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individually, and on behalf of all other similarly
situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

GLORIA RAMOS, as an individual and on
behalf of other similarly situated employees,

Plaintiff,
vs.

TAGTIME, INC., a California corporation,
and DOES 1-50, inclusive,

Defendant.

Case No.: 21STCP00903

Assigned for all purposes to:
Hon. William F. Highberger
Dept. 10

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: June 20, 2022
Time: 10:00 a.m.
Place: Department 10

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 20, 2022 at 10:00 a.m., or as soon thereafter as counsel
3 may be heard, in Department 10 of the above-captioned court, located at 312 N. Spring Street, Los
4 Angeles, California 90012, the Honorable William F. Highberger, presiding, Plaintiff Gloria Ramos will,
5 and hereby does, move this Court to:

6 1. Preliminarily approve the settlement described in the Stipulation of Class Action and
7 PAGA Settlement (attached as **Exhibit A** to the Declaration of Armond M. Jackson), which contains the
8 principal terms of the class action settlement between Plaintiff Gloria Ramos and Defendant Tagtime,
9 Inc. (“Defendant”);

10 2. Conditionally certify the proposed Settlement Class;

11 3. Approve distribution of the proposed Notice of Class Action and PAGA Settlement
12 (“Notice of Class Action Settlement”) to the Settlement Class (attached as **Exhibit 1** to **Exhibit A** of the
13 Declaration of Armond M. Jackson);

14 4. Appoint Plaintiff Gloria Ramos as the class representative;

15 5. Appoint Jackson Law, APC as class counsel;

16 6. Appoint Phoenix Settlement Administrators as the settlement administrator; and

17 7. Set a hearing date for final approval of the settlement.

18 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
19 Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement; (3)
20 the Declaration of Armond M. Jackson; (4) the Stipulation of Class Action and PAGA Settlement; (5)
21 the Notice of Class Action Settlement; (6) the [Proposed] Order Granting Preliminary Approval of the
22 Stipulation of Class Action and PAGA Settlement; (7) the records, pleadings, and papers filed in this
23 action; and (8) such other documentary and oral evidence or argument as may be presented to the Court
24 at or prior to the hearing of this Motion.

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1 Dated: May 26, 2022

Respectfully submitted,

2
3 By: /s/ Armond M. Jackson

Armond M. Jackson, Esq.

Andrea M. Fernandez, Esq.

Anthony S. Filer Jr., Esq.

JACKSON LAW, APC

Attorneys for Plaintiff GLORIA RAMOS and all
other similarly situated employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gloria Ramos (“Plaintiff”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for approximately 60 current and former employees of Defendant Tagtime, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid Employees employed by Defendant in the State of California during the Class Period, which is from March 19, 2017 to March 14, 2022.
- (2) A non-reversionary Class Settlement Amount of \$265,000.00 in addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$141,675.5 (the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$88,324.50) and litigation costs and expenses not to exceed \$10,000, to Jackson Law, APC (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$10,000, to be paid to the jointly selected settlement administrator, Phoenix Settlement Administrators.¹
 - (d) A \$10,000 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. \$7,500 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
 - (e) Class Representative Enhancement Payment of \$5,000 to Gloria Ramos for their service on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members’ behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm’s-length with helpful guidance from mediator Marc Feder, an experienced, well-respected class action

mediator, and the Stipulation confers substantial benefits to Class Members. The relief offered by the Settlement—**average payment of \$2,361.26** per full-time Class Member—is particularly impressive when viewed against the difficulties in pursuing wage and hour cases. 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.

As discussed below, the proposed Stipulation satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Moreover, the proposed group of Class Members is appropriate for provisional certification. Accordingly, the Parties respectfully request that this Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Summary of the Litigation.

Defendant is a company that provides support, manufacturing and development label company. Plaintiff Ramos was employed by Defendant. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendant's approximate 60 Employees in the State of California with approximately 9,880 total workweeks, during the Class Period. [Jackson Decl. ¶ 3, Ex. A, pgh. 39.]

On March 19, 2021, Plaintiff filed a Class Action Complaint in the Los Angeles County Superior Court alleging violations of the California Labor Code and applicable wage orders for the following claims: (1) failure to pay overtime wages; (2) failure to pay timely wages; (3) claim for unlawfully receiving wages; (4) failure to provide meal periods; (5) failure to provide rest breaks; (6) failure to provide and maintain accurate itemized wage statements; (7) failure to pay timely wages upon termination; as well as an addition claim for (8) unlawful business practices under Business and Professions Code section 17200 et. seq. in order to extend the claims back four years; (9) and claims under the Private Attorney General Act. Plaintiff Ramos also submitted a PAGA notice letter to the LWDA on August 26, 2020. [Jackson Decl. ¶ 4.]

Thereafter, Plaintiff served the Complaint on Defendant. Thereafter, the parties engaged in discovery and Defendant agreed to produce payroll data and policies and procedures in which Plaintiff analyzed. [Jackson Decl. ¶¶ 5-6.]

Plaintiff's primary theories of liability are as follows:

1 • **Unlawful Meal Period Claim:** Plaintiff alleges that Defendant failed to provide
2 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
3 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 7.]

4 • **Unlawful Rest Break Claim:** Plaintiff alleges that Defendant failed to permit and
5 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 8.]

6 • **Overtime Claim:** Plaintiff alleges that Defendant's practices of having employees work
7 during unpaid meal break, which resulted in unpaid hours worked that also should have been paid at the
8 overtime rate of pay. [Jackson Decl. ¶ 9.]

9 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
10 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
11 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
12 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 10.]

13 After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for
14 January 13, 2022. Prior to the mediation, Defendant provided me with Plaintiff's personnel file,
15 Defendant's Employee Handbook, the total number of Class Members, including those formerly
16 employed during the class period, and the total number of workweeks during the class period. I
17 thoroughly reviewed the foregoing documents prior to mediation. Through evaluation, it was determined
18 there are approximately 9880 total workweeks. [Jackson Decl. ¶ 11.]

19 **B. The Parties Settled at the Mediation.**

20 On January 13, 2022 the Parties participated in a full day of mediation with mediator Marc Feder,
21 Esq., an experienced mediator of wage and hour class actions. Mediator Feder helped to manage the
22 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the
23 conclusion of the mediation, the Parties jointly drafted and executed the Stipulation. [Jackson Decl., ¶ 12,
24 **Exhibit A.**] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation
25 thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶ 12.]

26 **C. The Proposed Settlement Fully Resolves Plaintiff's Claims.**

27 **1. Composition of the Settlement Class and Settlement Consideration**

28 The proposed group of Class Members consists of all paid Employees employed by Defendant in

California during the Class Period, which is from March 19, 2017 to March 14, 2022.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Maximum Settlement Amount of \$265,000. The Maximum Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$88,324.50 in requested attorneys' fees and up to \$10,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at \$10,000; (4) an allocation of \$10,000 to the LWDA; and (5) a Class Representative Enhancement Payment of \$5,000 to Plaintiff Ramos for her service on behalf of the Class Members.

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration Costs, the payment to the LWDA, and the Class Representative Enhancement Payment, the Net Settlement Amount will be distributed to Participating Class Members. The Net Settlement Amount will be paid to Participating Class Members, and without the need to submit claims for payment.

2. Formula for Calculating Settlement Payments

Each Class Member's share of the Net Settlement will be proportional to the workweeks that he or she worked during the Class Period. The Settlement Administrator will calculate Individual Settlement Payments as follows:

- Defendant will calculate the workweeks worked by each Class Member during the Class Period and the aggregate workweeks worked by all Class Members during the Class Period, which is from March 19, 2017 to March 14, 2022, and provide that to the Settlement Administrator.
- To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: net settlement amount divided by total number of workweeks for all class member multiplied by the participating class members workweeks.
- Each Individual Settlement Payment will be reduced by any legally mandated deductions for each Participating Class Member, including both employee-side tax withholdings or deductions. Employer payroll taxes will be paid on top of the Maximum Settlement Amount.
- The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion ("Participating Class Members".) If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the workweeks worked, so that the amount actually distributed to all the Participating Class Members equals 100% of the Net Settlement Amount.

[Jackson Decl. ¶ 3, Ex. A, pgh. 29]

1 The **average payment will be \$2,361.26** per full-time Class Member, assuming no Class
2 Members opt out. If there are any opt-outs, that average will increase. This average net recovery is
3 significantly higher than many wage and hour class action settlements approved by California state and
4 federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
5 recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A.
6 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
7 No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v.*
8 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

9 **3. Release by the Participating Class Members**

10 In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to
11 release the following Released Claims that accrue from March 19, 2017 to March 14, 2022:

12 “wage and hour claims, misclassification claims, rights, demands, liabilities, penalties,
13 interest and causes of action, arising from or related to the claims pled in Plaintiff’s Class
14 Action Complaint (“Complaint”) or that could have been pled in the Complaint based
15 on the factual allegations pled in the Complaint, including: Failure to Pay Overtime
16 Wages; Failure to Pay Minimum Wages; Failure to Provide Meal Periods; Failure to
17 Provide Rest Periods; Failure to Provide Accurate Wage Statements; Failure to Pay Due
18 Wages at Separation; Violation of Business and Professions Code § 17200, et seq.
(Unfair or Unlawful Business Practices) based on the alleged Labor Code violations;
Civil Penalties Pursuant to Labor Code § 2699 (Private Attorneys General Act) based
on the alleged Labor Code violations; claims for injunctive relief, liquidated damages,
penalties, interest, and fees and costs. “wage and hour claims, misclassification claims,
rights, demand, liabilities, penalties.

19 [Jackson Decl., ¶ 3, **Exhibit A** (¶ 19.)]

20 **III. ARGUMENT**

21 **A. The Court Should Preliminarily Approve the Proposed Settlement.**

22 **1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,** 23 **Adequate, and Reasonable.**

24 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
25 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
26 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for
27 their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
28 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final
approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary

approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the proposed order, and (4) must identify any agreement regarding attorneys' fees. [Rule 3.769(b) and (c).]

If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. [Rule 3.769(f).] At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. [Rule 3.769(g).]

Although 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 Ass'n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) ("Newberg"). 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;" and (4) the percentage of objectors "is small." [*Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California's public policy goal of favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation").]

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*, 186 Cal. App. 4th at 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.*]

2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Objectively Assessed the Settlement's Reasonableness.

By engaging in a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel

1 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
2 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
3 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
4 defenses asserted by Defendant. [Jackson Decl. ¶ 13.]

5 Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his
6 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
7 violations. In addition to informing Plaintiff's Counsel's initial evaluation of the lawsuit, the information
8 that Plaintiff and other employees provided also influenced Plaintiff's Counsel's discovery efforts.
9 [Jackson Decl. ¶ 14.]

10 Plaintiff's discovery requests led to the production of considerable information relied upon for the
11 Settlement, including a statistically significant sampling of timekeeping and payroll records, and policies
12 and practices directly pertaining to the alleged Labor Code violations at issue. Plaintiff's Counsel
13 reviewed and analyzed Defendant's written policies provided in its Employee Handbook, and reviewed
14 the entire set of data and documents produced by Defendant. From this analysis, Plaintiff's Counsel was
15 able to analyze Labor Code issues, theories and alleged violations that would have provided direct
16 evidence for use at trial in a class and PAGA action. Plaintiff's Counsel analyzed the timekeeping and
17 payroll data, in order to assess, *inter alia*, the incidence of meal and rest period violations, and premiums
18 paid for said violations, the minimum and overtime rates paid to Class Members, the amount of underpaid
19 wages, the accuracy of the wage statements, and the amount of waiting time penalties under Cal. Labor
20 Code § 203. [Jackson Decl. ¶ 15.]

21 Plaintiff's Counsel interviewed Plaintiff who provided accounts of their own experience, which
22 enabled Plaintiff's Counsel to understand the theories explaining the respective frequencies of the alleged
23 violations borne out in the data and records produced and to learn more about the day-to-day
24 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 16.] Overall, Plaintiff's Counsel
25 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's
26 suitability as a class representative through interviews, background investigations, and analyses of his
27 employment files and related records; (2) researching similar wage and hour class actions as to the claims
28 brought, the nature of the positions, and the type of employer; (3) analyzing employee time and wage

1 records; (4) analyzing Defendant’s labor policies and practices; (5) researching settlements in similar
2 cases; (6) researching Plaintiff’s novel theories of liability; (7) evaluating Plaintiff’s claims and estimating
3 Defendant’s liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in
4 the mediation. [Jackson Decl. ¶ 16.]

5 **3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which**
6 **All Parties Were Represented by Experienced Counsel.**

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

11 On January 13, 2022, the Parties participated in a mediation with mediator Marc Feder, Esq., who
12 helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to
13 both sides. [In re Apple Computer, Inc. Derivative Litig., No. C 06-4128 JF (HRL), 2008 U.S. Dist.
14 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
15 inference of a collusive settlement); D’Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001) (same).]
16 At all times, the Parties’ negotiations were adversarial and non-collusive. After a full day of mediation,
17 the Parties reached a settlement in principal and executed a detailed settlement agreement. [Jackson Decl.
18 ¶ 17.]

19 Experienced class action counsel represented both Parties throughout the case and settlement
20 negotiations. Plaintiff is represented by Armond M. Jackson of Jackson Law, APC, who regularly litigates
21 wage and hour claims through certification and on the merits, and has considerable experience settling
22 wage and hour class actions. [Jackson Decl. ¶¶ 18-21.] Defendant Tagtime, Inc. is represented by BG
23 Law, LLP who operates a respected wage and hour defense practice.

24 **4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant’s**
25 **Defenses and the Risks and Expense of Continued Litigation.**

26 In seeking approval, a settling party must provide sufficient information to “enable the court to
27 make an independent assessment of the adequacy of the settlement terms.” [Kullar v. Foot Locker Retail,
28 Inc., 168 Cal. App. 4th 116, 131–32 (2008).] However, “[i]t is well-settled law that a cash settlement

1 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
2 unfair.” [See *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615,
3 628 (9th Cir. 1982).] “The proposed settlement is not to be judged against a hypothetical or speculative
4 measure of what might have been achieved by the negotiators.” [Id. at 625.] “Estimates of a fair
5 settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the
6 case, and the expected delay in recovery (often measured in years).” [In re *Toys R Us-Delaware, Inc.—*
7 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In
8 other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should
9 discount the value of the settled claims for risks such as changes in the law, the probability of success, and
10 other factors.²

11 Settling parties are not however required to partake in a hypothetical accounting exercise: [Kullar
12 does not . . . require any such explicit statement of [maximum] value; it requires a record which allows “an
13 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”
14 [Munoz v. BCI Coca-Cola Bottling Co., 186 Cal. App. 4th 399, 409–10 (2010) (quoting Kullar 168 Cal.
15 App. 4th at 120 (emphasis added))]. Overall, the most important factor in determining whether a
16 settlement is fair and reasonable is the strength of the case for plaintiffs on the merits balanced against the
17 amount offered in the settlement. [Id. at 409 n.6 (quoting Kullar, 168 Cal. App. 4th at 130).]

18 Based on the information and evidence provided by Defendant in discovery, the analysis of the
19 time cards and wage statements, and Plaintiff’s Counsel’s own independent investigation, Plaintiff’s
20 Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s
21 maximum theoretical exposure by: (i) the strength of Defendant’s affirmative defenses; (ii) the risk of
22 losing a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a
23 class and PAGA trial would be unmanageable;³ (iv) the risk of losing on various dispositive or quasi-

24
25 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
26 whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case
27 and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” [Id. at 188
28 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). See *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”).

³ Similar to class actions, California trial courts will strike PAGA claims where too many allegedly aggrieved employees would be required to show that they were, in fact, aggrieved, rendering the claim

dispositive motions that Defendant will bring before trial (e.g., motion to strike class and representative allegations, motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or some of Plaintiff's claims, or bar evidence necessary to prove such claims; (v) the risk of losing some or all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully refuse to pay discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e, a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of the Court exercising its discretion to reduce PAGA penalties (see Cal. Lab. Code section 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors"). [Jackson Decl. ¶ 22.]

Based on the preceding and considering the aggregate value of the claims in light of the Discount Factors, Plaintiff's Counsel valued the claims for settlement purposes at between **\$0** and **\$785,850**. [Jackson Decl. ¶ 22.] It must be underscored, however, that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery Plaintiff might have received had he succeeded at trial. 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.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)).]

i. Wage Statement Data and Range of Damages

Review of the wage statements revealed the following: (1) approximately 9,880 workweeks. [Jackson Decl. ¶ 23.] The following is a table of potential damages:

unmanageable because countless mini-trials would be necessary before the aggrieved employees were known and the claim could proceed. [*Wesson v. Staples the Office Superstore, LLC* (September 9, 2021) 2021 WL 4099059.]

Claim	Highest Theoretical Damage Exposure	Reasonable Range of Damages and Penalties	
Failure to Provide Meal Breaks	\$534,800 (damages) and \$74,400 (civil penalties) for a total of \$609,200	\$0	\$267,400 (damages) and \$37,200 (civil penalties) for a total of \$304,600
Failure to Provide Rest Breaks	\$534,800 (damages) and \$74,400 (civil penalties) for a total of \$609,200	\$0	\$133,700 (damages) and \$18,600 (civil penalties) for a total of \$152,300
Failure to Pay Minimum and Overtime Wages	\$267,400 (damages) and \$74,400 (civil penalties) for a total of \$341,800	\$0	\$200,550 (damages) and \$37,200 (civil penalties) for a total of \$237,750
Failure to Provide Accurate Wage Statements	\$74,400	\$0	\$37,200
Waiting Time Penalties	\$108,000	\$0	\$54,000
Total Damages (excluding attorneys' fees and interest):	\$1,742,600	\$0	\$785,850

[Jackson Decl. ¶ 24.]

ii. Meal and Rest Period Claims

An employer's only obligation is to provide meal periods and authorize and permit rest periods, not to police its employees to ensure that they take their lunches and breaks. (See *Brinker, supra*, 53 Cal.4th at 1028, 1034.)

Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees were not authorized to take rest periods due to understaffing. Analysis of the sample time records Defendant produced for 31 Employees, and an extrapolation of the result of the analysis to all 60 Employees revealed the following findings: (1) Approximately 38,200 rest break and meal break

1 violations. [Jackson Decl. ¶ 28.]

2 Although Defendant's time records may create a rebuttable presumption that it did not provide
3 meal periods on those occasions, in compliance with California law, *see, e.g., Donahue v. AMN Services,*
4 *LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimizes the
5 potential value of the claims. [Jackson Decl. ¶ 25.]

6 First, Defendant alleged it provided the Employees with its Employee Handbook, which sets forth
7 meal and rest period policies consistent with California law. To the extent Plaintiff may allege he felt
8 pressured by his duties or schedule, this evidence is rebuttable. [Jackson Decl. ¶ 26.]

9 Second, analysis of the time and payroll data for all Employees only reveals *possible* meal period
10 violations and in fifty percent of the shifts greater than 5 hours. The other alternative interpretation
11 anticipated by Defendant is that it demonstrates that Defendant, in fact, does provide employees with
12 complete meal periods which could potentially undermine any claim of a systemic pattern or practice of
13 failing to provide meal periods since employees choose to take them a few minutes late or short on their
14 own volition at other times. Furthermore, since employees are not required in California to record their
15 rest periods times, this claim may present difficulties when proving the extent of any rest break violations.
16 [Jackson Decl. ¶ 28.]

17 Therefore, based on the foregoing and the "Discounted Factors" described above, these claims
18 should be discounted. After taking into account the foregoing considerations and the Discount Factors,
19 Plaintiff assessed the combined value of the meal and rest period claims, at between **\$0** and **\$456,900**.
20 [Jackson Decl. ¶ 29.]

21 More specifically, the high end of the realistic range for the meal period claim accounts for all the
22 Discount Factors to consider the best scenario of a trier of fact finding for liability and damages as half of
23 the 50% violation rate (38,200 violations multiplied times average rate of pay of \$14.00 per hour =
24 \$534,800) and \$100 in civil penalties under PAGA for the estimated 744 eligible pay periods for a total of
25 \$609,200 as the realistic case scenario for the meal period claim with applicable discount factor including
26 civil penalties amounts to \$304,600. [Jackson Decl. ¶ 30.]

27 For the rest periods, the risk to Plaintiff is greater due to the additional consideration of a lack of
28 rest period recordkeeping requirement. Therefore, Plaintiff estimates the best-case scenario at one quarter

of a 50% violation rate (38,200 violations multiplied times average rate of pay of \$14.00 per hour = \$534,800) and \$100 in civil penalties under PAGA for the estimated 744 eligible pay periods for a total of \$609,200 as the realistic case scenario for the rest period claim with applicable discount factor including civil penalties amounts to \$152,300. [Jackson Decl. ¶ 31.]

iii. Minimum Wage and Overtime Claim

Plaintiff's analysis revealed that employees may have worked off-the-clock during meal breaks. The amount of time in which this off-the-clock work occurred amounted to approximately 19,100 hours equating to \$401,100 (30 minutes * 38,200/60 minutes* \$21 overtime hourly rate). [Jackson Decl. ¶ 36.]

Employees are entitled to be paid for all "hours worked." [See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582 ("hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.)] California Labor Code sections 1194, 1197, 1197.1, and 510 and the applicable Wage Orders mandate that employees must be compensated for all hours worked at minimum wage or greater, or at an overtime rate of 1.5 times the regular rate of pay for hours worked in excess of 8 in a workday or 40 in a workweek. Moreover, IWC Wage Order 1-2001, § 7 requires employers to keep accurate information with respect to time records showing when employees being and end each work period, daily hours worked, and meal periods, except meal periods during which all operations cease.

Additionally, Labor Code section 204 provides, in relevant part:

(a) All wages . . . earned by any person in any employment are due and payable twice during each calendar month . . .

(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular pay period.

In this case, common proof of unpaid minimum and overtime wages for "off-the-clock" work could be difficult given the risks of certification as well as to demonstrate at trial for purposes of finding class-wide liability and damages. As with the preceding claims, Plaintiff had to discount the value of the overtime claim to account for the risks of continued litigation and Defendant's affirmative defenses. [Jackson Decl. ¶ 37.]

For example, Defendant will simply argue: (i) that Plaintiff will not be able to present any evidence of a company-wide, uniform policy requiring employees to work off-the-clock and (ii) it cannot

1 be held liable because it did not know employees were actually performing work off-the-clock. [*Brinker*,
2 53 Cal. 4th at 1017 (“[w]ith respect to the third contested subclass, covering allegations that employees
3 were required to work “off-the-clock,” no evidence of common policies or means of proof was supplied,
4 and the trial court therefore erred in certifying a subclass”); *see also Garcia v. Sun Pacific Farming Coop.*,
5 No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008) (denying motion
6 for class certification of state wage and hour law and other claims allegedly resulting from off-the-clock
7 work).] [Jackson Decl. ¶ 37.]

8 Furthermore, Defendant will argue that its policies align with those in the *See’s Candy Shops, Inc.*
9 matter in that employees were expressly prohibited from working, when on premises. [See, e.g. *See’s*
10 *Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907 (Court found employees were not
11 subject to control of employer for time spent on employer’s premises prior to the start of a shift, even
12 when clocked in, because employer prohibited employees from performing any work before scheduled
13 start time and employees were free to pursue any personal activities during that time before a shift.))]
14 Moreover, as with the meal and rest break claims, Defendant represented it will likely be able to garner
15 numerous declarations in support of their defense that no such off-the-clock work took place. [Jackson
16 Decl. ¶ 31.]

17 However, based on certain Discount Factors (i.e. lack of common evidence such as express
18 policies and customer deadlines), the lack of documentary evidence, and Defendant’s ability to garner
19 numerous declarations in support of its defense to this claim, Plaintiff’s discount is reasonable. Plaintiff
20 estimates that a more realistic high end of exposure discounts the top end by at least 75% of the highest
21 theoretical amount, leaving a more realistic range of recovery between \$0 and \$152,300. [Jackson Decl. ¶
22 31.]

23 **iv. Wage Statement Claim**

24 Plaintiff alleges that Defendant failed to provide Plaintiff with timely and accurate wage
25 statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours
26 worked, and improper overtime and premium pay. [Jackson Decl. ¶ 38.]

27 Labor Code section 226 requires that employers provide wage statements that accurately set forth
28 a variety of items including, but not limited to, gross wages earned, total hours worked, deductions, net

wages earned, the periods of employment, and hourly rates and corresponding number of hours at each rate. Labor Code section 226 further provides, in relevant part:

(2)(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee ***cannot promptly and easily determine*** from the wage statement alone one or more of the following:

(i) The ***amount of the gross wages or net wages*** paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to ***items (2)*** to (4), inclusive, (6), and (9) of subdivision (a)

...

(C) For purposes of this paragraph, ***“promptly and easily determine” means*** a reasonable person would be able to readily ascertain the information without reference to other documents or information.

Defendant provided wage statements with the itemized information, as required under Cal. Lab. Code section 226, to its Employees, including Plaintiff, on a semi-monthly basis. To the extent this claim is derivative of the claims set forth above - that Plaintiff’s wage statements were not accurate because Plaintiff was not paid an additional hour of pay when she was not provided meal and rest periods, not paid for all hours worked, and not properly compensated for all overtime premium pay - the claim bears the same risk for failure as the factual reasons discussed above. [Jackson Decl. ¶ 39.]

Furthermore, actions for violations of the Labor Code’s meal and rest break provisions do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. [See *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th 444.]

Furthermore, to award statutory penalties under section 226(e), Plaintiff would have had to show that Defendant knowingly and intentionally issued wage statements with unlawful deficiencies. [See Labor Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142–43 (2011); *see also Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1180–81 (2008).]

With the foregoing in mind, any such statutory penalties under Labor Code § 226 needs to be adjusted to account for disks and uncertainties. Labor Code § 226(e)(1) provides that an employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a “subsequent pay

period,” not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

First, penalty provisions are limited to the one-year statute of limitation under California Code of Civil Procedure §340.

Defendant issued approximately 744 wage statements since March 19, 2019 (one year prior to the filing of the Complaint). Assuming all wages statements dating back one year prior to the filing of the complaint are inaccurate, then the Defendant is liable for no more than \$74,400 in Labor Code Section 226 penalties (744 x \$100.) Therefore, in light of these considerations and the Discount Factors, Plaintiff assessed the settlement value of the wage statement claim at between **\$0 and \$74,400**. [Jackson Decl. ¶ 42.]

v. Waiting Time Penalties

This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when meal or rest breaks were not provided, and that Employees were not paid all minimum and overtime premium wages. On the assumption that all 31 formerly employed Employees are owed some unpaid wages, then the highest theoretical amount for potential waiting time penalties is calculated as follows: 31 former employees x 30 days x 8 hours per day x \$14 average hourly wage = \$100,800. However, for the reasons discussed above, Defendant will argue that it will be difficult for Plaintiff to present substantial common evidence that he and the putative class members were not paid all wages due at the time of termination as to all formerly employed Employees. [Jackson Decl. ¶ 43.]

Additionally, the current law for violations of Labor Code's meal break provisions do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. [See *Naranjo v. Spectrum Security Services, Inc.*, *supra*, 40 Cal.App.5th 444.] As such, Plaintiff estimates that the reasonable case scenario is 50% of the theoretical best-case scenario of \$100,800. Therefore, a reasonable range of potential waiting time penalties is **\$0 to \$50,400**. [Jackson Decl. ¶ 44.]

5. The Settlement Amount Is Fair and Reasonable Compensation for the Class

As the above analysis shows, Plaintiff's Counsel objectively and knowledgeably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine the realistic range of settlement recovery of \$0 and \$785,850. The Net Settlement Amount guarantees

1 \$2,361.26 per full-time class member, in the pockets of 60 workers today, and not a mere speculative
2 return, years into the future. It also provides closure for all parties involved. Therefore, in this case, the
3 settlement value of \$265,000.00 falls well within the range of reasonableness, and is thus fair, adequate,
4 and reasonable.

5 **B. The Proposed Notice Properly Informs Class Members About the Settlement.**

6 Class members are entitled to the best practical notice under the circumstances. [*Kass v. Young*,
7 67 Cal. App. 3d 100, 106 (1977) (“*Kass*”).] The purpose of the notice is to give class members sufficient
8 information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or
9 object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass’n*, 48 Cal. App. 3d 143, 151–
10 52 (1975).] The notice must advise class members “that they may be excluded from the class if they so
11 request and that they will be bound by the judgment, whether favorable or not, if they do not request
12 exclusion.” [*Kass*, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class
13 members, California authorities generally require service of the class notice by mail or similar reliable
14 means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
15 (1975).]⁴

16 The proposed Class Notice will be mailed to the Class by First Class mail and will include
17 information regarding the nature of the lawsuit, a summary of the Settlement’s terms, the class definition,
18 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
19 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
20 Released Claims. Before mailing the Class Notice, the Administrator will verify the addresses produced
21 by Defendant for each Class Member using the National Change of Address Database. In the event Class
22 Notices are returned as undeliverable, the Administrator will attempt to locate a current address through
23 the use of skip tracing or another automated search. [Jackson Decl., **Exhibit A** (¶ 34.)] This method is
24 designed to maximize the Class Member response rate while ensuring cost effective administration of the
25 settlement. In past cases, similar notice methods to class members have resulted in strong response rates.
26 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy

27
28 ⁴ 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).]

1 due process and the requirements of California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*,
2 41 Cal. 3d 460, 485 (1986) (The class notice must “fairly apprise the class members of the terms of the
3 proposed compromise and of the options open to dissenting class members.”).]

4 **C. The Court Should Preliminarily Approve the Enhancement Payment.**

5 Enhancement payments “are fairly typical in class action cases.” [*Cellphone Termination Fee*
6 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
7 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
8 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*, 53 UCLA
9 L. Rev. 1303 (2006).] Enhancement payments “are intended to compensate class representative for work
10 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
11 and, sometimes, to recognize their willingness to act as a private attorney general.” [*Rodriguez*, 563 F.3d
12 at 958–59; see also *Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009).]

13 Subject to Court approval, therefore, the Settlement provides for a Class Representative
14 Enhancement Payment of \$5,000 for Plaintiff. The enhancement payment is fair and reasonable
15 compensation for Plaintiff’s efforts in representing the putative Class and the interests of the State of
16 California, for assisting counsel with the litigation, at mediation, and settlement, regularly conferring with
17 counsel on the status of the case and the strategies for prosecuting the claims, reviewing the proposed
18 settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.
19 [Declaration of Gloria Ramos, ¶¶ 1-7.]

20 Plaintiff will file a motion seeking award of the negotiated Class Representative Enhancement
21 Payment if preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
22 showing is sufficient for preliminary approval of the Class Representative Enhancement Payment.

23 **D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs.**

24 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
25 took the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
26 Plaintiffs will seek Court approval of attorneys’ fees of \$88,324.50 which is 33.33% of the Maximum
27 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the
28 time of the Final Approval Hearing.

1 California courts routinely award attorneys' fees equaling one-third or more of the potential value
2 of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) ("Empirical studies
3 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
4 actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, Attorney
5 Fees in Class Action Settlements: An Empirical Study, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-
6 78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar
7 conclusion that a one-third fee is consistent with market rates). At final approval, Class Counsel will fully
8 brief the merits of its request for attorneys' fees and costs.

9 **E. California Law Authorizes Provisional Certification for Settlement Purposes.**

10 **1. The California Standard for Class Certification**

11 Class actions are statutorily authorized "when the question is one of common or general interest,
12 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
13 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008) ("*Lee*").]
14 Class certification is appropriate when there is an "ascertainable class and a well-defined community of
15 interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004)
16 ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be required to make
17 an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App.
18 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

19 **2. The Proposed Settlement Class is Ascertainable, and There is a Well-**
20 **Defined Community of Interest Among Class Members.**

21 Whether a class is "ascertainable" within the meaning of Section 382 is "determined by
22 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class
23 members." [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily
24 identified without unreasonable expense or time by reference to official records. [*Id.*] The community of
25 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class
26 representative with claims or defenses typical of the class; and (3) a class representative and counsel who
27 can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of
28 predominance, the California Supreme Court noted that the "ultimate question" is whether "the issues

1 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
2 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
3 litigants.” [Brinker, 53 Cal. 4th at 1021–22.]

4 The proposed Settlement Class consists of employees employed by Defendant in California
5 during the Class Period, which is March 19, 2017 to March 14, 2022. Defendant’s payroll records show
6 that there are approximately 60 persons in the Class, making joinder of all Class Members impracticable.
7 Further, because all Class Members are either current or former employees of Defendant, the class is
8 readily ascertainable from Defendant’s regular business records.

9 Conditional certification of the proposed group of Class Members is warranted here given the
10 relatively relaxed standard for certification at the preliminary approval stage. [See *Dunk v. Ford Motor*
11 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
12 settlement cases).]⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
13 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
14 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
15 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

16 Here, the California statutes relating to Plaintiff’s claims apply to all Class Members. Plaintiff
17 contends that Defendant’s policies and practices apply class wide and liability can be determined by facts
18 common to all class members, i.e., common policies or de facto common practices that deny Class
19 Members’ meal and rest periods, and pay for all hours worked. The wage and hour issues are numerous
20 and substantial, and a class action is the most advantageous method of adjudicating the claims of the
21 Class. For example, Plaintiff contends that his meal and rest period claims are readily certifiable because
22 whether Defendant’s policies and practices violate the law “is by its nature a common question eminently
23 suited for class treatment.” [Brinker, 53 Cal. 4th at 1033; see *Faulkinbury v. Boyd & Assocs., Inc.*, 216
24 Cal. App. 220, 237 (2013) (“[Defendant’s] liability, if any, would arise upon a finding that its uniform rest
25 break policy, or lack of policy, was unlawful.”); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal.

26
27 ⁵ See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class certification
28 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the
preliminary approval stage.”) (citing, e.g., *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016
WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
cursory approach appears the norm.”).)

App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt any policy authorizing and permitting meal and rest breaks).]

Plaintiff also contends his wage and hour claims are typical of the proposed group of Class Members because they arise from the same factual basis and are based on the same legal theories applicable to the Class. Likewise, Plaintiff's interests are coextensive with the interests of the Class and he alleges that he was injured by the same company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class by initiating this litigation and evaluating the fairness of the proposed settlement.

Additionally, Plaintiff is represented by competent counsel who has extensive experience in litigating wage and hour class action cases. [Jackson Decl. ¶¶ 18-21.] Plaintiff's Counsel has successfully briefed, argued, certified, and gained state court settlement approval of the same or similar class-wide causes of action that are at issue in this case. Plaintiff's Counsels' wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class 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.

IV. CONCLUSION

The Parties have negotiated a fair, reasonable settlement and presented the required for preliminary approval, and as such, request that the Court preliminarily approve the settlement.

Dated: May 26, 2022

JACKSON LAW, APC

By: /s/ Armond M. Jackson

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