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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MONTEREY**

GUSTAVO DOMINGUEZ and MATTHEW
SCOTT, individuals, on behalf of themselves
and on behalf of all persons similarly situated,

Plaintiff,

v.

LIFESAFER OF NORTHERN CALIFORNIA,
a Corporation, and DOES 1-50, inclusive,

Defendants.

Case No: 20CV002586

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

Hearing Date: November 5, 2021
Hearing Time: 9:00am

Honorable Judge Marla O. Anderson
Department 14

Trial Date: Not Set
Action Filed: September 25, 2020

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1 **I. INTRODUCTION**

2 Plaintiffs GUSTAVO DOMINGUEZ and MATTHEW SCOTT (“Plaintiffs”) respectfully
3 submit this memorandum in support of the motion for preliminary approval of the proposed class
4 and Private Attorneys General Act (“PAGA”) action settlement with Defendant LIFESAFER OF
5 NORTHERN CALIFORNIA (“Defendant”), and seek entry of an order: (1) preliminary approving
6 the proposed settlement of this class and PAGA action with Defendant; (2) approving the form and
7 method for providing class-wide notice; (3) directing that notice of the proposed settlement be given
8 to the class; and (4) scheduling a final approval hearing date to consider Plaintiffs’ motion for final
9 approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of
10 attorneys’ fees and litigation expenses.

11 Plaintiffs and Defendant have reached a full settlement of the above-captioned action, which
12 is embodied in the Class and PAGA Action Settlement Agreement (“Agreement”). A copy of the
13 fully executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl.
14 Zakay”), served and filed herewith.

15 As consideration for this Settlement, the total amount to be paid by Defendant is One
16 Hundred and Seventy-Five Thousand Dollars (\$175,000) (the “Gross Settlement Amount”). The
17 Gross Settlement Amount will settle all issues pending in this litigation between the Plaintiffs and
18 the California Class (the “Class”), on the one hand, and the Defendant and the Released Parties, on
19 the other hand, including: payment of all Settlement Shares to Participating Class Members, the
20 Class Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation
21 Expenses Payment, the payment to the California Labor Workforce Development Agency (“LWDA
22 Payment”), and the expenses of the Settlement Administrator. The Gross Settlement Amount does
23 not include Defendant’s share of employer payroll taxes, which it shall pay separately. The
24 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Decl.
25 Zakay at ¶ 3)

26 On May 17, 2021, the parties participated in a full-day mediation before Hon. Carl J. West
27 (Ret.), a respected jurist and mediator of wage and hour class actions. At the conclusion of the full-
28 day mediation, the Parties reached an agreement for settlement. The basic terms were set forth in a

1 signed Memorandum of Understanding. The Parties then prepared the full Agreement, which was
2 signed by all counsel and the Parties and is now presented to this Court for preliminary approval.
3 Plaintiffs and Class Counsel believe that this Settlement is fair, reasonable, and adequate. (Decl.
4 Zakay at ¶ 5).

5 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
6 Therefore, Plaintiffs respectfully requests that this Court grant preliminary approval of the
7 Agreement and enter the proposed order submitted herewith.

8 **II. DESCRIPTION OF THE SETTLEMENT**

9 The Gross Settlement Amount to be paid by Defendant is One Hundred and Seventy-Five
10 Thousand Dollars (\$175,000). Under the Settlement, the Gross Settlement Amount consists of the
11 following elements: (1) payments of the Settlement Shares to Participating Class Members,
12 including the California Class Members, (2) Class Counsel Fees Payment and Class Counsel
13 Litigation Expenses Payment, (3) Settlement Administration Costs, (4) the LWDA Payment, and
14 (5) the Class Representative Service Payment to the Plaintiffs. The Gross Settlement Amount does
15 not include Defendant's share of employer payroll taxes, which Defendant shall pay to the
16 Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to
17 Defendant. (Decl. Zakay at ¶ 3).

18 After final approval and the Judgment becomes final, the Defendant will fund the Gross
19 Settlement Amount in accordance with the following payment schedule: (1) fifty-percent (50%)
20 within thirty (30) days after final approval and the Judgment becomes final; and (2) fifty-percent
21 (50%) within one hundred and eighty (180) days after final approval and the Judgment becomes
22 final. Within fifteen (15) days after Defendant funds the Gross Settlement Amount in full, the
23 Settlement Administrator will pay: the Participating Class Members their Settlement Shares; Class
24 Counsel their Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment;
25 the LWDA its LWDA Payment; and the Settlement Administrator its Settlement Administration
26 Costs, all in the amounts approved by the Court. (Decl. Zakay at ¶13).

27 The Net Settlement Amount shall equal the net amount available for Settlement shares to
28 Participating Class Members from the Gross Settlement Amount after deducting the Court-

1 approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment,
2 the Class Counsel Litigation Expenses Payments, the LWDA Payment, and the Settlement
3 Administration Costs. The Settlement Administrator will pay a Settlement Share from the Net
4 Settlement Amount to each Participating Class Member. The submission of a claim form is not
5 required in order for the Participating Class Member to be paid his or her Settlement Share. The
6 Settlement Share for each Participating Class Member will be calculated as follows: (1) from the
7 Net Settlement Amount, the Settlement Share for each Participating Class Member in the Class will
8 be calculated by (a) dividing this amount by the total number of workweeks worked by all
9 Participating Class Members during the California Class Period to determine a dollar amount per
10 workweek (“Workweek Payment”), and (b) multiplying the total number of workweeks worked by
11 each Participating Class Member in the California Class during the California Class Period by the
12 Workweek Payment. The entire Net Settlement Fund shall be distributed. (Decl. Zakay at ¶14).

13 Class Members will have 45 days after the mailing of the Class Notice to exclude themselves
14 or submit written objections. Class Members may choose to opt-out of the Settlement by following
15 the directions in the Class Notice. All Class Members who do not “opt out” will be deemed
16 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
17 settlement payment. Finally, the Class Notice will advise the Class Members of their right to object
18 to the Settlement. (Decl. Zakay at ¶15).

19 If a check is returned to the Settlement Administrator, the Settlement Administrator will
20 make all reasonable efforts to obtain a correct address for the Participating Class Member and re-
21 mail the check to the Participating Class Member at his or her correct address. If a Participating
22 Class Member’s Settlement Share check is not cashed within 90 days after the Settlement
23 Administrator’s last mailing to the Participating Class Member, the Settlement Administrator will
24 send the affected Participating Class Member a notice informing him or her that unless the check is
25 cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check
26 if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the
27 60 days period after this notice, the funds from such uncashed check will be paid to the Children
28

1 Advocacy Institute in the name of the Participating Class Member and the Participating Class
2 Member will remain bound by the Settlement. (Decl. Zakay at ¶16).

3 The Parties have agreed to use ILYM Group as the Settlement Administrator for the
4 Settlement. Payment of the expenses of the Settlement Administrator from the Gross Settlement
5 Fund shall be made for the expenses of effectuating and administering the Settlement. The
6 Settlement Administrator shall receive payment for services in an amount not to exceed \$8,000.
7 (Decl. Zakay at ¶17).

8 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
9 not to exceed 1/3 of the Gross Settlement Amount as their Class Counsel Fees Payment. Class
10 Counsel will also be allowed to apply separately for an award of litigation expenses in an amount
11 not to exceed \$15,000. In support of this request, Class Counsel will provide evidentiary support,
12 including lodestar method calculations. Subject to Court approval, the Agreement provides for
13 payment of Class Representative Service Payments of no more than \$7,500 for Plaintiff Gustavo
14 Dominguez and no more than \$7,500 for Plaintiff Matthew Scott, or such lesser amount as may be
15 approved by the Court at final approval.¹ Defendant will not oppose a motion for approval of
16 attorneys' fees, costs and a service award consistent with the Agreement. (Decl. Zakay at ¶18).

17 Subject to Court approval, \$10,000 will be paid from the Gross Settlement Amount for
18 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the
19 requirements of Labor Code §2699(i), the PAGA Payment shall be allocated \$7,500 (75%) to the
20 LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties and
21 \$2,500 (25%) to the Net Settlement Amount for distribution to the Participating Class Members in
22 the California Class. (Decl. Zakay at ¶19).

23 **III. CASE BACKGROUND**

24 On September 25, 2020, Plaintiffs filed a class action Complaint ("Action") against
25 Defendant in the Superior Court of the State of California, County of Monterey, asserting claims
26

27 ¹ Plaintiffs will address the reasonableness of this award when filing their final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 that Defendant: (1) Violated California Business and Professions Code § 17200; (2) Failed to pay
2 minimum wages in violation of California Labor Code §§ 1194, 1197, 1197.1; (3) Failed to pay
3 overtime wages in violation of California Labor Code § 510; (4) Failed to provide required meal
4 periods in violation of California Labor Code §§ 226.7 & 512; (5) Failed to provide required rest
5 periods in violation of California Labor Code §§ 226.7 & 512; (6) Failed to reimburse employees
6 for required business expenses in violation of California Labor Code § 2802; (7) Failed to provide
7 accurate itemized wage statements in violation of California Labor Code § 226; (8) Failed to provide
8 wages when due in violation of California Labor Code §§ 201, 202 and 203; and (9) Violation of
9 the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]. (Decl. Zakay at ¶7).

10 Plaintiffs seek to represent a putative class of all non-exempt employees who are or
11 previously were employed by Defendant in California during the period of September 25, 2016 to
12 May 17, 2021 (the “California Class”). The Class Period is defined as the period from September
13 25, 2016 to May 17, 2021. The Action generally alleges that Defendant failed to properly pay
14 Plaintiffs and Class Members minimum and overtime wages, failed to provide them with proper
15 meal breaks and rest breaks, failed to pay them wages for all time worked, failed to reimburse for
16 required business expenses, failed to provide them with complete and accurate wage statements,
17 engaged in unfair business practices, and failed to timely pay them all wages owed at the time of
18 the separation of their employment. The Action seeks unpaid wages, statutory penalties, civil
19 penalties, attorneys’ fees, litigation costs², and any other equitable or legal relief allegedly due and
20 owing to Plaintiffs and the other Class Members by virtue of the foregoing claims. (Decl. Zakay at
21 ¶8).

22 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
23 information in connection with the Action. As part of this process, Defendant provided a significant
24 sample of time records and payroll records, as well as other documents and information, to Class
25 Counsel to review and analyze. On May 17, 2021, the Parties participated in an all-day mediation
26 presided over by Hon. Carl J. West (Ret), a respected jurist and mediator of wage and hour class
27

28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with
the final approval papers.

1 actions. At the conclusion of the full-day mediation, the Parties were able to reach an agreement to
2 settle the Action. The Parties documented the agreement in the form of a Memorandum of
3 Understanding. The Parties then prepared the Settlement Agreement, which was signed by the
4 Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at ¶9).

5 Although a resolution has been reached, Defendant denies any liability or wrongdoing of
6 any kind associated with the claims alleged in the Action and further denies that, for any purpose
7 other than Settlement, the Action is appropriate for class treatment. Defendant contends, among
8 other things, that it has correctly and fully compensated the Class Members, provided compliant
9 meal and rest periods to the Class Members, provided complete, accurate itemized wage statements,
10 and complied at all times with the California Labor Code, and the applicable Wage Orders. Further,
11 Defendant contends that class certification would be inappropriate for any reason other than for
12 settlement. (Decl. Zakay at ¶10).

13 Plaintiffs contend that Defendant violated California wage and hour laws. Plaintiffs further
14 contend that the Action is appropriate for class certification on the basis that the Plaintiffs' claims
15 meet the requisites for class certification. Without admitting that class certification is proper,
16 Defendant has stipulated that the above Class may be certified for settlement purposes only. The
17 Parties agree that certification for settlement purposes is not an admission that class certification
18 would be proper or that Plaintiffs would be adequate class representatives if the class certification
19 issues were litigated. Further, the Agreement is not admissible in this or any other proceeding as
20 evidence that the Class could be certified absent a settlement. Solely for purposes of settling the
21 Action, the Parties stipulate and agree that the requisites for establishing class certification with
22 respect to the Class, as defined above, are satisfied. (Decl. Zakay at ¶10).

23 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
24 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
25 reviewed the production of documents from the Defendant. Prior to the settlement negotiations,
26 counsel for Defendant provided Class Counsel with access to the necessary data and information
27 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
28 of a significant sample of time records and data with the assistance of an expert (Berger Consulting).

1 Based on the foregoing data and their own independent investigation, evaluation and experience,
2 Class Counsel believe that the Settlement is fair, reasonable, and adequate and are in the best interest
3 of the Class in light of all known facts and circumstances, including the risk of significant delay,
4 the defenses asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶11).

5 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 6 **COURT TO GRANT PRELIMINARY APPROVAL**

7 When a proposed class-wide settlement is reached, the settlement must be submitted to the
8 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
9 p.11-87). California “[p]ublic policy generally favors the compromise of complex class action
10 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
11 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
12 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
13 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
14 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

15 Preliminary approval is the first of three steps that comprise the approval procedure for
16 settlements of class actions. The second step is the dissemination of notice of the settlement to all
17 Class Members. The third step is a final settlement approval hearing, at which evidence and
18 argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented
19 and Class Members may be heard regarding the settlement. (See *Dunk v. Ford Motor Co.*, 48 Cal.
20 App. 4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of
21 Court, rule 3.769.).

22 The primary question presented on an application for preliminary approval of a proposed
23 class action settlement is whether the proposed settlement is “within the range of possible approval.”
24 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
25 (7th Cir. 1982)).³ Preliminary approval is merely the prerequisite to giving notice so that “the

26 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts
28 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure
for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986),
citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 proposed settlement... may be submitted to members of the prospective Class for their acceptance
2 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
3 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
4 LEXIS 151997, *3 (C.D. Cal. 2010)). There is an initial presumption of fairness when a proposed
5 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
6 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
7 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
8 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and
9 adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly
10 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).
11 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
12 is made after notice of the settlement is given to the Class Members and a final settlement hearing
13 is held by the Court.

14 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

15 The approval of a proposed settlement of a class action suit is a matter within the broad
16 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at
17 1794). Preliminary approval does not require the trial court to answer the ultimate question of
18 whether a proposed settlement is fair, reasonable, and adequate. That final determination is made
19 only after notice of the settlement has been given to the class members and after they have been
20 given an opportunity to voice their views of the settlement or to be excluded from the settlement.
21 (3B J. Moore, *Moore’s Federal Practice* §§23.80 - 23.85 (2003)).

22 In considering a potential settlement for preliminary approval purposes, the trial court does
23 not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits
24 of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at
25 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807). The Ninth Circuit explains, “the very essence of a
26 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
27 *for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
28 _____

1 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
2 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
3 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
4 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
5 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
6 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
7 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

8 With regard to class action settlements, the opinions of counsel should be given considerable
9 weight both because of counsel’s familiarity with this litigation and previous experience with cases
10 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
11 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
12 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
13 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
14 court noted that “[e]xperienced and competent counsel have assessed these problems and the
15 probability of success on the merits... The parties’ decision regarding the respective merits of their
16 position has an important bearing.” (*Id.* at ¶ 92,520). “The recommendations of plaintiffs’ counsel
17 should be given a presumption of reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
18 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
19 significant weight. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
20 Cal. 2004)).

21 **B. Factors To Be Considered In Granting Preliminary Approval**

22 A number of factors are to be considered in evaluating a settlement for purposes of
23 preliminary approval. In determining whether to grant preliminary approval, the court considers
24 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
25 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
26 treatment to class representatives or segments of the class, and (4) falls within the range of possible
27 approval.” (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No
28

one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement. (*Manual of Complex Litigation, Second* §30.44, at 229).

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel

This settlement is the result of extensive and hard-fought litigation and negotiations before an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.⁴

The Parties scheduled and attended an arms-length private mediation before Hon. Carl J. West (Ret.), a respected jurist and experienced mediator. In preparation for the mediation, Defendant provided Class Counsel with necessary records and information for the members of the Class. Defendant produced a large sample consisting of pay records and time records. Defendant also produced Defendant's relevant employment policies, including compensation policies and timekeeping policies. Plaintiffs analyzed the data with the help of an expert, Berger Consulting Group ("Berger"). On May 17, 2021, the Parties participated in a full-day mediation before Hon. Carl J. West (Ret.). The Parties were able to reach an agreement to settle the Action. The basic

⁴ Upon the entry of Final Judgment and funding in full of the Gross Settlement Amount by Defendant, any person who is a Participating Class Member of the California Class who does not timely and validly opt out shall be deemed to have fully and finally released all class claims alleged in the operative complaint, or claims that could have been asserted in the Action based on the allegations in the complaint, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. This release shall be referred to here is the "Released Class Claims." (*See Agreement at ¶ I(CC).*)

1 terms were set forth in a signed Memorandum of Understanding. The Parties then prepared the full
2 Agreement, which was signed by all counsel and the Parties. (Decl. Zakay at ¶5).

3 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
4 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
5 reviewed the production of documents from the Defendant. Prior to the settlement negotiations,
6 counsel for Defendant provided Class Counsel with access to the necessary data and information
7 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
8 of a significant sample of time records and data with the assistance of an expert. Based on the
9 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
10 believe that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class
11 in light of all known facts and circumstances, including the risk of significant delay, the defenses
12 asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶11).

13 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
14 trying the Action against Defendant through possible appeals which could take several years. Class
15 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in
16 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
17 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
18 their evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in the
19 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶20).

20 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
21 capable advocacy on both sides. The Parties were represented by experienced and capable counsel
22 who zealously advocated their respective positions with the assistance of an experienced mediator.
23 Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were
24 vigorously conducted at arms' length and without any suggestion of undue influence." (*In re Wash.*
25 *Public Power*, 720 F. Supp. at 1392).

26 **2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of**
27 **Approval**

28 **a. The Settlement is Fair, Reasonable, and Adequate**

1 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
2 possible approval. All Class Members will receive an opportunity to participate in the Settlement
3 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
4 III(E)(3).)

5 The amounts to compensate the Class Members for the alleged violations at the time this
6 Settlement was negotiated were calculated by Berger, Plaintiffs’ damage expert. Plaintiffs used
7 Berger to analyze the data and determine the potential damages for the employees. For the Class,
8 Plaintiffs estimate that Defendant was subject to maximum liability for damages in the amount of
9 \$1,085,979 consisting of \$312,814 for unpaid wages, \$704,165 for meal and rest break periods, and
10 \$69,000 for unreimbursed business expenses. In addition, Plaintiffs’ expert calculated \$142,526 in
11 waiting time penalties and \$102,600 for wage statement penalties.⁵ Finally, Plaintiffs’ expert
12 calculated that Defendant could be liable for PAGA penalties in an amount of \$2,608,250.⁶
13

14 ⁵ Plaintiffs’ claims pursuant to Labor Code Section 226 and various PAGA penalties are also subject
15 to a good faith defense as to whether any premium wages for meal or rest periods or other wages
16 were owed given Defendant’s position that Plaintiffs and the Class were properly compensated. *See*
17 *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008)
18 (granting defendant’s motion for summary judgment on claim for failure to provide accurate
19 itemized wage statements “because a good faith dispute exists... [therefore, defendant] was not
20 ‘knowing and intentional’ in failing to provide [Section 226] statements”); *see also Nordstrom*
21 *Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) (“There is no willful failure to pay wages if
22 the employer and employee have a good faith dispute as to whether and when the wages were due.”).
23 Additionally, there is serious doubt as to whether violations of the meal/rest period regulations,
24 which require payment of a “premium wage” for each improper meal period, give rise to claims
25 under sections 203 and 226. *See Ling v. P.F. Chang’s China Bistro, Inc.*, 245 Cal. App. 4th 1242,
26 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). This
27 issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App.
28 2019), which held that actions for meal break and rest break premiums “do not entitle employees to
pursue the derivative penalties in sections 203 and 226.”

⁶ Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by
Defendant, including that Class Members may not be able to recover subsequent penalties until, at
a minimum, Plaintiffs provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
1209 (2008) (“Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a “violation” subject to
penalties.”). In addition, Plaintiffs recognize that PAGA claims bear some risk. *See Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer’s good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of

1 Consequently, the Settlement of \$175,000 represents approximately 16.1% of the maximum
2 estimated damages, and 13.1% of the maximum combination of damages and penalties to the Class,
3 assuming all of these amounts could be proved at trial. Given the amount of the Settlement as
4 compared to the potential value of claims in this case, the Settlement is fair and reasonable. Clearly,
5 the goal of this litigation to provide compensation to Class Members for unpaid time and for
6 allegedly missed rest breaks has been met.

7 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
8 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
9 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
10 consideration far exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
11 ruled that the settlement which represented approximately 10% of the estimated loss to the class
12 was fair, reasonable, and adequate. As a result, this settlement, which exceeds the percentage
13 approved in *Stovall-Gusman*, is entitled to preliminary approval.

14 **b. The Strengths and Weaknesses in Plaintiffs' Case and Defendant's Defenses**
15 **Warrant the Settlement**

16 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
17 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026). Here, a number of defenses asserted by
18 Defendant presented serious threats to the claims of the Plaintiffs and the other Class Members. For
19 instance, Defendant asserted that the employment practices complied with all applicable Labor
20 Laws.

21 Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
22 1004 (2012) weakened, if not eliminated, Plaintiffs' claims, on liability, value, and class
23 certifiability as to the meal and rest period claims. A major component of the damages alleged to
24 have been suffered by the Class Members is attributed to missed meal and rest breaks. Before and
25 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
26 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
27

28 Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 Plaintiffs *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
2 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
3 strictly enforced lawful policies, afforded Plaintiffs and the Class Members compliant meal and rest
4 breaks, and had a system in place to pay premiums when breaks were missed, short or untimely.
5 As to expense reimbursement, Defendant argued that any use of personal cellphones was voluntary,
6 and not a necessary expense that required reimbursement. Finally, the court may find
7 remitter/reduction of the statutory damages appropriate. See e.g. *Klingensmith v. Max & Erma's*
8 *Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007). If
9 successful, these defenses could eliminate or substantially reduce any recovery to the Class. While
10 Plaintiffs believes that these defenses, and others, could be overcome, Defendant maintains these
11 defenses have merit and therefore present a serious risk to recovery for the Class. (Decl. Zakay at
12 ¶22).

13 **c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration**
14 **and Complexity of Further Litigation Weight in Favor of the Settlement**

15 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
16 to obtain class certification and thereby not recover on behalf of any employee other than
17 themselves. Defendant argued that the individual experience of each employee varied with respect
18 to the alleged claims. While other cases have approved class certification of wage and hour claims,
19 class certification in this action would have been hotly disputed and was by no means a foregone
20 conclusion. Finally, even if class certification was successful, as demonstrated by the California
21 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
22 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
23 (Decl. Zakay at ¶23).

24 This Settlement is therefore entitled to preliminary approval. Were this case to go to trial,
25 the Plaintiffs and other Class Members would need to prove to the satisfaction of the Court, among
26 other things, that wages, premiums, and other damages were owed on a class-wide basis. This was
27 and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and
28 informed counsel, recognized the potential risks and agreed on the settlement. The "risk, expense,

complexity, and likely duration of further litigation” in this case “favors the settlement.” *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) (“Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. ‘The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.’”) (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class Representative or Segments of The Class

The relief provided in the Settlement will benefit all members of the Class who do not opt out. The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments of the Class in any way. Each Participating Class Member will be entitled to a cash payment based on the plan of allocation described herein. Each Participating Class Member’s Settlement Share will be determined based upon the weeks worked by that employee during the prescribed California Class Period. (Decl. Zakay at ¶4).

Plaintiffs will apply to the Court for Class Representative Service Payments in consideration for their service, and for the risks undertaken on behalf of the Class. Plaintiffs performed their duties admirably by working with Class Counsel. The requested Plaintiffs' service payments are well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service

1 awards are routinely awarded to class representatives to compensate the employees for the time and
2 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
3 therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. (2007 WL
4 221862 at *16-17.) (Decl. Zakay at ¶25).

5 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
6 **Preliminary Approval Of The Settlement**

7 The stage of the proceedings at which this Settlement was reached also militates in favor of
8 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
9 a thorough investigation into the facts of the class action. Class Counsel began investigating the
10 Class Members' claims before this action was filed. Class Counsel performed significant review
11 and analysis of Defendant's documents, time records and pay records. Class Counsel engaged in a
12 thorough research and analysis of the relevant claims and data. Class Counsel were also
13 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
14 claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel
15 possessed sufficient information to make an informed judgment regarding the likelihood of success
16 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶26).

17 Based on the foregoing data and their own independent investigation and evaluation, Class
18 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
19 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
20 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
21 numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed
22 sufficient information to make an informed judgment regarding the likelihood of success on the
23 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶27).

24 The fact that an informal exchange of information (as opposed to formal discovery) was
25 agreed to by the Parties is of no consequence. In *Glass*, the Northern District of California granted
26 final approval of an unpaid wages action although in *Glass* no formal discovery had been conducted
27 prior to the settlement:
28

Here, no formal discovery took place prior to settlement. As the Ninth Circuit has observed, however, “[i]n the context of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’ where the parties have sufficient information to make an informed decision about settlement.” *See In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist. LEXIS 8476 at *14).

Here, Class Counsel was in an equally strong position to evaluate the fairness of this settlement because Class Counsel had the same sufficient information, as well as document production, independent investigations and due diligence, to confirm the accuracy of the information supplied by Defendant.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiffs contend that the proposed settlement meets all the requirements for class certification under the California Code of Civil Procedure section 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows:

The California Class:

“all non-exempt employees who are or previously were employed by Defendant in California during the period of September 25, 2016 to May 16, 2021.” (Agreement at ¶ I(B)).

The California Class Period is the period of time from September 25, 2016 to May 17, 2021. The Parties estimate that there are 103 California Class Members who collectively worked approximately 5,776 workweeks. (Decl. Zakay at ¶28).

A. California Code of Civil Procedure §382

Plaintiffs seeks certification of this Class for settlement purposes under California Code of Civil Procedure section 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

Code of Civil Procedure Section 382 authorizes class actions “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court....” The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*citations omitted*). The “community of interest” requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives

1 with claims or defenses typical of the class; and (3) class representatives who can
2 adequately represent the class.

3 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

4 While Defendant reserves all rights to dispute that the Plaintiffs can satisfy any of these
5 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
6 purposes of settlement and therefore, the proposed Class should be certified for purposes of
7 settlement only.

8 **B. The Proposed Class Is Ascertainable and Numerous**

9 Here, the approximately 103 current and former employees that comprise the California
10 Class can be identified based on Defendant's records and are sufficiently numerous for class
11 certification. All of these employees are ascertainable because the class members can readily be
12 determined through examination of Defendant's employment files. Given that the classes consist of
13 approximately 103 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44
14 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
15 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Moreover,
16 the current and former employees that comprise the Class can be identified based on Defendant's
17 records and are sufficiently numerous for class certification. (Decl. Zakay at ¶31(a)).

18 **C. Common Issues of Law and Fact Predominate**

19 Predominance of common issues of law or fact does not require that the common issues be
20 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
21 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). "Predominance is a comparative
22 concept, and 'the necessity for class members to individually establish eligibility and damages does
23 not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334).

24 Commonality exists if there is a predominant common legal question regarding how an
25 employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
26 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on
27 its drivers.")). Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the
28 certification stage since the question is "essentially a procedural one that does not ask whether an

1 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
2 (2003)).

3 Here, Plaintiffs contend that common questions of law and fact are present, and specifically,
4 whether Defendant failed to properly provide and/or pay for meal and rest periods, whether
5 Defendant provided accurate wage statements, whether Defendant failed to reimburse for all
6 required business expenses, whether Defendant failed to pay all wages, and whether the Class is
7 entitled to compensation and related penalties. (Decl. Zakay at ¶31(b)). Defendant will not oppose
8 such a finding for purposes of this settlement only.

9 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

10 The typicality requirement requires Plaintiffs to demonstrate that the members of the class
11 have the same or similar claims as Plaintiffs. “The typicality requirement is met when the claims
12 of the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
13 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
14 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
15 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
16 need not be substantially identical.” (50 F.3d at 1020).

17 In the instant case, Plaintiffs contend that the typicality requirement is fully satisfied. The
18 Plaintiffs, like every other member of the Class was employed by Defendant and is a member of
19 the Class. Plaintiffs were subject to the same employment practices concerning overtime rate
20 calculation, and the meal and rest periods, and received similar wage statements. Thus, the claims
21 of the Plaintiffs and the Class Members arise from the same course of conduct by the Defendant,
22 involve the same employment policies, and are based on the same legal theories. (Decl. Zakay at
23 ¶31(c)). For purposes of settlement, the typicality requirement is met as to the common issues
24 presented in this case. Defendant will not oppose such a finding for purposes of this settlement
25 only.

26 **E. The Class Representative Fairly and Adequately Protected the Class**

27 The Class Members are adequately represented because Plaintiffs and Class Counsel (a) do
28 not have any conflicts of interest with other class members, and (b) will prosecute the case

1 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020). First, Plaintiffs are well aware
2 of their duties as representatives of the Class and have actively participated in the prosecution of
3 this case to date. Plaintiffs effectively communicated with Class Counsel, provided documents to
4 them and participated in discovery, investigation and negotiations in the Action. Second, Plaintiffs
5 retained competent counsel who are experienced in employment class actions. Third, there is no
6 antagonism between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and
7 the Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay
8 at ¶31(d)).

9 **F. The Superiority Requirement Is Met**

10 To certify a class, the Court must also determine that a class action is superior to other
11 available methods for the fair and efficient adjudication of the controversy. “Where classwide
12 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
13 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
14 1234 (9th Cir. 1996)). As courts have previously observed:

15 Absent class treatment, each individual plaintiff would present in separate,
16 duplicative proceedings the same or essentially the same arguments and evidence,
17 including expert testimony. The result would be a multiplicity of trials conducted
18 at enormous expense to both the judicial system and the litigants. ‘It would be
neither efficient nor fair to anyone, including defendants, to force multiple trials to
hear the same evidence and decide the same issues.’

19 *Sav-On*, 34 Cal. 4th at 340.

20 Here, a class action is the superior mechanism for resolution of the claims as pled by the
21 Plaintiffs. Defendant will not dispute such a finding for purposes of this settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The Parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. In
26 accordance with the Agreement, within 14 days after the Court enters its order granting Preliminary
27 Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic
28 database containing the Class Data. (Agreement at ¶ III(E)(2)(a)). Within 14 days after receiving

1 the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
2 Members via first-class regular U.S. Mail to their last known addresses. (Agreement at ¶
3 III(E)(2)(b)).

4 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
5 counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the
6 Agreement). The Class Notice will include, among other information: (i) information regarding the
7 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
8 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
9 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
10 litigation expenses to be sought; (vi) the amount of the Plaintiffs' Class Representative Service
11 Payment requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement
12 Administration Costs. (Decl. Zakay at ¶30).

13 The Class Notice will state that the Class Members shall have forty-five (45) days from the
14 date that the Class Notice is mailed to them to request exclusion or to submit an objection. The
15 Class Members will be given an opportunity to object to the terms of the Agreement and/or the
16 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
17 with the instructions set forth in the Class Notice. Class Members will be instructed to only contact
18 the Settlement Administrator and Class Counsel and not the Court. Class Members who do not opt
19 out will automatically receive a settlement payment. This notice program was designed to
20 meaningfully reach the Class Members and advises them of all pertinent information concerning
21 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
22 process, is the best notice practicable under the circumstances and constitutes due and sufficient
23 notice to all persons entitled thereto. The Class Notice provides information on the terms and
24 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
25 time and place of the final settlement approval hearing; and the procedure and deadline for
26 submitting comments, objections, and requests for exclusion. The Class Notice complies with
27 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶30).

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