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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

JEFFREY GREGORY, an individual on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,
v.

VERIO HEALTHCARE, INC.; and DOES 1-
50, Inclusive,

Defendants.

Case No: 20STCV37254

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

Hearing Date: March 29, 2022
Hearing Time: 2:00PM

Judge: Hon. Kenneth R. Freeman
Dept.: 14

Action Filed: 9/29/2020

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1 **I. INTRODUCTION**

2 Plaintiff JEFFREY GREGORY (“Plaintiff”) respectfully submits this memorandum in
3 support of the motion for preliminary approval of the Class and Private Attorney General Act
4 (“PAGA”) Action Complaint, Case No. 20STCV37254, filed on or about September 29, 2020 (the
5 “Action”) with Defendant VERIO HEALTHCARE, INC. (“Defendant”), and seeks entry of an
6 order: (1) preliminary approving the proposed settlement of the Action with Defendant; (2)
7 approving the form and method for providing class-wide notice; (3) directing that notice of the
8 proposed settlement be given to the class; and (4) scheduling a final approval hearing date to
9 consider Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and
10 Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

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

15 As consideration for this Settlement, the total amount to be paid by Defendant is One
16 Hundred Fifty Thousand Dollars (\$150,000) (the “Gross Settlement Amount”). The Gross
17 Settlement Amount will settle all issues pending in the Action between the Plaintiff and the “Class
18 Members,” defined in the Agreement as all non-exempt employees who are or previously were
19 employed by Defendant in California as Drivers and/or who earned an “On Call Fee” in California
20 during the period of September 29, 2016, through April 23, 2021 (the “Class Period”), on the one
21 hand, and the Defendant and the Released Parties, on the other hand, including: payment of all
22 Individual Settlement Payments to Participating Class Members, the Class Representative Incentive
23 Payment, the Class Counsel’s Fees and Costs, the PAGA Penalties to the California Labor
24 Workforce Development Agency (“LWDA Payment”) and the PAGA Members, and the Settlement
25 Administration Costs. The Gross Settlement Amount does not include Defendants’ share of
26 employer-side payroll taxes, which it shall pay separately. The Settlement is all-in with no reversion
27 to Defendants and no need to submit a claim form. (Decl. Zakay at ¶ 3).
28

1 On April 23, 2021, the parties participated in a full-day mediation before Jeffrey Krivis,
2 Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day
3 mediation, the Parties reached an agreement for settlement based on the mediator's proposal. The
4 basic terms were set forth in a signed Memorandum of Understanding. The Parties then prepared
5 the full Agreement, which was signed by all counsel and the Parties and is now presented to this
6 Court for preliminary approval. (Decl. Zakay at ¶ 5).

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

10 **II. DESCRIPTION OF THE SETTLEMENT**

11 The Gross Settlement Amount to be paid by Defendant is One Hundred Fifty Thousand
12 Dollars (\$150,000). Under the Settlement, the Gross Settlement Amount consists of the following
13 elements: (1) payments of the Individual Settlement Payments to Participating Class Members, (2)
14 the Class Counsel's Fees and Costs, (3) Settlement Administration Costs, (4) the PAGA Penalties
15 to the LWDA and PAGA Members, and (5) the Class Representative Incentive Payment to the
16 Plaintiff. The Gross Settlement Amount does not include Defendant's share of employer payroll
17 taxes, which Defendant shall pay to the Settlement Administrator separately. The Gross Settlement
18 Amount shall be all-in with no reversion to Defendant. (Decl. Zakay at ¶ 12).

19 After Final Approval and the Judgment becoming final (the "Effective Date," as defined in
20 the Agreement), the Defendant will fund the Gross Settlement Amount in one lump sum payment¹.
21 Within fifteen (15) days after Defendant funds the Gross Settlement Amount and the Settlement
22 becomes Final², the Settlement Administrator will pay: the Participating Class Members their
23 Individual Settlement Payments; Class Counsel their Class Counsel Fees and Costs; the PAGA
24

25
26 ¹ Defendant has already funded the Settlement by depositing the Gross Settlement Amount into a
27 QSF account set up by the Settlement Administrator. The Parties agreed that the Settlement
28 Administrator will hold the settlement funds in trust until the Court approves the settlement and
the Court's order and judgment become final.

² See AGREEMENT TO HOLD FUNDS AND INSTRUCTIONS FOR SETTLEMENT
PAYMENT attached to the Declaration of Shani O. Zakay as Exhibit 4.

1 Penalties to the LWDA and PAGA Members; and the Settlement Administrator its Settlement
2 Administration Costs, all in the amounts approved by the Court. (Decl. Zakay at ¶13).

3 The Net Settlement Amount shall equal the net amount available for Individual Settlement
4 Payments to Participating Class Members from the Gross Settlement Amount after deducting the
5 Court-approved amounts for the Class Representative Incentive Payment, Class Counsel's Fees and
6 Costs, PAGA Penalties to the LWDA and PAGA Members, and the Settlement Administration
7 Costs. The Settlement Administrator will pay an Individual Settlement Payments from the Net
8 Settlement Amount to each Participating Class Member. The submission of a claim form is not
9 required in order for the Participating Class Member to be paid his or her Individual Settlement
10 Payment. The Individual Settlement Payment for each Participating Class Member will be
11 calculated as follows: from the Net Settlement Amount, the Individual Settlement Payment for each
12 Participating Class Member in the Class will be calculated by dividing each Participating Class
13 Member's individual Workweeks by the total Workweeks of all Participating Class Members, and
14 multiplying the resulting fraction by the Net Settlement Amount. The entire Net Settlement Fund
15 shall be distributed. (Decl. Zakay at ¶14).

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

22 If a check is returned to the Settlement Administrator, the Settlement Administrator will
23 make all reasonable efforts to obtain a correct address for the Participating Class Member and re-
24 mail the check to the Participating Class Member at his or her correct address. If a Participating
25 Class Member's Individual Settlement Payment check is not cashed within 180 days after the
26 Settlement Administrator's last mailing to the Participating Class Member, the funds from such
27 uncashed check will be paid to the Children Advocacy Group consistent with California Code of
28

1 Civil Procedure Section 384. Class Counsel, Defendant’s counsel, Plaintiff and Defendant do not
2 have any interest, pecuniary or otherwise, in the Children Advocacy Group. (Decl. Zakay at ¶16).

3 The Parties have agreed to use Simpluris as the Settlement Administrator for the Settlement.
4 Payment of the expenses of the Settlement Administrator from the Gross Settlement Fund shall be
5 made for the expenses of effectuating and administering the Settlement. The Settlement
6 Administrator shall receive payment for services in an amount not to exceed \$3,500. (Decl. Zakay
7 at ¶17).

8 Subject to Court approval, the Agreement provides, as part of the Class Counsel’s Fees and
9 Costs, (a) for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount
10 (\$50,000) for their fees and (b) an award of litigation expenses in an amount not to exceed \$20,000.
11 In support of the request for the Class Counsel’s Fees and Costs, Class Counsel will provide
12 evidentiary support, including lodestar method calculations. Subject to Court approval, the
13 Agreement provides for payment of a Class Representative Incentive Payment of no more than
14 \$7,500 for Plaintiff or such lesser amount as may be approved by the Court at Final Approval.³
15 Defendants will not oppose a motion for approval of attorneys’ fees, costs and a service award
16 consistent with the Agreement. (Decl. Zakay at ¶18).

17 Subject to Court approval, \$5,000 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 \$3,750.00 (75%) to
20 the LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and
21 \$1,250.00 (25%) for distribution to PAGA Members. (Decl. Zakay at ¶19).

22 **III. CASE BACKGROUND**

23 On September 29, 2020, Plaintiff filed the Action in the Superior Court of the State of
24 California County of Contra Costa, asserting claims for: (1) unfair competition in violation of Cal.
25 Business & Professions Code § 17200; (2) failure to pay overtime wages in violation of Cal. Labor
26

27 ³ Plaintiff 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 Code § 510; (3) failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197, and
2 1197.1; (4) failure to provide required meal breaks in violation of Cal. Labor Code §§ 226.7 & 512
3 and the applicable IWC Wage Order; (5) failure to provide required rest breaks in violation of Cal.
4 Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failure to provide accurate
5 itemized wage statements in violation of Cal. Labor Code § 226; (7) failure to provide wages when
6 due in violation of Cal. Lab. Code §§ 201, 202 and 203; (8) violation of the Private Attorneys
7 General Act [Labor Code §§ 2698, *et seq.*]. (Decl. Zakay at ¶7).

8 Plaintiff seeks to represent a putative class of all non-exempt employees who are or
9 previously were employed by Defendant in California as Drivers and/or who earned an “On Call
10 Fee” in California during the period of September 29, 2016, through April 23, 2021 (the “Class
11 Period”). The Complaint generally alleges that Defendants failed to properly pay Plaintiff and Class
12 Members minimum and overtime wages, failed to provide them with proper meal breaks and rest
13 breaks, failed to provide them with complete and accurate wage statements, engaged in unfair
14 business practices, and failed to timely pay them all wages owed at the time of the separation of
15 their employment. The Action seeks unpaid wages, statutory and PAGA penalties, attorneys’ fees,
16 and litigation costs⁴ due and owing to Plaintiff, Class Members, and PAGA Members by virtue of
17 the foregoing claims. (Decl. Zakay at ¶8).

18 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
19 information in connection with the Action. As part of this process, Defendants provided a
20 significant sample of time records and payroll records, as well as other documents and information,
21 to Class Counsel to review and analyze. On April 23, 2021, the Parties participated in an all-day
22 mediation presided over by Jeffery Krivis, Esq., a mediator of wage and hour class actions. At the
23 conclusion of the full-day mediation, the Parties were able to reach an agreement to settle the Action
24 based on the mediator’s proposal. The Parties documented the agreement in the form of a
25 Memorandum of Understanding. The Parties then prepared the Settlement Agreement, which was
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27

28 ⁴ Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with
the final approval papers.

1 signed by the Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at
2 ¶9).

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

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

21 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
22 Counsel has diligently evaluated the Class Members' claims against Defendants. Class Counsel
23 reviewed the production of documents from the Defendants. Prior to the settlement negotiations,
24 counsel for Defendants provided Class Counsel with access to the necessary data and information
25 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
26 of a significant sample of time records and data with the assistance of an expert (Berger Consulting
27 Group). Based on the foregoing data and their own independent investigation, evaluation and
28 experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the

1 best interest of the Class in light of all known facts and circumstances, including the risk of
2 significant delay, the defenses asserted by Defendants, and potential appellate issues. (Decl. Zakay
3 at ¶11).

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

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

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

21 The primary question presented on an application for preliminary approval of a proposed
22 class action settlement is whether the proposed settlement is “within the range of possible approval.”
23 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
24 (7th Cir. 1982)).⁵ Preliminary approval is merely the prerequisite to giving notice so that “the

25
26 ⁵ 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 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a

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

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

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

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

1 If the proposed settlement appears to be the product of serious, informed,
2 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
3 preferential treatment to class representatives or segments of the class, and falls
4 within the range of possible approval, then the court should direct that notice be
5 given to the class members of a formal fairness hearing, at which evidence may be
6 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.

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

9 This settlement is the result of extensive and hard-fought litigation and negotiations before
10 an experienced and well-respected mediator. Defendants have expressly denied and continue to
11 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff
12 and Class Counsel have determined that it is desirable and beneficial to the Class Members to put
13 to rest the Released Class Claims.⁶

14 The Parties scheduled and attended an arms-length private mediation before Jeffrey Krivis,
15 Esq., an experienced mediator of wage and hour actions. In preparation for the mediation,
16 Defendant provided Class Counsel with necessary records and information for the members of the
17 Class. Defendant produced a large sample consisting of pay records and time records. Defendant
18 also produced Defendants' relevant employment policies, including compensation policies and
19 timekeeping policies. Plaintiff analyzed the data with the help of an expert, Berger Consulting
20 Group ("Berger"). On April 23, 2021, the Parties participated in a full-day mediation at which the
21 Parties were able to reach an agreement to settle the Action. The basic terms were set forth in a
22 signed Memorandum of Understanding. The Parties then prepared the full Agreement, which was
23 signed by all counsel and the Parties. (Decl. Zakay at ¶5).

24 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
25 trying the Action against Defendant through possible appeals which could take several years. Class
26 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in

27 ⁶ Upon the entry of Final Judgment and funding in full of the Gross Settlement Amount by
28 Defendant, any person who is a Participating Class Member of the Class who does not timely and
validly opt out shall be deemed to have fully and finally released "the claims alleged in the operative
complaint which occurred during the Class Period..." (See Agreement at ¶ I(W).)

1 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
2 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
3 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
4 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶20).

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

11 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
12 **Approval**

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

14 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
15 possible approval. All Class Members will receive an opportunity to participate in the Settlement
16 and receive payment according to the same formula if they do not opt out. (Agreement at ¶ 33.)

17 The amounts to compensate the Class Members for the alleged violations at the time this
18 Settlement was negotiated were calculated by Berger, Plaintiff’s damage expert. Plaintiff used
19 Berger to analyze the data and determine the potential damages for the employees. For the Class,
20 Plaintiff estimated that Defendant was subject to maximum liability for *damages* in the amount of
21 \$493,335 consisting of \$91,309 for unpaid wages due to overtime miscalculation and off-the-clock
22 work, \$238,754 for rest periods, and \$163,272 for meal periods. In addition, Plaintiff’s expert
23 calculated \$88,166 in waiting time penalties and \$48,950 for wage statement penalties.⁷ Finally,

24 ⁷ While Plaintiff alleged claims for statutory penalties, he recognizes that this claim is subject to
25 various defenses asserted by Defendant. Plaintiff’s claims pursuant to Labor Code Section 226 and
26 various PAGA penalties are also subject to a good faith defense as to whether any premium wages
27 for meal or rest periods or other wages were owed given Defendant’s position that Plaintiff and the
28 Class were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment on
claim for failure to provide accurate itemized wage statements “because a good faith dispute exists...

1 Plaintiff's expert calculated that Defendant could be liable for PAGA penalties in an amount of
2 \$367,200.⁸ Consequently, the Settlement of \$150,000 represents more than 30% of the maximum
3 estimated *damages* and interest, and approximately 23.8% of the maximum combination of
4 damages and penalties to the Class, assuming all of these amounts could be proved at trial. Given
5 the amount of the Settlement as compared to the potential value of claims in this case, the Settlement
6 is fair and reasonable. Clearly, the goal of this litigation to provide compensation to Class Members
7 for unpaid time and for allegedly missed meal and rest breaks has been met.

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

15
16 [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226]
17 statements"); *see also Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is
18 no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
19 and when the wages were due."). Additionally, there is serious doubt as to whether violations of
20 the meal/rest period regulations, which require payment of a "premium wage" for each improper
21 meal period, give rise to claims under sections 203 and 226. *See Ling v. P.F. Chang's China Bistro,*
22 *Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
23 5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal.
24 App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums
25 "do not entitle employees to pursue the derivative penalties in sections 203 and 226."

26 ⁸ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
27 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
28 a minimum, Plaintiff 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, Plaintiff recognizes 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
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 **b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses**
2 **Warrant the Settlement**

3 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
4 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026). Here, a number of defenses asserted by
5 Defendant presented serious threats to the claims of the Plaintiff and the other Class Members.
6 Defendant asserted that the employment practices complied with all applicable Labor Laws.
7 Defendant also argued that (1) there were vast differences across different types of Class Members'
8 job positions; (2) they maintained compliant compensation and break policies; and (3) it had high
9 compliance rates for meal and rest periods.

10 Defendants also argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
11 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
12 certifiability as to the meal and rest period claims. The largest component of the damages alleged
13 to have been suffered by the Class Members are attributed to missed meal and rest breaks. Before
14 and during the mediation, Defendants aggressively argued that Defendants' policies and culture
15 afforded the Class Members an opportunity to take timely meal and rest breaks, and that employees
16 like the Plaintiff *chose* not to take compliant breaks. Defendants argued, therefore, that under the
17 *Brinker* decision it has no liability for the missed breaks whatsoever. Defendants argued that they
18 adopted and strictly enforced lawful policies, and afforded Plaintiff and the Class Members
19 compliant meal and rest breaks. If successful, these defenses could eliminate or substantially reduce
20 any recovery to the Class. While Plaintiff believes that these defenses, and others, could be
21 overcome, Defendants maintain these defenses have merit and therefore present a serious risk to
22 recovery for the Class. (Decl. Zakay at ¶22).

23 With respect to Plaintiff's argument that Defendant miscalculated employees' overtime rate,
24 Defendant argued that the damages for this claim, if any, are minimal. In reviewing the records
25 provided by Defendants to Plaintiff for the mediation, Plaintiff's counsel confirmed that damages
26 for this claim are likely limited to less than \$5,000. (Decl. Zakay at ¶22).

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

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

10 This Settlement is therefore entitled to preliminary approval. Were this case to go to trial,
11 the Plaintiff and other Class Members would need to prove to the satisfaction of the Court, among
12 other things, that wages, premiums, and other damages were owed on a class-wide basis. This was
13 and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and
14 informed counsel, recognized the potential risks and agreed on the settlement. The "risk, expense,
15 complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v.*
16 *UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court
17 might have ruled on the merits of the legal issues, the losing party likely would have appealed, and
18 the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and
19 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
20 settlement.'") (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
21 2000)).

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

24 The relief provided in the Settlement will benefit all members of the Class who do not opt
25 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
26 the Class in any way. Each Participating Class Member will be entitled to a cash payment based
27 on the plan of allocation described herein. Each Participating Class Member's Individual
28

1 Settlement Payment will be determined based upon the weeks worked by that employee during the
2 prescribed Class Period. (Decl. Zakay at ¶4).

3 Plaintiff will apply to the Court for a Class Representative Incentive Payment in
4 consideration for his service, and for the risks undertaken on behalf of the Class. Plaintiff performed
5 his duties admirably by working with Class Counsel. The requested Plaintiff's service award is
6 well within the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v.*
7 *Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where
8 average class member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S.
9 Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member
10 recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL
11 671334 (D. Or. 2007) (approving award of \$10,000 where class member recoveries were as little as
12 \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06,
13 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v.*
14 *UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
15 overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
16 awards are routinely awarded to class representatives to compensate the employees for the time and
17 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
18 therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. (2007 WL
19 221862 at *16-17.) (Decl. Zakay at ¶25).

20 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
21 **Preliminary Approval Of The Settlement**

22 The stage of the proceedings at which this Settlement was reached also militates in favor of
23 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
24 a thorough investigation into the facts of the class action. Class Counsel began investigating the
25 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel served
26 formal discovery on Defendants. Thereafter, Class Counsel performed significant review and
27 analysis of Defendant's documents, time records and pay records. Class Counsel engaged in a
28 thorough research and analysis of the relevant claims and data. Class Counsel were also

1 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
2 claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel
3 possessed sufficient information to make an informed judgment regarding the likelihood of success
4 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶26).

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

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

17 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
18 observed, however, “[i]n the context of class action settlements, ‘formal discovery
19 is not a necessary ticket to the bargaining table’ where the parties have sufficient
20 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).

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

25 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

26 Plaintiff contends that the proposed settlement meets all the requirements for class
27 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
28

1 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
2 should conditionally certify the Class for settlement purposes only, defined as follows:

3 The California Class:

4 “all non-exempt employees who are or previously were employed by Defendant in
5 California as Drivers and/or who earned an “On Call Fee” in California during the period of
6 September 29, 2016, through April 23, 2021.” (Agreement at ¶ I(B)).

7 The Class Period is the period of time from September 29, 2016, through April 23, 2021. The
8 Parties estimate that there are 42 California Class Members who collectively worked approximately
9 3,500 workweeks. (Decl. Zakay at ¶28).

10 **A. California Code of Civil Procedure §382**

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

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is
15 one of a common or general interest, of many persons, or when the parties are
16 numerous, and it is impracticable to bring them all before the court....” The party
17 seeking certification has the burden to establish the existence of both an
18 ascertainable class and a well-defined community of interest among class members.
19 (*citations omitted*). The “community of interest” requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can
adequately represent the class.

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

21 While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these
22 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
23 purposes of settlement and therefore, the proposed Class should be certified for purposes of
24 settlement only.

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

26 Here, the approximately 42 current and former employees that comprise the Class can be
27 identified based on Defendants’ records and are sufficiently numerous for class certification. All
28 of these employees are ascertainable because the class members can readily be determined through

1 examination of Defendants’ employment files. Given that the classes consist of approximately 42
2 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class
3 with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981)
4 (class of 48 members satisfies numerosity requirement.)). Moreover, the current and former
5 employees that comprise the Class can be identified based on Defendant’s records and are
6 sufficiently numerous for class certification. (Decl. Zakay at ¶28(a)).

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

8 Predominance of common issues of law or fact does not require that the common issues be
9 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
10 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). “Predominance is a comparative
11 concept, and ‘the necessity for class members to individually establish eligibility and damages does
12 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334).

13 Commonality exists if there is a predominant common legal question regarding how an
14 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
15 1524, 1536 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on
16 its drivers.”)). Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the
17 certification stage since the question is “essentially a procedural one that does not ask whether an
18 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
19 (2003)).

20 Here, Plaintiff contends that common questions of law and fact are present, and specifically:
21 (i) whether Defendant failed to pay wages for all time worked; (ii) whether Defendant failed to
22 provide legally-requisite meal and rest periods to Class Members; (iii) whether Defendant failed to
23 timely furnish accurate, itemized and legal wage statements to Class Members; (iv) whether
24 Defendant subjected Class Members to unlawful, unfair and/or fraudulent business acts/practices;
25 and (v) whether Defendant is liable for attorneys’ fees and costs. (Decl. Zakay at ¶28(b)).
26 Defendants will not oppose a finding of commonality for purposes of settlement only.

1 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

2 The typicality requirement requires Plaintiff to demonstrate that the members of the class
3 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
4 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
5 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
6 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
7 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
8 need not be substantially identical.” (50 F.3d at 1020).

9 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
10 Plaintiff, like every other member of the Class was employed by Defendants and is a member of
11 the Class—a non-exempt employee who worked for Defendant as a Driver and earned On-Call
12 compensation, and was entitled to meal and rest breaks. Plaintiff was subject to the same
13 employment practices concerning payment of wages, the meal and rest periods, and received similar
14 wage statements. Thus, the claims of the Plaintiff and the Class Members arise from the same
15 course of conduct by the Defendants, involve the same employment policies, and are based on the
16 same legal theories. (Decl. Zakay at ¶28(c)). For purposes of settlement, the typicality requirement
17 is met as to the common issues presented in this case. Defendants will not oppose such a finding
18 for purposes of settlement only.

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

20 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
21 not have any conflicts of interest with other class members, and (b) will prosecute the case
22 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020). First, Plaintiff is well aware of
23 his duties as a representative of the Class and have actively participated in the prosecution of this
24 case to date. Plaintiff effectively communicated with Class Counsel, provided documents to them
25 and participated in discovery, investigation and negotiations in the Action. Second, Plaintiff
26 retained competent counsel who are experienced in employment class actions. Third, there is no
27 antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the
28

1 Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at
2 ¶28(d)).

3 F. The Superiority Requirement Is Met

4 To certify a class, the Court must also determine that a class action is superior to other
5 available methods for the fair and efficient adjudication of the controversy. “Where classwide
6 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
7 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
8 1234 (9th Cir. 1996)). As courts have previously observed:

9 Absent class treatment, each individual plaintiff would present in separate,
10 duplicative proceedings the same or essentially the same arguments and evidence,
11 including expert testimony. The result would be a multiplicity of trials conducted
12 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.’

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

14 Here, a class action is the superior mechanism for resolution of the claims as pled by the
15 Plaintiff. Defendants will not dispute such a finding for purposes of this settlement only.

16 VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

17 The Court has broad discretion in approving a practical notice program. The Parties have
18 agreed upon procedures by which the Class Members will be provided with written notice of the
19 Settlement similar to that approved and utilized in hundreds of class action settlements. In
20 accordance with the Agreement, within fourteen (14) days after the Court enters its order granting
21 Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an
22 electronic database containing the Class List. (Agreement at ¶ III(E)(2)). Within 14 days after
23 receiving the Class List, the Settlement Administrator will mail the Class Notice to all Class
24 Members via first-class regular U.S. Mail to their last known addresses. (Agreement at ¶ III(E)(2)).

25 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
26 counsel and to be approved by the Court, includes all relevant information. (See Exhibit 1 to the
27 Agreement). The Class Notice will include, among other information: (i) information regarding the
28 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information

1 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
2 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
3 litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative Incentive
4 Payment request; (vii) the amount being paid to the LWDA; and (viii) the Settlement Administration
5 Costs. (Decl. Zakay at ¶30).

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

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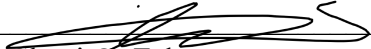
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1 **VII. CONCLUSION**

2 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement
3 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
4 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
5 Preliminary Approval.

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7 DATED: February 25, 2022

8 **ZAKAY LAW GROUP, APLC**

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10 By: 
11 Shani O. Zakay
12 Attorney for Plaintiff
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