

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff DANIEL JACOBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL JACOBS, on behalf of himself, and
others similarly situated,

Plaintiff,

v.

RUSH MEDIA COMPANY, LLC, a Wisconsin
limited liability company; XLT
MANAGEMENT SERVICES, INC. an Illinois
corporation; and DOES 1-50, inclusive,

Defendants.

Case No: 20STCV32350

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

Hearing Date: November 12, 2021
Hearing Time: 10:30 AM

Honorable Judge Daniel J. Buckley
Department 1

Trial Date: Not Set
Action Filed: August 25, 2020

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	5
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL.....	7
a.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement.....	8
b.	Factors To Be Considered In Granting Preliminary Approval.....	10
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	10
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of Approval.....	12
a.	The Settlement is Fair, Reasonable, and Adequate.....	12
b.	The Strengths and Weaknesses in Plaintiff's Case and Defendants' Defenses Warrant the Settlement.....	15
c.	The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and Complexity of Further Litigation Weight in Favor of the Settlement...	16
3.	The Settlement Does Not Improperly Grant Preferential Treatment to the Class Representative or Segments Of The Class.....	16
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement.....	17
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES.....	18
a.	California Code of Civil Procedure §382.....	19
b.	The Proposed Class Is Ascertainable and Numerous.....	19
c.	Common Issues of Law and Fact Predominate.....	20
d.	The Claims of the Plaintiff Are Typical of the Class Claims.....	21
e.	The Class Representative Fairly and Adequately Protected the Class.....	21
f.	The Superiority Requirement Is Met.....	22

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

TABLE OF AUTHORITIES

Cases:	Page:
<i>Amaral v. Cintas Corp.</i> , 163 Cal. App. 4th 1157, 1209 (2008).....	13
<i>Bowles v. Superior Court</i> 44 Cal.2d 574 (1955)	20
<i>Boyd v. Bechtel Corp.</i> 485 F.Supp. 610, 622 (N.D. Cal. 1979)	9
<i>Brinker v. Superior Court</i> 53 Cal. 4th 1004 (2012)	15
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	13
<i>Cellphone Termination Fee Cases</i> (2009 180 Cal.App.4th 1110, 1117-18).....	7
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , (2009) 177 Cal. App. 4th 734, 742-45.....	8
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996)	7-8
<i>Duran v. U.S. Bank National Assn.</i> 59 Cal. 4th 1 (2014)	16
<i>Frazier v. City of Richmond</i> 184 Cal.App.3d 1491 (1986)	8
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	8
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	20
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. January 27, 2007)	16-18
<i>Green v. Obledo</i> , 29 Cal.3d 126, 145-6 (1981)	8
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1020, 1026 (9th Cir. 1998)	15,21

1	<i>Holman v. Experian Info. Solutions, Inc.,</i>	
2	2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	17
3	<i>Kirkorian v. Borelli,</i>	
4	695 F. Supp. 446, 451 (N.D. Cal. 1988)	9
5	<i>Klingensmith v. Max & Erma's Restaurants, Inc.,</i>	
6	2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505, at *5 (E.D. Pa. 2007).....	15
7	<i>Linder v. Thrifty Oil Co.,</i>	
8	23 Cal. 4th 429 (2003)	20
9	<i>Ling v. P.F. Chang's China Bistor, Inc.,</i>	
10	245 Cal. App. 4th 1242, 1261 (2016).....	13
11	<i>Louie v. Kaiser Foundation Health Plan, Inc.,</i>	
12	2008 WL 4473183 (S.D.Cal. Oct. 06, 2008)	17
13	<i>Lyons v. Marrud, Inc.,</i>	
14	[1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 93,525 (S.D.N.Y. 1972)	9
15	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
16	22 Cal. App. 5th 1308, 1336 (2018).....	13
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.,</i>	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	17
19	<i>Mego Financial Corp. Securities Litigation,</i>	
20	213 F.3d 454, 458 (9th Cir. 2000).....	16
21	<i>Naranjo v. Spectrum Sec. Servs., Inc.,</i>	
22	40 Cal. App. 5th 444, 474, (Ct. App. 2019).....	13
23	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,</i>	
24	221 F.R.D. 523, 528 (C.D. Cal. 2004)	9
25	<i>Nordstrom Comm'n Cases</i>	
26	(2010) 186 Cal. App. 4th 576, 581, 584.....	7, 12
27	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
28	688 F.2d. 615, 624-5 (9th Cir. 1982)	7, 9
	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.,</i>	
	323 F. Supp. 364, 372 (E.D. Pa. 1970)	8
	<i>Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson</i>	
	390 U.S. 414, 424-25 (1968).....	9

1	<i>Rausch v. Hartford Fin. Servs. Grp.</i> ,	
2	2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007)	17
3	<i>Reber v. AIMCO/Bethesda Holdings, Inc.</i>	
4	2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008).....	12
5	<i>Rose v. City of Hayward</i> ,	
6	126 Cal.App.3d 926, 934 (1981).....	20
7	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
8	34 Cal. 4th 319, 326, 334, 340 (2004)	19-20, 22
9	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
10	2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010).....	8
11	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
12	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	13
13	<i>Tableware Antitrust Litig.</i> ,	
14	484 F.Supp. 2d 1078-9 (N.D. Cal. 2007)	10
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16	723 F.2d 598, 608 (8th Cir. 1983)	21
17	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
18	97 F.3d 1227 (9th Cir. 1996)	22
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22	720 F. Supp. 1379, 1392 (D. Ariz. 1989)	9, 12
23	<i>Weinberger v. Kendrick</i> ,	
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27	Statutes, Rules and Regulations:	
28	California Code of Civil Procedure §382	18-19
	California Labor Code §203	13
	California Labor Code §226	5,10
	California Labor Code §2699	4

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3
4
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23
24
25
26
27
28

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California Rules of Court, rule 3.766 23

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1 **I. INTRODUCTION**

2 Plaintiff Daniel Jacobs (“Plaintiff”) respectfully submits this memorandum in support of the
3 motion for preliminary approval of the proposed class action and Private Attorneys General Act
4 (“PAGA”) settlement with Defendants Rush Media, LLC and XLT Management Services, Inc.
5 (“Defendants”), and seeks entry of an order: (1) preliminarily approving the proposed settlement of
6 this class and PAGA action with Defendants; (2) approving the form and method for providing
7 class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4)
8 scheduling a final approval hearing date to consider Plaintiff’s motion for final approval of the
9 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
10 litigation expenses.

11 Plaintiff and Defendants have reached a full settlement of the above-captioned action, which
12 is embodied in the Stipulation of Settlement of Class Action Claims and Release of Claims
13 (“Agreement”). A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration
14 of Shani O. Zakay (“Decl. Zakay”), served and filed herewith.

15 As consideration for this Settlement, the total amount to be paid by Defendants is Three
16 Hundred Thirty Thousand Dollars and Zero Cents (\$330,000) (the “Total Settlement Amount”).
17 (Agreement at ¶ III(A)(1)). The Total Settlement Amount will settle all issues pending in this
18 litigation between the Plaintiff and the California Class (the “Class”), on the one hand, and the
19 Defendants and the Released Parties, on the other hand, including: payment of all Individual
20 Settlement Payments, the Class Representative Service Payment Awards, the Class Counsel Award,
21 Class Counsel Litigation Expenses Payment, the payment to the Aggrieved Employees and
22 California Labor Workforce Development Agency (“PAGA Payment”), and the expenses of the
23 Settlement Administrator. (*Id.*). The Total Settlement Amount does not include Defendants’ share
24 of employer payroll taxes, which they shall pay separately. (*Id.*) The Settlement is all-in with no
25 reversion to Defendants and no need to submit a claim form. (*Id.*). (Decl. Zakay at ¶ 3).

26 On May 4, 2021, the parties participated in a mediation before Hon. William C. Pate (Ret.)
27 a respected jurist and mediator of wage and hour class actions. (Agreement at ¶ II(C)). At the
28 conclusion of the mediation, both Parties agreed to the Mediator’s proposal and the basic terms

1 were set forth in a signed Memorandum of Understanding. The Parties then prepared the full
2 Agreement, which was signed by all counsel and the Parties and is now presented to this Court for
3 preliminary approval. Plaintiff and Class Counsel believe that this Settlement is fair, reasonable,
4 and adequate. (Decl. Zakay at ¶ 4).

5 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
6 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
7 Agreement and enter the proposed order submitted herewith. (Decl. Zakay at ¶ 5).

8 **II. DESCRIPTION OF THE SETTLEMENT**

9 The Total Settlement Amount to be paid by Defendants is Three Hundred Thirty Thousand
10 Dollars (\$330,000.00). Under the Settlement, the Total Settlement Amount consists of the
11 following elements: (1) Individual Settlement Payments to Participating Class Members, (2) Class
12 Counsel Fees Payment and Class Counsel Litigation Expenses Payment, (3) Settlement
13 Administration Costs, (4) the PAGA Payment, and (5) the Class Representative Service Award to
14 the Plaintiff. The Total Settlement Amount does not include Defendants' share of employer payroll
15 taxes, which Defendants shall pay to the Administrator separately. (Decl. Zakay ¶ 6). The Total
16 Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at ¶ III(A)(1)).

17 Within thirty (30) calendar days after final approval and the Judgment becoming final, the
18 Defendants will fund the Total Settlement Amount. Within approximately thirty (30) calendar days
19 thereafter, the Settlement Administrator will pay: the Participating Class Members their Individual
20 Settlement Payments; Class Counsel their Class Counsel Fees Payment and the Class Counsel
21 Litigation Expenses Payment; the Aggrieved Employees their portion of the PAGA Payment, the
22 LWDA its portion of the PAGA Payment; and the Settlement Administrator its Settlement
23 Administration Costs, all in the amounts approved by the Court. (Agreement at ¶ III(M)). (Decl.
24 Zakay ¶ 7).

25 The Net Settlement Amount shall equal the net amount available for Settlement shares to
26 Participating Class Members from the Total Settlement Amount after deducting the Court-approved
27 amounts for the Class Award, Class Representative Service Award, PAGA Settlement, and
28 Settlement Administration Costs. The Settlement Administrator will pay the Individual Settlement

1 Payments to the Class Members. (Agreement at ¶III(K)). (Decl. Zakay at ¶ 8). The Settlement
2 Administrator will pay an Individual Settlement Payment from the Net Settlement Amount.
3 (Agreement at ¶I(N).

4 The Individual Settlement Payments will be calculated based on the number of Work Shifts
5 worked during the Class Period. (Agreement at ¶III(M)(1)). The Individual Settlement Payment
6 for each Class Member will be calculated from the Net Settlement Amount as follows: (1) respective
7 Work Shifts for each Class Member will be divided by the total Work Shifts for all Class Members,
8 resulting in the Payment Ratio for each Class Member; (2) each Class Member's Payment Ratio is
9 then multiplied by the Net Settlement Amount to calculate each Class Member's estimated
10 Individual Settlement Payments. The entire Net Settlement Amount shall be distributed. (Decl.
11 Zakay at ¶ 9).

12 Class Members will have forty-five (45) days after the mailing of the Class Notice to exclude
13 themselves or submit written objections. (Agreement at ¶I(BB)). Class Members may choose to
14 exclude themselves and opt-out of the Settlement by following the directions set forth in the Class
15 Notice. (Agreement at ¶III(L)(7)). All Class Members who do not "opt-out" will be deemed
16 Settlement Class Members who will be bound by the Settlement and will be entitled to receive an
17 Individual Settlement Payment. (Agreement at ¶I(FF)). Finally, the Class Notice will advise the
18 Class Members of their right to object to the Settlement. (Agreement at ¶III(L)(8)). (Decl. Zakay at
19 ¶ 10).

20 If a check is returned to the Settlement Administrator, the Settlement Administrator shall
21 re-mail the check to any forwarding address provided by the Class Member. (Agreement at
22 ¶III(L)(4)). If a Participating Class Member does not cash their Individual Settlement Payment
23 within ninety (90) days after the Settlement Administrator's last mailing to the Participating Class
24 Member, the Settlement Administrator will send the affected Participating Class Member a notice
25 informing him or her that unless the check is cashed in the next ninety (90) days, the check will
26 expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not
27 cashed. (Agreement at ¶III(M)(1)(f)). If a Class Member's Individual Settlement Payment check
28 is not cashed within one hundred eighty (180) days after its mailing to the Class Member, the

1 Settlement Administrator will transfer the funds to the State of California Controller in accordance
2 with CCP §1500 with the Participating Class Member's identity to be held for the Participating
3 Class Member pursuant to the California Unclaimed Property Law. (Agreement at ¶III(M)(8)).
4 (Zakay Decl. ¶ 11).

5 The Parties have agreed to use ILYM Group as the Settlement Administrator for the
6 Settlement. (Agreement at ¶I(DD)). Payment of the expenses of the Settlement Administrator from
7 the Total Settlement Administrator shall be made for the expenses of effectuating and administering
8 the Settlement. ILYM Group shall receive payment for services in an amount not to exceed
9 \$11,000. (Agreement at ¶III(M)(5)). (Decl. Zakay at ¶ 12).

10 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
11 not to exceed one-third of the Total Settlement Amount currently estimated to be \$110,000.00, as
12 their Class Counsel Fees Payment. (Agreement at ¶III(M)(10)). Class Counsel's award for
13 attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC and
14 50% to Zakay Law Group, ALPC). (Agreement at ¶ I(E)). Class Counsel will also be allowed to
15 apply separately for an award of litigation expenses incurred in the prosecution and settlement of
16 the Action currently not exceeding \$15,000. (Agreement at ¶III(M)(10)). In support of this request,
17 Class Counsel will provide evidentiary support, including lodestar. (Zakay Decl. at ¶ 13).

18 Subject to Court approval, the Agreement provides for the payment of Class Representative
19 Service Payment of no more than \$10,000 for Plaintiff, or any lesser amount as may be approved
20 by the Court. (Agreement at ¶III(M)(9)). (Decl. Zakay at ¶14).

21 Subject to Court approval, \$20,000 will be allocated from the Total Settlement Amount for
22 settlement of civil penalties under PAGA. (Agreement at ¶III(M)(11)). Pursuant to the
23 requirements of Labor Code §2699(i) the PAGA Payment shall be allocated \$15,000 (75%) to the
24 LWDA (the "LWDA Payment") as the LWDA's share of the settlement of civil penalties and
25 \$5,000 (25%) will be distributed to the Aggrieved Employees (the "Aggrieved Employee
26 Payment"). (*Id.*). (Decl. Zakay at ¶ 15).

1 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
2 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
3 Agreement and enter the proposed order submitted herewith.

4 **III. CASE BACKGROUND**

5 On August 20, 2020, Plaintiff filed a Notice of Violations with the LWDA and served the
6 same on Defendants. The Notice to the LWDA included a proposed Complaint which Plaintiff
7 planned on filing with the Court, which asserted the Defendant: (1) Violated California Business
8 and Professions Code § 17200 *et seq.*; (2) Failed to pay minimum wages in violation of California
9 Labor Code §§ 1194, 1197, and 1997.1; (3) Failed to pay overtime wages in violation of California
10 Labor Code §§ 510, *et seq.*; (4) Failed to provide meal periods in violation of California Labor Code
11 §§ 226.7 & 512, and IWC Wage Order; (5) Failed to provide rest periods in violation of California
12 Labor Code §§ 226.7 & 512, and IWC Wage Order; (6) Failed to provide accurate and complete
13 itemized wage statements in violation of California Labor Code §226; (7) Failed to provide wages
14 when due in violation of California Labor Code §§ 201, 202, and 203; and (8) Failed to reimburse
15 employees for required expenses in violation of California Labor Code §2802. (Decl. Zakay at ¶
16 16.)

17 On August 25, 2020, Plaintiff filed a class action Complaint against Defendants in the
18 Superior Court of the State of California, County of Los Angeles. Plaintiff alleges that Defendants
19 violated and continue to violate the California Labor Code protections applicable to California
20 employees including because Defendants have misclassified some California employees as
21 independent contractors and otherwise underpaid wages, including overtime wages, failed to
22 provide meal and rest breaks, accurate wage statements and final pay. On November 2, 2020,
23 Plaintiff filed a First Amended Complaint adding a claim for penalties pursuant to PAGA. (Decl.
24 Zakay at ¶ 17).

25 Plaintiff sought to represent a putative class of all of the current and former non-exempt
26 employees and independent contractors that worked for Defendant Rush, including those that
27 received payroll services from XLT Management Services, Inc., during the California Class Period
28 (the “California Class”). The Class Period is defined as the period between August 20, 2016, to

1 July 4, 2021. The Action seeks alleged unpaid wages, penalties, attorneys’ fees and costs, and any
2 other equitable or legal relief allegedly due and owing to Plaintiff and other Class Members by
3 virtue of the foregoing claims. (Decl. Zakay at ¶ 18).

4 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
5 information in connection with the Action. As part of this process, Defendants provided a
6 significant sample of time records and payroll records, as well as other documents and information,
7 to Class Counsel to review and analyze. On May 4, 2021, the Parties participated in a mediation
8 presided over by Hon. William C. Pate (Ret.) a respected jurist and mediator of wage and hour class
9 actions. At the conclusion of the mediation, all Parties agreed to the Mediator’s proposal and the
10 Parties documented the agreement in the form of a Memorandum of Understanding. The Parties
11 then prepared the Settlement Agreement, which was signed by the Parties and is now presented to
12 this Court for preliminary approval. (Decl. Zakay at ¶¶ 19, 49).

13 For purposes of this Settlement, the “Class” is defined as “all of the current and former non-
14 exempt employees and independent contractors that worked for Defendant Rush, including those
15 that received payroll services from XLT Management Services, Inc., in California during the Class
16 Period.” (Agreement at ¶I(G)). The Class Period is the period of time from August 20, 2016, to
17 July 4, 2021. (Agreement at ¶I(H)). (Decl. Zakay at ¶ 20).

18 Although a resolution has been reached, Defendants deny any liability or wrongdoing of any
19 kind associated with the claims alleged in the Action and further deny that, for any purpose other
20 than Settlement, the Action is appropriate for class treatment. Defendants contend, among other
21 things, that they correctly classified Class Members as independent contractors, that they have
22 correctly and fully compensated the Class Members for wages, provided compliant meal and rest
23 periods to the Class Members, provided complete and accurate itemized wage statements and final
24 payments, and complied at all times with the California Labor Code, and the applicable Wage
25 Orders. Further, “[t]he Parties agree to certification of the Class for purposes of this Settlement
26 only.” (Agreement at ¶II(A)). (Decl. Zakay at ¶ 21).

27 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
28 Counsel has diligently evaluated the Class Members’ claims against Defendants. Class Counsel

1 reviewed the production of documents from the Defendants. Prior to mediation, counsel for
2 Defendants provided Class Counsel with access to the necessary data and information for Class
3 Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review of a
4 significant sample of time records and data with the assistance of an expert. Based on the foregoing
5 data and their own independent investigation, evaluation, and experience, Class Counsel believe
6 that the terms of the Settlement set forth in the Agreement are fair, reasonable, and adequate and
7 are in the best interest of the Class in light of all known facts and circumstances, including the risk
8 of significant delay, the defenses asserted by Defendants, and potential appellate issues. (Decl.
9 Zakay at ¶ 22).

10 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 11 **COURT TO GRANT PRELIMINARY APPROVAL**

12 When a proposed class-wide settlement is reached, the settlement must be submitted to the
13 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
14 p.11-87). California “[p]ublic policy generally favors the compromise of complex class action
15 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
16 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
17 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
18 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
19 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

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

27 The primary question presented on an application for preliminary approval of a proposed
28 class action settlement is whether the proposed settlement is “within the range of possible approval.”

(*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982)).¹ Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010)). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the Class Members and a final settlement hearing is held by the Court.

A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794). Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. (3B J. Moore, *Moore’s Federal Practice* §§23.80 - 23.85 (2003)).

¹ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 In considering a potential settlement for preliminary approval purposes, the trial court does
2 not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits
3 of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at
4 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807). The Ninth Circuit explains, “the very essence of a
5 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
6 *for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
7 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
8 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
9 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
10 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
11 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
12 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
13 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

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

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

2 A number of factors are to be considered in evaluating a settlement for purposes of
3 preliminary approval. In determining whether to grant preliminary approval, the court considers
4 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
5 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
6 treatment to class representatives or segments of the class, and (4) falls within the range of possible
7 approval.” (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No
8 one factor should be determinative, but rather all factors should be considered. The analysis has
9 been summarized as follows:

10 If the proposed settlement appears to be the product of serious, informed,
11 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
12 preferential treatment to class representatives or segments of the class, and falls
13 within the range of possible approval, then the court should direct that notice be
14 given to the class members of a formal fairness hearing, at which evidence may be
presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

15 Here, the Settlement meets all of these criteria for preliminary approval.

16 **1. The Settlement is the Product of Serious, Informed and Arm’s Length**
17 **Negotiations by Experienced Counsel**

18 This settlement is the result of extensive and hard-fought litigation and negotiations before
19 an experienced and well-respected mediator. Defendants have expressly denied and continue to
20 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff
21 and Class Counsel have determined that it is desirable and beneficial to the Class Members to put
22 to rest the Released Class Claims.²

23 ² Upon the entry of Final Judgment and funding in full of the Total Settlement Amount by
24 Defendants, any person who is a Participating Class Member who does not timely and validly opt
25 out shall be deemed to have fully and finally released any and all class action claims, actions,
26 demands, causes of action, suits, debts, obligations, damages, penalties but excluding PAGA
27 penalties which are being separately released herein, rights or liabilities, of any nature and
28 description whatsoever that are asserted in the Action or based on the facts and theories pleaded in
the operative complaint on file at the time of final approval, including but not limited to, Labor
Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 558, 1174(d),
1174.5, 1194, 1197, 1197.1, 1198, 1199, 2802, and 2804 and the applicable IWC Wage Orders
which occurred during the Class Period, and expressly excluding all other claims, including claims

1 On May 4, 2021, the Parties attended an arms-length private mediation before Hon. William
2 C. Pate (Ret.) a respected jurist and mediator of wage and hour class actions. In preparation for the
3 mediation, Defendants provided Class Counsel with necessary records and information for the
4 members of the Class. Defendants produced a large sample consisting of pay records and time
5 records. Defendants also produced Defendants' relevant employment policies, including
6 compensation policies and timekeeping policies. Plaintiff analyzed the data with the help of an
7 expert Berger Consulting Group ("Berger"). At the conclusion of the mediation, all Parties agreed
8 to a Mediator's proposal and the basic terms were set forth in a signed Memorandum of
9 Understanding. The Parties then prepared the full Agreement, which was signed by all counsel and
10 the Parties. Plaintiff and his Counsel believe that this Settlement is fair, reasonable, and adequate.
11 (Decl. Zakay at ¶ 23).

12 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
13 Counsel has diligently evaluated the Class Members' claims against Defendants. Class Counsel
14 reviewed the production of documents from the Defendants. Prior to mediation, counsel for
15 Defendants provided Class Counsel with access to the necessary data and information for Class
16 Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review of a
17 significant sample of time records and data with the assistance of an expert. Based on the foregoing
18 data and their own independent investigation, evaluation, and experience, Class Counsel believe
19 that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class
20 considering all known facts and circumstances, including the risk of significant delay, the defenses
21 asserted by Defendants, and potential appellate issues. (Decl. Zakay at ¶ 24).

22 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
23 trying the Action against Defendants through possible appeals which could take several years. Class
24 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in
25 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
26 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
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for vested, benefits, wrongful termination, unemployment, insurance, disability, social security,
workers' compensation, and class claims outside the Class Period. (See Agreement at ¶ I(Z)).

1 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
2 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶ 25).

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

9 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
10 **Approval**

11 **a. The Settlement is Fair, Reasonable, and Adequate**

12 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
13 possible approval. All Class Members will receive an opportunity to participate in the Settlement
14 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
15 III(L)(7)).

16 The amounts to compensate the Class Members for the alleged violations at the time this
17 Settlement was negotiated were calculated by Berger, Plaintiff’s damage expert. Plaintiff used
18 Berger to analyze the data and determine the potential damages for the employees. For the Class,
19 Plaintiff estimates that Defendants were subject to maximum liability for damages in the amount of
20 \$847,986, consisting of \$220,750 for unreimbursed business expenses, \$238,760 for unpaid wages,
21 and \$388,476 for meal and rest break periods. In addition, Plaintiff calculated that Defendants
22 could be liable for \$1,907,914 for waiting time penalties and \$83,150 for wage statement penalties.³

23 ³ Plaintiff’s claims pursuant to Labor Code Section 226 and various PAGA penalties are also
24 subject to a good faith defense as to whether any premium wages for meal or rest periods or other
25 wages were owed given Defendants’ position that Plaintiff and the Class were properly
26 compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal.
27 Aug. 25, 2008) (granting defendant’s motion for summary judgment on claim for failure to provide
28 accurate itemized wage statements “because a good faith dispute exists... [therefore, defendant] was
not ‘knowing and intentional’ in failing to provide [Section 226] statements”); *see also Nordstrom*
Commission Cases, 186 Cal. App. 4th 576, 584 (2010) (“There is no willful failure to pay wages if
the employer and employee have a good faith dispute as to whether and when the wages were due.”).
Additionally, there is serious doubt as to whether violations of the meal/rest period regulations,

1 Finally, Plaintiff's expert calculated that Defendants could be liable for *PAGA penalties* in an
2 amount of \$1,266,650⁴. Consequently, the Settlement of approximately \$330,000 represents almost
3 39% of the value of the maximum actual class-wide damages at issue (\$847,986). Furthermore, the
4 Settlement represents almost 11.6% of the maximum class-wide damages **and** penalties to the Class
5 (\$2,839,000), assuming all these amounts could be proved at trial. Given the amount of the
6 Settlement as compared to the potential value of claims in this case, the Settlement is fair and
7 reasonable. Clearly, the goal of this litigation to provide compensation to Class Members for unpaid
8 time and for allegedly missed meal and rest breaks has been met. (Decl. Zakay at ¶ 26).

9 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
10 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
11 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
12 consideration far exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
13 ruled that the settlement which represented approximately 10% of the estimated loss to the class
14 was fair, reasonable, and adequate. As a result, this settlement, which exceeds the percentage
15 approved in *Stovall-Gusman*, is entitled to preliminary approval.

16 Here, several defenses asserted by Defendants presented serious threats to the claims of the
17 Plaintiff and other Class Members. In order to recover any penalties, Plaintiff would be required at
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19 which require payment of a "premium wage" for each improper meal period, give rise to claims
20 under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro, Inc.*, 245 Cal. App. 4th 1242,
21 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018). This
22 issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444, 474, (Ct. App.
23 2019), which held that actions for meal break and rest break premiums "do not entitle employees to
24 pursue the derivative penalties in sections 203 and 226."

25 ⁴ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
26 Defendants, including that Class Members may not be able to recover subsequent penalties until, at
27 a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
28 1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a "violation" subject to
penalties."). In addition, Plaintiff recognizes that PAGA claims bear some risk. See *Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 trial to prove each of the underlying Labor Code violations. Specifically, Plaintiff would need to
2 prove as to individuals who worked for Defendants that he or she was misclassified as an
3 independent contractor, and that he or she was not properly compensated for minimum wages, meal
4 break wages, rest break wages, expenses, and overtime wages. To do so, Plaintiff would require
5 proof of Labor Code violations to each of the above. (Decl. Zakay at ¶ 27).

6 Defendants maintain that Plaintiff and other Class Members were properly classified as
7 independent contractors and were properly compensated, and that Defendants did not violate the
8 Labor Code as to any of them. Given Defendants' potential defenses to the Labor Code violations,
9 and the risks and costs of continued litigation, Plaintiff and Class Counsel believe that the
10 Settlement Amount is fair and reasonable. While Plaintiff believes that these defenses, and others,
11 could be overcome, Defendants maintain these defenses have merit and therefore present a serious
12 risk to recovery for the Class. (Decl. Zakay at ¶ 28).

13 Further supporting the fairness and reasonableness of the settlement is Defendants' financial
14 condition. Defendants provide video, field production and post-production packaging services for
15 televised sporting events (Rush Media, LLC) and related payroll services (XLT Management
16 Services, Inc.). The production business has suffered significantly as a result of the effects of the
17 COVID-19 virus and the Governor's order prohibiting large events and gatherings, which resulted
18 in the cancellation of many sporting events. In fact, as a result of the pandemic, many of the
19 Defendants' operations were largely shut down for more than a year. Considering the resulting
20 financial hardship, the settlement provides great value for the Class Members, while also allowing
21 Defendants to continue in business. Further, during the time that many of Defendants' operations
22 were mandated closed by state and local authorities during the COVID-19 pandemic, the alleged
23 violations could not have occurred. (Decl. Zakay at ¶ 29).

24 Here, the risk of further litigation is substantial. After arm's-length negotiations between
25 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
26 settlement.

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1 **b. The Strengths and Weaknesses in Plaintiff's Case and Defendants' Defenses**
2 **Warrant the Settlement**

3 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
4 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, several defenses asserted by
5 Defendants presented serious threats to the claims of the Plaintiff and the other Class Members. For
6 instance, Defendants asserted that the employment practices complied with all applicable Labor
7 Laws.

8 First, Defendants argued that they properly classified Plaintiff and the Class Members as
9 independent contractors. Defendants further argued that even if they misclassified the Class
10 Members, they did not deprive those Class Members of any wages or meal and rest breaks. (Decl.
11 Zakay at ¶ 30).

12 Defendants argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
13 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
14 certifiability as to the meal and rest period claims. A major component of the damages alleged to
15 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
16 during the mediation, Defendants aggressively argued that Defendants' policies and culture
17 afforded the Class Members an opportunity to take timely meal and rest breaks, and that employees
18 like the Plaintiff *chose* not to take compliant breaks. Defendants argued, therefore, that under the
19 *Brinker* decision it has no liability for the missed breaks whatsoever. Defendants argued that it
20 adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant
21 meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short
22 or untimely. Finally, the court may find remitter/reduction of the statutory damages appropriate.
23 See e.g. *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL
24 3118505, at *5 (E.D. Pa. 2007). If successful, these defenses could eliminate or substantially reduce
25 any recovery to the Class. While Plaintiff believes that these defenses, and others, could be
26 overcome, Defendants maintain these defenses have merit and therefore present a serious risk to
27 recovery for the Class. (Decl. Zakay at ¶ 31).

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

3 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
4 to obtain class certification and thereby not recover on behalf of any employee other than himself.
5 Defendants argued that the individual experience of each employee varied with respect to the
6 alleged claims. While other cases have approved class certification of wage and hour claims, class
7 certification in this action would have been hotly disputed and was by no means a foregone
8 conclusion. Finally, even if class certification was successful, as demonstrated by the California
9 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
10 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
11 (Decl. Zakay at ¶ 32).

12 This Settlement is therefore entitled to preliminary approval. Were this case to go to trial,
13 the Plaintiff and other Class Members would need to prove to the satisfaction of the Court, among
14 other things, that wages, premiums, and other damages were owed on a class-wide basis. This was
15 and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and
16 informed counsel, recognized the potential risks, and agreed on the settlement. The "risk, expense,
17 complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v.*
18 *UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court
19 might have ruled on the merits of the legal issues, the losing party likely would have appealed, and
20 the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and
21 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
22 settlement.'") (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
23 2000)).

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

26 The relief provided in the Settlement will benefit all members of the Class who do not opt
27 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
28 the Class in any way. Each Participating Class Member will be entitled to a payment based on the

1 plan of allocation described herein. Each Participating Class Member's Individual Settlement
2 Payment will be determined based upon the shifts worked by that employee during the prescribed
3 Class Period. (Agreement at ¶III (M)(1) (Decl. Zakay at ¶ 33).

4 Plaintiff will apply to the Court for the Class Representative Service Award of not more
5 than \$10,000 in consideration for his service, and for the risks undertaken on behalf of the Class.
6 (Agreement at ¶III(M)(9)). Plaintiff performed his duties admirably by working with Class
7 Counsel. The requested Plaintiff's service payment is well within the accepted range of awards for
8 purposes of preliminary approval. See e.g. *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist.
9 LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
10 \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)
11 (approving \$10,000 service award where class member recovery was \$375); *Rausch v. Hartford*
12 *Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award
13 of \$10,000 where class member recoveries were as little as \$150); *Louie v. Kaiser Foundation*
14 *Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service
15 award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862,
16 *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class action and a pool of
17 \$100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to
18 class representatives to compensate the employees for the time and effort expended on the case, for
19 the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve as an
20 incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17. (Decl.
21 Zakay at ¶ 34).

22 4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit 23 Preliminary Approval Of The Settlement

24 The stage of the proceedings at which this Settlement was reached also militates in favor of
25 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
26 a thorough investigation into the facts of the class action. Class Counsel began investigating the
27 Class Members' claims before this action was filed. Class Counsel performed significant review
28 and analysis of Defendants' documents, time records, and pay records. Class Counsel engaged in

1 a thorough research and analysis of the relevant claims and data. Class Counsel were also
2 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
3 claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel
4 possessed sufficient information to make an informed judgment regarding the likelihood of success
5 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶ 35).

6 Based on the foregoing data and their own independent investigation and evaluation, Class
7 Counsel are of the opinion that the settlement with Defendants for the terms set forth in the
8 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
9 known facts and circumstances, including the risk of significant delay, defenses asserted by
10 Defendants, and numerous potential appellate issues. There can be no doubt that Counsel for all
11 Parties possessed sufficient information to make an informed judgment regarding the likelihood of
12 success on the merits and the results that could be obtained through further litigation. (Decl. Zakay
13 at ¶ 36).

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

18 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
19 observed, however, “[i]n the context of class action settlements, ‘formal discovery
20 is not a necessary ticket to the bargaining table’ where the parties have sufficient
21 information to make an informed decision about settlement.” See *In re Mego
Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

22 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
23 settlement because Class Counsel had the same sufficient information, as well as document
24 production, independent investigations, and due diligence, to confirm the accuracy of the
25 information supplied by Defendants.

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

27 Plaintiff contends that the proposed settlement meets all the requirements for class
28 certification under the California Code of Civil Procedure section 382 as demonstrated below, and

1 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
2 should conditionally certify the Classes for settlement purposes only, defined as follows:

3 The California Class:

4 “all of the current and former non-exempt employees and independent contractors that
5 worked for Defendant Rush, including those that received payroll services from XLT
6 Management Services, Inc., in California during the Class Period.” (Agreement at ¶I(G)).

7 The California Class Period is the period from August 20, 2016, to July 4, 2021. The Parties
8 estimate that there are 397 California Class Members who collectively worked approximately 4,704
9 shifts. (Decl. Zakay at ¶ 37).

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

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

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is
15 one of a common or general interest, of many persons, or when the parties are
16 numerous, and it is impracticable to bring them all before the court....” The party
17 seeking certification has the burden to establish the existence of both an
18 ascertainable class and a well-defined community of interest among class members.
19 (*citations omitted*). The “community of interest” requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can
adequately represent the class.

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

21 While Defendants reserve all rights to dispute that the Plaintiff can satisfy any of these
22 requirements, Defendants will not dispute that these requirements may be satisfied in this case for
23 purposes of settlement and therefore, the proposed Class should be certified for purposes of
24 settlement only.

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

26 Here, the approximately 397 current and former employees and independent contractors that
27 comprise the California Class and are identified based on Defendants’ records and are sufficiently
28 numerous for class certification. All of these class members are ascertainable because they can

1 readily be identified through examination of Defendants’ employment and other files. Given that
2 the class consist of approximately 397 members, numerosity is easily satisfied. (*See Bowles v.*
3 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City*
4 *of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity
5 requirement.)). Moreover, the current and former employees and independent contractors that
6 comprise the Class can be identified based on Defendants’ records and are sufficiently numerous
7 for class certification. (Decl. Zakay at ¶ 38).

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

9 Predominance of common issues of law or fact does not require that the common issues be
10 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
11 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). “Predominance is a comparative
12 concept, and ‘the necessity for class members to individually establish eligibility and damages does
13 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334).

14 Commonality exists if there is a predominant common legal question regarding how an
15 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
16 1524, 1536 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on
17 its drivers.”)). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the
18 certification stage since the question is “essentially a procedural one that does not ask whether an
19 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
20 (2003)).

21 Here, Plaintiff contends that common questions of law and fact are present, and specifically,
22 whether Defendants’ employment practices were lawful, whether Defendants misclassified Class
23 Members as independent contractors, whether Defendants failed to properly provide and/or pay for
24 meal and rest periods, whether Defendants paid for all time worked, whether Defendants provided
25 accurate wage statements, whether Defendants failed to pay all wages, and whether the Class is
26 entitled to compensation and related penalties. (Decl. Zakay at ¶¶ 39-4). Defendants will not
27 oppose such a finding for purposes of this settlement only.

28 ///

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

2 The typicality requirement requires Plaintiff to demonstrate that the members of the class
3 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
4 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
5 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
6 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
7 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
8 need not be substantially identical.” (50 F.3d at 1020).

9 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
10 Plaintiff, like the other members of the Class, worked for Defendant Rush Media, LLC and received
11 payroll services from XLT Management Services as an employee and/or independent contractor
12 and is a member of the Class. Plaintiff was subject to the same employment practices concerning
13 his classification, payment of wages, and the meal and rest periods, and received similar wage
14 statements as the other class members. Thus, the claims of the Plaintiff and the Class Members
15 arise from the same course of conduct by the Defendants, involve the same employment policies,
16 and are based on the same legal theories. (Decl. Zakay at ¶ 42). For purposes of settlement, the
17 typicality requirement is met as to the common issues presented in this case. Defendants will not
18 oppose such a finding for purposes of this settlement only.

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

20 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
21 not have any conflicts of interest with other class members, and (b) will prosecute the case
22 vigorously on behalf of the class. (*See Hanlon* 150 F.3d at 1020). First, Plaintiff is well aware of
23 his duties as representative of the Class and has actively participated in the prosecution of this case
24 to date. He effectively communicated with Class Counsel, provided documents to them, and
25 participated in informal discovery, investigation, and negotiations in the Action. Second, Plaintiff
26 retained competent counsel who are experienced in employment class actions. (Decl. Zakay at ¶
27 47). (Declaration of Jean-Claude Lapuyade at ¶¶ 1-10.) Third, there is no antagonism between the
28

1 interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek
2 monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶ 43).

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

4 To certify a class, the Court must also determine that a class action is superior to other
5 available methods for the fair and efficient adjudication of the controversy. “Where classwide
6 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
7 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
8 1234 (9th Cir. 1996)). As courts have previously observed:

9 Absent class treatment, each individual plaintiff would present in separate,
10 duplicative proceedings the same or essentially the same arguments and evidence,
11 including expert testimony. The result would be a multiplicity of trials conducted
12 at enormous expense to both the judicial system and the litigants. ‘It would be
neither efficient nor fair to anyone, including defendants, to force multiple trials to
hear the same evidence and decide the same issues.’

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

14
15 Here, a class action is the superior mechanism for resolution of the claims as pled by the
16 Plaintiff. Defendants will not dispute such a finding for purposes of this settlement only.

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

18 The Court has broad discretion in approving a practical notice program. The Parties have
19 agreed upon procedures by which the Class Members will be provided with written notice of the
20 Settlement similar to that approved and utilized in hundreds of class action settlements. In
21 accordance with the Agreement, no later than ten (10) days after the Court enters its order granting
22 Preliminary Approval of the Settlement, Defendants will provide to the Settlement Administrator
23 an electronic database containing the Class Data. (Agreement at ¶ III(L)(1)). Within fourteen (14)
24 days after receiving the Class Data, the Settlement Administrator will mail the Class Notice Packets
25 to all Class Members via regular First-Class U.S. Mail to their current addresses determined by the
26 Settlement Administrator. (Agreement at ¶ III(L)(3)).

27 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
28 counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the

1 Agreement). The Class Notice will include, among other information: (i) information regarding the
2 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
3 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
4 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
5 litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative Service
6 Payment requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement
7 Administration Costs. (Decl. Zakay at ¶¶ 44-46).

8 The Class Notice will state that the Class Members shall have forty-five (45) days from the
9 date that the Class Notice is mailed to them to request exclusion or to submit an objection. The
10 Class Members will be given an opportunity to object to the terms of the Agreement and/or the
11 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
12 with the instructions set forth in the Class Notice. Class Members will be instructed to only contact
13 the Settlement Administrator and Class Counsel and not the Court. Class Members who do not opt
14 out will automatically receive a settlement payment. The Class Members are highly skilled and
15 educated broadcast production personnel who must speak and read in English fluently in order to
16 perform their job. Therefore, Spanish or other alternative language notice is not necessary and is
17 not included. This notice program was designed to meaningfully reach the Class Members and
18 advises them of all pertinent information concerning the Settlement. The mailing and distribution
19 of the Class Notice satisfies the requirements of due process, is the best notice practicable under the
20 circumstances, and constitutes due and sufficient notice to all persons entitled thereto. The Class
21 Notice provides information on the terms and provisions of the Settlement; the benefits that the
22 Settlement provides for Class Members; the date, time, and place of the final settlement approval
23 hearing; and the procedure and deadline for submitting comments, objections, and requests for
24 exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶
25 45).

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VII. CONCLUSION

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

DATED: October 18, 2021

ZAKAY LAW GROUP, APLC

By: 
Shani O. Zakay
Attorney for Plaintiff