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situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE COUNTY – CIVIL COMPLEX CENTER**

In re WATERMARK WAGE AND HOUR
CASES

Coordination Proceedings Special Title
(C.R.C. Rule 3.550)

Included Actions:

*Daniel Carillo-Salazar v. Watermark
Services IV, LLC, et al.*
Orange County Superior Court
Case No. 30-2020-01126766-CU-OE-CXC

*Evanina Alaniz v. Watermark Retirement
Communities LLC, et al.,*
Los Angeles County Superior Court
Case No. 20STCV16386

*Katherine Greene v. Watermark Retirement
Properties, Inc., et al*
Monterey County Superior Court
Case No. 20CV002422

Case No.: No. JCCP 5176

Assigned for all purposes to:
Hon. William Claster
Dept. CX 104

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 13, 2023
Time: 9:00 a.m.
Place: Department CX 104

Reservation ID: 73898977

Complaint Filed: January 27, 2020
Trial Date: None Set

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. FACTS AND PROCEDURE..... 2

 A. Summary of the Litigation. 2

 B. The Parties Settled After the Mediation. 4

 C. The Proposed Settlement Fully Resolves Plaintiff’s Claims. 4

 1. Composition of the Settlement Class and Settlement Consideration..... 4

 2. Formula for Calculating Settlement Payments..... 4

 3. Release by the Participating Class Members..... 5

III. ARGUMENT..... 6

 A. The Court Should Preliminarily Approve the Proposed Settlement. 6

 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,
 Adequate, and Reasonable..... 6

 2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and
 Legal Issues and Objectively Assessed the Settlement’s Reasonableness. 7

 3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which
 All Parties Were Represented by Experienced Counsel..... 8

 4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant’s
 Defenses and the Risks and Expense of Continued Litigation..... 9

 5. The Settlement Amount Is Fair and Reasonable Compensation for the Class..... 18

 B. The Proposed Notice Properly Informs Class Members About the Settlement. 18

 C. The Court Should Preliminarily Approve the Enhancement Payment. 19

 D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs. 19

 E. California Law Authorizes Provisional Certification for Settlement Purposes. 20

 1. The California Standard for Class Certification 20

 2. The Proposed Settlement Class is Ascertainable, and There is a Well-Defined
 Community of Interest Among Class Members. 20

IV. CONCLUSION 22

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	7
<i>Benton v. Telecom Network Specialists, Inc.</i> , 200 Cal. App. 4th 701 (2013) <i>reh 'g denied</i> (Nov. 1, 2013)	23
<i>Bufl v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008)	22
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960 (1975)	20
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	6, 7
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010)	19
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275 (1962)	17
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	19
<i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009)	19
<i>D'Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	9
<i>Dearaujo v. Regis Corp.</i> , No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473 (E.D. Cal. June 30, 2016)	21
<i>Doty v. Costco Wholesale Corp.</i> , Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)	5
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	7, 21
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F. Supp. 2d 1169 (2008)	16
<i>Faulkinbury v. Boyd & Assocs., Inc.</i> , 216 Cal. App. 220 (2013)	21
<i>Fontana v. Elrod</i> , 826 F.2d 729 (7th Cir. 1987)	17
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174, 186 (W.D.N.Y. 2005)	10
<i>Fukuchi v. Pizza Hut</i> , Case No. BC302589 (L.A. County Super. Ct.)	5
<i>Garcia v. Sun Pacific Farming Coop.</i> , No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008)	14
<i>Gomez v. Amadeus Salon, Inc.</i> , Case No. BC392297 (L.A. County Super. Ct.)	5
<i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	18

1	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 U.S. Dist.	
2	LEXIS 108195 (N.D. Cal. Nov. 5, 2008)	9
3	<i>In re Michael Milken and Assoc. Sec. Litig.</i> , 150 F.R.D. 57 (S.D.N.Y. 1993)	11
4	<i>In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA)</i>	
5	<i>Litig.</i> , 295 F.R.D. 438, 453 (C.D. Cal. 2014).....	9
6	<i>Jaimez v. Daiohs USA, Inc.</i> , 181 Cal. App. 4th 1286 (2010).....	15
7	<i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977)	17
8	<i>Kisliuk v. ADT Sec. Servs.</i> , 263 F.R.D. 544 (C.D. Cal. 2008).....	15
9	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	9, 10
10	<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008).....	20
11	<i>Lutin v. Lerner New York, Inc.</i> , Case No. BC498443 (L.A. County Super. Ct. Sept. 20,	
12	2016).....	18
13	<i>Mendiola v. CPS Sec. Solutions, Inc.</i> , 60 Cal. 4th 833 (2015).....	13
14	<i>Morillion v. Royal Packing Co.</i> , 22 Cal. 4th 575 (2000).....	13
15	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010).....	10
16	<i>Naranjo v. Spectrum Security Servs, Inc.</i> , 40 Cal. App. 5th 444 (2019).....	15
17	<i>Nat’l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	10
18	<i>Newman v. Stein</i> , 464 F. 2d 6893 (2d Cir.).....	10
19	<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	18
20	<i>North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085	
21	(1994)	7
22	<i>Officers for Justice v. Civil Serv. Comm.</i> , 688 F. 2d 615 (C.A. Cal. 1982).....	9
23	<i>Price v. Starbucks Corp.</i> , 192 Cal. App. 4th 1136 (2011).....	16
24	<i>Ressler v. Federated Department Stores, Inc.</i> , Case No. BC335018 (L.A. County Super.	
25	Ct.)	5
26	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009).....	19
27	<i>Sav-On Drug Stores, Inc. v. Super. Ct.</i> , 34 Cal. 4th 319 (2004)	20
28	<i>Simmons v. T-Mobile USA, Inc.</i> , No. H-06-1820, 2007 U.S. Dist. LEXIS 5002 (S.D. Tex.	

1	Jan. 27, 2007).....	15
2	<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976)	7
3	<i>State v. Levi Strauss & Co.</i> , 41 Cal. 3d 460 (1986).....	8, 18
4	<i>The Children's Place Retail Stores Wage And Hour Cases</i> , No. JCCP4790 (L.A. County	
5	Super. Ct. Sept. 1, 2016).....	19
6	<i>Trotsky v. Los Angeles Fed. Savings & Loan Ass'n</i> , 48 Cal. App. 3d 143 (1975).....	17
7		
8	STATUTES	
9	Cal. Civ. Proc. Code § 382	20
10	Cal. Lab. Code § 1194	14
11	Cal. Lab. Code § 1197	14
12	Cal. Lab. Code § 1197.1	14
13	Cal. Lab. Code § 226(a).....	3
14	Cal. Lab. Code § 226.7	12
15	Cal. Lab. Code § 2698	3
16	Cal. Lab. Code § 2699(e).....	10
17	Cal. Lab. Code § 510	14
18		
19	RULES	
20	8 Cal. Code Regs. § 11160, subd. 11(A).....	12
21	Cal. R. Ct. 3.769	6
22	Cal. R. Ct. 3.776	18
23	Federal Rules of Civil Procedure, Rule 23	21
24		
25	TREATISES	
26	4 Newberg on Class Actions (4th ed. 2002) § 11:38.....	19
27	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	7, 8, 21
28	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiff: An Empirical Study</i> , 53	

1	UCLA L. Rev. 1303 (2006).....	19
2	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> (2d ed. 1986).....	17
3		
4		
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Daniel Carillo-Salazar (“Plaintiff Carillo”) and Plaintiff Evanina Alaniz (“Plaintiff Alaniz”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for approximately 2650 current and former employees of Defendant Watermark Services, IV, LLC, Defendant Watermark Retirement Communities, Inc., and Defendant Watermark Retirement Communities, LLC (“Defendants”) (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid Employees employed by Defendant in the State of California during the Class Period, which is from January 27, 2016 through May 31, 2022 or a date the Court enters in an order granting preliminary approval of the Stipulation.
- (2) A non-reversionary Class Settlement Amount of \$2,400,000.00 in addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$1,506,000 the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$800,000.00) and litigation costs and expenses not to exceed \$30,000, to Jackson Law, APC and/or Aegis Law Firm, PC, and/or United Employees Law Group (“Class Counsels”).
 - (c) Settlement Administration Costs, currently estimated at \$25,000, to be paid to the jointly selected settlement administrator, ILYM Group, Inc.¹
 - (d) A \$24,000.00 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. 75% or \$18,000 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”). 25% or \$6,000 will be distributed to PAGA Group Members.
 - (e) Class Representative Enhancement Payments of \$10,000 to Plaintiff Daniel

¹ The parties obtained several bids for settlement administration and ultimately selected ILYM Group, Inc. to administer the settlement based on price and reliability.

Carillo-Salazar and \$5,000 for Plaintiff Alaniz for their service on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members' behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm's-length with helpful guidance from mediator Steve Rottman, Esq., an experienced, well-respected class action mediator, and the Stipulation confers substantial benefits to Class Members. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

As discussed below, the proposed Stipulation satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Moreover, the proposed group of Class Members is appropriate for provisional certification. Accordingly, the Parties respectfully request that this Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Summary of the Litigation.

Defendant is a company that owns and operates a series of retirement communities and assisted living facilities throughout California, including Orange County, California. Plaintiff Carillo-Salazar was employed by Defendant. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendant's employees in the State of California, during the Class Period. [Jackson Decl. ¶ 13, Ex. A.]

On January 27, 2020, Plaintiff filed a Class Action Complaint in the Orange County Superior Court alleging violations of the California Labor Code and applicable wage orders for the following claims; (1) claim for failure to provide meal breaks; (2) claim for failure to provide rest breaks; (3) claim for failure to provide accurate itemized wages statements; and (4) unlawful business practices. On May 26, 2020, Plaintiff filed a First Amended Complaint alleging claims for; (1) failure to pay for minimum wages; (2) failure to pay for overtime wages; (3) claim for failure to provide meal breaks; (4) claim for failure to provide rest periods; (5) claim for failure to provide accurate itemized wage statements; (6) claim for failure to pay for timely wages upon termination; (7) violation of the California Private Attorneys General Act; (8) unlawful business practices under Business and Professions Code section 17200 et. seq.; and (9) successor corporation liability. [Jackson Decl. ¶ 4.]

Thereafter, Plaintiff Carillo served a set of written discovery, including a Request for Production

1 of Documents and Special Interrogatories. In its responses, Defendant agreed to produce informal
2 discovery and engage in mediation. [Jackson Decl. ¶ 6.] Defendant also agreed to produce the time
3 records and wage statements for a 25% sample of the putative class members. (*Id.*)

4 Defendant produced such data for 25% of the class, including Plaintiff Daniel Carillo-Salazar.
5 Prior to the mediation and for purposes of the Settlement, Plaintiff and Plaintiff's expert analyzed the time
6 cards and wage statements. [*Id.*]

7 Plaintiff's primary theories of liability are as follows:

8 • **Off-the-Clock Claims:** Plaintiff alleges that Defendant required training to be conducted
9 off-the-clock as part of the onboarding process. [Jackson Decl. ¶ 32.]

10 • **Unlawful Meal Period Claim:** Plaintiff alleges that Defendant failed to provide
11 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
12 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶¶ 25-31.]

13 • **Unlawful Rest Break Claim:** Plaintiff alleges that Defendant failed to permit and
14 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶¶ 25-31.]

15 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
16 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
17 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
18 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶¶ 37-41.]

19 • **Unlawful Failure to Pay Upon Termination Claim:** Plaintiff alleges that Defendant
20 failed to pay that extra hour of pay was not provided when meal or rest breaks were not provided, and that
21 workers were not paid all overtime and/or premium wages. [Jackson Decl. ¶ 42.]

22 • **Failure to Reimburse Claim:** Plaintiff alleged itself, aggrieved employees and class
23 members were subjected to California Labor Code section 2802 violations for failure to reimburse class
24 members and aggrieved employees. [Jackson Decl. ¶ 43.]

25 After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for
26 January 4, 2022. Prior to the mediation, Defendant produced Plaintiff's personnel file, Defendant's
27 Employee Handbook, the total number of Class Members, including those formerly employed during the
28 class period, and the total number of pay periods and workweeks during the class period. Plaintiff's

counsel thoroughly reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶¶ 23-43.]

B. The Parties Settled After the Mediation.

On January 4, 2022, the Parties participated in a full day of mediation with mediator Steve Rottman, Esq., an experienced mediator of wage and hour class actions. Mediator Rottman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, the continued to engage Mediator Rottman that ultimately resulted in the resolution of this case. [Jackson Decl. ¶ 13.] Thereafter, the Parties jointly drafted and executed the Stipulation. [Jackson Decl., ¶ 13, **Exhibit A.**] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶¶ 12-13.]

C. The Proposed Settlement Fully Resolves Plaintiff's Claims.

1. Composition of the Settlement Class and Settlement Consideration

The proposed group of Class Members consists of all hourly paid employees employed by Defendant in California during the Class Period, which is from January 27, 2016 through May 31, 2022 or the date the Court enters an order granting preliminary approval of the Stipulation.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Maximum Settlement Amount of \$2,400,000.00. The Maximum Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$800,000.00 in requested attorneys' fees and up to \$30,000 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at \$25,000; (4) an allocation of \$18,000.00 to the LWDA; and (5) a Class Representative Enhancement Payment of \$10,000 to Plaintiff Carillo-Salazar and \$5,000.00 to Plaintiff Evanina Alaniz for their service on behalf of the Class Members.

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement Amount will be distributed to Participating Class Members. The Net Settlement Amount will be paid to Participating Class Members, and without the need to submit claims for payment.

2. Formula for Calculating Settlement Payments

Each Class Member's share of the Net Settlement will be proportional to the Qualified Pay

Periods that he or she worked during the Class Period. The Settlement Administrator will calculate Individual Settlement Payments as follows:

- Defendant will calculate the “Qualifying Workweeks” worked by each Class Member during the Class Period and the aggregate Qualifying Workweeks worked by all Class Members during the Class Period, which is from January 27, 2016 through May 31, 2022 or the date the court enters an order granting preliminary approval of the Stipulation, and provide that to the Settlement Administrator.
- To determine each Class Member’s settlement payment, the Settlement Administrator will use the following formula: by dividing the remaining Net Settlement Fund by the total Qualifying Workweeks of all participating Settlement Class Members during the Class Period, and the allocating on a pro-rata basis.

[Jackson Decl., ¶ 13, **Exhibit A**, Article III, Section 3.06, Section f, pp. 17-17]

The **average payment will be several hundreds of dollars up to approximately \$566.59 (estimated 2658 class members)** per full-time Class Member, assuming no Class Members opt out. If there are any opt-outs, that average will increase. This average net recovery is significantly higher than many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

3. Release by the Participating Class Members

In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to release the following Released Claims that accrue from January 27, 2016 through May 31, 2022 or the date the court enters an order granting preliminary approval of the Stipulation:

all claims, causes of action, disputes, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, penalties, and damages (including but not limited to liquidated, exemplary, punitive, and statutory damages), whether suspected or unsuspected, contingent or accrued, known or unknown, that have been pled or could have been pled based upon the factual allegations and issues set forth in the Actions, for any acts occurring during the Class Period, including, claims for failure to pay minimum wages; failure to pay overtime, double time or other premium pay; failure to provide meal periods; failure to provide paid rest periods; failure to provide compliant pay stubs and itemized wage statements; failure to timely pay wages to terminated and resigning employees; failure to maintain accurate records; failure to properly pay all wages owed at the correct time; failure to include compliant notice of the employer entity;

claims for alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and their subparts, and applicable IWC Wage Orders; derivative claims for civil penalties under the Labor Code Attorneys General Act of 2004, Labor Code sections 2698, et seq.; derivative claims for unfair, unlawful, and fraudulent business practices under the California Business and Professions Code sections 17200, et seq., and/or any other unfair competition law; any other state or federal statute, rule, or regulation that could have been pled based upon the factual allegations and issues set forth in the Actions; and all related remedies of any nature whatsoever, including claims for restitution and other equitable relief, injunctive relief, statutory damages, liquidated damages, exemplary damages, punitive damages, waiting-time penalties, statutory penalties, civil penalties, attorneys' fees, costs, and expenses

[Jackson Decl., ¶ 13, **Exhibit A**, Article V, Section 5.01]

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement.

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").] The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the proposed order, and (4) must identify any agreement regarding attorneys' fees. [Rule 3.769(b) and (c).]

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. [Rule 3.769(f).] At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. [Rule 3.769(g).]

Although 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 Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte &

1 Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) (“Newberg”). Reasonableness and fairness
2 are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and
3 discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in
4 similar litigation;” and (4) the percentage of objectors “is small.” [*Dunk v. Ford Motor Co.*, 48 Cal. App.
5 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California’s public policy goal of
6 favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
7 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
8 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
9 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
10 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”).]

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

16 **2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and**
17 **Legal Issues and Objectively Assessed the Settlement’s Reasonableness.**

18 By engaging in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel
19 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
20 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
21 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
22 defenses asserted by Defendant. [Jackson Decl. ¶¶ 12-13.]

23 Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his
24 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
25 violations. In addition to informing Plaintiff’s Counsel’s initial evaluation of the lawsuit, the information
26 that Plaintiff and other employees provided also influenced Plaintiff’s Counsel’s discovery efforts.
27 [Jackson Decl. ¶ 3.]

28 Plaintiff’s discovery requests led to the production of considerable information relied upon for the

1 Settlement, including a statistically significant sampling of thousands of excel data cells and payroll
2 records, and policies and practices directly pertaining to the alleged Labor Code violations at issue.
3 Plaintiff's Counsel reviewed Defendant's written policies provided in its Employee Handbook, and
4 reviewed the entire set of thousands of pages of data and documents produced by Defendant. From this
5 analysis, Plaintiff's Counsel and expert was able to analyze Labor Code issues, theories and alleged
6 violations that would have provided direct evidence for use at trial in a class and PAGA action. Plaintiff's
7 Counsel analyzed the timekeeping and payroll data, in order to assess, *inter alia*, the incidence of meal and
8 rest period violations, and premiums paid for said violations, the minimum and overtime rates paid to
9 Class Members, the amount of underpaid minimum, regular and overtime wages, the accuracy of the
10 wage statements, and the amount of waiting time penalties under Cal. Labor Code § 203. [Jackson Decl.
11 ¶¶ 15-18, 23-43.]

12 Plaintiff's Counsel interviewed Plaintiff who provided accounts of their own experience, which
13 enabled Plaintiff's Counsel to understand the theories explaining the respective frequencies of the alleged
14 violations borne out in the data and records produced and to learn more about the day-to-day
15 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 15-17.] Overall, Plaintiff's Counsel
16 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's
17 suitability as a class representative through interviews, background investigations, and analyses of his
18 employment files and related records; (2) researching similar wage and hour class actions as to the claims
19 brought, the nature of the positions, and the type of employer; (3) analyzing employee time and wage
20 records; (4) analyzing Defendant's labor policies and practices; (5) researching settlements in similar
21 cases; (6) researching Plaintiff's novel theories of liability; (7) interviewing Class Members regarding the
22 alleged claims; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of
23 settlement; (9) drafting the mediation brief; and (10) participating in the mediation. [Jackson Decl. ¶ 17.]

24 **3. The Settlement Was Reached Through Arm's-Length Bargaining in Which**
25 **All Parties Were Represented by Experienced Counsel.**

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

1 thus, there is a presumption that settlement negotiations are conducted in good faith. [Newberg, § 11.51.]

2 On January 4, 2022, the Parties participated in a mediation with mediator Steve Rottman, Esq.,
3 who helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
4 to both sides. [*In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist.
5 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
6 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same).]
7 At all times, the Parties' negotiations were adversarial and non-collusive. After a full day of mediation,
8 the Parties reached a settlement in principal and executed a detailed Memorandum of Understanding,
9 before entering in the long form Settlement. [Jackson Decl. ¶ 18.]

10 Experienced class action counsel represented both Parties throughout the case and settlement
11 negotiations. Plaintiffs are represented by Armond M. Jackson and counsels of Jackson Law, APC, Kashif
12 Haque and Kristy R. Connolly and counsel of Aegis Law Firm, PC and Walter Haines of United
13 Employees Law Group whom regularly litigate wage and hour claims through certification and on the
14 merits, and has considerable experience settling wage and hour class actions. [Jackson Decl. ¶¶ 19-22;
15 Declaration of Kristy R. Connolly ("Connolly Decl.") ¶¶ 11-25; Declaration of Walter L. Haines,
16 ("Haines Decl.") ¶¶ 1-6] Defendant Watermark Services, IV, LLC and Watermark Retirement
17 Communities, Inc. is represented by Jackson Lewis PC, who operates a large, respected wage and hour
18 defense practice.

19 **4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant's**
20 **Defenses and the Risks and Expense of Continued Litigation.**

21 In seeking approval, a settling party must provide sufficient information to "enable the court to
22 make an independent assessment of the adequacy of the settlement terms." [*Kullar v. Foot Locker Retail,*
23 *Inc.*, 168 Cal. App. 4th 116, 131–32 (2008).] However, "[i]t is well-settled law that a cash settlement
24 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
25 unfair." [*See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615,
26 628 (9th Cir. 1982).] "The proposed settlement is not to be judged against a hypothetical or speculative
27 measure of what might have been achieved by the negotiators." [*Id.* at 625.] "Estimates of a fair
28 settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the

case, and the expected delay in recovery (often measured in years).” [*In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.²

Settling parties are not however required to partake in a hypothetical accounting exercise: [*Kullar* does not . . . require any such explicit statement of [maximum] value; it requires 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.*, 186 Cal. App. 4th 399, 409–10 (2010) (*quoting Kullar* 168 Cal. App. 4th at 120 (emphasis added))]. Overall, the most important factor in determining whether a settlement is fair and reasonable is the strength of the case for plaintiffs on the merits balanced against the amount offered in the settlement. [*Id.* at 409 n.6 (*quoting Kullar*, 168 Cal. App. 4th at 130).]

Based on the information and evidence provided by Defendant in discovery, the analysis of the payroll data, and Plaintiff’s Counsel’s own independent investigation, Plaintiff’s Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s maximum theoretical exposure by: (i) the strength of Defendant’s affirmative defenses; (ii) the risk of losing a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a class and PAGA trial would be unmanageable;³ (iv) the risk of losing on various dispositive or quasi-dispositive motions that Defendant will bring before trial (e.g., motion to strike class and representative allegations, motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or some of Plaintiff’s claims, or bar evidence necessary to prove such claims; (v) the risk of losing some or all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully refuse to pay discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e, a good faith failure)

² Federal district courts also 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.” [*Id.* at 188 (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). *See Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”).]

with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of the Court exercising its discretion to reduce PAGA penalties (see Cal. Lab. Code section 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the “Discount Factors”). [Jackson Decl. ¶ 23.]

Based on the preceding and considering the aggregate value of the claims in light of the Discount Factors, Plaintiff’s Counsel valued the class claims for settlement purposes at \$6,541,051.77. [Jackson Decl. ¶ 24.] It must be underscored, however, that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery Plaintiff might have received had he succeeded at trial. 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.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)).]

i. Range of Damages

Review of the wage statements for the sampling revealed the following: (1) approximately 241,725.47 workweeks; and (2) 2455 class members at the time of mediation. The following is a table of potential damages:

Claim	Highest Theoretical Damage Exposure	Reasonable Range of Damages and Penalties	
Failure to Provide Meal Breaks	\$1,799,521 (damages and interest) and \$1,879,900 (civil penalties) for a total of \$3,679,421	\$0	\$899,760.5 (damages) and \$939,950 (civil penalties) for a total of \$1,839,710.5 (50% discount)

			\$4,118,960 (damages) and \$1,247,900 (civil penalties) for a total of \$5,366,860 (75% discount)
Failure to Provide Rest Breaks	\$16,475,840 (damages) and \$4,991,600 (civil penalties) for a total of \$21,467,440	\$0	
Failure to Pay Minimum and Overtime Wages	\$ 431,422 (damages) and \$98,200 (civil penalties) for a total of \$529,622	\$0	\$215,711 (damages) and \$49,100 (civil penalties) for a total of \$264,811 (50% discount)
Failure to Provide Accurate Wage Statements	\$3,928,000	\$0	\$1,964,000 (50% discount)
Waiting Time Penalties	\$7,293,444	\$0	\$3,646,722 (50% discount)
2802 Damages	\$1,208,627 (damages) and \$4,991,600 (civil penalties) for a total of \$6,200,227	\$0	\$604,313.50 (damages) and \$2,495,800 (civil penalties) \$3,100,113.50 (50% discount)
Total Damages (excluding attorneys' fees and interest):	\$43,098,154	\$0	\$16,182,217 (50% discount)

[Jackson Decl. ¶ 24.]

ii. Meal and Rest Period Claims

An employer's only obligation is to provide meal periods and authorize and permit rest periods, not to police its employees to ensure that they take their lunches and breaks. (See *Brinker, supra*, 53 Cal.4th at 1028, 1034.)

Plaintiffs allege that Defendants understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiffs allege employees were not authorized to take rest periods due to understaffing. Analysis of the sample time records Defendants produced 25% sampling.

Although Defendants' time records may create a rebuttable presumption that it did not provide meal periods on those occasions, in compliance with California law, see, e.g., *Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimizes the

1 potential value of the claims. [Jackson Decl. ¶ 26.]

2 First, Defendant alleged it provided the employees with its Employee Handbook, which sets forth
3 meal and rest period policies. To the extent Plaintiffs allege they felt pressured by their duties or schedule,
4 this evidence is rebuttable. [Jackson Decl. ¶ 27.]

5 The other alternative interpretation anticipated by Defendants is that it demonstrates that
6 Defendants, in fact, does provide employees with complete meal periods which could potentially
7 undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees
8 choose to take them a few minutes late or short on their own volition at other times. Furthermore, since
9 employees are not required in California to record their rest periods times, this claim may present
10 difficulties when proving the extent of any rest break violations. [Jackson Decl. ¶¶ 27-28.]

11 Third, the analysis revealed evidence of an approximate 11.2% violation rate regarding short meal
12 periods (i.e. less than 30 minutes), missed meal periods and potentially “late” meal periods (i.e. started
13 after the fifth hour). While there may be a limited “de minimis” defense in California for meal period
14 claims, *see Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, such evidence cuts both ways as it
15 underscores the likelihood of personal choice by employees electing to delay their breaks for a few
16 minutes or knock off a minute or two early and get back to work on their own, as opposed to an express
17 policy that schedules breaks late or the presence of express work deadlines that effectively forces
18 employees to cut breaks short. Furthermore, in opposition to any motion for class certification,
19 Defendants represented it would present declarations from dozens of employees attesting to Defendant’s
20 lawful meal and rest period policies and practices, and how employees personally chose to skip, delay or
21 shorten breaks on their own without any influence from Defendant. [Jackson Decl. ¶ 29.]

22 Therefore, based on the foregoing and the “Discounted Factors” described above, these claims
23 should be discounted. After taking into account the foregoing considerations and the Discount Factors,
24 Plaintiff assessed the combined value of the meal and rest period claims, inclusive of civil penalties, at
25 between **\$0 and \$3,603,285.25 amounting to \$1,801,642.62**. [Jackson Decl. ¶ 30.]

26 More specifically, the high end of the realistic range for the meal period claim accounts for all the
27 Discount Factors to consider the best scenario of a trier of fact finding for liability and damages as half of
28 the 11.2% violation rate. [Jackson Decl. ¶ 28.]

1 For the rest periods, the risk to Plaintiff is greater due to the additional consideration of a lack of
2 rest period recordkeeping requirement. Therefore, Plaintiff estimates the best-case scenario at a 75%
3 discount based upon a 100% violation rate. [Jackson Decl. ¶ 31.]

4 **iii. Minimum Wage and Overtime Claim**

5 Based on Plaintiffs' experiences and discussion with other employees, Plaintiffs allege that the
6 lack of sufficient staffing and relief coverage effectively forced Class Members to work off-the-clock as
7 part of the onboarding process at the time of hiring. [Jackson Decl. ¶ 32-36.]

8 Employees are entitled to be paid for all "hours worked." [See *Morillion v. Royal Packing Co.*
9 (2000) 22 Cal.4th 575, 582 ("hours worked" means the time during which an employee is subject to the
10 control of an employer, and includes all the time the employee is suffered or permitted to work, whether or
11 not required to do so.)] California Labor Code sections 1194, 1197, 1197.1, and 510 and the applicable
12 Wage Orders mandate that employees must be compensated for all hours worked at minimum wage or
13 greater, or at an overtime rate of 1.5 times the regular rate of pay for hours worked in excess of 8 in a
14 workday or 40 in a workweek. Moreover, IWC Wage Order 1-2001, § 7 requires employers to keep
15 accurate information with respect to time records showing when employees begin and end each work
16 period, daily hours worked, and meal periods, except meal periods during which all operations cease.

17 Additionally, Labor Code section 204 provides, in relevant part:

18 (a) All wages . . . earned by any person in any employment are due and payable twice
19 during each calendar month . . .

20 (b)(1) Notwithstanding any other provision of this section, all wages earned for labor in
21 excess of the normal work period shall be paid no later than the payday for the
22 next regular pay period.

23 In this case, common proof of unpaid minimum and overtime wages for "off-the-clock" work
24 could be difficult given the risks of certification as well as to demonstrate at trial for purposes of finding
25 class-wide liability and damages. As with the preceding claims, Plaintiffs had to discount the value of the
26 minimum wage and overtime claim to account for the risks of continued litigation and Defendants'
27 affirmative defenses. [Jackson Decl. ¶ 32-36.]

28 For example, Defendants will simply argue: (i) that Plaintiff will not be able to present any
evidence of a company-wide, uniform policy requiring employees to work off-the-clock and (ii) it cannot
be held liable because it did not know employees were actually performing work off-the-clock. [*Brinker*,

53 Cal. 4th at 1017 (“[w]ith respect to the third contested subclass, covering allegations that employees were required to work “off-the-clock,” no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass”); *see also Garcia v. Sun Pacific Farming Coop.*, No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008) (denying motion for class certification of state wage and hour law and other claims allegedly resulting from off-the-clock work).] [Jackson Decl. ¶ 32-36.]

Furthermore, although employees are permitted to arrive early at the job site, Defendants will argue that its policies align with those in the *See’s Candy Shops, Inc.* matter in that employees were expressly prohibited from working, when on premises before and after their scheduled shift, but allowed to pursue personal activities. [See, e.g. *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (Court found employees were not subject to control of employer for time spent on employer’s premises prior to the start of a shift, even when clocked in, because employer prohibited employees from performing any work before scheduled start time and employees were free to pursue any personal activities during that time before a shift.))] Moreover, as with the meal and rest break claims, Defendants represented it will likely be able to garner numerous declarations in support of their defense that no such off-the-clock work took place. [Jackson Decl. ¶ 32-36.]

Analysis of the sample of records, and extrapolation to class members, revealed that, in the aggregate, Defendant underpaid Employees by 19,640 hours with an average blended hourly rate of \$16.93 equating to \$529,622 in damages and penalties. [Jackson Decl. ¶ 35.]

Based on certain Discount Factors (i.e. lack of common evidence such as express policies and customer deadlines), the lack of documentary evidence, and Defendants’ ability to garner numerous declarations in support of its defense to this claim, Plaintiffs discount is reasonable at \$264,811. [Jackson Decl. ¶ 36.]

iv. Wage Statement Claim

Plaintiffs allege that Defendant failed to provide Plaintiff with timely and accurate wage statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours worked, and improper overtime premium pay. [Jackson Decl. ¶ 37.]

Labor Code section 226 requires that employers provide wage statements that accurately set forth

1 a variety of items including, but not limited to, gross wages earned, total hours worked, deductions, net
2 wages earned, the periods of employment, and hourly rates and corresponding number of hours at each
3 rate. Labor Code section 226 further provides, in relevant part:

4 (2)(B) An employee is deemed to suffer injury for purposes of this subdivision if
5 the employer fails to provide accurate and complete information as required by any
6 one or more of items (1) to (9), inclusive, of subdivision (a) and the employee
7 **cannot promptly and easily determine** from the wage statement alone one or more
8 of the following:

9 (i) The **amount of the gross wages or net wages** paid to the employee during the
10 pay period or any of the other information required to be provided on the itemized
11 wage statement pursuant to **items (2)** to (4), inclusive, (6), and (9) of subdivision (a)
12 . . .

13 (C) For purposes of this paragraph, **“promptly and easily determine” means** a
14 reasonable person would be able to readily ascertain the information without
15 reference to other documents or information.

16 Defendants provided payroll data, as required under Cal. Lab. Code section 226, to its Employees,
17 including Plaintiff Carillo. To the extent this claim is derivative of the claims set forth above - that
18 Plaintiffs wage statements were not accurate because Plaintiffs were not paid an additional hour of pay
19 when they were not provided meal and rest periods, not paid for all hours worked, and not properly
20 compensated for all overtime premium pay - the claim bears the same risk for failure as the factual reasons
21 discussed above. [Jackson Decl. ¶¶ 37-41.]

22 Furthermore, actions for violations of the Labor Code’s meal and rest break provisions do not
23 entitle employees to pursue the derivative waiting time and itemized wage statement penalties. [See
24 *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444.]

25 With the foregoing in mind, any such statutory penalties under Labor Code § 226 needs to be
26 adjusted to account for risks and uncertainties. Labor Code § 226(e)(1) provides that an employee is
27 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
28 a violation occurs and one hundred dollars (\$100) per employee for each violation in a “subsequent pay
period,” not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
of costs and reasonable attorney’s fees.

First, penalty provisions are limited to the one-year statute of limitation under California Code of

Civil Procedure §340. Assuming wage statements dating back one year prior to the filing of the complaint are inaccurate, then the Defendant is liable for approximately \$3,928,000. Therefore, in light of these considerations and the Discount Factors, Plaintiff assessed the settlement value of the wage statement claim at \$982,000 (50% Discount of \$1,964,000 related to loss on the merits). [Jackson Decl. ¶ 41.]

v. Waiting Time Penalties

This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when meal or rest breaks were not provided, and that Employees were not paid all minimum and overtime and premium wages. On the presumption that 1795 formerly employed Employees are owed some unpaid wages, then the highest theoretical amount for potential waiting time penalties is calculated as follows: 1795 former employees x 30 days x 8 hours per day x \$16.93 average hourly wage = \$7,293,444. However, for the reasons discussed above, Defendant will argue that it will be difficult for Plaintiff to present substantial common evidence that he and the putative class members were not paid all wages due at the time of termination as to all formerly employed Employees. [Jackson Decl. ¶ 42.]

Additionally, the fact that Defendants did pay some premium wages, had a 11.2% meal break violation rate, lack of documentary evidence to confirm rest breaks or off-the-clock work, these factors would diminish the probability of success of achieving a 100% violation rate for all terminated employees entitling each of these employees to 203 penalties. As such, Plaintiff estimates that the reasonable case scenario is 50% of the theoretical best-case scenario of \$3,646,722 after discounting for merits. Therefore, a reasonable range of potential waiting time penalties is **\$0 to \$3,646,722** creating a risk of loss resulting in a realistic estimate of \$1,823,361. [Jackson Decl. ¶ 42.]

vi. Reimbursement Claims

This claim is based upon Plaintiff, aggrieved employees and class members were subjected to California Labor Code section 2802 violations for failure to reimburse class members and aggrieved employees. Given the risk of litigation, Plaintiff assessed the settlement value of the 2802 Labor Code claims at \$302,156.84 in damages and \$1,247,900 in civil penalties totaling \$1,550,056.84. Defendant maintained reimbursement policies that would make it difficult to ultimately prove all Labor Code violations.

1 **5. The Settlement Amount Is Fair and Reasonable Compensation for the Class**

2 As the above analysis shows, Plaintiff's Counsel objectively and knowledgably balanced the
3 strengths and weaknesses of the claims against the risk of continued litigation and was able to determine
4 the realistic settlement recovery of **\$8,091,108**. Therefore, in this case, the settlement value of **\$2,400,000**
5 falls well within the range of reasonableness, and is thus fair, adequate, and reasonable.

6 **B. The Proposed Notice Properly Informs Class Members About the Settlement.**

7 Class members are entitled to the best practical notice under the circumstances. [*Kass v. Young*,
8 67 Cal. App. 3d 100, 106 (1977) (“*Kass*”).] The purpose of the notice is to give class members sufficient
9 information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or
10 object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass’n*, 48 Cal. App. 3d 143, 151–
11 52 (1975).] The notice must advise class members “that they may be excluded from the class if they so
12 request and that they will be bound by the judgment, whether favorable or not, if they do not request
13 exclusion.” [*Kass*, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class
14 members, California authorities generally require service of the class notice by mail or similar reliable
15 means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
16 (1975).]⁴

17 The proposed Class Notice will be mailed to the Class by First Class mail and will include
18 information regarding the nature of the lawsuit, a summary of the Settlement's terms, the class definition,
19 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
20 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
21 Released Claims. Before mailing the Class Notice, the Administrator will verify the addresses produced
22 by Defendant for each Class Member using the National Change of Address Database. In the event Class
23 Notices are returned as undeliverable, the Administrator will attempt to locate a current address through
24 the use of skip tracing or another automated search. [Jackson Decl ¶ 13., **Exhibit A.**], Article I, Section x.
25 Ex. A] This method is designed to maximize the Class Member response rate while ensuring cost
26 effective administration of the settlement. In past cases, similar notice methods to class members have

27
28 ⁴ 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).]

1 resulted in strong response rates. Accordingly, both the method of disseminating the Class Notice and
2 content of the Class Notice satisfy due process and the requirements of California law. [See C.R.C.
3 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The class notice must “fairly apprise
4 the class members of the terms of the proposed compromise and of the options open to dissenting class
5 members.”).]

6 **C. The Court Should Preliminarily Approve the Enhancement Payment.**

7 Enhancement payments “are fairly typical in class action cases.” [*Cellphone Termination Fee*
8 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
9 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
10 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*, 53 UCLA
11 L. Rev. 1303 (2006).] Enhancement payments “are intended to compensate class representative for work
12 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
13 and, sometimes, to recognize their willingness to act as a private attorney general.” [*Rodriguez*, 563 F.3d
14 at 958–59; *see also Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009).]

15 Subject to Court approval, therefore, the Settlement provides for a Class Representative
16 Enhancement Payment of \$10,000 for Plaintiff Carillo and \$5,000 for Plaintiff Alaniz. The enhancement
17 payment is fair and reasonable compensation for Plaintiff’s efforts in representing the putative Class and
18 the interests of the State of California, for assisting counsel with the litigation, at mediation, and
19 settlement, regularly conferring with counsel on the status of the case and the strategies for prosecuting the
20 claims, reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for
21 the Settlement Class. [Declaration of Daniel Carillo-Salazar, ¶¶ 1-7; Declaration of Evanina Alaniz, ¶¶ 1-
22 9.]

23 Plaintiff will file a motion seeking award of the negotiated Class Representative Enhancement
24 Payment if preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
25 showing is sufficient for preliminary approval of the Class Representative Enhancement Payment.

26 **D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs.**

27 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
28 took the risk of non-payment and invested in a case that achieved a substantial positive result for the class.

1 Plaintiffs will seek Court approval of attorneys' fees of \$800,000 which is 33.33% of the Maximum
2 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the
3 time of the Final Approval Hearing.

4 California courts routinely award attorneys' fees equaling one-third or more of the potential value
5 of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) ("Empirical studies
6 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
7 actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, Attorney
8 Fees in Class Action Settlements: An Empirical Study, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-
9 78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar
10 conclusion that a one-third fee is consistent with market rates). At final approval, Class Counsels will fully
11 brief the merits of its request for attorneys' fees and costs.

12 **E. California Law Authorizes Provisional Certification for Settlement Purposes.**

13 **1. The California Standard for Class Certification**

14 Class actions are statutorily authorized "when the question is one of common or general interest,
15 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
16 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008) ("*Lee*").]
17 Class certification is appropriate when there is an "ascertainable class and a well-defined community of
18 interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004)
19 ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be required to make
20 an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App.
21 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

22 **2. The Proposed Settlement Class is Ascertainable, and There is a Well-**
23 **Defined Community of Interest Among Class Members.**

24 Whether a class is "ascertainable" within the meaning of Section 382 is "determined by
25 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class
26 members." [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily
27 identified without unreasonable expense or time by reference to official records. [*Id.*] The community of
28 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class

1 representative with claims or defenses typical of the class; and (3) a class representative and counsel who
2 can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of
3 predominance, the California Supreme Court noted that the “ultimate question” is whether “the issues
4 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
5 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
6 litigants.” [Brinker, 53 Cal. 4th at 1021–22.]

7 The proposed Settlement Class consists of all hourly employees employed by Defendant in
8 California during the Class Period, which is January 27, 2016 through May 31, 2022 or the date the Court
9 enters an order granting preliminary approval of the Settlement. Defendant’ payroll records show that
10 there are approximately 2455 employees at the time of mediation in the Class, making joinder of all Class
11 Members impracticable. Further, because all Class Members are either current or former employees of
12 Defendant, the class is readily ascertainable from Defendant’ regular business records.

13 Conditional certification of the proposed group of Class Members is warranted here given the
14 relatively relaxed standard for certification at the preliminary approval stage. [See *Dunk v. Ford Motor*
15 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
16 settlement cases).]⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
17 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
18 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
19 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

20 Here, the California statutes relating to Plaintiffs’ claims apply to all Class Members. Plaintiffs
21 contends that Defendants’ policies and practices apply class wide and liability can be determined by facts
22 common to all class members, i.e., common policies or de facto common practices that deny Class
23 Members’ meal and rest periods, and pay for all hours worked. The wage and hour issues are numerous
24 and substantial, and a class action is the most advantageous method of adjudicating the claims of the
25 Class. For example, Plaintiffs contend that their meal and rest period claims are readily certifiable because

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27 ⁵ See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class certification
28 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the
preliminary approval stage.”) (citing, e.g., *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016
WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
cursory approach appears the norm.”).)

whether Defendant’s policies and practices violate the law “is by its nature a common question eminently suited for class treatment.” [*Brinker*, 53 Cal. 4th at 1033; see *Faulkinbury v. Boyd & Assocs., Inc.*, 216 Cal. App. 220, 237 (2013) (“[Defendant’s] liability, if any, would arise upon a finding that its uniform rest break policy, or lack of policy, was unlawful.”); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal. App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt any policy authorizing and permitting meal and rest breaks).]

Plaintiffs also contends their wage and hour claims are typical of the proposed group of Class Members because they arise from the same factual basis and are based on the same legal theories applicable to the Class. Likewise, Plaintiffs’ interests are coextensive with the interests of the Class and they allege that they were injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation and evaluating the fairness of the proposed settlement.

Additionally, Plaintiffs also represented by competent counsel who has extensive experience in litigating wage and hour class action cases. [Jackson Decl. ¶¶ 19-22; Connolly Decl. ¶¶ 11-25, Haines Decl. ¶¶ 1-6] Plaintiffs’ Counsels have successfully briefed, argued, certified, and gained state court settlement approval of the same or similar class-wide causes of action that are at issue in this case. Plaintiffs’ Counsels wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member’s claim, 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.

IV. CONCLUSION

The Parties have negotiated a fair, reasonable settlement and presented the required for preliminarily approval, and as such, request that the Court preliminarily approve the settlement.

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Dated: December 2, 2022

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