

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiffs

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

CHRISTINE ROSE, an individual, on behalf
of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

IMPACT GROUP, LLC, a Limited Liability
Company; and DOES 1-50, inclusive,

Defendants.

Case No: 30-2020-01141107-CU-OE-CXC

[Related Case No.: 30-2020-01166291-CU-
OE-CXC]

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

Hearing Date: October 29, 2021
Hearing Time: 10:00am

Honorable Judge Randall Sherman
Department CX105

Trial Date: Not Set
Action Filed: May 27, 2020

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL.....	7
	a. The Role Of The Court In Preliminary Approval Of A Class Action Settlement.....	8
	b. Factors To Be Considered In Granting Preliminary Approval.....	9
	1. The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	10
	2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of Approval.....	11
	a. The Settlement is Fair, Reasonable, and Adequate.....	11
	b. The Strengths and Weaknesses in Plaintiffs' Case and Defendant's Defenses Warrant the Settlement.....	13
	c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and Complexity of Further Litigation Weight in Favor of the Settlement...	14
	3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class Representative or Segments Of The Class.....	15
	4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement.....	16
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES.....	17
	a. California Code of Civil Procedure §382.....	17
	b. The Proposed Class Is Ascertainable and Numerous.....	18
	c. Common Issues of Law and Fact Predominate.....	18
	d. The Claims of the Plaintiffs Are Typical of the Class Claims.....	19
	e. The Class Representative Fairly and Adequately Protected the Class.....	20

1	f. The Superiority Requirement Is Met.....	20
2	VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE.....	21
3	VII. CONCLUSION.....	22
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases:	Page:
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157, 1209 (2008).....	12
<i>Bowles v. Superior Court</i> 44 Cal.2d 574 (1955)	18
<i>Boyd v. Bechtel Corp.</i> 485 F.Supp. 610 (N.D. Cal. 1979)	9
<i>Brinker v. Superior Court</i> 53 Cal. 4th 1004 (2012)	13-14
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	12
<i>Cellphone Termination Fee Cases</i> (2009 180 Cal.App.4th 1110, 1117-18).....	7
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , (2009) 177 Cal. App. 4th 734, 742-45.....	8
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	4
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996)	7
<i>Duran v. U.S. Bank National Assn.</i> 59 Cal. 4th 1 (2014)	14
<i>Frazier v. City of Richmond</i> 184 Cal.App.3d 1491 (1986)	8
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	7
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	19
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	15-16
<i>Golba v. Dick's Sporting Goods, Inc.</i> , (2015) 238 Cal. App. 4th 1251.....	4

1	<i>Green v. Obledo,</i>	
2	29 Cal.3d 126 (1981)	8
3	<i>Hanlon v. Chrysler Corp.,</i>	
4	150 F.3d 1011 (9 th Cir. 1998)	13, 19
5	<i>Holman v. Experian Info. Solutions, Inc.,</i>	
6	2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	15
7	<i>Kirkorian v. Borelli,</i>	
8	695 F. Supp. 446 (N.D. Cal. 1988)	9
9	<i>Linder v. Thrifty Oil Co.,</i>	
10	23 Cal. 4th 429 (2003)	19
11	<i>Ling v. P.F. Chang's China Bistor, Inc.,</i>	
12	245 Cal. App. 4th 1242, 1261 (2016).....	12
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
14	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	16
15	<i>Lyons v. Marrud, Inc.,</i>	
16	[1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,525 (S.D.N.Y. 1972)	9
17	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
18	22 Cal. App. 5th 1308, 1336 (2018).....	12
19	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
20	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	15
21	<i>Mego Financial Corp. Securities Litigation,</i>	
22	213 F.3d 454, 458 (9 th Cir. 2000).....	15, 17
23	<i>Naranjo v. Spectrum Sec. Servs., Inc.,</i>	
24	40 Cal. App. 5th 444, 474, (Ct. App. 2019).....	12
25	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
26	221 F.R.D. 523 (C.D. Cal. 2004)	9
27	<i>Nordstrom Comm'n Cases</i>	
28	(2010) 186 Cal. App. 4th 576, 581.....	7, 12
	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
	688 F.2d. 615 (9 th Cir. 1982)	7, 9
	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,</i>	
	323 F. Supp. 364, 372 (E.D. Pa. 1970)	8

1	<i>Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson</i>	
2	390 U.S. 414, 424-25 (1968).....	9
3	<i>Rausch v. Hartford Fin. Servs. Grp.,</i>	
4	2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007)	16
5	<i>Reber v. AIMCO/Bethesda Holdings, Inc.</i>	
6	2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008).....	12
7	<i>Rose v. City of Hayward,</i>	
8	126 Cal.App.3d 926, 934 (1981).....	18
9	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
10	34 Cal. 4th 319 (2004)	18-19, 21
11	<i>Sayaman v. Baxter Healthcare Corp.,</i>	
12	2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010).....	8
13	<i>Stovall-Gusman v. W.W. Granger, Inc.,</i>	
14	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	13
15	<i>Tableware Antitrust Litig.,</i>	
16	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	9
17	<i>Tate v. Weyerhaeuser Co.,</i>	
18	723 F.2d 598 (8th Cir. 1983)	19
19	<i>Valentino v. Carter-Wallace, Inc.,</i>	
20	97 F.3d 1227 (9th Cir. 1996)	20
21	<i>Vasquez v. Superior Court,</i>	
22	4 Cal.3d 800 (1971)	7
23	<i>Wash. Public Power Supply System Sec. Litig.,</i>	
24	720 F. Supp. 1379 (D. Ariz. 1989)	9, 11
25	<i>Weinberger v. Kendrick,</i>	
26	698 F.2d 61 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983)	9
27	<i>Wershba v. Apple Computer, Inc.,</i>	
28	91 Cal.App.4th 224 (2001)	8
	Statutes, Rules and Regulations:	
	California Code of Civil Procedure §382	17-18
	California Labor Code §203	5, 10, 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

California Labor Code §2265, 10, 12

California Labor Code §226.7.....4-5, 10

California Labor Code §2698 4

California Labor Code §2699 4-5

California Labor Code §28025,10

California Rules of Court, rule 3.766 11

California Rules of Court, rule 3.769 7, 22

Secondary Sources:

2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992)7-8, 18

Manual For Complex Litigation, (Second), §30.44, 41.43 (1993) 7-10

3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003) 8

1 **I. INTRODUCTION**

2 Plaintiff CHRISTINE ROSE (“Plaintiff”) respectfully submits this memorandum in support
3 of the motion for preliminary approval of the Class Action Complaint (*Christine Rose v. Impact*
4 *Group, LLC*, Case No. 30-2020-01141107-CU-OE-CXC, filed on or about May 27, 2020) and the
5 Private Attorneys General Act (“PAGA”) Action Complaint (*Christine Rose v. Impact Group, LLC*,
6 Case No. 30-2020-01166291-CU-OE-CXC, filed on or about October 19, 2020) (collectively, the
7 “Action”) with Defendant IMPACT GROUP, LLC (“Defendant”), and seek entry of an order: (1)
8 preliminary approving the proposed settlement of the Action with Defendant; (2) approving the
9 form and method for providing class-wide notice; (3) directing that notice of the proposed
10 settlement be given to the class; and (4) scheduling a final approval hearing date to consider
11 Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and Plaintiff’s
12 motion for approval of attorneys’ fees and litigation expenses.

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

17 As consideration for this Settlement, the total amount to be paid by Defendant is Six
18 Hundred Thousand Dollars (\$600,000) (the “Gross Settlement Amount”). The Gross Settlement
19 Amount will settle all issues pending in the Action between the Plaintiff and the Class Members
20 (defined in the Agreement as “All persons who were employed by Defendant in California in non-
21 exempt, hourly-paid positions at any time during the Class Period”) (the “Class”), on the one hand,
22 and the Defendant and the Released Parties, on the other hand, including: payment of all Individual
23 Settlement Awards to Participating Class Members, the Class Representative Service Award, the
24 Class Counsel Award (for fees and costs), the payment to the California Labor Workforce
25 Development Agency (“LWDA Payment”), the Individual PAGA Payments, and the expenses of
26 the Settlement Administrator. The Gross Settlement Amount does not include Defendant’s share
27 of employer-side payroll taxes, which it shall pay separately. The Settlement is all-in with no
28 reversion to Defendant and no need to submit a claim form. (Decl. Zakay at ¶ 3).

1 On May 13, 2021, the parties participated in a full-day mediation before Jeffrey Ross, Esq.,
2 a respected mediator of wage and hour class actions. At the conclusion of the full-day mediation,
3 the Parties reached an agreement for settlement. The basic terms were set forth in a signed
4 Memorandum of Understanding. The Parties then prepared the full Agreement, which was signed
5 by all counsel and the Parties and is now presented to this Court for preliminary approval. (Decl.
6 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 Six Hundred Thousand Dollars
12 (\$600,000). Under the Settlement, the Gross Settlement Amount consists of the following elements:
13 (1) payments of the Individual Settlement Awards to Participating Class Members, (2) the Class
14 Counsel Award (for fees and costs), (3) Settlement Administration Costs, (4) the LWDA Payment,
15 (5) the Individual PAGA Payments, and (6) the Class Representative Service Award to the Plaintiff.
16 The Gross Settlement Amount does not include Defendant's share of employer payroll taxes, which
17 Defendant shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in
18 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 payment
21 within thirty (30) calendar days. Within ten (10) days after Defendant funds the Gross Settlement
22 Amount, the Settlement Administrator will pay: the Participating Class Members their Individual
23 Settlement Awards; Class Counsel their Class Counsel Award (consisting of fees and costs); the
24 LWDA its share of the PAGA Payment; the Participating PAGA Members their Individual PAGA
25 Payments; and the Settlement Administrator its Settlement Administration Costs, all in the amounts
26 approved by the Court. (Decl. Zakay at ¶13).

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

1 Court-approved amounts for the Class Representative Service Award, the Class Counsel Award,
2 the PAGA Payment, and the Settlement Administration Costs. The Settlement Administrator will
3 pay an Individual Settlement Award from the Net Settlement Amount to each Participating Class
4 Member. The submission of a claim form is not required in order for the Participating Class
5 Member to be paid his or her Individual Settlement Award. The Individual Settlement Award for
6 each Participating Class Member will be calculated as follows: from the Net Settlement Amount,
7 the Individual Settlement Award for each Participating Class Member in the Class will be calculated
8 by dividing the Net Settlement Amount by the total number of workweeks worked by all
9 Participating Class Members during the Class Period and then multiplying that amount (the
10 “Workweek Value”) by the total number of workweeks worked by each Participating Class
11 Member during the Class Period. The entire Net Settlement Fund shall be distributed. (Decl. Zakay
12 at ¶14).

13 Class Members will have 45 days after the mailing of the Settlement Notice to exclude
14 themselves or submit written objections. Class Members may choose to opt-out of the Settlement
15 by following the directions in the Settlement Notice. All Class Members who do not “opt out” will
16 be deemed Participating Class Members who will be bound by the Settlement and will be entitled
17 to receive a settlement payment. Finally, the Settlement Notice will advise the Class Members of
18 their right to object 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 within five (5)
22 calendar days of receipt of the returned check. If a Participating Class Member’s Individual
23 Settlement Award check is not cashed within 180 days after the Settlement Administrator’s last
24 mailing to the Participating Class Member, the funds from such uncashed check will be paid to the
25 State Controller’s Office, Unclaimed Property Division. (Decl. Zakay at ¶16).

26 The Parties have agreed to use Simpluris as the Settlement Administrator for the Settlement.
27 Payment of the expenses of the Settlement Administrator from the Gross Settlement Fund shall be
28 made for the expenses of effectuating and administering the Settlement. The Settlement

1 Administrator shall receive payment for services in an amount not to exceed \$4,250. (Decl. Zakay
2 at ¶17).

3 Subject to Court approval, the Agreement provides, as part of the Class Counsel Award, (a)
4 for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount for their
5 fees and (b) an award of litigation expenses in an amount not to exceed \$15,000. In support of the
6 request for the Class Counsel Award, Class Counsel will provide evidentiary support, including
7 lodestar method calculations. Subject to Court approval, the Agreement provides for payment of a
8 Class Representative Service Award of no more than \$10,000 for Plaintiff or such lesser amount as
9 may be approved by the Court at Final Approval.¹ Defendant will not oppose a motion for approval
10 of attorneys' fees, costs and a service award consistent with the Agreement. (Decl. Zakay at ¶18).

11 Subject to Court approval, \$30,000 will be paid from the Gross Settlement Amount for
12 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the
13 requirements of Labor Code §2699(i), the PAGA Payment shall be allocated \$22,500.00 (75%) to
14 the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties and
15 \$7,500.00 (25%) for distribution as Individual PAGA Payments to PAGA Members. (Decl. Zakay
16 at ¶19).

17 III. CASE BACKGROUND

18 On May 27, 2020, Plaintiff filed the Class Action Complaint (Case No. 30-2020-01141107-
19 CU-OE-CXC) in the Superior Court of the State of California County of Orange, asserting claims
20 for: (1) unfair competition in violation of Cal. Business & Professions Code § 17200; (2) failure to
21 pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay
22 overtime wages in violation of Cal. Labor Code § 510; (4) failure to provide required meal breaks
23 in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to
24 provide required rest breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable
25 IWC Wage Order; (6) failure to provide accurate itemized wage statements in violation of Cal.

26
27 ¹ 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 Labor Code § 226; (7) failure to provide wages when due in violation of Cal. Lab. Code §§ 201,
2 202 and 203; and (8) failure to reimburse employees for required business expenses in violation of
3 Cal. Lab. Code § 2802. (Decl. Zakay at ¶7).

4 On October 19, 2020, Plaintiff filed the PAGA Complaint (Case No. 30-2020-01166291-
5 CU-OE-CXC) in the Superior Court of the State of California County of Orange, asserting a single
6 cause of action for civil penalties pursuant to Cal. Labor Code § 2699, *et seq.* for violations of Cal.
7 Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194,
8 1197, 1197.1, 1198, 2802, and Cal. Code of Regulations, Title 8, section 11050, Subdivision 5(A)-
9 (B). (Decl. Zakay at ¶7).

10 Plaintiff seeks to represent a putative class of all persons who were employed by Defendant
11 in California in non-exempt, hourly-paid positions at any time during the Class Period, including
12 current and former employees (the “Class Members”). The Class Period is defined as the period of
13 time from May 27, 2016 through June 13, 2021. The Class Action Complaint generally alleges that
14 Defendant failed to properly pay Plaintiff and Class Members minimum and overtime wages, failed
15 to provide them with proper meal breaks and rest breaks, failed to reimburse for required business
16 expenses, failed to provide them with complete and accurate wage statements, engaged in unfair
17 business practices, and failed to timely pay them all wages owed at the time of the separation of
18 their employment. The PAGA Action Complaint seeks civil penalties for the underlying
19 substantive violations alleged in the Class Action Complaint. Collectively, the Action seeks unpaid
20 wages, statutory and PAGA penalties, attorneys’ fees, and litigation costs² due and owing to
21 Plaintiff, Class Members, and PAGA Members by virtue of the foregoing claims. (Decl. Zakay at
22 ¶8).

23 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
24 information in connection with the Action. As part of this process, Defendant provided a significant
25 sample of time records and payroll records, as well as other documents and information, to Class
26 Counsel to review and analyze. On May 13, 2021, the Parties participated in an all-day mediation
27

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

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

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

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

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

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

6 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 7 **COURT TO GRANT PRELIMINARY APPROVAL**

8 When a proposed class-wide settlement is reached, the settlement must be submitted to the
9 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
10 p.11-87). California “[p]ublic policy generally favors the compromise of complex class action
11 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
12 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
13 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
14 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
15 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

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

23 The primary question presented on an application for preliminary approval of a proposed
24 class action settlement is whether the proposed settlement is “within the range of possible approval.”
25 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
26 (7th Cir. 1982)).³ Preliminary approval is merely the prerequisite to giving notice so that “the

27 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
28 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts
are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure

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 _____
28 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 *for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
2 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
3 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
4 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
5 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
6 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
7 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
8 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

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

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

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

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. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.⁴

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 Class who does not timely and validly opt out shall be deemed to have fully and finally released all claims under state or local law, whether statutory, common law, or administrative law, whether in law or equity, for the claims that were pled in the Class Action Complaint, arising out of the factual allegations therein, during the Class Period, including: (a) all claims for failure to pay minimum wages under Cal. Labor Code §§ 1194, 1197 and 119.1; (b) all claims for failure to pay overtime wages under Cal. Labor Code §§ 510, *et seq.*; (c) all claims for failure to provide required meal periods under Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order; (d) all claims for failure to provide required rest breaks under Cal. Labor Code §§ 226.7 and 512 and the applicable IWC Wage order; (e) all claims for failure to provide accurate itemized wage statements under Cal. Labor Code § 226; (f) all claims for failure to provide wages when due under Cal. Labor Code §§ 201, 202 and 203; (g) claims for failure to reimburse employees for required expenses under Cal. Labor Code § 2802; (h) claims under the California Business and Professions Code § 17200 *et seq.* including injunctive relief related to the California Labor Code violations covered by this release; (i) liquidated damages; (j) interest; (k) attorneys' fees; and (l) attorneys' costs. Except as to Plaintiff, Released Claims exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, Release Claims outside the Class Period, and PAGA Claims which are released separately. Plaintiff, through Class Counsel, also expressly agrees that this Settlement and the Released Claims will fully resolve the class claims of non-exempt class members brought by Helder Herrera in *Helder Herrera v. Impact Group, LLC* *United States District Court, Central District, Case No. 2:21-cv-03075 JAK (JDEX)). This release is referred to as the "Released Class Claims." (*See* Agreement at ¶ 32.)

1 The Parties scheduled and attended an arms-length private mediation before Jeffrey Ross,
2 Esq., an experienced mediator of wage and hour actions. In preparation for the mediation,
3 Defendant provided Class Counsel with necessary records and information for the members of the
4 Class. Defendant produced a large sample consisting of pay records and time records. Defendant
5 also produced Defendant's relevant employment policies, including compensation policies and
6 timekeeping policies. Plaintiff analyzed the data with the help of an expert, Berger Consulting
7 Group ("Berger"). On May 13, 2021, the Parties participated in a full-day mediation before Jeffrey
8 Ross, Esq., at which the Parties were able to reach an agreement to settle the Action. The basic
9 terms were set forth in a signed Memorandum of Understanding. The Parties then prepared the full
10 Agreement, which was signed by all counsel and the Parties. (Decl. Zakay at ¶5).

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

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

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

26 **a. The Settlement is Fair, Reasonable, and Adequate**
27
28

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 ¶ 35.)

4 The amounts to compensate the Class Members for the alleged violations at the time this
5 Settlement was negotiated were calculated by Berger, Plaintiff’s damage expert. Plaintiff used
6 Berger to analyze the data and determine the potential damages for the employees. For the Class,
7 Plaintiff estimates that Defendant was subject to maximum liability for damages in the amount of
8 \$1,996,380 (inclusive of interest) consisting of \$1,257 for unpaid overtime wages, \$1,234,540 for
9 rest periods, and \$760,583 for meal periods. In addition, Plaintiff’s expert calculated \$127,936 in
10 waiting time penalties and \$251,550 for wage statement penalties.⁵ Finally, Plaintiff’s expert
11 calculated that Defendant could be liable for PAGA penalties in an amount of \$2,222,900.⁶

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

⁶ Plaintiff recognizes 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, 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 Consequently, the Settlement of \$600,000 represents more than 30% of the maximum estimated
2 damages and interest, and 25.25% of the maximum combination of damages and penalties to the
3 Class, assuming all of these amounts could be proved at trial. Given the amount of the Settlement
4 as compared to the potential value of claims in this case, the Settlement is fair and reasonable.
5 Clearly, the goal of this litigation to provide compensation to Class Members for unpaid time and
6 for 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 far exceeds the percentage
13 approved in *Stovall-Gusman*, is entitled to preliminary approval.

14 **b. The Strengths and Weaknesses in Plaintiff's 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 Plaintiff and the other Class Members. For
19 instance, Defendant asserted that the employment practices complied with all applicable Labor
20 Laws. Defendant also argued that (1) there were vast differences across different types of Class
21 Members (ranging from retail associates to office-based administrative assistants and customer
22 support); (2) it maintained robust, compliant off-the-clock policies; (3) it had high compliance rates
23 for meal periods; and (4) it in fact provided company-issued cell phones or tablets to employees
24 who specifically needed them to perform their jobs and offered monthly reimbursements to those
25 employees who did not, but who were required to use their personal cell phone in any given month.

26 Defendant also argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
27 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
28 certifiability as to the meal and rest period claims. A major component of the damages alleged to

1 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
2 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
3 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
4 Plaintiff *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
5 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
6 strictly enforced lawful policies, and afforded Plaintiff and the Class Members compliant meal and
7 rest breaks. If successful, these defenses could eliminate or substantially reduce any recovery to
8 the Class. While Plaintiff believes that these defenses, and others, could be overcome, Defendant
9 maintains these defenses have merit and therefore present a serious risk to recovery for the Class.
10 (Decl. Zakay at ¶22).

11 With respect to Plaintiff's argument that Defendant failed to accurately calculate some Class
12 Members' overtime rate by failing to include non-discretionary bonuses into the employees' regular
13 rate of pay for purposes of the overtime calculation, Defendant argued that payment of such bonuses
14 was infrequent, and employees rarely earned a bonus and overtime pay in the same pay period.
15 Defendant argued that the damages for this claim are therefore minimal. In reviewing the records
16 provided by Defendant to Plaintiff for the mediation, Plaintiff's expert confirmed that incentive
17 compensation was infrequent, and concluded that damages on this claim are likely limited to no
18 more than \$1,000-\$2,000. (Decl. Zakay at ¶22).

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

21 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
22 to obtain class certification and thereby not recover on behalf of any employee other than
23 themselves. Defendant argued that the individual experience of each employee varied with respect
24 to the alleged claims. While other cases have approved class certification of wage and hour claims,
25 class certification in this action would have been hotly disputed and was by no means a foregone
26 conclusion. Finally, even if class certification was successful, as demonstrated by the California
27 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
28

1 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
2 (Decl. Zakay at ¶23).

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

15 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the** 16 **Class Representative or Segments of The Class**

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

23 Plaintiff will apply to the Court for a Class Representative Service Award in consideration
24 for her service, and for the risks undertaken on behalf of the Class. Plaintiff performed her duties
25 admirably by working with Class Counsel. The requested Plaintiff's service award is well within
26 the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps.*
27 *(U.S.)*, Inc., 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class
28 member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS

1 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was
2 \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D.
3 Or. 2007) (approving award of \$10,000 where class member recoveries were as little as \$150);
4 *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008)
5 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
6 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
7 overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
8 awards are routinely awarded to class representatives to compensate the employees for the time and
9 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
10 therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. (2007 WL
11 221862 at *16-17.) (Decl. Zakay at ¶25).

12 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit** 13 **Preliminary Approval Of The Settlement**

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

25 Based on the foregoing data and their own independent investigation and evaluation, Class
26 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
27 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
28 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and

1 numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed
2 sufficient information to make an informed judgment regarding the likelihood of success on the
3 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶27).

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

8 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
9 observed, however, “[i]n the context of class action settlements, ‘formal discovery
10 is not a necessary ticket to the bargaining table’ where the parties have sufficient
11 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).

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

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

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

21 The California Class:

22 “all persons who were employed by Defendant in California in non-exempt, hourly-paid
23 positions at any time during the Class period, including current and former employees.”

24 (Agreement at ¶ 6).

25 The California Class Period is the period of time from May 27, 2016 through June 13, 2021. The
26 Parties estimate that there are 98 California Class Members who collectively worked approximately
27 12,126 workweeks. (Decl. Zakay at ¶28).

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

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

4 Code of Civil Procedure Section 382 authorizes class actions “when the question is
5 one of a common or general interest, of many persons, or when the parties are
6 numerous, and it is impracticable to bring them all before the court....” The party
7 seeking certification has the burden to establish the existence of both an
8 ascertainable class and a well-defined community of interest among class members.
9 (*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.

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

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

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

16 Here, the approximately 98 current and former employees that comprise the California Class
17 can be identified based on Defendant’s records and are sufficiently numerous for class certification.
18 All of these employees are ascertainable because the class members can readily be determined
19 through examination of Defendant’s employment files. Given that the classes consist of
20 approximately 98 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44 Cal.2d
21 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
22 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Moreover,
23 the current and former employees that comprise the Class can be identified based on Defendant’s
24 records and are sufficiently numerous for class certification. (Decl. Zakay at ¶28(a)).

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

26 Predominance of common issues of law or fact does not require that the common issues be
27 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
28 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). “Predominance is a comparative

1 concept, and ‘the necessity for class members to individually establish eligibility and damages does
2 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334).

3 Commonality exists if there is a predominant common legal question regarding how an
4 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
5 1524, 1536 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on
6 its drivers.”)). Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the
7 certification stage since the question is “essentially a procedural one that does not ask whether an
8 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
9 (2003)).

10 Here, Plaintiff contends that common questions of law and fact are present, and specifically:
11 (i) whether Defendant’s failed to pay overtime wages at the legal overtime pay rate; (ii) whether
12 Defendant failed to provide legally-requisite meal and rest periods to Class Members; (iii) whether
13 Defendant failed to timely furnish accurate, itemized and legal wage statements to Class Members;
14 (iv) whether Defendant failed to properly reimburse Class Members for required business expenses;
15 (v) whether Defendant subjected Class Members to unlawful, unfair and/or fraudulent business
16 acts/practices; and (vi) whether Defendant is liable for attorneys’ fees and costs. (Decl. Zakay at
17 ¶28(b)). Defendant will not oppose a finding of commonality for purposes of settlement only.

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

19 The typicality requirement requires Plaintiff to demonstrate that the members of the class
20 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
21 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
22 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
23 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
24 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
25 need not be substantially identical.” (50 F.3d at 1020).

26 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
27 Plaintiff, like every other member of the Class was employed by Defendant and is a member of the
28 Class—a non-exempt employee who was entitled to meal and rest breaks, and who received

1 incentive compensation in the same pay period she received overtime pay. Plaintiff was subject to
2 the same employment practices concerning overtime rate calculation, the meal and rest periods, and
3 received similar wage statements. Thus, the claims of the Plaintiff and the Class Members arise
4 from the same course of conduct by the Defendant, involve the same employment policies, and are
5 based on the same legal theories. (Decl. Zakay at ¶28(c)). For purposes of settlement, the typicality
6 requirement is met as to the common issues presented in this case. Defendant will not oppose such
7 a finding for purposes of settlement only.

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

9 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
10 not have any conflicts of interest with other class members, and (b) will prosecute the case
11 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020). First, Plaintiff is well aware of
12 her duties as a representative of the Class and have actively participated in the prosecution of this
13 case to date. Plaintiff effectively communicated with Class Counsel, provided documents to them
14 and participated in discovery, investigation and negotiations in the Action. Second, Plaintiff
15 retained competent counsel who are experienced in employment class actions. Third, there is no
16 antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the
17 Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at
18 ¶28(d)).

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

20 To certify a class, the Court must also determine that a class action is superior to other
21 available methods for the fair and efficient adjudication of the controversy. “Where classwide
22 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
23 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
24 1234 (9th Cir. 1996)). As courts have previously observed:

25 Absent class treatment, each individual plaintiff would present in separate,
26 duplicative proceedings the same or essentially the same arguments and evidence,
27 including expert testimony. The result would be a multiplicity of trials conducted
28 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.’

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

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

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

5 The Court has broad discretion in approving a practical notice program. The Parties have
6 agreed upon procedures by which the Class Members will be provided with written notice of the
7 Settlement similar to that approved and utilized in hundreds of class action settlements. In
8 accordance with the Agreement, within 14 days after the Court enters its order granting Preliminary
9 Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic
10 database containing the Class List. (Agreement at ¶ 53(a)). Within 15 days after receiving the
11 Class List, the Settlement Administrator will mail the Settlement Notice to all Class Members via
12 first-class regular U.S. Mail to their last known addresses. (Agreement at ¶ 53(a)(i)).

13 The Settlement Notice, drafted jointly and agreed upon by the Parties through their
14 respective counsel and to be approved by the Court, includes all relevant information. (See Exhibit
15 1 to the Agreement). The Settlement Notice will include, among other information: (i) information
16 regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii)
17 information to the Class Members regarding how to opt out and how to object to the Settlement;
18 (iv) the estimated settlement payment for each of the Class Members; (v) the amount of attorneys'
19 fees and litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative
20 Service Award request; (vii) the amount being paid to the LWDA; and (viii) the Settlement
21 Administration Costs. (Decl. Zakay at ¶30).

22 The Settlement Notice will state that the Class Members shall have forty-five (45) days from
23 the date that the Settlement Notice is mailed to them to request exclusion or to submit an objection.
24 The Class Members will be given an opportunity to object to the terms of the Agreement and/or the
25 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
26 with the instructions set forth in the Settlement Notice. Class Members will be instructed to only
27 contact the Settlement Administrator and Class Counsel and not the Court. Class Members who do
28 not opt out will automatically receive a settlement payment. This notice program was designed to

1 meaningfully reach the Class Members and advises them of all pertinent information concerning
2 the Settlement. The mailing and distribution of the Settlement Notice satisfies the requirements of
3 due process, is the best notice practicable under the circumstances and constitutes due and sufficient
4 notice to all persons entitled thereto. The Settlement Notice provides information on the terms and
5 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
6 time and place of the final settlement approval hearing; and the procedure and deadline for
7 submitting comments, objections, and requests for exclusion. The Settlement Notice complies with
8 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶30).

9 **VII. CONCLUSION**

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

14
15 DATED: September 24, 2021

16 **ZAKAY LAW GROUP, APLC**

17
18
19 By: 
20 Shani G. Zakay
21 Attorney for Plaintiffs
22
23
24
25
26
27
28