated by Class
15 Counsel at the time of mediation. The following summarizes Defendant’s estimated exposure. JCL
16 Dec., ¶ 25.

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

18 One of Plaintiffs’ primary claims in this Action alleges that Defendant’s piece-rate
19 compensation plan, which paid its drivers per-mile, failed to compensate its employees for all hours
20 worked, including non-productive time, in violation of Labor Code Section 226.2. *See Gonzalez v.*
21 *Downtown LA Motors* (2013) 215 Cal.App.4th 36 (establishing that piece-rate employees must be paid
22 the agreed upon rate for each piece plus be separately compensated at, or above, the minimum wage

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

1 for all time during which they are unable to earn piece-rate compensation). Defendant denied liability
2 for the claim and argued that the Class Members received compensation for all time worked, and that
3 if any off-the-clock work was performed, it was de minimus. Plaintiffs estimated that Defendant's
4 exposure for this claim was approximately \$382,118. JCL Dec., ¶ 26.

5 (b) Defendant's Estimated Exposure for Wage Statement Violations

6 Plaintiffs also allege that Defendant issued inaccurate wage statements. Specifically, Plaintiffs
7 alleged that Defendant issued wage statements that failed to include Defendant's correct legal name in
8 violation of Labor Code Section 226(a)(8) and failed to include employees' last four digits of the social
9 security number. *See e.g. Noori v. Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th
10 957, 964-966 (providing serious truncations of the employer's name on issued wage statements can
11 violate Labor Code Section 226(a)(8) where confusion *might* ensue.). Defendant denied liability for
12 the claim and argued that it substantially complied with its obligation to provide its correct legal name
13 on the wage statements issued to its employees. Further, Defendant argued that even if it failed to
14 furnish accurate wage statements, Plaintiffs could not establish the injury requirement on a class-wide
15 basis. *See Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136 (holding that the employee must
16 suffer an injury from allegedly noncompliant wage statements.) Plaintiffs estimated that Defendant's
17 exposure for this claim was approximately \$208,000. JCL Dec., ¶ 27.

18 (c) Defendant's Estimated Exposure for Meal and Rest Period Violations

19 Plaintiffs also allege that Defendant failed to provide compliant meal and rest periods from the
20 start of the Class Period on September 9, 2016, until December 28, 2018. In an order dated December
21 28, 2018, the Federal Motor Carrier Safety Administration (FMCSA) concluded that California meal
22 and rest break rules were preempted by the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31101 *et*
23 *seq.*) ("Preemption Decision"). On June 21, 2022, the Second District Court of Appeal issued its
24 opinion in *Garcia v. Superior Court of Los Angeles County, supra*, addressing whether California meal
25 and rest breaks were preempted by the Motor Carrier Safety Act of 1984. The Court held that the
26 Preemption Decision issued by FMCSA, "does not apply to bar [meal and rest break] claims arising
27 from conduct that occurred prior to the decision, i.e., before December 28, 2018." *Id.* at 69. Stated
28 differently, the language of the Preemption Decision "strongly suggests prospective, not retroactive

1 application.” *Id.* JCL Dec., ¶ 28.

2 Conversely, Defendant denied these claims. As to the meal and rest break claims, Defendant
3 argued that it previously provided breaks to its drivers until the Department of Transportation FMCSA’s
4 Notice of Final Disposition granting an application for exemption for petroleum products drivers on
5 April 9, 2018. Thus, Defendant argued that there was no potential liability for Plaintiff’s meal and rest
6 period violations. Plaintiff’s expert estimated the damages for these claims to be approximately
7 \$393,984. JCL Dec., ¶ 29.

8 (d) Defendant’s Exposure for Waiting Time Penalties

9 Plaintiffs allege that Defendant’s alleged violations resulted in derivative violations of Labor
10 Code sections 203. Class Counsel considered the arguable presence of various penalties and weighed
11 the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs
12 could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section
13 203. Plaintiffs estimated Defendant’s exposure for these claims to be approximately \$207,360. JCL
14 Dec., ¶ 30.

15 (e) Defendant’s PAGA Exposure

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

24 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
25 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
26 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
27 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
28 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employees suffered a violation

1 for each pay period the employee worked. Again, Defendant raised several defenses that presented
2 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Defendant asserted that its
3 employment practices complied with all applicable Labor Laws. JCL Dec., ¶ 32.

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

10 The proposed Settlement allocates \$5,000 to satisfy the PAGA claims. This amount represents
11 2.78% of the Gross Settlement Amount. This is well within the range of approved PAGA Payments.
12 *See, e.g., Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation);
13 *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation
14 in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving
15 \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010
16 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands,*
17 *Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)
18 JCL Dec., ¶ 33.

19 (f) Inherent Risks of Continued Litigation Support Preliminary Approval.

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

25 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
26 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
27 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
28 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., ¶ 34.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates

extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 36.

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.) 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

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.

1 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
2 and scope of the Released Claims. See generally Agreement at § III(L). This method was negotiated
3 by the Parties to ensure delivering the most reasonable method of notice to the Class Members while
4 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 37.

5 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
6 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
7 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
8 of the options open to dissenting class members.”).) JCL Dec., ¶ 38.

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

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

21 The Settlement provides for a Class Representative Enhancement Payment of \$10,000 for
22 Plaintiff Gabriel Mendez and \$5,000 to Plaintiffs George Gosch, John Dian, and Michael Knighton.
23 The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
24 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
25 the status of his case and the strategies for prosecuting the claims, responding to Defendant’s written
26 discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate
27 relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising
28 out of his employment. JCL Dec., ¶ 39.

1 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
2 Representative Enhancement Payment once preliminary approval of the Settlement is granted.
3 Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the
4 negotiated Class Representative Enhancement Payment. JCL Dec., ¶ 40.

5 **D. The Court Should Preliminarily Approve Class Counsel's Class Counsel Award**

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

16 Class Counsel took this matter on a contingency fee basis and invested significant time and
17 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
18 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
19 Members. Considering the positive outcome for the Class Members, and in light of the supporting
20 authority, the proposed award of Class Counsel Award is fair and reasonable. JCL Dec., ¶ 41.

21 Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Award once
22 preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing
23 is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 42.

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

25 For Settlement, Plaintiffs contends, and Defendant does not dispute, that provisional certification
26 of the Class is appropriate. JCL Dec., ¶ 43.

27 1. The Standard for Class Certification

28 Class actions are statutorily authorized "when the question is one of common or general interest,

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

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

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

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

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

23 Because all Class Members are Defendant’s current and former employees, the class is readily
24 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 47.

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

claims of the Settlement Class. JCL Dec., ¶ 45.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 46.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 48-55; Declaration of Shani O. Zakay at ¶ 3.

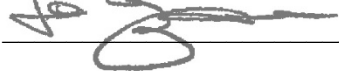
A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 47.

IV. CONCLUSION

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

Dated: March 21, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.