

JEAN-CLAUDE LAPUYADE (SBN 248676)

[JLAPUYADE@JCL-LAWFIRM.COM](mailto:JLAPUYADE@JCL-LAWFIRM.COM)

**JCL LAW FIRM, APC**

3990 OLD TOWN AVENUE, SUITE C204

SAN DIEGO, CA 92110

TEL: 619-599-8292

FAX: 619-599-8291

ATTORNEYS FOR PLAINTIFF

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN DIEGO**

JACQUELINE BALTAZAR an individual,  
on behalf of herself, and on behalf of all  
persons similarly situated,

Plaintiffs,

vs.

WESTGATE HOTEL COMPANY, a  
Corporation; SINCLAIR SERVICES  
COMPANY, a Corporation; GRAND  
AMERICAN HOTELS & RESORTS, INC.;  
and DOES 1 through 30, Inclusive;

Defendants.

Case No. 37-2020-00005102

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

Date: 04/02/2021

Time: 1:30 p.m.

Judge: Hon. Timothy Taylor

Dept.: 72

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. FACTS AND PROCEDURE .....3

    A. Overview of the Litigation .....3

    B. Class Counsel Thoroughly Investigated the Factual and Legal Issues .....4

    C. The Parties Settled at Mediation .....6

    D. The Proposed Settlement Fully Resolves Plaintiff’s Claims .....7

        1. The Composition of the Settlement Class Members .....7

        2. The Settlement Consideration .....7

        3. Formula for Calculating Individual Settlement Payments .....8

        4. Release by Participating Settlement Class Members .....9

        5. Release by the LWDA and the Aggrieved Employees .....9

III. ARGUMENT .....9

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

        1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel .....10

        2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness .....11

3. The Settlement Falls Within the Recognized Range of Reasonableness .....12

    a. The Total Settlement Amount Meets the Recognized Range of Reasonableness .....12

        (1) Estimated Damages for Piece-Rate and Derivative Claims .....13

        (2) Estimated Damages for Meal Period Violations .....14

        (3) Estimated Damages for Rest Period Violations .....15

        (4) Defendants’ estimated Exposure for Unreimbursed Business Expenses .....16

        (5) Defendants’ Exposure for Miscalculated Sick Pay .....16

        (6) Defendants’ Exposure for Wage Statement Violations .....17

    b. Inherent Risks of Continued Litigation Support Preliminary Approval .....18

B. The Proposed Notice Informs the Class about the Case and Settlement .....20

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

D. The Court Should Preliminarily Approve the Negotiated Class Counsel Award .....22

E. California Law Authorizes Provisional Certification for Settlement Purposes .....23

    1. The California Standard for Class Certification .....23

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

IV. CONCLUSION .....25

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.....                                              | 10       |
| 5  | <i>Acheson v. Express, LLC</i>                                                     |          |
| 6  | No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) .....                | 22       |
| 7  | <i>Aguiar v. Cingular Wireless, LLC</i>                                            |          |
| 8  | No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....                           | 22       |
| 9  | <i>Ali v. U.S.A. Cab Ltd.</i>                                                      |          |
| 10 | (2009) 176 Cal.App.4th 1333, 1341.....                                             | 19       |
| 11 | <i>Almanza v. The Express Group Inc.,</i>                                          |          |
| 12 | San Bernardino Superior Court Case No. CIVDS1722542.....                           | 8        |
| 13 | <i>Alonzo v. Maximus, Inc.</i>                                                     |          |
| 14 | 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011).....                              | 17       |
| 15 | <i>Alvarez v. IBP, Inc.</i>                                                        |          |
| 16 | 339 F.3d 894 (9th Cir. 2003).....                                                  | 13       |
| 17 | <i>Apple Computer, Inc. Derivative Litig.,</i>                                     |          |
| 18 | No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)..... | 10       |
| 19 | <i>Baker v. LA. Fitness Int'l, LLC</i>                                             |          |
| 20 | No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....                           | 21       |
| 21 | <i>Ballaris v. Wacker Siltronic Corp.</i>                                          |          |
| 22 | (9 <sup>th</sup> Cir. 2004) 370 F.3d 901, 91.....                                  | 13       |
| 23 | <i>Barrett v. Doyon Security Services, LLC,</i>                                    |          |
| 24 | Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....      | 22       |
| 25 | <i>Bejarano v. Amerisave Mortgage Corp.,</i>                                       |          |
| 26 | No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....                         | 22       |
| 27 | <i>Blue v. Codwell Banker Residential Brokerage Co.</i>                            |          |
| 28 | No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....                            | 21       |
|    | <i>Brinker</i>                                                                     |          |
|    | 53 Cal. 4th at 1021-1022.....                                                      | 19-24    |
|    | <i>Brown v. Fed Express Corp.</i>                                                  |          |
|    | (C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....                                       | 19       |
|    | <i>Buckmire v. Jo-Ann Stores, Inc.,</i>                                            |          |
|    | No. BC394795 (L.A. County Super. Ct. June 11, 2010).....                           | 21       |
|    | <i>Bufile v. Dollar Financial Group, Inc.</i>                                      |          |
|    | (2008) 162 Cal.App.4th 1193, 1207.....                                             | 23       |
|    | <i>Cacho v. Eurostar, Inc.</i>                                                     |          |
|    | (2019) 43 Cal.App.5th 885.....                                                     | 18       |
|    | <i>Carbajal v. Sally Beauty Supply LLC</i>                                         |          |
|    | No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....                    | 22       |
|    | <i>Cardenas v. McLane Foodservice, Inc.</i>                                        |          |
|    | 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....                             | 17       |
|    | <i>Campbell v. Best Buy Stores, L.P.,</i>                                          |          |
|    | (C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....                                    | 19       |
|    | <i>Cart v. Super. Ct.</i>                                                          |          |
|    | (1975) 50 Cal.App.3d 960, 972.....                                                 | 20       |
|    | <i>Cellphone Termination Fee Cases</i>                                             |          |
|    | 180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010).....                               | 9-10, 21 |

|    |                                                               |      |
|----|---------------------------------------------------------------|------|
| 1  | <i>Chance v. Super. Ct.</i>                                   |      |
| 2  | (1962) 58 Cal.2d 275, 290.....                                | 20   |
| 3  | <i>Chavez v. Netflix, Inc.</i>                                |      |
| 4  | (2008) 162 Cal.App.4th 43, 66 n.11.....                       | 22   |
| 5  | <i>Clark v. American Residential Services LLC</i>             |      |
| 6  | (2009) 175 Cal.App.4th 785.....                               | 21   |
| 7  | <i>Cochran v. Schwan's Home Serv.</i>                         |      |
| 8  | 228 Cal. App. 4 <sup>th</sup> 1137, 1144 (2014).....          | 16   |
| 9  | <i>Coleman v. Estes Express Lines, Inc.</i>                   |      |
| 10 | No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013).....       | 21   |
| 11 | <i>Contreras v. United Food Group, LLC</i>                    |      |
| 12 | Case No. BC389253 (L.A. County Super. Ct.).....               | 22   |
| 13 | <i>Crawford et al. v. Outlook Amusements, Inc.,</i>           |      |
| 14 | Los Angeles Superior Court Case No. BC617160.....             | 8    |
| 15 | <i>D'Amato v. Deutsche Bank</i>                               |      |
| 16 | (2d. Cir. 2001) 236 F.3d 78, 85.....                          | 10   |
| 17 | <i>Donohue v. AMN Services, LLC</i>                           |      |
| 18 | (2018) 29 Cal.App.5 <sup>th</sup> 1068.....                   | 18   |
| 19 | <i>Dunk v. Ford Motor Co.</i>                                 |      |
| 20 | (1996) 48 Cal.App.4th 1794, 1802.....                         | 9-10 |
| 21 | <i>Duran v. U.S. Bank National Association</i>                |      |
| 22 | (2014) 59 Cal.4th 1, 31.....                                  | 18   |
| 23 | <i>Ethridge v. Universal Health Services, Inc.</i>            |      |
| 24 | No. BC391958 (L.A. County Super. Ct. May 27, 2011).....       | 22   |
| 25 | <i>Fleming v. Covidien</i>                                    |      |
| 26 | 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....            | 17   |
| 27 | <i>Fontana v. Elrod</i>                                       |      |
| 28 | (7 <sup>th</sup> Cir. 1987) 826 F.2d 729, 732.....            | 20   |
| 29 | <i>Frank v. Eastman Kodak Co.</i>                             |      |
| 30 | (W.D.N.Y. 2005) 228 FRD. 174, 186.....                        | 12   |
| 31 | <i>Guerrero v. R.R. Donnelley &amp; Sons Co.</i>              |      |
| 32 | No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....     | 22   |
| 33 | <i>Global Crossing Sec. and ERISA Litig.</i>                  |      |
| 34 | (S.D.N.Y 2004) 225 F.R.D. 436, 460.....                       | 12   |
| 35 | <i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i> |      |
| 36 | No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....      | 22   |
| 37 | <i>Hill v. Sunglass Hut Int'l, Inc.,</i>                      |      |
| 38 | No. BC422934 (L.A. County Super. Ct. July 2, 2012).....       | 22   |
| 39 | <i>Howard v. CVS Caremark Corp.,</i>                          |      |
| 40 | 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014).....    | 17   |
| 41 | <i>IKON Office Solutions, Inc Sec Litig.</i>                  |      |
| 42 | (E.D. Pa. 2000) 194 F.R.D. 166, 184.....                      | 12   |
| 43 | <i>Jimenez v. Allstate Ins. Co.,</i>                          |      |
| 44 | 765 F.3d 1161, 1165 (9th Cir. 2014) .....                     | 13   |
| 45 | <i>Kabamba v. Victoria's Secret Stores. LLC</i>               |      |
| 46 | No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....      | 22   |
| 47 | <i>Kass v. Young</i>                                          |      |
| 48 | (1977) 67 Cal.App.3d 100, 106).....                           | 20   |
| 49 | <i>Kisliuk v. ADT Security Services, Inc.,</i>                |      |

|    |                                                                          |        |
|----|--------------------------------------------------------------------------|--------|
| 1  | No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....                   | 22     |
| 2  | <i>Lampe v. Queen of the Valley Medical Center</i>                       |        |
| 3  | 19 Cal.App.5th 832, 851 (2018).....                                      | 14     |
| 4  | <i>Lee v. Dynamex, Inc.</i>                                              |        |
| 5  | (2008) 166 Cal.App.4th 1325, 1332.....                                   | 23-24  |
| 6  | <i>Leverage v. Traeger Pellet Grills, LLC</i>                            |        |
| 7  | (N.D. Cal. 2017) 2017 WL 2797811, at *7.....                             | 18     |
| 8  | <i>Macaspac v. San Antonio Regional Hospital</i>                         |        |
| 9  | San Bernardino Superior Court Case No. CIVDS1512625.....                 | 8      |
| 10 | <i>Magee v. American Residential Services, LLC</i>                       |        |
| 11 | No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....                   | 22     |
| 12 | <i>Maldonado v. Epsilon Plastics, Inc.</i>                               |        |
| 13 | (2018) 22 Cal.App.5th 1308.....                                          | 17     |
| 14 | <i>Mares v. BFS Retail &amp; Commercial Operations, LLC</i>              |        |
| 15 | No. BC375967 (L.A. County Super. Ct. June 24, 2010).....                 | 22     |
| 16 | <i>Michael Milken and Assoc. Sec. Litig.</i>                             |        |
| 17 | (S.D.N.Y. 1993) 150 F.R.D. 57, 66).....                                  | 12     |
| 18 | <i>Misra v. Decision One Mortg. Co.</i>                                  |        |
| 19 | (C.D. Cal. 2009) 2009 WL 4581276, at *7.....                             | 18     |
| 20 | <i>Morales v. BCBG Maxaria Int’l Holdings, Inc.,</i>                     |        |
| 21 | No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....               | 22     |
| 22 | <i>Munoz v. BCI Coca-Cola Bottling Co.</i>                               |        |
| 23 | (2010) 186 Cal.App.4th 399, 409.....                                     | 12     |
| 24 | <i>Naranjo v. Spectrum Security Services, Inc.</i>                       |        |
| 25 | 40 Cal.App.5th 444 (2019).....                                           | 17     |
| 26 | <i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i>                      |        |
| 27 | (C.D. Cal. 2004) 221 F.R.D. 523, 527.....                                | 12, 20 |
| 28 | <i>Nevarez v. Trader Joe’s Co.,</i>                                      |        |
|    | No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....                  | 22     |
|    | <i>Newman v. Stein</i>                                                   |        |
|    | (2d. Cir. 2002) 464 F.2d 689, 693.....                                   | 12     |
|    | <i>Nordstrom Com. Cases</i>                                              |        |
|    | 186 Cal.App.4th 576, 589 (2010).....                                     | 17     |
|    | <i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i> |        |
|    | (1994) 27 Cal.App.4th 1085, 1089-90.....                                 | 9      |
|    | <i>Nvidia Derivs. Litig.</i>                                             |        |
|    | (N.D. Cal. 2008) 2008 WL 5382544, at *3.....                             | 19     |
|    | <i>O’Conner v. Uber Technologies, Inc.</i>                               |        |
|    | (9th Cir. 2018) 904 F.3d 1087.....                                       | 18     |
|    | <i>Officers for Justice v. Civil Serv. Comm’n</i>                        |        |
|    | (9th Cir. 1982) 688 F.2d 615, 625.....                                   | 9, 12  |
|    | <i>Omnivision Tech, Inc.</i>                                             |        |
|    | (N.D. Cal. 2008) 559 F.Supp.2d 1036.....                                 | 12     |
|    | <i>Ordonez v. Radio Shack, Inc.</i>                                      |        |
|    | (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....                    | 15     |
|    | <i>Ordaz v. Rose Hills Mortuary, LP.,</i>                                |        |
|    | No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....                  | 22     |
|    | <i>Rebney v. Wells Fargo Bank</i>                                        |        |
|    | (1990) 220 Cal.App.3d 1117, 1140, opinion modified (June 18, 1990).....  | 19     |

|    |                                                                   |        |
|----|-------------------------------------------------------------------|--------|
| 1  | <i>Rodriguez v. West Publishing Corp.</i>                         |        |
| 2  | (9 <sup>th</sup> Cir. 2009) 563 F.3d 948, 958.....                | 21     |
| 3  | <i>Sav-On Drug Stores, Inc.</i>                                   |        |
| 4  | (2014) 34 Cal.4th 319, 326.....                                   | 23     |
| 5  | <i>Shachno et al. v. KT Hotels, LLC</i>                           |        |
| 6  | San Diego Superior Court Case No. 37-2018-00043601.....           | 8, 11  |
| 7  | <i>Sheldon v. AHMC Monterey Park Hospital LP</i>                  |        |
| 8  | No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....          | 22     |
| 9  | <i>Silva v. Catholic Moray Services, Inc.,</i>                    |        |
| 10 | No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....           | 22     |
| 11 | <i>Stambaugh v. Super. Ct</i>                                     |        |
| 12 | (1976) 62 Cal.App.3d 231, 236.....                                | 10     |
| 13 | <i>State v. Levi Strauss &amp; Co.</i>                            |        |
| 14 | (1986) 41 Cal.3d 460, 482.....                                    | 10, 21 |
| 15 | <i>Stovall-Gusman v. W.W. Granger, Inc.</i>                       |        |
| 16 | (N.D. Cal. 2015) 2015 WL 3776765 at * 4.....                      | 18     |
| 17 | <i>Taco Bell Wage &amp; Hour Actions</i>                          |        |
| 18 | 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016)..... | 17     |
| 19 | <i>Tien v. Tenet Healthcare Corp.</i>                             |        |
| 20 | (2012) 209 Cal.App.4th 1077, 1088.....                            | 19     |
| 21 | <i>Trotsky v. Los Angeles Fed Savings &amp; Loan Assn.</i>        |        |
| 22 | (1975) 48 Cal. App. 3d 143, 151-52.....                           | 20     |
| 23 | <i>Viceral v. Mistras Grp., Inc.</i>                              |        |
| 24 | (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7.....                   | 18     |
| 25 | <i>Villa v. United Site Servs. of California, Inc.</i>            |        |
| 26 | (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....             | 15     |
| 27 | <i>Weisbarth v. Banc West Investment Services, Inc,</i>           |        |
| 28 | No. BC422202 (L.A. County Super. Ct. May 24, 2013).....           | 22     |
| 29 | <i>Zamora v. Balboa Life &amp; Casualty LLC</i>                   |        |
| 30 | No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....            | 22     |

## STATUTES

|                               |       |
|-------------------------------|-------|
| Cal.Civ.Proc. Code § 382..... | 23-24 |
|-------------------------------|-------|

## SECONDARY SOURCES

|                                                                                                 |    |
|-------------------------------------------------------------------------------------------------|----|
| Conte & Newberg, <i>Newberg on Class Actions</i> , §§11.26, 11.51 (4th ed. 2002)                |    |
| .....                                                                                           | 21 |
| Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,            |    |
| 53 UCLA L. Rev. 1303 (2006)                                                                     |    |
| .....                                                                                           | 23 |
| Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986) |    |
| .....                                                                                           | 20 |

I. INTRODUCTION

Plaintiff JACQUELINE BALTAZAR (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for approximately 605 members of the Settlement Class and 299 Aggrieved Employees. 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 defendants WESTGATE HOTEL COMPANY (“WHC”), SINCLAIR SERVICES COMPANY (“SSC”) and GRAND AMERICA HOTELS & RESORTS, INC. (“GAHR”) (WHC, SSC, and GAHR collectively “Defendants”) current and former non-exempt employees employed in California at the Westgate Hotel in San Diego (“Settlement Class”) between January 27, 2016 and February 14, 2020 (“Settlement Class Period”). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G) and (EE).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendants’ current and former non-exempt employees employed in California at the Westgate Hotel in San Diego (“Aggrieved Employees”) between January 17, 2019 and February 14, 2021 (“PAGA Period”). Agreement at §I(B).

3. The “**Total Settlement Amount**” is Seven Hundred and Forty Thousand Dollars (\$740,000). Defendants are each jointly and severally liable for the payment of the Total Settlement Amount. Agreement at §I(FF). The Total Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$7,500 to plaintiff Baltazar for her services on behalf of the Settlement Class, and for agreeing to a broad release. Agreement at §III(M)(2).

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 \$246,666.66 **and** litigation costs and expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §III(M)(3).

c. A “**PAGA Settlement**” of \$20,000 shall be allocated from the Total Settlement

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

Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA Payment”) the California Labor and Workforce Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to members of the Aggrieved Employees. Agreement at §III(M)(4).

d. And “**Settlement Administration Costs**” not to exceed \$13,000 payable to the proposed Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §III(M)(5).

3. The “**Net Settlement Fund**” of approximately \$437,833.34 (Total Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) which will be allocated to all participating members of the Settlement Class on a pro-rata basis according to the number of Workweeks each Settlement Class member performed during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$723.69**. Agreement at §III(M)(1); JCL Dec., ¶ 5.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

## II. FACTS AND PROCEDURE

### A. Overview of the Litigation

Defendants own, operate and manage “The Westgate Hotel®” a 223-room, luxury hotel located in Downtown, San Diego. Defendants employed Plaintiff as an hourly, non-exempt employee at the Westgate Hotel in San Diego in the Food and Beverage Department between September 3, 2014 and April 22, 2016 and again between December 20, 2018 and December 2, 2019. As a non-exempt employee working in the Food and Beverage department, Plaintiff regularly worked shifts at the pool bar, delivering room service, at banquets, in the Plaza Bar and in the Westgate Room restaurant. At all times during her employment, Plaintiff earned an hourly wage plus gratuities, and was entitled to legally complaint meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, the “Team Member Handbook – The Westgate Hotel.” JCL Dec., ¶ 7.

Generally, Plaintiff claims that Defendants failed to pay her for all hours worked, failed to provide complaint meal and rest periods, failed to reimburse mandatory business expenses and improperly pooled gratuities. Defendants forcefully deny liability for each of Plaintiff’s claims. Further, 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 complaint meal and rest period polices, written policies making the use of personal cell phones optional, and never required any member of the Settlement Class to don or doff a uniform while off-the-clock. JCL Dec., ¶ 8.

On January 17, 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”). JCL Dec., ¶ 9.

On January 27, 2020, Plaintiff filed a class action complaint in the San Diego 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 pay gratuities in violation of California Labor Code section 351; (5) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (7) failure to reimburse employees for required business expenses in violation of California Labor Code sections 2802; (8) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (9) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203. JCL Dec., ¶ 10.

Subsequently, on May 28, 2020, Plaintiff filed the operative First Amended Complaint alleging a tenth cause of action for violations of the California Labor Code Private Attorney General Act (“PAGA”). Thereafter, Defendants answered the First Amended Complaint. JCL Dec., ¶ 11.

Plaintiff commenced written discovery in May 2020. Prior to answering Plaintiff’s written discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties stipulated to stay formal discovery. 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. JCL Dec., ¶ 12.

On December 9, 2020 the Parties participated in a full day mediation with (Ret.) Hon. Steven Denton. After arms-length negotiations and bargaining, the parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

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

In October 2019, 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 nearly 100 pages of documents related to her employment for Defendants, including portions of Defendants’ handbooks, compensation policies and time and payroll

1 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints  
2 justified further inquiry. JCL Dec., ¶ 14.

3 Next, in November 2019 Class Counsel requested Plaintiff's employee file from Defendants. In  
4 response, Defendants produced hundreds of pages of documents, including but not limited, a copies of  
5 Plaintiff's hiring documents, payroll and time records, performance reviews and separation documents.  
6 Class Counsel reviewed and analyzed the documents and determined the documents substantiated  
7 Plaintiff's claim that Defendants withheld mandatory service charges from its service employees and  
8 required their non-exempt employees to don and doff their uniforms while off the clock. Shortly  
9 thereafter, Class Counsel summarized the known factual and legal issues in the PAGA Notice addressed  
10 to the LWDA. Several weeks later, Class Counsel filed this class action in the State Court Class Action.  
11 JCL Dec., ¶ 15.

12 Additionally, during the meetings with Class Counsel, Plaintiff provided the names and contact  
13 information for several members of the Settlement Class. After filing this action, Class Counsel  
14 interviewed those members of the Settlement Class to further investigate Plaintiff's allegations and  
15 those made on behalf of the Settlement Class. JCL Dec., ¶ 16.

16 After filing the First Amended Complaint, Plaintiff propounded written discovery. Prior to  
17 answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare for  
18 mediation, Class Counsel requested a number of documents and data points to further evaluate  
19 Plaintiff's claims and Defendants' liability exposure to the Settlement Class members. In response to  
20 Class Counsel's request, Defendants produced the time and payroll records for approximately 10% of  
21 the Settlement Class members, aggregate workweek and pay period data for 100% of the Settlement  
22 Class, and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal  
23 and rest period policies. Additionally, Defendants produced the standard form catering contract and  
24 data detailing the total amount of catering service charges collected and disbursed the Settlement Class  
25 during the Class Period. In total, Defendants produced approximately 3,200 pages containing nearly  
26 one-half million unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 17.

27 Class Counsel then retained the statisticians and economists at Berger Consulting Group  
28 ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides data

analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendants' time and payroll data. JCL Dec., ¶ 18.

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

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

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's 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' time and payroll records; (5) analyzing Defendants' 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 Defendants' 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. JCL Dec., ¶ 21.

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

On December 9, 2020, the Parties agreed to conduct a full day of mediation with (Ret.) Steven

Denton, Esq., a highly regarded mediator and former San Diego County Superior Court Judge. Hon. Denton 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 Denton's assistance. Namely, the parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After nearly eight hours arm's length and adversarial negotiations, the mediation nearly concluded without a settlement. However, at the conclusion of the mediation, Judge Denton 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. JCL Dec., ¶ 22.

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

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all Defendants' current and former non-exempt employees employed in California at the Westgate Hotel in San Diego between January 27, 2016 and February 14, 2020. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G) and (EE). There are approximately 605 members of the Settlement Class that worked an estimated 176,940 work shifts, 38,984 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 \$740,000. The Total Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$7,500 to Plaintiff for her services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$20,000; (4) Settlement Administration costs estimated at \$13,000, (5) Class Counsel Award in the amount of \$261,666.66, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be at least \$246,666.66 and an estimated \$15,000 for actually incurred litigation expenses. Agreement at §III(M).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award,

PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at §III(M)(1). There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at §III(A)(1).

3. Formula for Calculating Individual Settlement Payments

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

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

Given that there are approximately 605 Settlement Class Members, the average gross recovery is approximately \$723.69 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

¶ 4. This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The 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 (those that were asserted in the Action, or could have been asserted in the Action, based on the facts, claims and theories plead in the operative complaint) that accrued during the Class Period. Agreement at §§I(Y) 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 the Released Parties from any all claims or causes of action **for civil penalties** arising under PAGA based on the facts and allegations contained in either the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period. Agreement at §§I(Z) 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 \$740,000 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) In California, 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 California 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) (“Newberg”).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.*

(1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

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

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

The Parties participated in mediation the highly respected mediator and former San Diego Superior Court judge (Ret.) Hon. Steven Denton. Judge Denton managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-

collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session nearly concluded without a settlement. The matter resolved only when Judge Denton issued a mediator's proposal that the Parties accepted. Judge Denton only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 24.

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

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to formal and informal discovery, witness interview, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed to Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. For instance, Class Counsel reviewed the settlement in *Shachno v. KT Hotels, LLC dba Pendry Hotel San Diego*, San Diego Superior Court Case Number 37-2018-0043601-CU-OE-CTL, where the Court approved a \$14.26 workweek value in a similar wage and hour class action. Similarly, in *Guerrero v. Estancia Hotel Operations, LLC dba Estancia Hotel La Jolla*, San Diego Superior Court Case Number 37-2019-00028963-CU-OE-CTL, the court approved a settlement with a pay period value of \$23.36 in a PAGA only action arising out of similar Labor Code violations. JCL Dec., ¶ 22.

Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and in light of the risk of significant delay, uncertainty associated with litigation,

and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

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

The Total Settlement Amount of \$740,000 is well within the range of reasonable for preliminary approval. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.<sup>2</sup> Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

**a. The Total Settlement Amount Meets the Recognized Range of Reasonableness.**

The Total Settlement Amount of \$740,000 is fair and reasonable in light of the nature and

---

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

magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop varied economic damages models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for the Settlement Class ranged between approximately \$2.5 million ("Conservative Model") and \$8.3 million ("Aggressive Model") if successful at trial. This range 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 \$740,000 represents approximately between 8% and 30% of Defendants' liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 26.

(1) Estimated Damages for Off-the-Clock Work – Donning and Doffing

Plaintiff claims that Defendants failed to pay wages the Settlement Class Members and the Aggrieved Employees for time spent donning and doffing their uniforms at the beginning and end of their shifts. (*Ballaris v. Wacker Siltronic Corp.* (9<sup>th</sup> Cir. 2004) 370 F.3d 901, 910 ("In *Alvarez v. IBP, Inc.*, 339 F.3d 894 (9th Cir. 2003)], we held that donning and doffing of all protective gear was compensable worktime."); *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014), cert. denied, 135 S. Ct. 2835, 192 L. Ed. 2d 886 (2015) ("[A] plaintiff may establish liability for an off-the-clock claim by proving that (1) he performed work for which he did not receive compensation; (2) that defendants knew or should have known that plaintiff did so; but that (3) the defendants stood idly by.") (internal quotation marks omitted).

Plaintiff's theory of liability is that Defendants knew or should have known that their employees were donning and doffing their uniforms off the clock, but nonetheless stood idly by and failed to compensate Plaintiff, the Class Members and the Aggrieved Employees for this time. Defendants on the other hand assert that they never required, knew or permitted their employees to work while off the clock and maintained written policies prohibited working off-the-clock. Moreover, Defendants assert that their employees were allowed to take uniforms home and allowed to report in full uniform. Thus,

1 Defendants argued that individualized issued predominated the claim making certification unlikely.  
2 JCL Dec., ¶ 27.

3 Notwithstanding Defendants' arguments, Plaintiff perceived the donning and doffing claim as  
4 the strongest claim in the Action. Plaintiff estimated the damages for unpaid wages, penalties and  
5 interest at approximately arising from the donning and doffing claim at approximately \$2.5 million.  
6 JCL Dec., ¶ 28.

7 (2) Estimated Damages for Meal Period Violations

8 Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically,  
9 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the Settlement Class  
10 Members were not able to take timely and duty-free meal periods. Labor Code 512 requires employers  
11 to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first  
12 five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to  
13 receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512,  
14 an employer may not employ an employee for a work period of more than ten (10) hours, without providing  
15 the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal  
16 period may not be waived if the total hours worked is more than twelve (12) hours. California Lab. Code §  
17 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in  
18 accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer  
19 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each  
20 workday that the meal or rest or recovery period is not provided."

21 Defendants argued that they fully complied with California meal period laws and maintained legally  
22 compliant policies and practices. Courts have found that where an employer's meal period policies are  
23 compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g.*  
24 *Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only  
25 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not  
26 certifiable because individualized issues existed as to the reasons for the late meal periods). JCL Dec., ¶ 29.

27 Defendants also argued that they regularly paid meal period premium when missed, late or truncated  
28 meal periods were reported. As evidence, Defendants produced evidence establishing that they actually

1 paid in excess of \$120,000 for meal period premiums during the Class Period. Further, Defendants argued  
2 that many of the Settlement Class members executed valid First Meal Period Waiver or Second Meal  
3 Period Waiver. Again, if successful, Defendants availed themselves to a complete defense of  
4 Plaintiff's meal period claim. Plaintiff estimated the range of outcomes for this claim ranged between  
5 \$0 and approximately \$800,000. JCL Dec., ¶ 30.

6 (3) Estimated Damages for Rest Period Violations

7 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff  
8 alleged that as a result of their rigorous work schedule they were not able to take timely and duty-free rest  
9 periods. WC Wage Orders 5-2001 and 7-20017 provide that "[a]uthorized rest period times shall be counted  
10 as hours worked for which there shall be no deduction from wages." Lab. Code § 226.7(c) provides that "if  
11 an employer fails to provide an employee a meal or rest or recovery period in 13 accordance with a state  
12 law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee  
13 one additional hour of pay at the employee's regular rate of compensation for each workday that the meal  
14 or rest or recovery period is not provided."

15 Again, Defendants denied liability and asserted that they maintained legally compliant rest period  
16 policies and practices at all time throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary  
17 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on  
18 Class Member testimony, making it a riskier claim at class certification and liability stages. Defendants  
19 likely would have argued that only a small number of Class Members actually missed their rest breaks.  
20 Certification likely would have required depositions of Class Members who provided declarations, and  
21 Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or rest  
22 breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL  
23 210223, at \*11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant  
24 may have an illegal, written rest break policy is insufficient for this Court to find that common issues  
25 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550,  
26 at \*8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform  
27 practices."). Accordingly, the rest break claim was heavily discounted in Plaintiff's valuation of the case.  
28 this claim and ranged between \$0 and \$900,000. JCL Dec., ¶ 31.

(4) Defendants' Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendants required the Settlement Class Members to use their personal cell phone to obtain and view work schedules. California employers who require employees to use a personal cellular device for work purposes must reimburse the employee for the cost incurred in furnishing the device, including voice and data service. (See Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...")

Under Section 2802, when use of a personal electronic device is "mandatory," reimbursement is "always required." (*Cochran v. Schwan's Home Serv.*, 228 Cal. App. 4<sup>th</sup> 1137, 1144 (2014)). Absent adequate reimbursement, "the employer would receive a windfall because it would be passing its operating expenses onto the employee." (*Id.*). To comply with the statute, "the employer must pay some reasonable percentage of the employee's cell phone bill." (*Id.*). "Because of the difference in cell phone plans and work-related scenarios, the calculation for reimbursement must be left to the trial court and parties in each particular case." (*Id.*)

Again, Defendants vigorously denied any liability for this claim. Defendants argued that any cell phone use was voluntary, never mandatory, and contrary to written policies. Defendants also offered evidence that work schedules were regularly posted at the Westgate Hotel where copies were made available their employees to take home. This claim was also heavily discounted based on Defendants' defenses. Plaintiff estimated Defendants' exposure for this claim ranged between \$0 and \$650,000. JCL Dec., ¶ 32

(5) 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 that meal and rest period violations do not entitled 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 nearly \$2 million 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. JCL Dec., ¶ 33.

(6) 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 \$1,650,000. JCL Dec., ¶ 34.

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 the 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. JCL Dec., ¶ 34.

Accordingly, the Gross Settlement Fund of \$740,000 represents between **8% and 30%** of the full verdict value of the claims being released. JCL Dec., ¶ 35. This is well within the bounds of reasonableness. (See *Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at \*3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at \*7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at \* 4 (Approving California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the "range of reasonableness." ).)

**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 settlement. JCL Dec., ¶ 36.

“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 are complex and expensive, as it often necessitates

extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. JCL Dec., ¶¶ 36-37. “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.)

In this matter, Class Counsel negotiated a Total Settlement Amount of \$740,000 that is roughly between 8% and 30% Defendants’ maximum liability exposure. 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., ¶ 38.

**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.)<sup>3</sup>

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

---

<sup>3</sup> 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* (7<sup>th</sup> Cir. 1987) 826 F.2d 729, 732.

information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(L). 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. JCL Dec., ¶¶39-40.

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.”).)

**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.* (9<sup>th</sup> 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 605 members of the Settlement Class will share in the estimated \$437,833.34 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 \$7,500<sup>4</sup> for

---

<sup>4</sup> The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding

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, and agreeing to provide Defendants a general release of all claims arising out of their employment. JCL Dec., ¶ 41.

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. JCL Dec., ¶ 42.

#### **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.");

\$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

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(M)(3). 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. JCL Dec., ¶ 43.

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

**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. JCL Dec., ¶ 45.

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

///

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

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

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

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

Generally, the proposed Settlement Class consists of all of Defendants’ current and former California employees during the Class Period. Defendants’ records show that the Settlement Class Members consists of approximately 490 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Settlement Class Members are Defendants’ current and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 46.

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

Plaintiff’s 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, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 48.

Additionally, Plaintiff is represented by competent Class Counsel who has 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 he is well qualified to represent the interests of this Class. JCL Dec., ¶¶ 50-57

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Settlement Class Member's claim, Class Settlement 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., ¶ 49.

#### 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 3, 2021

**JCL LAW FIRM, APC**

By:   
Jean-Claude Lapuyade, Esq.