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situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE– CIVIL COMPLEX CENTER**

MARIA DE JESUS ROMERO, as an
individual, and on behalf of other similarly
situated employees,

Plaintiff,

vs.

MARUCHAN, INC., a California
corporation, EMPLOYBRIDGE, LLC, a
California corporation, REAL TIME
STAFFING SERVICES, LLC, a California
corporation and DOES 1-50, inclusive,

Defendant.

Case No.: 30-2020-01155487-CU-OE-CXC

Assigned for all purposes to:
Hon. Peter Wilson
Dept. CX 101

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

Date: April 27, 2023
Time: 2:00 p.m.
Place: Department CX 101

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. FACTS AND PROCEDURE..... 2

 A. Summary of the Litigation. 2

 B. The Parties Settled After the Mediation. 4

 C. The Proposed Settlement Fully Resolves Plaintiff’s Claims. 4

 1. Composition of the Settlement Class and Settlement Consideration..... 4

 2. Formula for Calculating Settlement Payments..... 5

 3. Release by the Participating Class Members..... 6

III. ARGUMENT..... 6

 A. The Court Should Preliminarily Approve the Proposed Settlement. 6

 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable..... 6

 2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and Legal Issues and Objectively Assessed the Settlement’s Reasonableness. 8

 3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All Parties Were Represented by Experienced Counsel..... 9

 4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant’s Defenses and the Risks and Expense of Continued Litigation..... 9

 i. Data and Range of Damages 11

 ii. Minimum Wage and Overtime Wages and Range of Damages..... 12

 iii. Meal and Rest Period Claims..... 12

 iv. Wage Statement Claim 13

 v. Waiting Time Penalties 14

 5. The Settlement Amount Is Fair and Reasonable Compensation for the Class..... 14

 B. The Proposed Notice Properly Informs Class Members About the Settlement. 14

 C. The Court Should Preliminarily Approve the Enhancement Payment. 15

 D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs. 16

1	E. California Law Authorizes Provisional Certification for Settlement Purposes.....	16
2	1. The California Standard for Class Certification	16
3	2. The Proposed Settlement Class is Ascertainable, and There is a Well-Defined	
4	Community of Interest Among Class Members.	17
5	IV. CONCLUSION	18
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1151 (2000)	6
<i>Benton v. Telecom Network Specialists, Inc.</i> , 200 Cal. App. 4th 701 (2013)	17
<i>Bufl v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193, 1207 (2008).....	15
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960, 972 (1975)	13
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110, 1118 (2009).....	6
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th at 1389.....	6, 14
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275, 290 (1962).....	13
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<i>Doty v. Costco Wholesale Corp.</i> , Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	5
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1802 (1996)	6, 16
<i>Faulkinbury v. Boyd & Assocs., Inc.</i> , 216 Cal. App. 220, 237 (2013)	17
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174, 186 (W.D.N.Y. 2005.....	10
<i>Fukuchi v. Pizza Hut</i> , Case No. BC302589 (L.A. County Super. Ct.).....	5
<i>Gomez v. Amadeus Salon, Inc.</i> , Case No. BC392297 (L.A. County Super. Ct.).....	5
<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)	8
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<i>In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.</i> , 295 F.R.D. 438, 453 (C.D. Cal. 2014).....	9
<i>Kass v. Young</i> , 67 Cal. App. 3d 100, 106 (1977).....	13

1	<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116, 131–32 (2008).....	9
2	<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325, 1332 (2008).....	15, 16
3	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399, 409–10 (2010).....	9
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5	<i>Newman v. Stein</i> , 464 F.2d 689, 693 (2d Cir.....	9
6	<i>North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.</i> , 27 Cal. App. 4th 1085,	
7	1089–90 (1994).....	6
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9	628 (9th Cir. 1982)	9
10	<i>Ressler v. Federated Dept. Stores, Inc.</i> , Case No. BC335018 (L.A. County Super. Ct.)	5
11	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948, 958 (9th Cir. 2009).....	14
12	<i>Sav-On Drug Stores, Inc. v. Super. Ct.</i> , 34 Cal. 4th 319, 326 (2004).....	15
13	<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231, 236 (1976).....	6
14	<i>State v. Levi Strauss & Co.</i> , 41 Cal. 3d 460, 482 (1986).....	8, 14
15	<i>Trotsky v. Los Angeles Fed. Savings & Loan Ass’n</i> , 48 Cal. App. 3d 143, 151–52 (1975).....	13
16		
17	STATUTES	
18	Cal. Civ. Proc. Code § 382	15, 16
19	Cal. Lab. Code Section 1194.....	11
20	Cal. Lab. Code section 203.....	10
21	Cal. Lab. Code section 226.....	12
22	Cal. Lab. Code section 2699(e)	10
23	Cal. Labor Code section 226(e).....	10
24		
25	RULES	
26	C.R.C. 3.776(e)-(f)	14
27	California Rule of Court (“Rule”), Rule 3.769.....	5, 6
28	Federal Rules of Civil Procedure, Rule 23	16

1
2
3
4
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14
15
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21
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23
24
25
26
27
28

TREATISES

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1986)..... 13

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Maria De Jesus Romero (“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 current and former employees of Defendants Maruchan, Inc., Employbridge, LLC, and Real Time Staffing Services, LLC (“Defendants”), (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 current and former non-exempt or hourly employees deployed by Real Time to work at Maruchan’s Deere Facility at any time during the Class Period of August 17, 2016 through April 30, 2022 who did not sign an arbitration agreement.
- (2) A non-reversionary Class Settlement Amount of \$459,375.00 in addition to employer payroll taxes which will be paid separately by Defendant. The Gross Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$256,250 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the PAGA Payment, and the requested Class Representative Enhancement Payment), which will be distributed to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”) on a pro-rata basis according to the Weeks Worked by them during the Class Period. The entire Net Settlement Amount will be paid to all Participating Class Members, and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$153,125.00) and litigation costs and expenses not to exceed \$20,000.00, to Jackson Law, APC (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$7,500.00, to be paid to the jointly selected settlement administrator, Simpluris, Inc.
 - (d) A \$50,000.00 payment of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties (the “PAGA Payment”). \$37,500.00, or 75%, of the PAGA Payment will be paid to the California Labor and Workforce Development Agency [“LWDA”] pursuant to the Private Attorneys General Act (“PAGA”). \$12,500, or 25%, of the PAGA Payment will be paid as a distribution to all current and former non-exempt or hourly employees deployed by Real Time to work at Maruchan’s Deere Facility at any time during the PAGA Period of September 19, 2019 through April 30, 2022 (“the PAGA Group Members”)
 - (e) Class Representative Enhancement Payments of \$5,000.00 to Plaintiff Maria De Jesus Romero 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 Jeffrey A. Ross, Esq., an experienced, well-respected class action mediator, and the Stipulation confers substantial benefits to Class Members. 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 Maruchan is a company that owns and operates food manufacturing and distribution plant in California, including but not limited to an Irvine location known as the "Deere facility" where Plaintiff worked. Defendant Real Time Staffing Services, LLC is a staffing agency which assigned the Plaintiff to work at Maruchan's Deere facility. Defendant Employbridge, LLC contends it did not employ Plaintiff and is therefore an improperly named defendant. Real Time employed Plaintiff Romero to work as a non-exempt Employee at Maruchan's Deere facility in Irvine [Jackson Decl. ¶ 3.] This Stipulation is limited to all current and former non-exempt or hourly employees deployed by Real Time to work at Maruchan's Deere Facility at any time during the Class Period of August 17, 2016 through April 30, 2022 who did not sign an arbitration agreement. [*Id.*]

On August 17, 2020, Plaintiff filed a Class Action Complaint in the Orange County Superior Court alleging various violations of the California Labor Code and applicable wage orders. Plaintiff Romero then submitted a PAGA notice letter to the LWDA on August 21, 2020, and amended her Complaint to add that claim on or around November 20, 2020. [ROA No. 13.]

On March 4, 2021, Plaintiff filed her operative Second Amended Complaint (ROA No. 38), which alleges the following claims: (1) "Claim for Failure to Pay Minimum Wages (Cal. Lab. Code Section 1194; IWC Wage Orders 1, 4, 7, and 9 Section 3);" (2) "Claim for Failure to Pay Overtime Wages (Cal. Lab. Code Section 1194, IWC Wage Orders 1, 4, 7, and 9 Section 3);" (3) "Claim for Failure to Pay

1 Timely Wages (Lab. Code § 221)”; (4) “Claim for Failure to Unlawfully Receive Wages (Lab. Code §
2 221)”; (5) “Claim for Failure to Provide Meal Breaks (IWC Wage Orders 1, 4, 7, and 9, Section 11)”; (6)
3 “Claim for Failure to Provide Rest Periods (IWC Wage Orders 1, 4, 7, and 9, Section 12”); (7) “Claim for
4 Failure to Provide and Maintain Accurate Itemized Wage Statements and Maintain Records (Lab. Code §
5 226(a))”; (8) “Claim for Failure to Pay Timely Wages Upon Termination (Lab. Code § 203)”; (9)
6 “Unlawful Business Practices Under (Bus. And Prof. Code § 17200, et seq.[]”; and (10) “Violation of the
7 California Labor Code Private Attorneys General Act of 2004 (Cal Lab. Code §§ 2698, et seq.).

8 Thereafter, Plaintiff served a set of written discovery, including a Request for Production of
9 Documents and Special Interrogatories. In its responses, Defendant agreed to produce informal discovery
10 and engage in mediation. [Jackson Decl. ¶¶ 6-26.] Defendant also agreed to produce the time records and
11 wage statements for a 20% sample of the putative class members. (*Id.*)

12 Defendant produced such data for 20% of the class, including Plaintiff Maria De Jesus Romero.
13 Prior to the mediation and for purposes of the Settlement, Plaintiff analyzed the time and pay data. [*Id.*]

14 Plaintiff’s primary theories of liability are as follows:

- 15 • **Minimum Wage Claim:** Plaintiff alleges that Defendant failed to pay for all hours
16 worked. [Jackson Decl. ¶ 11.]
- 17 • **Overtime Claim:** Plaintiff alleges that Defendant failed to pay for all hours worked.
18 [Jackson Decl. ¶ 10.]
- 19 • **Unlawful Meal Period Claim:** Plaintiff alleges that Defendant failed to provide
20 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
21 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 12.]
- 22 • **Unlawful Rest Break Claim:** Plaintiff alleges that Defendant failed to permit and
23 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 13.]
- 24 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
25 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
26 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
27 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 15.]
- 28 • **Failure to Pay Upon Termination:** Plaintiff alleges that Defendant failed to provide

complete and accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 14.]

After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for February 1, 2022. Prior to the mediation, Defendant produced Employee Handbooks, time and pay data, relevant wage and hour policies and other information for purposes of evaluation. Plaintiff's counsel thoroughly reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶¶ 6-26.]

B. The Parties Settled After the Mediation.

On February 1, 2022, the Parties participated in a full day of mediation with mediator Jeffrey A. Ross, Esq., an experienced mediator of wage and hour class actions. Mediator Ross helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, they continued to engage Mediator Ross that ultimately resulted in the resolution of this case. [Jackson Decl. ¶ 27.] Thereafter, the Parties jointly drafted and executed the Stipulation. [Jackson Decl., ¶ 2, **Exhibit A.**] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶¶ 6-26.]

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

1. Composition of the Settlement Class and Settlement Consideration

The proposed group of Class Members consists of all current and former non-exempt or hourly employees deployed by Real Time to work at Maruchan's Deere Facility at any time during the Class Period of August 17, 2016 through April 30, 2022 who did not sign an arbitration agreement.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Gross Settlement Amount of \$459,375.00. The Gross Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$153,125.00 in requested attorneys' fees and up to \$20,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at \$7,500.00; (4) an allocation of \$50,000.00 as the PAGA Payment; and (5) a Class Representative Enhancement Payment of \$5,000.00 to Plaintiff Romero for their service on behalf of the Class Members. [Jackson Decl., ¶ 2, **Exhibit A.**]

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

5 2. Formula for Calculating Settlement Payments

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

- 9 • The Individual Settlement Payment for each Participating Class Member will be calculated by
10 dividing the number of Weeks Worked by the Participating Class Member during the Class
11 Period by all Weeks Worked during the Class Period by all Participating Class Members,
12 multiplied by the Net Settlement Amount [i.e., (individual Weeks Worked during Class
Settlement Amount)]. A partial week shall be deemed a Week Worked..

13 [Jackson Decl., ¶ 2, **Exhibit A** p. 17, Section 5.8.]

14 Each PAGA Group Member will also receive an Individual PAGA Payment consisting of their
15 share of the PAGA Group Member Payment (\$12,500 or 25% of the PAGA Payment). The Settlement
16 Administrator will calculate Individual PAGA Payment as follows:

- 17 • The Individual PAGA Payment for each PAGA Group Member will be calculated by
18 dividing the number of Weeks Worked by the PAGA Group Member during the PAGA
19 Period by all Weeks Worked during the PAGA Period by all PAGA Group Members,
multiplied by the PAGA Group Member Payment [i.e., (individual Weeks Worked during
PAGA Period ÷ total Weeks Worked by PAGA Group Members during PAGA Period) x
PAGA Group Member Payment]. A partial week shall be deemed a Week Worked.

20 [Jackson Decl., ¶ 2, **Exhibit A** p. 17, Section 5.9.]

21 This average net recovery is significantly higher than many wage and hour class action
22 settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No.
23 BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated*
24 *Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
25 \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)
26 (average net recovery of about \$65); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.
27 County Super. Ct.) (average net recovery of about \$20).
28

1 **3. Release by the Participating Class Members and PAGA Group Members**

2 In exchange for the Gross Settlement Amount, Plaintiff and the Participating Class Members will
3 agree to release the following Released Claims that accrue from August 17, 2016 through April 30, 2022:

4 “for any and all claims asserted or that could have been asserted based on the facts
5 alleged in the Second Amended Complaint in the Action, including those for: (1) failure
6 to pay minimum wages; (2) failure to pay overtime wages; (3) failure to timely pay
7 wages during employment; (4) failure to unlawfully receive wages; (5) failure to provide
8 meal periods; (6) failure to authorize and permit rest periods; (7) failure to provide and
9 maintain accurate itemized wage statements; (8) failure to maintain required records; (9)
10 failure to pay all wages due to discharged and quitting employees; (10) claims brought
11 under California Business & Professions Code section 17200 et seq. including, but not
12 limited to, all claims for unfair, unlawful and harmful conduct to class members, the
general public and Defendants’ competitors and claims of unlawfully gaining an unfair
advantage over other businesses based on the facts and allegations contained in the
Second Amended Complaint; (11) penalties of any nature other than under PAGA; (12)
interest; (13) liquidated damages; (14) attorneys’ fees; (15) costs; and (16) any other
claims arising out of or related to the Second Amended Complaint filed in the Action.
The release is limited to Class Members who did not sign arbitration agreements. This
settlement shall have no impact or effect on individuals who signed arbitration
agreements.”

13 [Jackson Decl., ¶ 2, p. 20, Section 6.1]

14 In addition, the State of California and each PAGA Group Member will agree to the following
15 release of claims through the PAGA Period of September 19, 2019 through April 30, 2022:

16 “any and all claims, rights, demands, charges, complaints, causes of action, obligations,
17 or liability of any and every kind for penalties under PAGA that arose during the PAGA
18 Period, including but not limited to claims for civil penalties due to alleged violation of
19 California Labor Code sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510,
512, 515, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 1198.5 and California
Industrial Welfare Commission Wage Orders, and all related claims for attorneys’ fees,
costs, interest, and liquidated damages.”

20 [Jackson Decl., ¶ 2, p. 20, Section 6.2]

21 **III. ARGUMENT**

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

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

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

1 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final
2 approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary
3 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the
4 proposed order, and (4) must identify any agreement regarding attorneys’ fees. [Rule 3.769(b) and (c).]

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

10 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
11 preliminary approval is warranted if the settlement falls within a “reasonable range.” [See *North County*
12 *Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte &
13 Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) (“Newberg”). Reasonableness and fairness
14 are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and
15 discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in
16 similar litigation;” and (4) the percentage of objectors “is small.” [*Dunk v. Ford Motor Co.*, 48 Cal. App.
17 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California’s public policy goal of
18 favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
19 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
20 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
21 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
22 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”).]

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

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

3 By engaging in a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel
4 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
5 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
6 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
7 defenses asserted by Defendant. [Jackson Decl. ¶¶ 6-26.]

8 Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his
9 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
10 violations. In addition to informing Plaintiff's Counsel's initial evaluation of the lawsuit, the information
11 that Plaintiff provided also influenced Plaintiff's Counsel's discovery efforts. [Jackson Decl. ¶ 6-26.]

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

22 Plaintiff's Counsel interviewed Plaintiff who provided accounts of his own experience, which
23 enabled Plaintiff's Counsel to understand the theories explaining the respective frequencies of the alleged
24 violations borne out in the data and records produced and to learn more about the day-to-day
25 circumstances giving rise to the alleged violations. [Jackson Decl. ¶¶ 6-26.] Overall, Plaintiff's Counsel
26 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's
27 suitability as a class representative through interviews, background investigations, and analyses of his
28 employment files and related records; (2) researching similar wage and hour class actions as to the claims

brought, the nature of the positions, and the type of employer; (3) analyzing employee time and wage records; (4) analyzing Defendant's labor policies and practices; (5) researching settlements in similar cases; (6) researching Plaintiff's novel theories of liability; (7) interviewing Plaintiff regarding the alleged claims; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (9) drafting the mediation brief; and (10) participating in the mediation. [Jackson Decl. ¶¶ 6-26.]

3. The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented 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., 41 Cal. 3d 460, 482 (1986).] 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.]

On February 1, 2022, the Parties participated in a mediation with mediator Jeffrey A. Ross, Esq., who helped manage 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, 236 F.3d 78, 85 (2d Cir. 2001) (same).] At all times, the Parties' negotiations were adversarial and non-collusive. After a full day of mediation and weeks of further negotiations, the Parties reached a settlement in principal and executed a detailed Memorandum of Understanding, before entering in the long form Settlement. [Jackson Decl. ¶ 27.]

Experienced class action counsel represented both Parties throughout the case and settlement negotiations. Plaintiff is represented by Armond M. Jackson of Jackson Law, APC, who regularly litigates wage and hour claims through certification and on the merits, and has considerable experience settling wage and hour class actions. [Jackson Decl. ¶¶ 28-29, 34.] Defendants are represented by Seyfarth Shaw LLP and Ferruzzo LLP whom operates a large, respected wage and hour defense practice.

4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant's Defenses and the Risks and Expense of Continued Litigation.

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." [Kullar v. Foot Locker Retail,

1 *Inc.*, 168 Cal. App. 4th 116, 131–32 (2008).] However, “[i]t is well-settled law that a cash settlement
2 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
3 unfair.” [*See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615,
4 628 (9th Cir. 1982).] “The proposed settlement is not to be judged against a hypothetical or speculative
5 measure of what might have been achieved by the negotiators.” [*Id.* at 625.] “Estimates of a fair
6 settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the
7 case, and the expected delay in recovery (often measured in years).” [*In re Toys R Us-Delaware, Inc.—*
8 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).] In
9 other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should
10 discount the value of the settled claims for risks such as changes in the law, the probability of success, and
11 other factors.¹

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

19 Based on the information and evidence provided by Defendant in discovery, the analysis of the
20 time data and pay data, and Plaintiff’s Counsel’s own independent investigation, Plaintiff’s Counsel
21 determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s maximum
22 theoretical exposure by: (i) the strength of Defendant’s affirmative defenses; (ii) the risk of losing a
23 motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a class and
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28 ¹ Federal district courts also 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.” [*Id.* at 188
(*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”).

PAGA trial would be unmanageable;² (iv) the risk of losing on various dispositive or quasi-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. ¶¶ 6-26.]

Based on the preceding and considering the aggregate value of the claims, Plaintiff's Counsel valued the claims for settlement purposes at \$2,533,932.45. [Jackson Decl. ¶¶ 10-26.] 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. Data and Range of Damages

Review of the wage statements for the sampling revealed the following: (1) approximately 18,375 workweeks since August 17, 2016 through April 30, 2022. The following is a table of potential damages:

Claim	Damages and Penalties
Minimum Wage Violations	\$39,873.75

² 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 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.]

Overtime Wage Violations	\$59,810.63
Meal Period Violations	\$276,326.72
Rest Period Violations	\$47,848.50
Wage Statement Violations	\$918,750
Final Pay Violations	\$517,154
PAGA Exposure	\$409,130
TOTAL	\$2,268,893.60

[Jackson Decl. ¶ 6-26.]

ii. Minimum Wage and Overtime Wages and Range of Damages

An employer is obligated to pay for all wages owed, including minimum wages and overtime wages. (See Cal. Lab. Code Section 1194) We estimated approximately 15,312.50 hours worth of minimum wage labor and 15,312.50 worth of overtime wage labor is owed to the class and after discounting on the merits, this amount is \$99,684.38.

iii. 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 20% sampling. Although Defendant's time records may create a rebuttable presumption that it did not provide meal periods on those occasions, in compliance with California law, *see, e.g., Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimizes the potential value of the claims.

First, Defendant alleged it provided the employees with its Employee Handbook, which sets forth meal and rest period policies consistent with California law. To the extent Plaintiff may allege she felt pressured by her duties or schedule, this evidence is rebuttable.

The other alternative interpretation anticipated by Defendants is that it demonstrates that Defendants, in fact, does provide employees with complete meal periods which could potentially

1 undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees
2 choose to take them a few minutes late or short on their own volition at other times. Furthermore, since
3 employees are not required in California to record their rest periods times, this claim may present
4 difficulties when proving the extent of any rest break violations.

5 In conclusion, it was analyzed that 84,893 meal break violations occurred and 18,375 rest break
6 violations occurred during the class period.

7 **iv. Wage Statement Claim**

8 Plaintiff alleges that Defendant failed to provide Plaintiff with timely and accurate wage
9 statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours
10 worked, and improper overtime premium pay. [Jackson Decl. ¶ 15]

11 Labor Code section 226 requires that employers provide wage statements that accurately set forth
12 a variety of items including, but not limited to, gross wages earned, total hours worked, deductions, net
13 wages earned, the periods of employment, and hourly rates and corresponding number of hours at each
14 rate. Labor Code section 226 further provides, in relevant part:

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

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

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

24 Defendant provided wage statements with the itemized information, as required under Cal. Lab.
25 Code section 226, to its Employees, including Plaintiff, on a semi-monthly basis. To the extent this claim
26 is derivative of the claims set forth above - that Plaintiff’s wage statements were not accurate because
27 Plaintiff was not paid an additional hour of pay when he was not provided meal and rest periods. [Jackson
28 Decl. ¶ 15.]

1 It was analyzed that 18,375 pay periods were subjected to potential wage statement violations
2 based upon meal break or rest break violations that could potentially be entitled to wage statement
3 violations amounting to \$918,750. [Jackson Decl. ¶ 15.]

4 **v. Waiting Time Penalties**

5 This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when
6 meal or rest breaks were not provided, and that Employees were not paid all minimum and overtimes
7 premium wages. It was analyzed that approximately 331 employees were terminated during the class
8 period that could potentially be entitled to wages upon termination that were subjected to meal and rest
9 period violations which amounting to \$517,154. [Jackson Decl. ¶ 14.]

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

11 As the above analysis shows, Plaintiff's Counsel objectively and knowledgably balanced the
12 strengths and weaknesses of the claims against the risk of continued litigation and was able to determine
13 the realistic damage estimate is \$2,268,893.60 including PAGA penalties. Therefore, in this case, the
14 settlement value of \$459,375.00 falls well within the range of reasonableness, and is thus fair, adequate,
15 and reasonable.

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

17 Class members are entitled to the best practical notice under the circumstances. [*Kass v. Young*,
18 67 Cal. App. 3d 100, 106 (1977) (“*Kass*”).] The purpose of the notice is to give class members sufficient
19 information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or
20 object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass’n*, 48 Cal. App. 3d 143, 151–
21 52 (1975).] The notice must advise class members “that they may be excluded from the class if they so
22 request and that they will be bound by the judgment, whether favorable or not, if they do not request
23 exclusion.” [*Kass*, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class
24 members, California authorities generally require service of the class notice by mail or similar reliable
25 means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
26 (1975).]³

27
28 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).]

1 The proposed Class Notice will be mailed to the Class by First Class mail and will include
2 information regarding the nature of the lawsuit, a summary of the Settlement's terms, the class definition,
3 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
4 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
5 Released Claims. In the event Class Notices are returned as undeliverable, the Administrator will attempt
6 to locate a current address through the use of skip tracing or another automated search. [Jackson Decl., ¶
7 2, Ex. A, Section 1.26, p. 4, Exhibit B.)] This method is designed to maximize the Class Member
8 response rate while ensuring cost effective administration of the settlement. In past cases, similar notice
9 methods to class members have resulted in strong response rates. Accordingly, both the method of
10 disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of
11 California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The
12 class notice must "fairly apprise the class members of the terms of the proposed compromise and of the
13 options open to dissenting class members.".)]

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

15 Enhancement payments "are fairly typical in class action cases." [*Cellphone Termination Fee*
16 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$5,000.00); *Rodriguez v. West*
17 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
18 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*, 53 UCLA
19 L. Rev. 1303 (2006).] Enhancement payments "are intended to compensate class representative for work
20 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
21 and, sometimes, to recognize their willingness to act as a private attorney general." [*Rodriguez*, 563 F.3d
22 at 958–59; see also *Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009).]

23 Subject to Court approval, therefore, the Settlement provides for a Class Representative
24 Enhancement Payment of \$5,000.00 for Plaintiff. The enhancement payment is fair and reasonable
25 compensation for Plaintiff's efforts in representing the putative Class and the interests of the State of
26 California, for assisting counsel with the litigation, at mediation, and settlement, regularly conferring with
27 counsel on the status of the case and the strategies for prosecuting the claims, reviewing the proposed
28 settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

1 [Declaration of Maria De Jesus Romero, ¶¶ 1-7.]

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

5 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs.**

6 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
7 took the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
8 Plaintiff will seek Court approval of attorneys' fees of \$153,125.00 which is one-third of the Gross
9 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the
10 time of the Final Approval Hearing.

11 California courts routinely award attorneys' fees equaling one-third or more of the potential value
12 of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) ("Empirical studies
13 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
14 actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, Attorney
15 Fees in Class Action Settlements: An Empirical Study, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-
16 78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar
17 conclusion that a one-third fee is consistent with market rates). At final approval, Class Counsel will fully
18 brief the merits of its request for attorneys' fees and costs.

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

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

21 Class actions are statutorily authorized "when the question is one of common or general interest,
22 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
23 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008) ("*Lee*").]
24 Class certification is appropriate when there is an "ascertainable class and a well-defined community of
25 interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004)
26 ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be required to make
27 an individual showing as to eligibility for recovery. [*Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App.
28 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

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

3 Whether a class is “ascertainable” within the meaning of Section 382 is “determined by
4 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class
5 members.” [Lee, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily
6 identified without unreasonable expense or time by reference to official records. [Id.] The community of
7 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class
8 representative with claims or defenses typical of the class; and (3) a class representative and counsel who
9 can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of
10 predominance, the California Supreme Court noted that the “ultimate question” is whether “the issues
11 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
12 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
13 litigants.” [Brinker, 53 Cal. 4th at 1021–22.]

14 The proposed Settlement Class consists of all hourly employees employed by Defendant in
15 California during the Class Period, which is August 17, 2016 through April 30, 2022. Defendants’ payroll
16 records will ascertain the Class Members because all Class Members are either current or former
17 employees of Defendant, the class is readily ascertainable from Defendant’ regular business records.

18 Conditional certification of the proposed group of Class Members is warranted here given the
19 relatively relaxed standard for certification at the preliminary approval stage. [See *Dunk v. Ford Motor*
20 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
21 settlement cases).]⁴ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
22 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
23 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
24 23 allows for “a lesser standard of scrutiny for settlement cases.” [Id. at n.19.]

25 Here, the California statutes relating to Plaintiff’s claims apply to all Class Members. Plaintiff
26

27 ⁴ 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.”).)

1 contends that Defendant's policies and practices apply class wide and liability can be determined by facts
2 common to all class members, i.e., common policies or de facto common practices that deny Class
3 Members' meal and rest periods, and pay for all hours worked. The wage and hour issues are numerous
4 and substantial, and a class action is the most advantageous method of adjudicating the claims of the
5 Class. For example, Plaintiff contends that his meal and rest period claims are readily certifiable because
6 whether Defendant's policies and practices violate the law "is by its nature a common question eminently
7 suited for class treatment." [*Brinker*, 53 Cal. 4th at 1033; see *Faulkinbury v. Boyd & Assocs., Inc.*, 216
8 Cal. App. 220, 237 (2013) ("[Defendant's] liability, if any, would arise upon a finding that its uniform rest
9 break policy, or lack of policy, was unlawful."); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal.
10 App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt
11 any policy authorizing and permitting meal and rest breaks).]

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

18 Additionally, Plaintiff is represented by competent counsel who has extensive experience in
19 litigating wage and hour class action cases. [Jackson Decl. ¶¶ 28-29, 34.] Plaintiff's Counsel has
20 successfully briefed, argued, certified, and gained state court settlement approval of the same or similar
21 class-wide causes of action that are at issue in this case. Plaintiff's Counsels' wage and hour class action
22 expertise establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action
23 is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class
24 Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis
25 because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs
26 any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

27 **IV. CONCLUSION**

28 The Parties have negotiated a fair, reasonable settlement and presented the required for

1 preliminarily approval, and as such, request that the Court preliminarily approve the settlement.
2

3 Dated: March 31, 2023

JACKSON LAW, APC

4 By: /s/ Armond M. Jackson

Armond M. Jackson, Esq.

5 Andrea M. Fernandez-Jackson, Esq.

6 Anthony S. Filer Jr., Esq.

JACKSON LAW, APC

7 Attorneys for Plaintiff Maria De Jesus Romero and all
8 other similarly situated employees
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