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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CECILLE SARMIENTO, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

CADUCEUS HEALTHCARE INC, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00002597-CU-OE-CTL

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

Date: September 9, 2022

Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney

Dept.: 68

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I. INTRODUCTION

Plaintiff CECILLE SARMIENTO (“Plaintiff”) seeks preliminary approval of the Stipulation of Class and PAGA Action Settlement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 115 Class Members and 101 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by defendant Caduceus Healthcare, Inc. (hereinafter “Defendant”) in California during the period of January 20, 2017 and September 30, 2021 (“Class Period”). Agreement at §§ A(7) and (8). The Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §A(29).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees who are or previously were employed by Defendant in California (“Aggrieved Employees”) during the period of June 18, 2019 until September 30, 2021 (“PAGA Period”). Agreement at §§ A(2) and (20). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is Three Hundred Fifteen Thousand Dollars (\$315,000). Agreement at § A(15). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$7,500 to Plaintiff for her services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §C(15)(i);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$105,000 **and** litigation costs and expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §C(15)(j);

c. A “**PAGA Settlement Payment**” of \$15,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement to

¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §C(15)(k); and

d. “**Settlement Administration Costs**” not to exceed \$15,000 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §C(15)(l).

3. The “**Net Settlement Fund**” of approximately \$157,500 (Gross Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$1,369.57**. Agreement at §C(15)(a); JCL Dec., ¶ 5.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 5.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

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II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides a wide range of staffing and recruiting firm that provide Medical (Physicians, Nurses, Ancillary), IT, Scientific, and Administrative Services. Defendant operates 6 locations in California. This action asserts claims on behalf of Defendant's non-exempt employees working at those California locations. Plaintiff worked for Defendant as a non-exempt employee in California between February 3, 2020 to April 3, 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Human Resources Manual" JCL Dec., ¶ 7; Declaration of Cecille Sarmiento ("Sarmiento Dec.") at ¶¶ 4-5.

On June 18, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 8.

On January 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021-00002597-CU-OE-CTL (the "Action"). The Class Action alleged eleven causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 et seq.; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Timely Pay Earned Wages in Violation §204(a); (10) Wrongful Termination in Violation of Public Policy; and (11) Violation of the

1 Private Attorneys General Act [Labor Code §§ 2698, et seq.] (“Class Claims”). JCL Dec., ¶ 9.

2 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
3 compliant meal and rest periods, failed to pay overtime at the correct regular rate of pay, failed to
4 furnish accurate itemized wage statements, and failed to pay all wages upon separation failure.
5 Defendant forcefully denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it
6 fully complied with all applicable employment laws and raised several other significant defenses to
7 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, written
8 policies requiring all tasks to be performed while on-the-clock, compliant wage statements, and timely
9 paid all wages due upon separation of employment. JCL Dec., ¶ 10.

10 Plaintiff commenced written discovery in in April 2021. Before answering Plaintiff’s written
11 discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties agreed to
12 stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 11.

13 To prepare for mediation, the Parties agreed to informally produce additional documents and
14 data points subject to the mediation privilege, including but not limited to, a sampling of the Class
15 Members’ time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
16 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
17 Defendant’s time and payroll data. JCL Dec., ¶ 12.

18 On September 8, 2021, the Parties participated in a full day mediation with highly regarded
19 mediator and respected San Diego jurist Hon. Steven Denton (Ret). After arms-length negotiations and
20 bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding.
21 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement
22 agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

23 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

24 Months before filing the Action, Class Counsel began its pre-filing investigation into the
25 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
26 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
27 including her hiring documents, compensation policies, benefit plans and wage statements. At the
28 conclusion of the interviews, Class Counsel determined that each Plaintiff’s complaints justified further

inquiry. JCL Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff's Human Resource Policy Manual, payroll and time records, and a representative portion of aggrieved employees' payroll and time records and wage statements. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked and to provide compliant meal and rest periods. JCL Dec., ¶ 15.

Considering the many anticipated factual disputes, the Parties agreed, that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class Member time and payroll records, aggregate workweek and pay period data, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period policies. In total, Defendant produced approximately 350 pages of pertinent policy documents and approximately 40,000 unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 16.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 17.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount

of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 18.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 19.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) holding multiple phone interviews with Plaintiff; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20.

C. The Parties Settled at Mediation

On September 8, 2021, the Parties conducted a full day of mediation with Hon. Steven Denton (Ret), a respected jurist and a highly regarded wage and hour mediator. Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After nearly eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 21-23.

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D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Class consists of all Defendant's current and former non-exempt employees who are or previously were employed by Defendant in California between January 20, 2017 to September 30, 2021. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §A(7), (8) and (33). In the data exchanged prior to the Mediation, there were approximately 115 Class Members that worked an estimated 3,300 during the Class Period Agreement at §C(1)(b).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$315,000. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$7,500 to Plaintiff for her services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$15,000; (4) Settlement Administration costs estimated at \$15,000; (5) Class Counsel Award in the amount of \$105,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$315,00 and an estimated \$15,000 for actually incurred litigation expenses. See generally Agreement at §C(15).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at §C(15)(a). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §C(1)(a).

3. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for the entire Settlement Class. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be

1 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
2 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class
3 Members.

4 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
5 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class
6 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class
7 Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their
8 respective Payment Ratios. Agreement at §C(15)(a).

9 Given that there are approximately 115 Settlement Class Members, the average gross recovery
10 is approximately \$1,369.57 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

11 ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by
12 California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego
13 Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The*
14 *Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net
15 recovery \$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case
16 No. CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*,
17 Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

18 4. Release by Participating Settlement Class Members

19 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
20 release the Released Parties from all class claims, actions, demands, causes of action, suits, debts,
21 obligations, damages, penalties, rights or liabilities, of any nature and description whatsoever, that are
22 asserted in the Action or based on the facts and theories pleaded in the operative complaint on file at
23 the time of final approval, including but not limited to, Labor Code sections 201, 202, 203, 204(a), 210,
24 218.5, 226, 226.3, 226.7, 510, 512, 1194, 1197, 1197.1 and 2802, the applicable IWC Wage Orders
25 and all equivalent claims and causes of action arising under the Fair Labor Standards Act ("FSLA") at
26 29 U.S.C. §201 *et seq.*, which occurred during the Class Period, and expressly excluding all other
27 claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability,
28 social security, workers' compensation, and class claims outside the Class Period. Agreement at

§§A(25) and C(2).

5. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from any all claims for penalties under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at the time of final approval by Plaintiff in the Action and Plaintiff's June 18, 2020 notice letter to the LWDA including, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3 and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period. Agreement at §§A(26) and C(3).

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement

The proposed Settlement, including a Gross Settlement Amount of \$315,000 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length

1 bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act
2 intelligently;" (3) counsel is "experienced in similar litigation. . . ." (*Dunk v. Ford Motor Co.* (1996)
3 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy
4 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely
5 favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public
6 policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair
7 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and
8 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
9 action litigation").)

10 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
11 to what is "otherwise a private consensual agreement between the parties." (*Cellphone Termination
12 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry "must be limited to the extent necessary
13 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
14 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
15 and adequate to all concerned." (*Id.*)

16 1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by
17 Experienced Counsel.

18 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
19 settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
20 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
21 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
22 § 11.51.)

23 The Parties participated in mediation the highly respected jurist and mediator Hon. Steven
24 Denton (Ret). Judge Denton managed the Parties' expectations and provided a useful, neutral analysis
25 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF
26 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs
27 considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir.
28 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to

1 ensure that the proceedings were free of collusion and undue pressure.”.) At all times, the Parties’
2 negotiations were at an arm’s length, adversarial and non-collusive. Only after a full day of mediated
3 negotiations, the Parties reached a settlement. The matter resolved only when Judge Denton issued a
4 mediator’s proposal that the Parties accepted. Judge Denton only arrived at his proposal after hearing
5 arguments, reviewing evidence and evaluating the Parties’ respective claims and defenses. JCL Dec.,
6 ¶ 22.

7 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in protracted negotiations
8 regarding the written terms of the class action settlement. The Parties maintained the arm’s length, non-
9 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
10 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
11 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

12 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
13 Settlement’s Reasonableness.

14 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
15 the factual and legal issues in dispute. In addition to informal discovery, witness interviews, document
16 review, data analysis and legal research, Class Counsel also researched similar wage and hour actions.
17 Although no two cases are identical, this research provided Class Counsel with a marker to inform
18 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
19 to Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel
20 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
21 ¶¶ 14-20.

22 Class Counsel only agreed to enter the Settlement following his thorough investigation and
23 evaluation of Plaintiff’s claims. Based on his investigation of the facts, applicable law, and marketplace
24 for similar settlements, and considering the risk of significant delay, uncertainty associated with
25 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
26 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
27 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

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1 3. The Settlement Falls Within the Recognized Range of Reasonableness.

2 The Gross Settlement Amount of \$315,000 is within the range of reasonable settlement for
3 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
4 “consider enough information about the nature and magnitude of the claims being settled, as well as
5 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
6 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
7 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
8 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis,
9 courts do “not require any such explicit statement of value; [they] require[] a record which allows an
10 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.
11 ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
12 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
13 recovery plaintiffs might have received if they had succeeded at trial. Indeed, “[t]he determination
14 whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a
15 particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In*
16 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

17 **a. The Gross Settlement Amount Meets the Recognized Range of**
18 **Reasonableness.**

19 The Gross Settlement Amount of \$315,000 is fair and reasonable considering the nature and
20 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
21 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
22 liability exposure while accounting for the uncertainties of continued litigation. The various models
23 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
24 and payroll data. Class Counsel projected Defendant’s liability exposure for the Class damages,
25 excluding PAGA Penalties, to be \$1,876,101 (“Damages Model”) if successful at trial. Thus, the Gross
26 Settlement Amount of \$315,000 represents approximately 16.7% of the of Defendant’s liability
27 exposure for class damages. JCL Dec., ¶ 24.

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1 **(1) Estimate Damages for Failing to Pay for Unpaid Wages**

2 Plaintiff alleged that Defendant failed to pay for all hours worked. Specifically, Plaintiff asserted
3 that Defendant failed to pay for all time spent under Defendant's control post-shift, including but not
4 limited to, requiring Plaintiff to complete any incoming calls from the public and Customs and Border
5 Patrol regarding Covid-19 and inputting the information for the Centers for Disease Control and
6 Prevention ("CDC") into a database before being relieved for duty, regardless if the time spent finishing
7 the phone call and inputting the information caused her to work over 8 hour shift. Additionally, Plaintiff,
8 after finishing the phone call and inputting the information into the database, was required to shut down
9 her computer and secure return to the supervisor's office, make sure the phones were off, disinfect her
10 workstation, wipe down all the surfaces, make sure the lights were off and lock up the conference room,
11 all while off-the-clock. JCL Dec., ¶ 25.

12 Plaintiff also alleges that Defendant failed to accurately calculate Plaintiff's regular rate of pay
13 for the purposes of calculating overtime pay. Here, Defendant paid "Cash-in-Lieu" benefit compensation
14 to Plaintiff described as "HW" and "HW CA" in Plaintiff's wage statements. In total, Defendant paid
15 cash-in-lieu benefits on 60% of Plaintiff's wage statements. When calculating Plaintiff's regular rate of
16 pay for the purposes of overtime compensation, Defendant did not include the payments in the regular
17 rate of pay. Defendant's failure to include the cash-in-lieu benefits in Plaintiff's regular rate of pay
18 calculation resulted in systematic and uniform underpayment of overtime wages during the Class Period.
19 JCL Dec., ¶ 26.

20 Defendant vigorously denied liability for claim. In discovery, Defendant produced several
21 California specific operation manuals and policies first published in 2016. Collectively, Defendant
22 asserted that these written policies and procedures prohibited off-the-clock work and required employees
23 to see supervisor approval prior to any unscheduled work. Defendant asserted that any deviation from
24 these written policies was subject to disciplinary action and, thus, created individualized issues of
25 liability unsuitable for class treatment. Plaintiff's estimated Defendant's exposure for this claim at
26 \$201,199. JCL Dec., ¶ 27.

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1 (2) Estimate Damages for Meal Period Violations

2 Plaintiff also alleges that Defendant maintained facially unlawful meal period policies failed to
3 provide compliant meal periods. Specifically, Plaintiff alleges that the Defendant failed to provide
4 timely duty-free first meal periods on all shifts greater than five hours, provided late meal periods,
5 provided short meal periods and regularly required employees to work through meal periods. Moreover,
6 Plaintiff alleges Defendant regularly violated the law by round time punches and auto-deducting time
7 for meal breaks. JCL Dec., ¶ 28.

8 Defendant argued that they fully complied with California meal period laws and maintained
9 legally compliant policies and practices. Similarly, Defendant argued any divergence from these written
10 policies were not systematic and, if they existed at all, were employee specific. Defendant also asserted
11 that it maintained facially compliant meal period policies and practices throughout the Class Period.
12 Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations.
13 JCL Dec., ¶ 29.

14 Plaintiff's meal period claim (together with the rest period claim) likely represented the most
15 factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the
16 arguably individualized nature of the claim, Plaintiff heavily discounted Defendant's potential liability
17 for meal period violations. Plaintiff estimated the damages for this claim is an estimated \$255,723. JCL
18 Dec., ¶ 30.

19 (3) Estimated Damages for Rest Period Violations

20 Plaintiff also alleged that Defendant maintained facially unlawful rest period policies and failed to
21 provide compliant rest periods. Specifically, Plaintiff alleged that Defendant's did not have a rest period
22 policy in place that did not allow for a rest period regardless of how many hours an employee worked.
23 Plaintiff also alleged that because of their rigorous work schedule they were not able to take timely and duty-
24 free rest periods. JCL Dec., ¶ 31.

25 Defendant denied liability and asserted that they maintained legally complaint rest period policies
26 and practices throughout the Class Period. Moreover, Plaintiff recognized the evidentiary burdens
27 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
28 Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely

1 would have argued that only a small number of Class Members missed their meal breaks or that the
2 shifts periods worked by employees did not qualify the employees for rest periods. Certification likely
3 would have required depositions of Class Members. Accordingly, the rest break claim was heavily
4 discounted in Plaintiff's valuation of the case approximately valued at \$477,770. JCL Dec., ¶ 32.

5 **(4) Exposure for Wage Statement Violations and Waiting Time Penalties**

6 Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in derivative
7 violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of
8 various penalties and weighed the potential recoveries against probable defenses. Specifically,
9 Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time
10 penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show
11 that Class Members suffered an "injury" because of wage statement violations, as required by Cal. Lab.
12 Code § 226. Defendant could also argue that that meal and rest period violations do not entitled
13 employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage
14 statement penalties. *See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444;
15 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Settlement Class
16 arguably could have seen a payout of nearly \$1 million for these penalties if Plaintiff prevailed on every
17 penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying
18 claims. Moreover, Plaintiff would have to overcome damaging precedent to prove the Class deserved
19 the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal.
20 Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F.
21 Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury).
22 The wage statement and waiting time claims were estimate to give rise to \$941,408 in liability. JCL
23 Dec., ¶ 33.

24 **(5) Defendant's PAGA Exposure**

25 Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising
26 from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendant's PAGA
27 exposure at approximately \$815,500. JCL Dec., ¶ 34.

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
2 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
3 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
4 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
5 civil penalties, even when Labor Code violations are established. *See also In re Nordstrom Com. Cases*,
6 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
7 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
8 6, 2016) (PAGA penalties denied after trial). JCL Dec., ¶ 35.

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
10 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
14 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
15 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the
16 employment practices complied with all applicable Labor Laws. In addition to those arguments
17 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
18 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
19 rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 36.

20 Accordingly, the Gross Settlement Fund of \$315,000 represents approximately 16.7% of the of
21 Defendants liability exposure for damages and 11.7% of Defendant's liability exposure damages and
22 penalties, as estimated by Class Counsel and BCG at the time of mediation. This is well within the
23 bounds of reasonableness. (*See Viceria v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3,
24 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated
25 total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7
26 (Approving a California wage and hour settlement where the class received 18% of the estimated total
27 liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at * 4 (Approving
28

California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the “range of reasonableness.”.) JCL Dec., ¶ 37.

Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”). JCL Dec., ¶ 38.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

“It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. See also *O’Conner v. Uber Technologies, Inc.*

1 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
2 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
3 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
4 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
5 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
6 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
7 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
8 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
9 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
10 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
11 certification of driver meal and rest period claims based on the predominance of individual issues).
12 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
13 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
14 settlement. JCL Dec., ¶¶ 39.

15 “The Settlement eliminates these and other risks of continued litigation, including the very real
16 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
17 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
18 inherently perilous regardless of the strengths of merits of the claims:

19 [N]othing is assured when litigating against commercial giants with vast
20 litigative resources, particular in such complex litigation as this, which
21 would strain the cognitive capacities of any jury. Defense judgments were
22 hardly beyond the realm of possibility. Accordingly, this factor weighs in
23 favor of preliminary approval.

24 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990).)

25 Finally, continuing to litigate this action would require continued and extensive resources
26 coupled with significant Court time to proceed through trial and post-trial motions; which can often
27 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
28 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at

trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$315,000 that is roughly 16.7% Defendant’s liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

B. The Proposed Notice Informs the Class about the Case and Settlement

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)²

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the

² Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod* (7th Cir. 1987) 826 F.2d 729, 732.

1 procedure and time period within which to requests for exclusions or objections to the Settlement, the
2 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
3 and scope of the Released Claims. Agreement at §C(14). This method was negotiated by the Parties
4 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
5 effective administration of the Settlement. JCL Dec., ¶¶ 42.

6 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
7 satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of Cal. v.*
8 *Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the
9 terms of the proposed compromise and of the options open to dissenting class members.”).) JCL Dec.,
10 ¶ 43.

11 **C. The Court Should Preliminarily Approve the Class Representative Enhancement Award**

12 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
13 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
14 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
15 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
16 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
17 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
18 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
19 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
20 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
21 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
22 (2009) 175 Cal.App.4th 785.)

23 Approximately 115 Class Members will share in the net Settlement Amount due entirely to the
24 effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a
25 Class Representative Service Award of \$7,500 for Plaintiff. The service award is fair and reasonable
26 compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation
27 and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for
28 prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide

adequate relief for the Settlement Class. JCL Dec., ¶ 44.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 45.

D. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a Class Counsel Award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a class counsel Award in the amount of one-third of the Gross Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement C(14)(j). Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 47.

1 1. The Standard for Class Certification

2 Class actions are statutorily authorized “when the question is one of common or general interest,
3 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
4 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
5 certification is appropriate when there is an “ascertainable class and a well-defined community of
6 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
7 is appropriate even if class members at some point may be required to make an individual showing as
8 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
9 *Sav-On*, 34 Cal.4th at 333.)

10 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined
11 Community of Interest Among the Class Members.

12 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
13 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
14 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where
15 they may be readily identified without unreasonable expense or time by reference to official records.
16 (*Id.*)

17 The community of interest requirement embodies three factors: (1) predominant common
18 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
19 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

20 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
21 question” the element of predominance presents is whether “the issues which may be jointly tried, when
22 compared with those requiring separate adjudication, are so numerous or substantial that the
23 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
24 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

25 Because all Class Members are Defendant’s current and former employees, the class is readily
26 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 48.

27 The California statutes relating to each of Plaintiff’s claims apply with equal force and effect to
28 the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and

1 Defendant's liability can be determined by facts common to all members of the class. The wage and
2 hour issues are both numerous and substantial, and a class action is the most advantageous method of
3 dealing with the claims of the Settlement Class. JCL Dec., ¶ 49.

4 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
5 from the same factual basis and are based on the same legal theories applicable to the other Class
6 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
7 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
8 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
9 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive
10 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 50.

11 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
12 each individual claim, the Class Members likely have little incentive to litigate their claims on an
13 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
14 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
15 adjudication. JCL Dec., ¶ 51.

16 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
17 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
18 gained state court settlement approval of the same class-wide causes of action that are at issue in this
19 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
20 represent the interests of this Class. JCL Dec., ¶¶52-59.

21 IV. CONCLUSION

22 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
23 presented the materials and information necessary for preliminary approval, the Parties request that
24 the Court preliminarily approve the settlement.

25 Dated: May 20, 2022

JCL LAW FIRM, APC

26 By: 
27 Jean-Claude Lapuyade, Esq.
28