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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALEXANDER CASTELLANOS, an
individual, on behalf of himself, and on
behalf of all persons similarly situated,

Plaintiff,

vs.

SOUTHWEST SECURITY PATROL, INC.,
d.b.a. SOUTHWEST PATROL, a California
corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 37-2020-00024905

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

Date: October 29, 2021

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: 74

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I. INTRODUCTION

Plaintiffs Alexander Castellanos, Douglas Alonzo Allen Gray, and Robert Mauna (collectively “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 846 members of the Settlement Class and 846 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Settlement Class**” and “**Settlement Class Period**” shall mean with respect to the class, all of SOUTHWEST SECURITY PATROL, INC., d.b.a. SOUTHWEST PATROL (“Defendant”) current and former non-exempt employees employed in California (“Settlement Class”) between November 1, 2018 and September 21, 2021 (“Settlement Class Period”). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G) and (EE).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendant’s current and former non-exempt employees employed in California (“Aggrieved Employees”) between November 1, 2018 and September 21, 2021 (“PAGA Period”). Agreement at §§ I(B) and (S).

3. The “**Total Settlement Amount**” is Six Hundred Thousand Dollars (\$600,000). The Total Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Awards**” in the amount of \$10,000 to each Castellanos, Gray and Mauna for their services on behalf of the Settlement Class, and for agreeing to a broad release. Agreement at §III(O)(2).

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Total Settlement Amount for attorney’s fees, currently estimated to be \$200,000 **and** litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at §III(O)(3).

c. A “**PAGA Settlement**” of \$50,000 shall be allocated from the Total 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 (“LWDA Payment”) the Labor and Workforce Development Agency. The Settlement Administrator shall

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.

1 distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to members of the Aggrieved
2 Employees. Agreement at §III(O)(4).

3 d. And “**Settlement Administration Costs**” not to exceed \$17,000 payable to the
4 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
5 and Individual Settlement Payments. Agreement at §III(O)(5); JCL Dec., ¶ 5.

6 3. The “**Net Settlement Fund**” of approximately \$278,000 (Total Settlement Amount
7 minus the requested Class Representative Service Awards, Class Counsel Award, PAGA Settlement
8 and Settlement Administration Costs) which will be allocated to all participating members of the
9 Settlement Class on a pro-rata basis according to the number of Workweeks each Settlement Class
10 member performed during the Class Period. The entire Net Settlement Amount will be paid to all
11 Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual
12 Settlement Share of **\$328.60**. Agreement at §III(O)(1); JCL Dec., ¶ 6.

13 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
14 Settlement Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at
15 arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by
16 the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs
17 pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class
18 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
19 certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

20 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
21 approval and falls within the range of reasonableness. The average Individual Settlement Share to the
22 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
23 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff
24 respectfully requests the Court to grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

25 II. FACTS AND PROCEDURE

26 A. Overview of the Litigation

27 Defendant is a security guard company that provides security services to clients throughout
28 Southern California. Plaintiffs Mauna, Gray, and Castellanos were employed by Defendant as non-

1 exempt employees during the Class Period. At all times during their employment, Plaintiffs earned an
2 hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and
3 overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to
4 Defendant's written policies and procedures contained in, among other documents, the "Southwest
5 Patrol Employee Policy and Procedure Handbook." JCL Dec., ¶ 8.

6 Generally, Plaintiffs claim that Defendant failed to pay for all hours worked, failed to provide
7 compliant meal and rest periods, failed to reimburse mandatory business expenses and failed to timely
8 pay wages upon separation. Defendant forcefully denies liability for each of Plaintiffs' claims. Further,
9 Defendant asserts that it fully complied with all applicable employment laws and raised several other
10 significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest
11 period polices, written policies prohibiting the use of personal cell phones, and timely paid all wages
12 due upon separation of employment. JCL Dec., ¶ 9.

13 On September 11, 2019, plaintiff Mauna served Defendant and the Labor and Workforce
14 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Mauna's
15 PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various
16 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC")
17 Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General
18 Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 10.

19 On November 1, 2019, plaintiff Gray also served Defendant and the LWDA with a separate
20 PAGA Notice setting forth the facts and theories supporting Defendant's alleged violations of Labor
21 Code and IWC Wage Order. Gray subsequently filed a representative action for PAGA penalties in
22 the Los Angeles Superior Court, Case Number 20STCV02521 ("Gray Action"). JCL Dec., ¶ 11.

23 On August 20, 2019, Mauna, filed an individual action in the Los Angeles Superior Court entitled
24 *Mauna v. Southwest Patrol, Inc.* Case Number 19STCV28903 ("*Mauna Action*") asserting numerous
25 wage and hour violations against Defendant. JCL Dec., ¶ 12.

26 Subsequently, on July 15, 2020, plaintiff Castellanos also served Defendant and the LWDA with
27 a PAGA Notice. Plaintiff Castellanos' PAGA Notice also set forth the facts and theories supporting
28 Defendant's alleged violations of the Labor Code and IWC Wage Order and of his intent to pursue

claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 13.

On July 17, 2020, plaintiff *Castellanos* filed this class action complaint in the San Diego Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to reimburse employees for required business expenses in violation of California Labor Code sections 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (8) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203 (“*Castellanos Action*”). JCL Dec., ¶ 14.

Plaintiff *Castellanos* commenced written discovery in December 2020. Prior to answering Plaintiff’s written discovery, the Parties agreed to collectively mediate the *Mauna Action*, the *Gray Action* and the *Castellanos Action* (collectively “*Action*”). In anticipation of mediation, the Parties stipulated to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce certain documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Econ One to analyze Defendant’s time and payroll data. JCL Dec., ¶ 15.

On June 8, 2021 the Parties participated in a full day mediation with highly regarded wage and hour mediator Lynn Frank, Esq. After arms-length negotiations and bargaining, the parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. As part of the Agreement, the Parties stipulated to the filing of a First Amended Complaint joining all Plaintiffs and causes of action into a single proceeding and seeking approval of the Agreement in the *Castellano Action*. JCL Dec., ¶ 16.

///

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with each Plaintiff. As part of the interview process, the Plaintiffs produced hundreds of pages of documents related to their employment, including portions of Defendant's handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that each Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 17.

Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, a copies of Plaintiffs' hiring documents, payroll and time records, performance reviews and separation documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendant's failed to, among other things, pay for all time worked and to provide compliant meal and rest periods. Shortly thereafter, Class Counsel initiated the Actions which are before the Court now. JCL Dec., ¶ 18.

Additionally, during the meetings with Class Counsel, Plaintiffs provided the names and contact information for several members of the Settlement Class. After filing this action, Class Counsel interviewed those members of the Settlement Class to further investigate the allegations asserted in the Actions. JCL Dec., ¶ 19.

In light of the many anticipated factual disputes, the Parties agreed early in the litigation 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 Plaintiffs' claims and Defendant's liability exposure to the Settlement Class members. In response to Class Counsel's request, Defendant produced the time and payroll records for the Settlement Class members, aggregate workweek and pay period data for the Settlement Class, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and, meal and rest period policies. In total, Defendant produced approximately 3,000 pages of pertinent policy documents and nearly 200,000 unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 20.

Class Counsel then retained the statisticians and economists at Econ One to evaluate the

1 Settlement Class Members' payroll and time data. Econ One provides data analysis and damage
2 modeling consulting services specializing in wage and hour class actions. Econ One's team of financial
3 and data analysts are credentialed and experienced experts in their fields and have provided their
4 expertise on thousands of cases. Stated differently, the Econ One is uniquely qualified to analyze
5 Defendant's time and payroll data. JCL Dec., ¶ 21.

6 Econ One analyzed Defendant's time and payroll data to assist in the development of various
7 damage models. Among other things, Econ One determined the approximate number of work shifts,
8 workweeks, pay periods, average rate of pay, average length of shift and average number of hours
9 worked per week and pay period during the Class Period. Econ One also estimated the number of
10 missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid
11 during the Class Period, and the amount of off-the-clock work performed by the Settlement Class
12 during the Class Period. JCL Dec., ¶ 22.

13 In advance of mediation, Class Counsel created several damage models predicated on the Econ
14 One analysis. Class Counsel's models calculated Defendant's potential liability exposure while
15 accounting for the uncertainties of continued litigation. These damage models informed and guided
16 Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 23.

17 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
18 Plaintiff's suitability as a putative class representative through interviews, background investigations,
19 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
20 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
21 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
22 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
23 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
24 liability for purposes of settlement; (8) drafting the mediation brief and (9) participating in the
25 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
26 claims being settled, as well as the impediments to recovery, such as to make an independent
27 assessment of the reasonableness of the terms to which the parties have agreed. JCL Dec., ¶24.

28 ///

1 **C. The Parties Settled at Mediation**

2 On June 8, 2021, the Parties conducted a full day of mediation with Lynn Frank, Esq., a highly
3 regarded wage and hour mediator. Mediator Frank helped manage the Parties' expectations and
4 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
5 progress with Mediator Frank's assistance. Namely, the parties exchanged information regarding their
6 respective claims and defense, including their respective evaluation of the damages. After nearly eight
7 hours arm's length and adversarial negotiations, the mediation nearly concluded without a settlement.
8 However, at the conclusion of the mediation, Mediator Frank issued a proposal for settlement that the
9 Parties accepted. The complete and final terms of the Parties' settlement are now set forth in the
10 Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable
11 compromise of the claims at issue. JCL Dec., ¶ 25.

12 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

13 1. The Composition of the Settlement Class Members

14 The proposed Settlement Class consists of all Defendant's current and former non-exempt
15 employees employed in California between November 1, 2018 and September 21, 2021. The Settlement
16 Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G)
17 and (EE). There are approximately 846 members of the Settlement Class that worked an estimated
18 39,937 Workweeks during the Class Period. Agreement at §III(A)(2).

19 2. The Settlement Consideration

20 The Parties agreed to settle the underlying class claims in exchange for the Total Settlement
21 Amount of \$600,000. The Total Settlement Amount Fund: (1) Individual Settlement Payments to the
22 Settlement Class; (2) a Class Representative Service Awards of \$10,000 to each Plaintiff for their
23 services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a
24 PAGA Settlement in the amount of \$50,000; (4) Settlement Administration costs estimated at \$13,000,
25 (5) Class Counsel Award in the amount of \$225,000, comprised of attorneys' fees equal to one-third
26 of the Total Settlement Amount estimated to be \$200,666.66 and an estimated \$25,000 for actually
27 incurred litigation expenses. Agreement at §III(O).

28 Subject to the Court approving the Class Representative Service Awards, 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 §III(O)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §III(A)(1).

3. The Funding Date

Defendant will fund \$250,000 of the Total Settlement Amount within fourteen (14) days of *preliminary approval*. The remaining balance will be paid in fourteen equal installments (of \$25,000) commencing sixty days thereafter and continuing every thirty days until paid in full. Agreement at §III(A)(3). Defendant's financial solvency necessitated the payment plan.

4. Formula for Calculating Individual Settlement Payments

Each participating member of the Settlement Class will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each member of the Settlement Class worked for Defendant 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 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class member who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(O)(1)(a).

Given that there are approximately 846 Settlement Class Members, **the average gross recovery is approximately \$328.60** (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Claims (those that were asserted in the Action, or could

have been asserted in the Action, based on the facts, claims and theories plead in the operative complaint) that accrued during the Class Period. Agreement at §§I(Y) and III(C).

6. Release by the LWDA and the Aggrieved Employees

Generally, upon the Funding Date the LWDA and the Aggrieved Employees will release the Released Parties from any all claims or causes of action **for civil penalties** arising under PAGA based on the facts and allegations contained in either the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period. Agreement at §§I(Z) and III(D).

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$600,000 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 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public

policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

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

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

The Parties participated in mediation the highly respected mediator Lynn Frank, Esq. Mediator Frank managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the mediation session nearly concluded without a settlement. The matter resolved only when Mediator Frank issued a mediator’s proposal that the Parties accepted. Mediator Frank only arrived at her proposal after hearing arguments, reviewing evidence and

1 evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 25.

2 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
3 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
4 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
5 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
6 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

7 2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the
8 Settlement's Reasonableness.

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

16 Class Counsel only agreed to enter the Settlement following his thorough investigation and
17 evaluation of Plaintiffs' claims. Based on his investigation of the facts, applicable law, and marketplace
18 for similar settlements, and in light of the risk of significant delay, uncertainty associated with litigation,
19 and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in
20 the best interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and
21 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶¶ 17-24.

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

23 The Total Settlement Amount of \$600,000 is within the range of reasonableness. To determine
24 whether a settlement is fair and reasonable, the court should "consider enough information about the
25 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
26 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar*
27 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
28 is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of

reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. The Total Settlement Amount Meets the Recognized Range of Reasonableness.

The Total Settlement Amount of \$600,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Econ One to develop economic damages models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$1.78 million (“Conservative Model”) and \$6.345 million (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties resulting from meal and rest period violations. Thus, the Total Settlement Amount of \$600,000 represents approximately between 9% and 33% of Defendant’s *class-*

² 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”).

1 wide liability exposure as estimated by Class Counsel at the time of mediation. The following
2 summarizes Defendant's estimated exposure. JCL Dec., ¶ 27.

3 (1) Estimated Damages for Meal Period Violations – On Duty Meal Period
4 Agreements

5 Labor Code section 226.7 and Wage Order 4 require an employer to provide a 30-minute, **off-**
6 **duty** meal break for employees working more than five hours. Pursuant to Wage Order 4, an on-duty
7 meal period is "permitted only when the ***nature of the work*** prevents an employee from being relieved
8 of all duty and when by written agreement between the parties an on-the-job meal period is agreed to."
9 (Emphasis added.) Defendant required employees staffed at single guard assignments to sign on-duty
10 meal break agreements. Class Counsel estimates that approximately 57% of all shifts eligible for a
11 meal period, i.e., shifts greater than 5 hours in length, were subject to an on-duty meal period agreement.
12 Plaintiffs contend that these on-duty meal break agreements are invalid because the nature of the work
13 does not qualify for the narrowly construed on-duty meal period exception. (See *Addullah v U.S.*
14 *Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952.) Consequently, Plaintiffs assert this practice
15 deprived the Settlement Class from meal period premiums and resulted in approximately 10 minutes
16 of off-the-clock work per workweek. JCL Dec., ¶ 28.

17 Conversely, Defendant argued that the on-duty meal period agreements were enforceable and
18 that on duty security guards qualified for the on-duty meal-period exception because (a) there were no
19 other employees to provide relief to an employee during a meal period and (b) the potential
20 consequences of a security guard leaving his or her post unguarded were impossible to mitigate during
21 a meal period. Thus, Defendant argued that the nature of the work (providing security services)
22 qualified for the on-duty meal period exception. JCL Dec., ¶ 29.

23 Further, Defendant contended that far fewer than 57% of eligible shifts were subject to an on-
24 duty meal period agreement. Defendant argued that fewer than 10% of all eligible shifts were subject
25 to an on-duty meal period agreement. Thus, Defendant argued that if the on-duty meal period
26 agreements were ultimately held unlawful Plaintiffs' damage model greatly exaggerated the potential
27 liability. JCL Dec., ¶ 30.

28 Notwithstanding Defendant's arguments, Plaintiffs perceived the on-duty meal period claim as

the strongest claim in the Actions. Plaintiffs estimated the damages for this claim between \$3,090,256 and \$303,759. JCL Dec., ¶ 31.

(2) Estimated Damages for Rest Period Violations

Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiffs alleged that because of their rigorous work schedule, as evidenced by the need for an on-duty meal period agreement, they were not able to take timely and duty-free rest periods. JCL Dec., ¶ 32. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized rest period times shall be counted as hours worked for which there shall be no deduction from wages." Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

Again, Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Class Members missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Accordingly, the rest break claim was heavily discounted in Plaintiffs' valuation of the case and ranged between \$1,731,438 and \$303,759. JCL Dec., ¶ 33.

(3) Defendant's Estimated Exposure for Unreimbursed Business Expenses

Plaintiffs allege that Defendant required the Settlement Class Members to use their personal cell

1 phones to call dispatch during their shifts. JCL Dec., ¶ 34. Employers who require employees to use
2 a personal cellular device for work purposes must reimburse the employee for the cost incurred in
3 furnishing the device, including voice and data service. (See Cal. Labor Code § 2802(a), providing that
4 “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by
5 the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
6 the directions of the employer...”)

7 Under Section 2802, when use of a personal electronic device is “mandatory,” reimbursement is
8 “always required.” (*Cochran v. Schwan’s Home Serv.*, 228 Cal. App. 4th 1137, 1144 (2014)). Absent
9 adequate reimbursement, “the employer would receive a windfall because it would be passing its
10 operating expenses onto the employee.” (*Id.*). To comply with the statute, “the employer must pay
11 some reasonable percentage of the employee’s cell phone bill.” (*Id.*). “Because of the difference in
12 cell phone plans and work-related scenarios, the calculation for reimbursement must be left to the trial
13 court and parties in each particular case.” (*Id.*)

14 Again, Defendant vigorously denied any liability for this claim. Defendant argued that any cell
15 phone use was voluntary, never mandatory, and contrary to written policies. Plaintiffs estimated
16 Defendant’s exposure for this claim ranged between \$0 and \$347,316. JCL Dec., ¶ 35.

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

18 Plaintiffs allege that Defendant’s alleged violations resulted in derivative violations of Labor
19 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
20 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not
21 prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
22 Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an
23 “injury” as a result of wage statement violations, as required by Labor Code section 226. Defendant
24 could also argue that that meal and rest period violations do not entitle employees like Plaintiffs and
25 the Settlement Class Members to pursue the derivative waiting time and itemized wage statement
26 penalties. (See *Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App. 5th 444; *Maldonado v.*
27 *Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiffs would have to overcome precedent to
28 prove the Class deserved the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist.

LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Notwithstanding the uncertain nature of the claim, Plaintiff valued the claim at \$1,176,100, which had their own risks. JCL Dec., ¶ 36.

(5) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between approximately \$14.1 million and \$5.8 million. JCL Dec., ¶ 37.

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

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 38.

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the

1 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
2 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
3 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
4 penalties were reduced by 90%

5 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

11 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
12 certification of similar wage and hour claims are demonstrated by *Donohue v. AMN Services, LLC*
13 (2018) 29 Cal.App.5th 1068 (cert granted.) In *Donohue*, Fourth District Court of Appeal affirmed Hon.
14 Joel Pressman’s denial of class certification for missed meal and rest periods by call center employees.
15 (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage
16 and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
17 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
18 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not
19 take their breaks were predominantly individualized questions of fact not susceptible to class
20 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
21 certification because employees’ declarations attesting to having taken meal and rest breaks
22 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
23 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
24 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
25 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
26 period claims based on the predominance of individual issues.) Plaintiffs are confident about the
27 strength of his claims. Nonetheless, Plaintiffs recognize that Defendant has factual and legal defenses
28 that, if successful, would potentially defeat or substantially impair the value of Plaintiffs’ lawsuit.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶ 39-40.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expects that Defendant would appeal any favorable judgment. JCL Dec., ¶ 41. “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 Total Settlement Amount of \$600,000 that is roughly between 9% and 33% Defendant’s maximum class wide liability exposure. 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., ¶ 42.

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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.)³

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Settlement Class. 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 procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(N). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 43-44.

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

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*

³ 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.

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

The Settlement provides for a Class Representative Service Award of \$10,000⁴ for each Plaintiff. The service award is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement

⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguir v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int’l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of their employment. JCL Dec., ¶ 45.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 46.

D. The Court Should Preliminarily Approve the Negotiated 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 Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$25,000. Agreement at §III(O)(3). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 47.

Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 48.

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1 **E. Provisional Certification for Settlement Purposes Is Appropriate**

2 For the purpose of Settlement, Plaintiffs contend, and Defendant does not dispute, that
3 provisional certification of the Settlement Class is appropriate. JCL Dec., ¶ 49.

4 1. The Standard for Class Certification

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

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

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

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

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

28 Because all Settlement Class Members are Defendant’s current and former employees, the class

is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 50.

The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 51.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Settlement Class was subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 52.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 54-61, Zakay Dec., ¶¶ 1-3; Declaration of Adam Rose, Esq., ¶¶ 1-9, Declaration of Sam Donabedian, Esq., ¶¶ 1-12.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Settlement Class Member's claim, Class Settlement Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 53.

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Dated: October 1, 2021

By: 
Jean-Claude Lapuyade, Esq.