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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**

11 ANGELA ANTENUCCI, an individual, on
12 behalf of herself and all others similarly situated,

13 Plaintiff,

14 v.

15 BANK OF THE WEST, a California
16 corporation; and DOES 1 through 10, inclusive,

17 Defendants.

Case No.: **CGC-20-583746**

CLASS ACTION AND PAGA
REPRESENTATIVE ACTION

Assigned for all purposes to
Hon. Andrew Y.S. Cheng
Dept. 613

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND REPRESENTATIVE
SETTLEMENT

TABLE OF CONTENTS

I.	INTRODUCTION.....	6
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	7
III.	VIGOROUS PROSECUTION OF THIS ACTION.....	8
	A. Summary of Investigation and Discovery Conducted	8
	B. Settlement Reached after Arms-Length Negotiations with Assistance of Experienced Mediator	9
	C. Summary of the Risks to Further Litigation, and to Obtaining and Maintaining Class Certification	9
IV.	SUMMARY OF SETTLEMENT TERMS.....	11
	A. Settlement Relief	11
	B. Settlement Administration.....	14
V.	THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA.....	15
	A. Settlement Amount Calculations – <i>Kullar</i> analysis.....	15
	B. The Proposed Tax Allocation is Reasonable.....	17
	C. The Proposed Settlement is Fair, Adequate, and Reasonable.....	17
	1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations.....	18
	2. The Settlement has no “Obvious Deficiencies” and Falls within the Approval Range.....	19
	3. The Settlement does not Improperly Grant Preferential Treatment to Class Representatives or Segments of the Class.....	21
	4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval of the Settlement.....	22
	D. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes.....	22
VI.	THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED.....	25
	A. Proposed Notice Plan	25
	1. Notice by Regular Mail is the Best Notice Practicable:	26
	2. Strict Compliance for Opt-Outs and Substantial Compliance for Objections	26
	B. The Proposed Notice to the Class is Fair and Adequate.....	27
VII.	CONCLUSION.....	27

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000).....	15, 18, 20
<i>Adams v. Inter-Con Sec. Sys., Inc.</i> , 2007 WL 3225466 (N.D. Cal. Oct. 30, 2007)	18
<i>Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.</i> , 2009 WL 2448430 (S.D. Cal. Aug. 10, 2009)	13
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal.App.4th 1157 (2008).....	13
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	15
<i>Archer v. United Rentals, Inc.</i> , 195 Cal.App.4th 807 (2011).....	23
<i>Bellinghausen v. Tractor Supply Co.</i> , 303 F.R.D. 611 (N.D. Cal. 2014).....	19
<i>Bowen v. Target Corp.</i> , 2020 WL 1931278 (C.D. Cal. Jan. 24, 2020), <i>reconsideration denied</i> , 2020 WL 3628757 (C.D. Cal. Mar. 27, 2020).....	10
<i>Bowles v. Super. Ct.</i> , 44 Cal.2d 574 (1955)	23
<i>Bravo v. Gale Triangle, Inc.</i> , 2017 WL 708766 (C.D. Cal. Feb. 16, 2017)	14
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal.4th 1004 (2012)	9, 23
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	13
<i>Cartt v. Super. Ct.</i> , 50 Cal.App.3d 960 (1975)	18
<i>Cellphone Termination Fee Cases</i> , 186 Cal.App.4th 1380 (2010)	21
<i>Clark v. Am. Residential Servs.</i> , 175 Cal.App.4th 785 (2009)	21
<i>Classen v. Weller</i> , 145 Cal.App.3d 27 (1983)	24
<i>Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Am.</i> , 141 Cal.App.4th 46 (2006)	17
<i>Cotton v. Hinton</i> , 559 F.2d 1326 (5th Cir. 1977)	19
<i>Donohue v. AMN Servs., LLC</i> , 11 Cal.5th 58 (2021)	10
<i>Duran v. U.S. Bank Nat'l Assn.</i> , 59 Cal.4th 1 (2014).....	10
<i>Durham v. Cont'l Cent. Credit, Inc.</i> , 2011 WL 90253 (S.D. Cal. Jan. 10, 2011).....	22
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156 (1974).....	27
<i>Glass v. UBS Fin. Servs.</i> , 2007 WL 221862 (N.D. Cal. Jan. 26, 2007)	19, 22
<i>Gomez v. Lincare, Inc.</i> , 173 Cal.App.4th 508 (2009).....	10
<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497 (9th Cir. 1992)	25
<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017 (1972)	23
<i>Hernandez v. Best Buy Stores, LP</i> , 2017 WL 2445438 (S.D. Cal. June 6, 2017)	13
<i>Hertz v. Woodbury County</i> , 566 F.3d 775 (8th Cir. 2009)	9
<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454 (9th Cir. 2000).....	19, 21
<i>In re MyFord Touch Consumer Litig.</i> , 2019 WL 1411510 (N.D. Cal. Mar. 28, 2019).....	20

1	<i>In re Tableware Antitrust Litig.</i> , 484 F.Supp.2d 1078 (N.D. Cal. 2007)	18
2	<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 WL 4079226 (N.D. Cal. Sept. 13, 2011).....	22
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> , 720 F.Supp. 1379 (D. Ariz. 1989)	19
4	<i>Jong v. Kaiser Found. Health Plan, Inc.</i> , 226 Cal.App.4th 391 (2014).....	9
5	<i>Kullar v. Footlocker</i> , 168 Cal.App.4th 116 (2008).....	18
6	<i>La Sala v. American Sav. & Loan Assn.</i> , 5 Cal.3d 864 (1971).....	24
7	<i>Laffitte v. Robert Half International Inc.</i> , 1 Cal.5th 480 (2016)	12
8	<i>Le v. Walgreen Co.</i> , 2020 WL 3213684 (C.D. Cal. Apr. 27, 2020).....	10
9	<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998)	20, 22
10	<i>Low v. Trump University, LLC</i> , 246 F.Supp.3d 1295 (S.D. Cal. 2017)	22
11	<i>Maldonado v. Epsilon Plastics, Inc.</i> , 22 Cal.App.5th 1308 (2018).....	10
12	<i>Matter of Cont'l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992).....	21
13	<i>McGhee v. Bank of America</i> , 60 Cal.App.3d 442 (1976).....	25
14	<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950).....	27
15	<i>Murillo v. Pac. Gas & Elec. Co.</i> , 266 F.R.D. 468 (E.D. Cal. 2010)	19
16	<i>Officers for Justice v. Civil Serv. Comm'n of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	15
17	<i>Parsons v. Ryan</i> , 754 F.3d 657 (9th Cir. 2014).....	24
18	<i>Payton v. CSI Elec. Contractors, Inc.</i> , 27 Cal.App.5th 832 (2018)	10
19	<i>Raddcliffe v. Experian Info. Solutions, Inc.</i> , 715 F.3d 1157 (2013).....	21
20	<i>Reyes v. San Diego Cty. Bd. of Supervisors</i> , 196 Cal.App.3d 1263 (1987)	23
21	<i>Ridgeway v. Wal-Mart Stores Inc.</i> , 2017 WL 4071293 (N.D. Cal., Sept. 14, 2017).....	22
22	<i>Rodriguez v. West Publ'g</i> , 563 F.3d 948 (9th Cir. 2009)	21
23	<i>Ross v. U.S. Bank Nat'l Ass'n</i> , 2010 WL 3833922 (N.D. Cal. Sept. 29, 2010).....	22
24	<i>Ruch v. AM Retail Grp., Inc.</i> , 2016 WL 5462451 (N.D. Cal. Sept. 28, 2016).....	14
25	<i>Sav-On Drug Stores, Inc. v. Super. Ct.</i> , 34 Cal.4th 319 (2004)	23, 24
26	<i>Sevidal v. Target Corp.</i> , 189 Cal.App.4th 905 (2010)	23
27	<i>Slavkov v. Fast Water Heater Partners I, LP</i> , 2017 WL 3834873 (N.D. Cal. July 25, 2017).....	14
28	<i>Staton v. Boeing Co.</i> , 327 F.3d 938 (9th Cir. 2003).....	24
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> , 2015 WL 3776765 (N.D. Cal. June 17, 2015).....	20
	<i>Thomas v. Cognizant Tech. Sols. U.S. Corp.</i> , 2013 WL 12371622 (C.D. Cal. June 24, 2013).....	19
	<i>Trang v. Turbine Engine Components Techs. Corp.</i> , 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	13
	<i>Van Kempen v. Matheson Tri-Gas, Inc.</i> , 2017 WL 3670787 (N.D. Cal. Aug. 25, 2017).....	14
	<i>Vasquez v. Coast Valley Roofing, Inc.</i> , 266 F.R.D. 482 (E.D. Cal. 2010)	12
	<i>Villegas v. J.P Morgan Chase & Co.</i> , 2012 WL 5878390 (N.D. Cal. Nov. 21, 2012).....	20

1	<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S.Ct. 2541 (2011).....	24
2	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001).....	18
3	<i>Young v. Polo Retail, LLC</i> , 2007 WL 951821 (N.D. Cal. Mar. 28, 2007).....	22
4	Statutes	
5	Cal. Code of Civ. Proc., § 382	23
6	Other Authorities	
7	4 Newberg on Class Actions (4th ed. 2002), §11.41.....	15
8	Manual for Complex Litig., 2nd, § 21.632	27
9	Manual for Complex Litigation, Second (1993)	15
10	Moore’s Federal Practice, 23.165[3] (3d ed. 2005)	15
11	Rules	
12	Cal. Rules of Court, Rule 3.766	27
13	Cal. Rules of Court, Rule 3.769(c)	6
14	Cal. Rules of Court, Rule 3.769(f)	27
15	Cal. Rules of Court, Rule 3.771(b).....	15
16	Fed. Rules Civ. Proc., Rule 23(e).....	17
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1 I. INTRODUCTION

2 Plaintiff Angela Antenucci (“Plaintiff”) seeks preliminary approval,¹ under Rule 3.769(c) of the
3 California Rules of Court, of a \$750,000 non-reversionary Settlement on behalf of approximately 99
4 current and former Commercial Banking Group Loan Administrators who worked for Defendant Bank
5 of the West (“Defendant”) in California between March 16, 2016 and the date this Settlement is
6 preliminary approved by this Court (the “Class Period”).

7 This is a cash settlement and all Class Members who do not opt out will receive a payment,
8 without a requirement to submit a claim form. The Gross Settlement Amount is \$750,000. Plaintiff alleges
9 that she worked daily uncompensated time to open all computer programs necessary to perform her work
10 duties before the start of her shift, and was also not provided meal and rest breaks, nor paid premiums
11 for non-complying breaks. Plaintiff further alleges derivative claims for inaccurate wage statements and
12 untimely paid wages at termination of employment. Plaintiff also alleges a cause of action for violations
13 of Private Attorneys General Act (“PAGA”) and Business and Professions Code section 17200, *et seq.*
14 (“UCL”).

15 This case resolved following mediation before an experienced wage and hour neutral, David A.
16 Rotman, Esq. Plaintiff argues that Defendant’s maximum potential liability for all her claims, excluding
17 PAGA penalties,² is \$3,436,957.36 This assumes Plaintiff would collect meal break premiums for every
18 instance where a time card shows a missed, late or interrupted meal break, and a rest break premium for
19 every single workday, and Plaintiff and the class would be compensated for 15 minutes of off the clock
20 work, every day, at an overtime rate.

21 The \$750,000 Gross Settlement Amount represents **21.82%** of Defendant’s maximum potential
22 liability for all of Plaintiff’s non-PAGA claims, and **26.69%** of Plaintiff’s direct unpaid overtime and meal
23 and rest break claims. This is an excellent result, meeting – or exceeding – typical class action settlement
24 recoveries.

25 Plaintiff seeks entry of an order: (1) preliminarily approving the proposed Settlement; (2)

26 _____
27 ¹ This memorandum exceeds the 15-page limit set forth in CRC 3.1113, but because it seeks class certification as part of the
28 settlement approval process (which has a 20-page limit), and because Plaintiff needed additional space to sufficiently present
this Settlement for the Court’s approval, before filing this motion, Plaintiff submitted a stipulation for leave to exceed the page
limit.

² The settlement of Plaintiff’s PAGA penalties is discussed in section IV(A)(3), below.

1 approving the form and content of the proposed Class Notice; (3) directing that Class Notice be given to
2 Class Members; (4) provisionally certifying the Settlement Class and appointing Plaintiff as a Class
3 Representative and Plaintiff's counsel as Class Counsel; (5) preliminarily approving Settlement
4 administration services to be provided by the Settlement Administrator, and; (6) scheduling a Fairness
5 Hearing.

6 **II. FACTUAL AND PROCEDURAL BACKGROUND**

7 Plaintiff was employed by Defendant as a non-exempt, hourly-paid Commercial Banking Group
8 Senior Loan Administrator ("CBG Loan Admin") at Defendant's office in Fresno, California between
9 July 1, 2019 and November 19, 2019. Declaration of Angela Antenucci ("Antenucci Decl."), ¶3. Plaintiff's
10 duties included supporting the commercial loan processes by preparing the due diligence materials
11 required to conform with credit approval, performing loan processing support, and assisting in the
12 ongoing loan tracking and monitoring. *Id.*, ¶3.

13 Plaintiff filed a complaint against Defendant on March 16, 2020 in San Francisco Superior Court,
14 alleging Defendant failed to pay her and other CBG Loan Admins for all hours worked, and failed to
15 provide meal and rest breaks, or pay premiums for non-compliant breaks. Plaintiff also asserted claims
16 for violation of the UCL, claims for inaccurate wage statements, and untimely paid wages at termination
17 of employment. On May 8, 2020, Plaintiff amended her complaint to add claims for penalties under
18 PAGA. Declaration of David R. Markham ("Markham Decl."), ¶3.

19 Discovery revealed that in order to perform her work duties, CBG Loan Admins needed to log into
20 Defendant's computer and intranet, upload certain programs, such as VPN, VDI, HIVE, CLAS and Medici,
21 and then log into Defendant's timekeeping program. Plaintiff alleges Defendant expected class members to
22 clock in no sooner than at the start of their shifts, even though they performed work before the shift start
23 time, such as booting up the necessary computer programs. Further, Plaintiff alleges that at the end of
24 their shift, class members were required to clock out first, and then close all the programs and shut down
25 their computers. This booting up and shutting down process took on average up to 15 minutes each day,
26 and was unpaid. Markham Decl., ¶4.

27 Plaintiff's expert compared the employee timecards with VPN and VDI records which revealed
28 that 72% of the time stamps in this activity data occurred outside of the employee's clocked-in time, and

1 the average time was 15 minutes. Markham Decl., ¶5. However, the comparison of the time stamps of
2 the remaining programs with employee timecards showed no activity outside of the recorded hours.

3 Regarding Plaintiff's meal break claim, she alleged that the requirement to assist customers on the
4 phone and meet Defendant's quotas encroached on class members' meal break time. The expert review
5 of a class sample of employee timecards showed 5.4% of meal breaks were either missed, late, or short.
6 Markham Decl., ¶6. With respect to rest breaks, Plaintiff alleged that Defendant's policy required class
7 members to remain on-premises during rest breaks, depriving them of uninterrupted rest breaks. *Id.*, ¶6.

8 Plaintiff further alleged derivative claims, stemming from Plaintiff's primary unpaid wage and
9 meal and rest break claims, including violation of Labor Code section 226(a) for inaccurate wage
10 statements and Labor Code section 203 for waiting time penalties, and violations of PAGA and UCL
11 under the same predicate factual and legal theories. *Id.*, ¶3.

12 **III. VIGOROUS PROSECUTION OF THIS ACTION**

13 **A. Summary of Investigation and Discovery Conducted**

14 The parties engaged in significant discovery in this action. Between June 25, 2020 and September
15 21, 2021, Plaintiff served on Defendant two sets of requests for production of documents, two sets of
16 interrogatories, two sets of requests for admission, and noticed a deposition of Defendant's person most
17 knowledgeable. Markham Decl., ¶7. Defendant produced its applicable policies and handbooks in effect
18 during the class period, the class list subject to the *Belair-West* notice, and time and payroll records for a
19 20% sample of class members, together with a corresponding 20% class sample of time and date stamped
20 activity data from certain programs, used by Class Members in performance of their duties, including
21 from VPN and VDI. For certain data systems, Defendant produced data for a small sub-set of the sample.
22 *Id.*, ¶7. Plaintiff contacted class members and obtained signed declarations from individuals who worked
23 at different Bank of the West's locations in California. *Id.*, ¶7. Plaintiff retained an expert who reviewed
24 the class data and prepared a damages model. *Id.*

25 The parties carefully investigated the claims and facts alleged in this action, and Plaintiff has made
26 a thorough study of the legal principles applicable to the claims asserted against Defendant. As a result
27 of an aggressive investigation of the claims in this action, a careful review of numerous documents, and
28 extensive discovery, the parties had a clear understanding of their respective claims and defenses. *Id.*, ¶8.

1 **B. Settlement Reached after Arms-Length Negotiations with Assistance of**
2 **Experienced Mediator**

3 Plaintiff retained counsel with extensive experience in prosecuting wage and hour class actions.
4 Markham Decl., ¶¶28-34. Defendant was represented by seasoned attorneys at Orrick, Herrington &
5 Sutcliffe, LLP. *Id.*, ¶8. On March 28, 2022, the parties mediated this case before David A. Rotman, Esq.,
6 of Mediated Negotiations, a mediator vastly experienced in wage and hour class actions. At the
7 conclusion of the mediation session, the parties reached the settlement in principle, and executed a
8 Memorandum of Understanding. After additional weeks of arms'-length negotiations, the parties finalized
9 the terms of the settlement agreement. *Id.*, ¶9. The executed version of the Settlement Agreement is
10 attached as **Exhibit 1** to Markham Declaration.³

11 **C. Summary of the Risks to Further Litigation, and to Obtaining and**
12 **Maintaining Class Certification**

13 Although Plaintiff is confident in her position, she recognizes several risks to succeeding on the
14 merits and obtaining certification. Markham Decl., ¶17. First, regarding Plaintiff's claim for unpaid boot
15 up time, while Plaintiff asserts that the VPN and VDI transaction data is strong evidence of unpaid wages,
16 the activity data for multiple other programs class members used in performance of their duties does not
17 show that transactions occurred outside of the scheduled shift time. Further, Defendant will likely
18 contend that where an employer provides a means to record work time, the employer is entitled to rely
19 on those time records, and is not required to audit other available records to ascertain if any off-the-clock
20 work is occurring. *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1004, 1051 (2012) ("that employees are
21 clocked out creates a presumption they are doing no work"); *Hertz v. Woodbury County*, 566 F.3d 775, 781-
22 782 (8th Cir. 2009) (no duty to audit other available records); *Jong v. Kaiser Found. Health Plan, Inc.*, 226
23 Cal.App.4th 391, 398-399 (2014) (same). Also, some Class Members used a subset of different computer
24 programs than the others. This would likely hinder Plaintiff's ability to rely on the activity data to prove
25 liability for off-the-clock work. *Id.*, ¶18.

26 Second, Plaintiff would argue that Defendant's on-premises rest break policy is unlawful,
27 rendering this case certifiable under *Brinker*, 53 Cal.4th at 1033. However, Defendant would likely dispute
28 the alleged illegality of its policies arguing, for instance, that there is caselaw holding that a policy requiring

³ The Settlement Agreement was submitted to the LWDA concurrent to the filing of this motion, and proof of submission is attached as **Exhibit 2** to Markham Declaration.

1 an employee to remain on the premises during rest break is not per se unlawful. *See Bowen v. Target Corp.*,
2 2020 WL 1931278, at *6*7 (C.D. Cal. Jan. 24, 2020), *reconsideration denied*, 2020 WL 3628757 (C.D. Cal.
3 Mar. 27, 2020) (holding that the employer’s alleged on-premises rest break policy did not place employees
4 under “employer control” during rest breaks.); *see also Le v. Walgreen Co.*, 2020 WL 3213684, at *6 (C.D.
5 Cal. Apr. 27, 2020). Markham Decl., ¶19.

6 Further, Defendant would likely argue that where a plaintiff seeks class certification based on
7 allegations that the employer consistently imposed a uniform policy on class members, the plaintiff must
8 still demonstrate that the illegal effects of this policy can be proven efficiently and manageably within a
9 class setting. *Duran v. U.S. Bank Nat’l Assn.*, 59 Cal.4th 1, 29 (2014); *Payton v. CSI Elec. Contractors, Inc.*, 27
10 Cal.App.5th 832, 842 (2018). Here, Defendant would assert that some Class Members might have been
11 able to take uninterrupted rest (and meal) breaks, while some might not have been able to (on different
12 occasions and for different reasons). This could create individualized issues defeating commonality and
13 predominance, and manageability. Markham Decl., ¶20. Further, even if the rest break class were
14 certified, damages and penalties calculations could present complicated issues as Defendant’s employees
15 did not have to clock out to take rest breaks, or otherwise record them. *Id.*, ¶20.

16 Third, regarding Plaintiff’s meal break claim, Plaintiff would argue that under *Donohue v. AMN*
17 *Servs., LLC*, 11 Cal.5th 58 (2021) when time records show meal break violations, the presumption arises
18 employees were not provided meal breaks. *Id.* at 675-76. However, here, the rate of facial timecard
19 violation is very low at 5.4%, significantly diminishing the likelihood Plaintiff would be successful to show
20 on a classwide basis that Defendant failed to provide meal breaks. Markham Decl., ¶21. Notwithstanding,
21 Defendant would likely argue that in rebutting the presumption that meal breaks were not provided,
22 evidence of individualized experiences would be necessary, preventing the findings of commonality and
23 predominance. *Id.*, ¶21.

24 Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiff’s
25 unpaid time and meal and rest break claims, so if Plaintiff does not prevail on the underlying claims, her
26 derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Also,
27 Defendant will likely assert that wages that were not paid cannot form the basis of these derivative claims
28 based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018). Markham Decl., ¶22.

IV. SUMMARY OF SETTLEMENT TERMS

A. Settlement Relief

Gross Settlement Amount:	\$750,000. Settlement Agreement, ¶3.17.
Deductions from the Gross Settlement Amount:	• Attorneys' fees not to exceed 33.33% of the Gross Settlement Amount (\$250,000); • Out-of-pocket litigation costs not to exceed \$28,000; • Enhancement Award to Plaintiff not to exceed \$10,000; • PAGA penalties of \$60,000 (of which 75% or \$45,000 will be paid to the LWDA and 25% or \$15,000 to Aggrieved Employees, who are Settlement Class Members employed at any time from March 6, 2019 through the date of Preliminary Approval); • Administration costs of approximately \$3,495. • Employer's side payroll taxes. <i>Id.</i> , ¶8.2-8.5
Net Settlement Amount:	Approximately \$413,505 (minus employer's payroll taxes). <i>See id.</i> , ¶3.23.
Definition of the Settlement Class:	All current and former non-exempt employees of Defendant, employed in California, who, during the time period from March 16, 2016, and until the date of preliminary approval of this settlement ("class period"), worked in one of the following three job titles within the Commercial Banking Group: Senior Loan Administrator Specialist II, Senior Loan Administrator Specialist, and Loan Administrator Specialist II ("Class Members"). <i>Id.</i> , ¶3.6
Class Period:	from March 16, 2016 until the preliminary approval. <i>Id.</i> , ¶3.8.
The number of Class Members and workweeks worked during the Class Period	99 Settlement Class Members; 12,251 workweeks. <i>Id.</i> , ¶13.2
The average individual settlement payment	\$33.75 per workweek; or approximately \$4,176.81 per class member (without accounting for the number of workweeks worked, and minus employer's payroll taxes). Markham Decl., ¶15.

1. Settlement Formula and Distribution

Class Members who do not opt out of the Settlement will receive their respective Settlement Payments from the Net Settlement Amount based on the number of workweeks they worked during the Class Period, without the need to submit a claim form. Settlement Agreement, ¶8.7, VIII. Distribution amounts will be calculated and allocated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

3 *Id.*, ¶8.7.⁴

4 Class Members who do not opt out of the Settlement will release Defendant from all claims that
5 relate to the causes of action asserted in this action— or those that could have been asserted in this action
6 based on the facts alleged in Plaintiff's complaints and her PAGA letter. *See id.*, ¶11.1.

7 Settlement checks will be valid and negotiable for 180 days. *Id.*, ¶10.6. After that time, the Parties
8 will seek the Court's approval to donate the funds represented by uncashed checks, plus interest, to
9 California's Unclaimed Property Fund in the name of the intended recipient. *Id.* In no event will any of
10 the funds revert to Defendant. *Id.*, at VIII.

11 All Settlement Payments are subject to taxation and will be reported to the IRS and state tax
12 authorities. Fifty percent (50%) of each Class Member's Settlement Payment will be allocated as wages,
13 and fifty percent (50%) will be allocated as penalties and interest, with withholding to apply only to the
14 portion allocated to wages. *Id.*, ¶8.8. This allocation is reasonable. *See* section V(B), below. Class Members
15 shall seek their own tax advice regarding this Agreement. *Id.*

16 **2. Attorneys' Fees and Costs**

17 The parties agreed that, subject to approval by the Court, up to \$250,000 or 33.33% of the Gross
18 Settlement Amount, may be allocated to attorneys' fees, and up to \$28,000 may be allocated from the
19 Gross Settlement Amount to reimburse Class Counsel for litigation costs and expenses. Settlement
20 Agreement, ¶8.2. Courts in California wage and hour cases, where the common fund is under \$10 million,
21 tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D.
22 482, 491-92 (E.D. Cal. 2010) (citing to five wage and hour class actions where courts approved fee awards
23 ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the
24 lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half International Inc.*, 1
25 Cal.5th 480, 503 (2016). Class Counsel intends to brief the fee application using both methodologies, as
26 cross checks.⁵ Defendant agrees not to oppose or object to the application for attorneys' fees and costs

27 ⁴ The PAGA Penalty Payment allocated to Aggrieved Employees will be calculated similarly on a pro rata basis, based on the
28 total amount of workweeks PAGA Employees worked during the PAGA Period. *Id.*, ¶8.4.

⁵ 66.67% of the awarded attorneys' fees will be allocated to the Markham Law Firm, and 33.33% to The United Employees
Law Group. Markham Decl., ¶35.

1 in the amounts described above, *see* Settlement Agreement, ¶8.2. Any portion of the requested attorneys’
2 fees and costs that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall
3 be distributed to Class Members as provided in the Settlement Agreement. *Id.*, ¶8.2.1.

4 **3. *PAGA Payment to Labor Workforce Development Agency***

5 The Parties agreed \$60,000 of the Gross Settlement Amount will be allocated for payment under
6 the PAGA. 75% of this amount (\$45,000) will be paid to the LWDA, and 25% (\$15,000) to Aggrieved
7 Employees, who are those Class Members who worked for Defendant from March 6, 2019 and until the
8 preliminary approval. *Id.*, ¶8.4. The PAGA penalties to be paid under this Settlement represent
9 approximately 8.1% of the total potential PAGA penalties for Plaintiff’s direct claims, assuming class
10 members suffered three types of violations in every single pay period (47 initial pay periods times \$100,
11 plus 2,395 subsequent pay periods times \$100, multiplied by 3 penalties for unpaid time, meal breaks and
12 rest breaks per pay period = \$732,600). Markham Decl., ¶12. The subsequent penalties should be
13 calculated at \$100, not \$200 per pay period because under *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th
14 1157 (2008), for a plaintiff to recover \$200 per subsequent violation an employer must have been cited
15 first, which has not occurred in this action. *Id.* at 1207-09; *See also Hernandez v. Best Buy Stores, LP*, 2017
16 WL 2445438, 2 (S.D. Cal. June 6, 2017) (holding, based on *Amaral*, that \$100 penalty per pay period is
17 warranted because “no court, commissioner, or any other authority had held [that] Best Buy misclassified”
18 the general managers.”); *see also Trang v. Turbine Engine Components Technologies Corp.*, 2012 WL 6618854, *5
19 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for
20 subsequent violations unless and until a court or commissioner notifies the employer that it is in violation
21 of the Labor Code”); *Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Services, Inc.*, 2009
22 WL 2448430 at *9 (S.D. Cal. Aug. 10, 2009) (finding that California law imposes the “subsequent violation
23 penalty” only after an employer has been notified by “the court or commissioner” that its conduct violates
24 the Labor Code).

25 Such allocation of the PAGA penalties exceeds the range of other approved PAGA settlements,
26 as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties.
27 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of 0.2% of the
28 maximum, or \$5 per pay period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept.

28, 2016) (settlement allocating \$10,000 to PAGA penalties where potential value was over \$5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when measured against the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs' case,” or 2.2 percent); see also *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) (\$10,000 as PAGA penalties found reasonable).

4. *Settlement Administration Costs*

The parties selected Simpluris, Inc. as the Settlement Administrator in this action. Settlement Agreement, ¶9.1. The costs of the Administrator, estimated at \$3,495, will be deducted from the Gross Settlement Amount. *Id.*, ¶3.5. Declaration of Eric Springer of Simpluris, Inc., ¶13.

5. *Class Representative Service Enhancement Payment*

Defendant agreed, subject to Court approval, to pay up to \$10,000 from the Gross Settlement Amount to Plaintiff Antenucci. This is a payment for her services as a Class Representative, and not for general release of her claims. Settlement Agreement, ¶8.5. Any portion of the requested Service Enhancement Payment not awarded to the Class Representative shall be part of the Net Settlement Amount, and shall be distributed to Settlement Class Members as provided in this Agreement. *Id.*, ¶8.5.1.

B. *Settlement Administration*

Within 14 calendar days after the preliminary approval, Defendant will provide Simpluris with a class list containing Class Members’ contact information and sufficient information to determine the total number of workweeks worked within the relevant time periods. Settlement Agreement, ¶9.3. Within 10 business days thereafter, Simpluris, Inc. will send Class Notice to each Class Member as provided in this Settlement, determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Agreement, process and distribute Class Members’ payments, and process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶¶9.4, 10.4. Further, Class Members will also be able to contact the Settlement Administrator by the telephone or e-mail, or access the settlement

1 website,⁶ if they have any Settlement questions or need assistance. *See* Class Notice, **Ex. A** to the
2 Settlement Agreement. Also, any objections to or opt-outs from the Settlement must be delivered to the
3 Settlement Administrator. Settlement Agreement, ¶¶9.6, 9.8.

4 **V. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA**

5 There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for*
6 *Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises
7 discretion in deciding whether to grant preliminary approval of a class action settlement and “great weight
8 is accorded to [the] judge’s views.” *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th
9 1135, 1145 (2000).

10 Preliminary approval is the first of three steps of the settlement approval process. Second is the
11 dissemination of a settlement notice to all class members. Third is a final approval hearing, where the
12 evidence concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and
13 class members may be heard regarding the Settlement. *See* Manual for Complex Litigation, Second, ¶30A4
14 (1993). The court does not need to perform a final analysis of the settlement’s fairness to preliminarily
15 approve a proposed settlement. Rather, a more detailed assessment is reserved for the final approval
16 hearing, after class notice has been sent and class members have had the opportunity to object to or opt-
17 out of the settlement. *See* Moore’s Federal Practice, 23.165[3] (3d ed. 2005). Generally, there is an initial
18 presumption of fairness when a proposed settlement, which was negotiated at arms’-length by Class
19 counsel, is presented for court approval. 4 Newberg on Class Actions (4th ed. 2002), ¶11.41, p. 90. In
20 approving a settlement where the class has not yet been certified, the court must first determine that a
21 class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be shown
22 at a preliminary approval stage, although not necessarily manageability). Then, the Court should examine
23 the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

24 **A. Settlement Amount Calculations – Kullar analysis**

25 The settlement amount of \$750,000 derives primarily from Plaintiff’s regular unpaid overtime and
26 meal and rest break claims. Markham Decl., ¶12. Defendant’s records indicate there are 12,251 workweeks
27 worked by all class members. *Id.* The average hourly rate for class members is \$32.10. Class Members

28 ⁶ The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

1 worked on average 8 hours per shift. Defendant produced a class sample data of pay and time records
2 for 20% of class members during the class period. *Id.* The analysis of this data, and Plaintiff's investigation
3 of the claims in this action, reveal Defendant's maximum potential exposure is as follows:

4 Overtime claim: \$737,357.06. This is based on expert's comparison of activity data (VPN and
5 VDI) with employee timecards, which shows, that on average, class members are logged into activity
6 programs outside of the timekeeping program for 15 minutes per day, or 1.25 hours per week. This
7 conforms with class members' statements that they worked on average 15 minutes a day off the clock.
8 Markham Decl., ¶12. Thus, the total number of unpaid hours is 15,313.75 (12,251 workweeks x 1.25
9 hours per week). Plaintiff multiplied the number of unpaid hours (15,313.75) by an average overtime rate
10 of \$48.15, because class members' average shift length was 8 hours, so any additional work would be at
11 an overtime rate, resulting in a maximum unpaid overtime of \$737,357.06.

12 Meal break claim: \$106,186.80. This is based on the number of facial timecard violations analyzed
13 by Plaintiff's expert. Discovery and pre-mediation exchange of information in this action revealed that
14 there were approximately 3,308 unique meal break violations for all class members (extrapolated to the
15 class from a class sample). By multiplying the 3,308 meal break violations by the hourly rate of \$32.10,
16 the amount of meal premiums owed is \$106,186.80. There is no record of Defendant paying any meal
17 break premiums during the class period, so this amount is not discounted. Markham Decl., ¶12.

18 Rest break claim: \$1,966,285.50. This is based on 5 violations per workweek, based on Plaintiff's
19 allegation that Defendant's on-premises rest break policy is unlawful, and hence, results in a 100%
20 violation rate for this claim. 12,251 workweeks multiplied by 5 per workweek violation rate, multiplied by
21 \$32.10 hourly rate equals \$1,966,285.50 in unpaid rest break premiums. There is no record of Defendant
22 paying any rest break premiums during the class period, so this amount is not discounted. Markham Decl.,
23 ¶12.

24 Wage statement penalties: \$188,000, based on the \$50 per pay period for the initial violation (47
25 pay periods x 50 = \$2,350) and \$100 for the subsequent violations (\$100 x 2,395 pay periods = \$239,500).
26 Thus, the total penalties amount to \$241,850 (\$2,350 + \$239,500), but this exceeds the maximum \$4,000
27 cap per class member (47 class members who are within the 1-year statute of limitations for this claim x
28 \$4,000 = \$188,000). Markham Decl., ¶12.

1 Waiting time penalties: Plaintiff calculated daily wages for 57 former employees at \$256.80 (8
2 hours at \$32.10), times 30 days, to amount to **\$439,128**. Markham Decl., ¶12.

3 Thus, Defendant's potential maximum liability for Plaintiff's direct claims is \$2,809,829.36, and
4 an additional \$627,128 for Plaintiff's wage statement and waiting time penalties claims, possible only if
5 Plaintiff prevailed on her underlying claims. Thus, the Gross Settlement Amount of \$750,000 represents
6 26.69% of Defendant's maximum potential liability for Plaintiff's direct claims, and 21.82% of
7 Defendant's maximum liability for all Plaintiff's claims. *Id.*, ¶13. This is an excellent result, well within –
8 or exceeding - the range of settlements commonly approved by California state and district courts. *Id.*
9 *See also* section IV(B)(2) below for a detailed explanation.

10 **B. The Proposed Tax Allocation is Reasonable**

11 The tax allocation structure of 50% to wages and 50% to penalties (Settlement Agreement, ¶8.8)
12 is based upon the nature of the claims, with approximately half of Plaintiff's claims resulting in recovery
13 of unpaid wages and half resulting in recovery of penalties. The unpaid overtime wages, and meal and
14 rest break premiums, which consist of the primary claims, are considered wages. Plaintiff calculated
15 maximum exposure for these primary claims at \$2,809,829.36. *See* section A, above.

16 The derivative claims (and PAGA penalties) would be considered penalty payments, and not
17 subject to withholding. Plaintiff calculated maximum exposure for derivative claims and PAGA penalties
18 at \$1,359,728 (\$627,128 for wage statement and waiting time penalties and \$732,600 for PAGA penalties).
19 *See id.*; *see also* section IV(3), above. However, as discussed above, derivative penalties, if recoverable at
20 all, are contingent upon Plaintiff's initial success on Plaintiff's primary claims. Therefore, the 50%
21 allocation structure accounts for the emphasis on Plaintiff's primary claims represents in the settlement.

22 **C. The Proposed Settlement is Fair, Adequate, and Reasonable**

23 The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v.*
24 *Ford Motor Co.*, 48 Cal.App.4th at 1801, *citing Officers for Justice, supra*, 688 F.2d. at 625. The “fair, reasonable
25 and adequate” test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group,*
26 *Inc. v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). In the absence of California law, the court
27 might follow the federal authority. However, California courts have never adopted Rule 23 as “a
28 procedural strait jacket;” to the contrary, trial courts have been urged to be flexible in dealing with class

actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001), citing *Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be given considerable weight because of counsel's familiarity with the litigation, and previous experience with cases such as this one. *Officers for Justice, supra*, 688 F.2d at 625. "We note that... settlement [is] the preferred means of dispute resolution...especially in complex class action litigation." *7-Eleven Owners, supra*, 85 Cal.App.4th at 1151.

At the preliminary approval stage, the Court considers if:

(1) the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls with the range of possible approval.

In re Tableware Antitrust Litig., 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

This Settlement is the result of extensive and hard-fought negotiations. Markham Decl., ¶10. Plaintiff counsel's law firm specializes in wage and hour class action litigation, and Defendant was represented by seasoned attorneys at Orrick, Herrington & Sutcliffe. *Id.*, ¶8.

Class Counsel conducted interviews with Plaintiff and Class Members and diligently investigated Class Members' claims. Markham Decl., ¶¶7, 8; section III(A), *supra*. The parties engaged in written discovery and Defendant produced classwide data, including a class sample of time and pay records, and activity data. Class Counsel reviewed voluminous documents, including Defendant's timekeeping and meal and rest break policies, and engaged an expert to analyze significant electronic data. *Id.*, ¶¶7, 8.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. See *Adams v. Inter-Con Sec. Sys., Inc.*, 2007 WL 3225466, at *3 (N.D. Cal. Oct. 30, 2007) (preliminarily approving the settlement agreement after finding it was reached through extensive negotiations and plaintiff's counsel's thorough investigation of the claims); *Kullar v. Footlocker*, 168 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.)

Based on their knowledge of this action, Plaintiff determined that the Settlement would constitute the best outcome for the Class Members. Markham Decl., ¶10. Likewise, Defendant concluded that this action should be settled in the manner and upon the terms and conditions set forth in the Settlement

1 Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and
2 the uncertainties of trial and appeals. *Id.*

3 Before this action settled, the parties participated in mediation before a private neutral with
4 extensive experience in mediating wage and hour class actions. Markham Decl., ¶9; section III(B), *supra*.
5 That indicates the settlement was free of collusion. “The assistance of a well-respected mediator with
6 substantial experience in employment litigation...supports approval of the settlement.” *Murillo v. Pac.*
7 *Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk*, *supra*, 48 Cal.App.4th at 1802-03.

8 The parties have been cooperative, yet aggressive, and displayed capable and experienced
9 advocacy on both sides. Accordingly, “[t]here is ... every reason to conclude that settlement negotiations
10 were vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash.*
11 *Public Power Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

12 2. The Settlement has no “Obvious Deficiencies” and Falls within the Approval Range

13 “[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
14 highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir.
15 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider “the complete
16 package taken as a whole,” and the amount should “not be judged against a hypothetical or speculative
17 measure of what might have been achieved by the negotiators.” *Id.* at 625-28.

18 (i) *The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements*

19 Courts routinely approve class action settlements where the settlement amount is a lower
20 percentage of the claimed amount of damages. In *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611 (N.D.
21 Cal. 2014), the court found a settlement in a wage and hour class action between 9% and 27% of total
22 potential liability to be fair, adequate and reasonable given the uncertainty of continued litigation. *Id.* at
23 623-24; *see also Glass v. UBS Financial Services*, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007) (approving
24 a settlement of unpaid overtime wages where the settlement amount constituted approximately 25 to 35%
25 of the estimated actual loss to the class); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
26 2000) (16.67% of potential recovery adequate in light of plaintiff’s risks); *Thomas v. Cognizant Tech. Sols.*
27 *U.S. Corp.*, 2013 WL 12371622, at *6 (C.D. Cal. June 24, 2013) (granting final approval in wage and hour
28 action for settlement between 4.4% and 5% of maximum liability); *Stovall-Gusman v. W.W. Granger, Inc.*,

1 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (approving settlement representing 10% of potential
2 value); *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012); *In re MyFord*
3 *Touch Consumer Litig.*, 2019 WL 1411510, at *10 (N.D. Cal. Mar. 28, 2019) (6% of valuation). Simply put,
4 “the fact that a proposed settlement may only amount to a fraction of the potential recovery does not
5 mean that [it] should be disapproved.” *7-Eleven Owners, supra*, 85 Cal.App.4th at 1150, citing *Linney v.*
6 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

7 Here, the Settlement represents almost 22% (21.82%) of Defendant’s maximum potential liability
8 for Plaintiff’s direct overtime and break claims, and over 26% of Defendant’s maximum liability for all
9 Plaintiff’s claims, without any risks, costs, and uncertainty of prolonged litigation. Markham Decl., ¶13.
10 Without accounting for the length of each class member’s employment with Defendant, a class member
11 will recover over \$4,176.81 as a result of this settlement, or \$33.75 per workweek. *Id.*, ¶15. Based on the
12 average hourly rate of \$32.10, this amounts to recovery of approximately 65 meal break premiums and
13 65 rest break premiums, or over 86 hours of overtime wages per class member. This is an excellent result
14 when considering that Plaintiff could face difficulties to establish liability and prevail at certification and
15 trial, and is well within (or exceeds) the range of approved settlement payments. *See e.g., Villegas v. J.P*
16 *Morgan Chase & Co.*, 2012 WL 5878390, at *2, 6 (N.D. Cal. Nov. 21, 2012) (approving settlement with
17 approximately \$255 settlement payment per class member).

18 (ii) *The Formula of Allocation based on Workweeks is Fair and should be Approved*

19 Class Members will receive a portion of the Gross Settlement Amount based on the number of
20 workweeks they worked for Defendant during the class period. This formula is realistic because Class
21 Members’ individual recovery is proportionate to the amount of time the Class Members were employed
22 with Defendant. Markham Decl., ¶13. Plaintiff’s primary claims include failure to pay all wages owed due
23 to pre-shift boot-up time, and failure to provide all meal and rest periods and to pay required premiums.
24 Because Plaintiff’s expert’s analysis of the class sample confirmed that the average shift length was 8
25 hours, unpaid wages for “boot-up” time would be commonly calculated at the overtime rate. Markham
26 Decl., ¶12. Further, discovery confirmed that class members earned relatively the same hourly wage as
27 would be applied to unpaid wages and meal and rest break premium payments. *Id.*, ¶12. Finally, other
28 distribution approaches such as an allocation of a flat rate amount to waiting time or wage statement

1 penalties would not be feasible in this case, because the number of former employees already consists of
2 a large percentage of the class (over 57%), and pay periods worked by employees who are within the
3 statute of limitations for 226(a) penalties represent almost a half of all pay periods, and therefore these
4 individuals do not represent a small sub-set of class members to identify for payment separate from the
5 overall class. In addition, recovery for waiting time penalties or wage statement penalties at all under the
6 theories in this case is uncertain for the reasons discussed in Section IIB(e), *supra*. Further, derivative
7 penalties, if recoverable at all, are contingent on the success of Plaintiff's primary claims, and therefore,
8 the per workweek distribution represents the fairest and most efficient distribution approach.

9 Thus, considering the probability of lengthy litigation in the absence of a settlement, the risk that
10 Plaintiff and the Class Members might not have been able to succeed at trial, and the risk that a jury could
11 award damages less than \$750,000, the settlement amount is reasonable. *In re Mego Fin. Corp. Sec. Litig.*,
12 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at *7.

13 3. The Settlement does not Improperly Grant Preferential Treatment to Class
14 Representatives or Segments of the Class

15 Class Representative Angela Antenucci will receive \$10,000 for her time and efforts in
16 representing the Class. Settlement Agreement, ¶8.5. "Incentive awards [for class representatives] are fairly
17 typical in class actions." *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez*
18 *v. West Publ'g*, 563 F.3d 948, 958 (9th Cir. 2009). California courts agree that a class representative is
19 entitled to such an award. *Cellphone Termination*, *supra*, 186 Cal.App.4th at 1394. "Since without a named
20 plaintiff there can be no class action, such compensation as may be necessary to induce him to participate
21 in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses,
22 such as long-distance phone calls, which are reimbursable." *Clark v. Am. Residential Servs.*, 175 Cal.App.4th
23 785, 804 (2009), citing *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

24 Here, the enhancement payment to Plaintiff is based on the extent of Plaintiff's participation in this
25 action, and is not paid in exchange for general release, nor conditioned upon Plaintiff's support of the settlement.
26 *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1165 (2013). Throughout this action, Plaintiff assisted
27 in investigation, participated in multiple call conferences with counsel, provided and reviewed documents
28 and pleadings, and was on standby during mediation. *See* Antenucci Decl., ¶¶11, 12.

Courts award incentive awards in this range. *Ross v. U.S. Bank Nat'l Ass'n*, 2010 WL 3833922, at

*3 (N.D. Cal. Sept. 29, 2010) (approving an award of \$20,000 to each of four named plaintiffs based on their contributions to litigation and the risk that being a class representative would harm their reputation); *see also Ridgeway v. Wal-Mart Stores Inc.*, 2017 WL 4071293, at *19 (N.D. Cal., Sept. 14, 2017) (\$15,000 incentive awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC*, 246 F.Supp.3d 1295, 1316 (S.D. Cal. 2017) (\$15,000 incentive award approved where plaintiffs “devoted significant amounts of time and energy” to the action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *17 (\$25,000 for each class representative in wage and hour action). Thus, the proposed service award is reasonable.

4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval of the Settlement

“A court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case.” *Nat’l Rural Telecomms. Corp.*, *supra*, 221 F.R.D. at 527. However, the settlement can be approved even in the absence of any discovery, if other factors are satisfied. *In re TD Ameritrade Account Holder Litig.*, 2011 WL 4079226, at *6 (N.D. Cal. Sept. 13, 2011). The bottom line is that “the parties have sufficient information to make an informed decision about the settlement.” *Durham v. Cont’l Cent. Credit, Inc.*, 2011 WL 90253, at *3 (S.D. Cal. Jan. 10, 2011), citing *Linney v. Cellular Alaska P’ship*, 151 F.3d at 1239.

Here, before settling this action, the parties had a thorough understanding of their respective claims and defenses, as this action has been litigated for two years and the parties had engaged in significant formal and informal discovery. *See* section III(A), *supra*; Markham Decl., ¶¶7-8, 10. Before mediation, Class Counsel had investigated class members’ claims, examined documents and data, and performed damage calculations. *Id.*, ¶7. At the time the parties engaged in mediation, they knew and understood their respective positions. *Id.*, ¶8. As a result of the work performed in this case, the real value of the class claims was well known, and Class Counsel determined that the Settlement with Defendant is fair, reasonable, adequate, and in the best interest of the Class. *Young v. Polo Retail, LLC*, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28, 2007).

D. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes.⁷

⁷ Defendant agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. Settlement Agreement, at V.

1 In California, to prevail on a motion for class certification, plaintiffs need to show that “the
2 question is one of a common or general interest, of many persons, or...the parties are numerous, and it
3 is impracticable to bring them all before the court.” Cal. Code of Civ. Proc. § 382. The party seeking
4 certification needs to prove that the class is both ascertainable and that there is a well-defined community
5 of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal.4th 319, 326 (2004). In
6 *Sav-On Drug Store*, the court adopted a test for “community of interest,” which consists of the following
7 prongs: (1) there are predominant common questions of law or fact; (2) class representatives have claims
8 typical to those of the class; and (3) class representatives can adequately represent the interests of the
9 class. *Id.*

10 1. An Ascertainable and Numerous Class Exists that can be Determined from Payroll
11 Records

12 A class is generally considered ascertainable when: (i) under the class definition the members are
13 clearly identifiable, and (ii) the members can be located and notified through a reasonable expenditure of
14 time and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987);
15 *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Typically, class members are ascertainable
16 when they can be easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*,
17 195 Cal.App.4th 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919.

18 Here, the Class is composed of approximately 99 current and former CBG Loan Admin employees
19 of Defendant in California, who can be identified and located from Defendant’s personnel and payroll
20 records. In California, as few as ten (10) or twenty-eight (28) members satisfied numerosity. *Bowles v.*
21 *Super. Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Defendant will
22 provide the Settlement Administrator with a database with all Class Members’ names, contact
23 information, and the number of relevant workweeks within 14 calendar days of preliminary approval, and
24 further steps will be taken to locate the Class Members for whom the addresses are not current. Settlement
25 Agreement, ¶9.3; 3.32; *see also* section VI, *infra*. Numerosity is satisfied, and the class is ascertainable.

26 2. Common Issues of Law and Fact Predominate over any Individual Issues

27 “As a general rule if the defendant’s liability can be determined by facts common to all members of
28 the class, a class will be certified even if the members must individually prove their damages.” *Brinker*,
supra, 53 Cal.4th at 1022. The court only determines whether or not “the theory of recovery advanced by

1 the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.”
2 *Sav-On Drug Stores, supra*, 34 Cal.4th at 327.

3 Here, there are common questions of law and fact that apply to Class Members across the board,
4 because all Class Members were subject to Defendant’s timekeeping and meal and rest break policies and
5 practices, and Plaintiff argues these policies and/or practices were unlawful. Those common questions
6 predominate over any individual inquiries, in that “determination of [their] truth or falsity will resolve an
7 issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*,
8 131 S.Ct. 2541, 2551 (2011). Those questions include: (i) Whether or not Class Members were paid for
9 all hours worked, including time worked before and after their shifts, (ii) Whether or not Class Members
10 were provided with off-duty, uninterrupted meal and rest breaks; (iii) Whether or not Defendant’s on-
11 premises rest break policy is lawful; (iv) Whether or not Class Members were provided with all wages due
12 upon separation under Labor Code section 203; (v) Whether or not Class Members were provided with
13 accurate wage statements as required by Labor Code section 226; (vi) Whether or not Defendant engaged
14 in unfair business practices in violation of the UCL. *See also* Antenucci Decl., ¶¶4-7, attesting that her
15 claims are common to the claims of the absent Class Members.

16 Because several issues are common to all Class Members, a class action is superior to numerous
17 individual actions, and the maintenance of this action as a class action will save judicial resources, and
18 help avoid inconsistent judgments. *See Savon Drugs, supra*, 34 Cal.4th at 326. Class Members’ interests are
19 relatively small, so they are unlikely to prosecute separate actions. Plaintiff’s claims arise from her
20 employment with Defendant in California.

21 3. Plaintiff’s Claims are Typical of the Claims of Class Members

22 Typicality does not mean that the interests of representative plaintiffs must be identical to those of
23 the absent class members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d
24 938, 957 (9th Cir. 2003). They only need to be “reasonably co-extensive with those of absent class
25 members.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Further, the representative plaintiff must be
26 a member of the class she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875
27 (1971). “Typicality refers to the nature of the claims or defense of the class representative, and not to the
28 specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th

1 Cir. 1992).

2 Here, Plaintiff's claims arise from the same facts and legal theories as the Class Members' claims.
3 Plaintiff was a member of the class of CBG Loan Admins in California, and subject to the same policies
4 and practices of Defendant with respect to timekeeping, and meal and rest breaks. *See also* Antenucci
5 Decl., ¶¶4-7, attesting that her claims are typical of the claims of the absent Class Members. Thus,
6 typicality is met.

7 4. Plaintiff and Class Counsel will Adequately Protect the Interests of the Class

8 The adequacy of representation involves two conditions: the named plaintiff must be represented
9 by counsel qualified to prosecute class actions of this type; and the named plaintiff's interests cannot be
10 antagonistic to those of the class. *See McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976).

11 Here, Plaintiff retained counsel with extensive experience in prosecuting wage and hour class
12 actions. Markham Decl., ¶¶28-34; Declaration of Walter L. Haines ("Haines Decl."), ¶3. In addition,
13 Plaintiff has the same interests as the rest of the Settlement Class, because she has allegedly been injured
14 in substantially the same manner. Antenucci Decl., ¶¶4-7. Thus, the Court should certify Plaintiff's class
15 claims for the purposes of this Settlement.

16 **VI. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED**

17 **A. Proposed Notice Plan**

18 Within 10 business days following receipt of Class Data from Defendant, the Settlement
19 Administrator will send Class Notice to Class Members via first class mail. Settlement Agreement, ¶9.4.
20 Before mailing the Notice, the Settlement Administrator will run a check of the Class Members' addresses
21 against those contained in the USPS's National Change of Address database, and take any other
22 appropriate steps to validate the correctness of the addresses provided by the Defendant. *Id.*, ¶9.3. If the
23 Notice is returned with the forwarding address, the Settlement Administrator will use the forwarding
24 addresses to locate the missing Class Members, and re-mail the Notice to the correct address. *Id.*, ¶9.4.1-
25 9.4.4. If a Notice is returned as non-deliverable with no forwarding address, the Settlement Administrator
26 shall conduct an advanced skip trace to locate the most current address of the person to whom the Notice
27 was addressed, and shall resend the Notice to any updated address within five (5) business days. *Id.* Any
28 responses from the Class Member (*i.e.*, a dispute regarding calculation of workweeks, a Request for

1 Exclusion, or an objection) are due to the Administrator by the Notice Response Deadline, as defined in
2 the Settlement Agreement, or within twenty-one (21) days from the date of re-mailing, whichever is later.
3 *Id.*

4 The Class Notice will summarize the terms of the Settlement Agreement, advise the Class
5 Members of their estimated individual settlement payment, and inform Class Members of their right to
6 object to or exclude themselves from the Settlement within 60 days after the Notice mailing. **Ex. A.**
7 Because this is the California-only class, and the mailing will occur only in California, 60 days to opt out
8 from or object to the Settlement is sufficient. Markham Decl., ¶16. Further, because Class Members
9 worked as CBG Loan Admins in California, communicating with customers on daily basis in English,
10 and speaking English was a job requirement, English-only notice is sufficient. *Id.*

11 1. Notice by Regular Mail is the Best Notice Practicable:

12 The Parties believe that mailing of the notice is best calculated to reach class members. Personal
13 email addresses are generally available for former class members as part of the personnel file, however,
14 current employees are generally contacted through their current work email addresses. Markham Decl.,
15 ¶16. For former employees, if the email address is out-of-date, an updated email address cannot be traced
16 and located with the same reliability as the Settlement Administrator can perform tracing to confirm
17 updated addresses with the United States Postal Service. *Id.* Additionally, the nature of the CBG Loan
18 Admin, as an office position, is not one that would indicate a class of workers that would be particularly
19 transient or for which current mailing addresses would be difficult to confirm. *Id.*

20 Because mailing addresses can be verified and will be updated in official records, mailing of the
21 Notice is more likely to reach class members and has the additional security and likelihood for the class
22 member to receive the Notice. In Class Counsel's experience, certain "spam" filters can exist on e-mail
23 inboxes which may cause the class notice to be routed to the spam folder, and potentially not viewed by
24 the class member. Markham Decl., ¶16. For these reasons, including the additional tracing and security
25 available with mailing the Notice, the Parties believe that mailing of the notice would be the most efficient,
26 calculated, and secure way to distribute the notice.

27 2. Strict Compliance for Opt-Outs and Substantial Compliance for Objections

28 The parties agree that objections which substantially comply with their requirements will be

1 accepted, with the exception of the timeliness requirement. Settlement Agreement, ¶9.8. Strict compliance
2 will be enforced with respect to the opt out requests, but Class Members will have an opportunity to cure
3 any defects. *Id.*, ¶9.6. An opt out form will be mailed to Class Members with the Notice. *Id.*, Ex. B. The
4 Settlement Administrator will notify the Parties of any opt-out or objection received. *Id.*, ¶9.8.

5 **B. The Proposed Notice to the Class is Fair and Adequate**

6 The parties agreed on the language of the proposed class notice. *Id.* If the Court concludes after
7 a preliminary evaluation of the settlement that the relief offered and notice provided are fair and adequate,
8 the Court should order that the class notice be provided. Manual for Complex Litig., Second, § 21.632
9 at 321. The threshold requirement regarding the sufficiency of class notice is whether the means
10 proposed for distributing the notice are reasonably calculated to apprise the class of the pendency of the
11 action, the proposed settlement, and the right to opt out of or object to the settlement. *Eisen v. Carlisle*
12 *& Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950);
13 *see also* Cal. Rules of Court, Rule 3.766.

14 Here, the Notice is more than sufficient, because it gives Class Members, in an easy to understand
15 and clear language: (1) basic information about this action and the Settlement; (2) an estimate of the weeks
16 Class Members worked during the Class Period, and an explanation how Class Members can dispute this
17 calculation; (3) an explanation how the payout from the Settlement will be calculated for each Class
18 Member, and an estimate of a Class Member's Settlement Payment; (4) an explanation how Class
19 Members can exercise their right to opt-out from, or object to, the Settlement; (5) an explanation that
20 any claims against the Defendant that could have been litigated in this Action will be released if the Class
21 Member does not opt out; (6) name of Class Counsel and information regarding attorneys' fees and costs;
22 (7) the date of the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing;
23 and (8) the telephone and e-mail number, as well as website address, where Class Members can obtain
24 additional information. *See* Ex. A (proposed Class Notice).

25 Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the
26 California Rules of Court, Rules 3.766 and 3.769(f).

27 **VII. CONCLUSION**

28 Counsel for the parties aggressively litigated and now settled this case. In the judgment of Plaintiff

1 and Class Counsel, as well as Defendant, the proposed Settlement is a fair and reasonable compromise
2 of the issues in dispute in light of the strengths and weaknesses of each party's case.

3 After weighing the substantial, certain and immediate benefits of this Settlement against the
4 uncertainty of further trial and appeal, the parties believe the proposed Settlement is fair, reasonable and
5 adequate. Thus, Plaintiff's motion should, respectfully, be granted.

6
7 Dated: June 3, 2022

Respectfully submitted,

8 THE MARKHAM LAW FIRM

9
10 /s/ Maggie Realin

David Markham

11 Maggie Realin

Lisa Brevard

12 Attorneys for Plaintiff
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