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individually, and on behalf of all other similarly
situated employees

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

GARY GONZALEZ, as an individual and
on behalf of other similarly situated
employees,

Plaintiff,

vs.

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

Defendant.

Case No.: 20STCV40531

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

**PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 25, 2022
Time: 10:00 a.m.
Place: Department 10

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

2 **PLEASE TAKE NOTICE** that on May 25, 2022 at 10:00 a.m., or as soon thereafter as counsel
3 may be heard, in Department 10 of the above-captioned court, located at 312 N. Spring Street, Los
4 Angeles, California 90012, the Honorable William F. Highberger, presiding, Plaintiff Gary Gonzalez
5 will, and hereby does, move this Court to:

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

10 2. Conditionally certify the proposed Settlement Class;

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

14 4. Appoint Plaintiff Gary Gonzalez as the class representative;

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

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

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

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

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26 ///

27 ///

28 ///

1 Dated: May 3, 2022

Respectfully submitted,

2
3 By: /s/ Armond M. Jackson

Armond M. Jackson, Esq.

Andrea M. Fernandez, Esq.

Anthony S. Filer Jr., Esq.

JACKSON LAW, APC

Attorneys for Plaintiff GARY GONZALEZ and all
other similarly situated employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Gary Gonzalez (“Plaintiff”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for approximately 165 current and former employees of Defendant Star Waggon, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid Employees employed by Defendant in the State of California during the Class Period, which is from October 22, 2016 through the date the Court enters an order granting preliminary approval of the Stipulation.
- (2) A non-reversionary Class Settlement Amount of \$167,500.00 in addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$76,416.67 (the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$55,833.33) and litigation costs and expenses not to exceed \$8,500, to Jackson Law, APC (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$5,000, to be paid to the jointly selected settlement administrator, Phoenix Settlement Administrators.¹
 - (d) A \$16,750.00 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. \$12,562.50 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
 - (e) Class Representative Enhancement Payment of \$5,000 to Gary Gonzalez for his 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-

¹ The parties obtained several bids for settlement administration and ultimately selected Phoenix Settlement Administrators to administer the settlement based on price and reliability.

length with helpful guidance from mediator JJ Johnston, 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 is a company that provides custom trailers to businesses, including but not limited to the entertainment businesses. Defendant has facilities in Slymar, California. Plaintiff Gonzalez was employed by Defendant from approximately February 2017 to around August 18, 2020 as a non-exempt Employee at the facility in Slymar. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendant's employees in the State of California, during the Class Period. [Id.]

On October 22, 2020, Plaintiff filed a Class Action Complaint in the Los Angeles County Superior Court alleging violations of the California Labor Code and applicable wage orders for the following claims: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to provide and maintain accurate itemized wage statements; (6) failure to pay timely wages upon termination; as well as an addition claim for (7) unlawful business practices under Business and Professions Code section 17200 et. seq. in order to extend the claims back four years to October 22, 2016. Plaintiff Gonzalez also submitted a PAGA notice letter to the LWDA on October 21, 2021, and amended his Complaint to add that claim on or around April 22, 2021. [Jackson Decl. ¶ 4.]

Thereafter, Plaintiff served a set of written discovery, including a Request for Production of Documents and Special Interrogatories. In its responses, Defendant agreed to produce informal discovery and engage in mediation. [Jackson Decl. ¶ 5.] Defendant also agreed to produce the time records and wage statements for a 25% sample of the putative class members. (Id.)

1 Defendant produced such data for 25% of the class, including Plaintiff Gary Gonzalez. Prior to
2 the mediation and for purposes of the Settlement, Plaintiff analyzed the time cards and wage statements.
3 [Id.]

4 Plaintiff's primary theories of liability are as follows:

- 5 • **Unlawful Meal Period Claim:** Plaintiff alleges that Defendant failed to provide
6 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
7 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 6.]
- 8 • **Unlawful Rest Break Claim:** Plaintiff alleges that Defendant failed to permit and
9 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 7.]
- 10 • **Minimum Wage and Overtime Claim:** Plaintiff alleges that Defendant's practices of
11 having employees begin work before clocking in to perform COVID health screenings, which resulted in
12 unpaid hours worked that also should have been paid at the minimum wage rate of pay or overtime rate of
13 pay. [Jackson Decl. ¶ 8.]
- 14 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
15 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
16 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
17 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 9.]

18 After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for
19 May 19, 2021. Prior to the mediation, Defendant produced Plaintiff's personnel file, Defendant's
20 Employee Handbook, the total number of Class Members, including those formerly employed during the
21 class period, and the total number of pay periods and workweeks during the class period. Plaintiff's
22 counsel thoroughly reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶ 10.]

23 **B. The Parties Settled After the Mediation.**

24 On May 19, 2021, the Parties participated in a full day of mediation with mediator JJ Johnston,
25 Esq., an experienced mediator of wage and hour class actions. Mediator Johnston helped to manage the
26 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the
27 conclusion of the mediation, the continued to engage Mediator Johnston that ultimately resulted in the
28 resolution of this case. [Jackson Decl. ¶ 11.] Thereafter, the Parties jointly drafted and executed the

1 Stipulation. [Jackson Decl., ¶ 11, **Exhibit A.**] At all times, the Parties' negotiations were adversarial and
2 non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the
3 claims at issue. [Jackson Decl. ¶ 11.]

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

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

6 The proposed group of Class Members consists of all hourly paid employees employed by
7 Defendant in California during the Class Period, which is from October 22, 2016 through the date the
8 Court enters an order granting preliminary approval of the Stipulation.

9 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-
10 reversionary Maximum Settlement Amount of \$167,500.00. The Maximum Settlement Amount
11 includes: (1) settlement payments to Participating Class Members; (2) \$55,833.33 in requested attorneys'
12 fees and up to \$8,500.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration
13 Costs capped at \$5,000; (4) an allocation of \$12,562.50 to the LWDA; and (5) a Class Representative
14 Enhancement Payment of \$5,000 to Plaintiff Gonzalez for his service on behalf of the Class Members.

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

19 **2. Formula for Calculating Settlement Payments**

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

- 23 • Defendant will calculate the "Eligible Workweeks" worked by each Class Member during
24 the Class Period and the aggregate Eligible Workweeks worked by all Class Members
25 during the Class Period, which is from October 22, 2016 through the date the court enters an
26 order granting preliminary approval of the Stipulation, and provide that to the Settlement
27 Administrator.
- 28 • To determine each Class Member's settlement payment, the Settlement Administrator will
use the following formula: by multiplying the remaining Net Settlement Fund by a fraction,
the numerator of which is the participating Settlement Class Member's Eligible Workweeks
during the Class Period, and the denominator of which is the total Eligible Workweeks of all
participating Settlement Class Members during the Class Period.

The **average payment will be approximately \$463.13** per full-time Class Member, assuming no Class Members opt out. If there are any opt-outs, that average will increase. This average net recovery is significantly higher than many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

3. Release by the Participating Class Members

In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to release the following Released Claims that accrue from October 22, 2016 through the date the court enters an order granting preliminary approval of the Stipulation:

“all claims, demands, rights, liabilities and causes of action that were pled or could have been pled in the Litigation, based on the factual allegations therein, that arose during the Class Period with respect to the following claims: (1) failure to pay minimum wages (Cal. Lab. Code section 1194; IWC Wage Orders 1, 4, 7, and 9 section 3); (2) failure to pay overtime wages (Cal. Lab. Code section 1194; IWC Wage Orders 1, 4, 7, and 9 section 3); (3) failure to pay timely wages (Cal. Lab. Code section 210); (4) failure to unlawfully receive wages (Cal. Lab. Code section 221); (5) failure to provide meal breaks (Cal. Lab. Code section 226.7; IWC Wage Orders 1, 4, 7, and 9 section 11); (6) failure to provide rest periods (Cal. Lab. Code section 226.7; IWC Wage Orders 1, 4, 7, and 9 section 12); (7) failure to provide and maintain accurate itemized wage statements (Cal. Lab. Code section 226); (8) failure to pay timely wages upon termination (Cal. Lab. Code section 203); (9) unlawful business practices (Cal. Bus. & Prof. Code section 17200, et seq.); and (10) all claims under California’s Private Attorneys General Act of 2004 (Cal. Lab. Code section 2698, et seq.) that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”). For members of the Settlement Class who do not validly opt out, the release period shall run from October 22, 2016, through the date of Preliminary Approval by the Court.”

[Jackson Decl., ¶ 11, **Exhibit A** (pgh. 2 A, p. 2)]

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement.

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

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class

1 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
2 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for
3 their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
4 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final
5 approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary
6 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the
7 proposed order, and (4) must identify any agreement regarding attorneys’ fees. [Rule 3.769(b) and (c).]

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

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

26 In reviewing the fairness of a class action settlement, due regard should be given to what is
27 “otherwise a private consensual agreement between the parties.” [*Cellphone Termination Fee Cases*, 186
28 Cal. App. 4th at 1389.] The inquiry “must be limited to the extent necessary to reach a reasoned judgment

that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” [Id.]

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

By engaging in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair, reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. [Jackson Decl. ¶¶ 14-15.]

Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his experience working for Defendant and the circumstances that gave rise to the alleged Labor Code violations. In addition to informing Plaintiff’s Counsel’s initial evaluation of the lawsuit, the information that Plaintiff and other employees provided also influenced Plaintiff’s Counsel’s discovery efforts. [Jackson Decl. ¶ 14-15.]

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

Plaintiff’s Counsel interviewed Plaintiff who provided accounts of their own experience, which enabled Plaintiff’s Counsel to understand the theories explaining the respective frequencies of the alleged

violations borne out in the data and records produced and to learn more about the day-to-day circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 13-15.] Overall, Plaintiff's Counsel performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's suitability as a class representative through interviews, background investigations, and analyses of his 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 Class Members 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. ¶ 15.]

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 May 19, 2021, the Parties participated in a mediation with mediator JJ Johnston, 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, the Parties reached a settlement in principal and executed a detailed Memorandum of Understanding, before entering in the long form Settlement. [Jackson Decl. ¶ 16.]

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. ¶¶ 17-20.] Defendant Star Waggon, Inc. is represented by

1 Fisher & Phillips, LLP who operates a large, respected wage and hour defense practice.

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

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

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

24 Based on the information and evidence provided by Defendant in discovery, the analysis of the
25

26 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
27 whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case
28 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”).

1 time cards and wage statements, and Plaintiff's Counsel's own independent investigation, Plaintiff's
2 Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendant's
3 maximum theoretical exposure by: (i) the strength of Defendant's affirmative defenses; (ii) the risk of
4 losing a motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a
5 class and PAGA trial would be unmanageable;³ (iv) the risk of losing on various dispositive or quasi-
6 dispositive motions that Defendant will bring before trial (e.g., motion to strike class and representative
7 allegations, motion to decertify a class action, and/or motions for summary judgment) which may
8 eliminate all or some of Plaintiff's claims, or bar evidence necessary to prove such claims; (v) the risk of
9 losing some or all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully
10 refuse to pay discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section
11 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e,
12 a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the
13 chances of the Court exercising its discretion to reduce PAGA penalties (see Cal. Lab. Code section
14 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a
15 class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice
16 and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being
17 reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the
18 "Discount Factors"). [Jackson Decl. ¶ 21.]

19 Based on the preceding and considering the aggregate value of the claims in light of the Discount
20 Factors, Plaintiff's Counsel valued the claims for settlement purposes at between **\$0** and **\$1,598,340**.
21 [Jackson Decl. ¶ 21.] It must be underscored, however, that the reasonableness of a settlement is not
22 dependent upon its actual value approaching the potential recovery Plaintiff might have received had he
23 succeeded at trial. Indeed, "[t]he determination whether a settlement is reasonable does not involve the
24 use of a 'mathematical equation yielding a particularized sum.'" [*Frank v. Eastman Kodak Co.*, 228
25 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
26

27 ³ Similar to class actions, California trial courts will strike PAGA claims where too many allegedly
28 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.]

(S.D.N.Y. 1993)).]

i. Wage Statement Data and Range of Damages

Review of the wage statements for the sampling revealed the following: (1) approximately 9,747 pay periods since October 22, 2016; (2) approximately 19,456 workweeks since October 22, 2016; and (3) approximately 165 class members. The following is a table of potential damages:

Claim	Highest Theoretical Damage Exposure	Reasonable Range of Damages and Penalties	
Failure to Provide Meal Breaks	\$1,429,920 (damages) and \$250,800 (civil penalties) for a total of \$1,680,720 *.5 Discount Factor = \$840,360	\$0	\$840,360
Failure to Provide Rest Breaks	\$1,429,920 (damages) and \$250,800 (civil penalties) for a total of \$1,680,720 * .75 Discount Factor = \$420,180	\$0	\$420,180
Failure to Pay Minimum and Overtime Wages	\$199,900 (damages) and \$250,800 (civil penalties) for a total of \$370,700 *.75 Discount Factor = \$121,018.75	\$0	\$92,675
Failure to Provide Accurate Wage Statements	\$291,800 *.5 Discount Factor = \$145,900	\$0	\$145,900
Waiting Time Penalties	\$388,800 (damages) and \$8,100 (civil penalties) for a total of \$396,900 *.75 Discount Factor	\$0	\$99,225
Total Damages (excluding attorneys' fees and interest):		\$0	\$1,598,340

[Jackson Decl. ¶ 22.]

ii. Meal and Rest Period Claims

An employer's only obligation is to provide meal periods and authorize and permit rest periods,

1 not to police its employees to ensure that they take their lunches and breaks. (See *Brinker, supra*, 53
2 Cal.4th at 1028, 1034.)

3 Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that
4 employees did not take their meal periods within the first five hours of a shift, were less than thirty
5 minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees
6 were not authorized to take rest periods due to understaffing. Analysis of the sample time records
7 Defendant produced 25% sampling.

8 Although Defendant's time records may create a rebuttable presumption that it did not provide
9 meal periods on those occasions, in compliance with California law, *see, e.g., Donahue v. AMN Services,*
10 *LLC* (2021) 11 Cal.5th 58, other evidence could potentially rebut the presumption or minimizes the
11 potential value of the claims. [Jackson Decl. ¶ 24.]

12 First, Defendant alleged it provided the employees with its Employee Handbook, which sets forth
13 meal and rest period policies consistent with California law. To the extent Plaintiff may allege he felt
14 pressured by his duties or schedule, this evidence is rebuttable. [Jackson Decl. ¶ 24.]

15 The other alternative interpretation anticipated by Defendant is that it demonstrates that
16 Defendant, in fact, does provide employees with complete meal periods which could potentially
17 undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees
18 choose to take them a few minutes late or short on their own volition at other times. Furthermore, since
19 employees are not required in California to record their rest periods times, this claim may present
20 difficulties when proving the extent of any rest break violations. [Jackson Decl. ¶¶ 25-26.]

21 Third, the analysis revealed evidence of an approximate 26% violation rate regarding short meal
22 periods (i.e. less than 30 minutes) and potentially "late" meal periods (i.e. started after the fifth hour), but
23 most of those "meal period violations" are just a few minutes short or late. While there may be a limited
24 "de minimis" defense in California for meal period claims, *see Troester v. Starbucks Corp.* (2018) 5
25 Cal.5th 829, such evidence cuts both ways as it underscores the likelihood of personal choice by
26 employees electing to delay their breaks for a few minutes or knock off a minute or two early and get back
27 to work on their own, as opposed to an express policy that schedules breaks late or the presence of express
28 work deadlines that effectively forces employees to cut breaks short. Furthermore, in opposition to any

1 motion for class certification, Defendant represented it would present declarations from dozens of
2 employees attesting to Defendant’s lawful meal and rest period policies and practices, and how employees
3 personally chose to skip, delay or shorten breaks on their own without any influence from Defendant.

4 [Jackson Decl. ¶ 25.]

5 Therefore, based on the foregoing and the “Discounted Factors” described above, these claims
6 should be discounted. After taking into account the foregoing considerations and the Discount Factors,
7 Plaintiff assessed the combined value of the meal and rest period claims, inclusive of civil penalties, at
8 between **\$0** and **\$1,260,540**. [Jackson Decl. ¶ 27.]

9 More specifically, the high end of the realistic range for the meal period claim accounts for all the
10 Discount Factors to consider the best scenario of a trier of fact finding for liability and damages as half of
11 the 26% violation rate. [Jackson Decl. ¶ 26.]

12 For the rest periods, the risk to Plaintiff is greater due to the additional consideration of a lack of
13 rest period recordkeeping requirement. Therefore, Plaintiff estimates the best-case scenario at one quarter
14 of a 26% violation rate found in the meal period records. [Jackson Decl. ¶ 28.]

15 **iii. Minimum Wage and Overtime Claim**

16 Based on Plaintiff’s experiences and discussion with other employees, Plaintiff alleges that the
17 lack of sufficient staffing and relief coverage effectively forced Class Members to work off-the-clock
18 before the beginning of the shift for about 10-15 minutes per day, to complete a health care prior to be
19 allowed to clock-in. [Jackson Decl. ¶ 29.]

20 Employees are entitled to be paid for all “hours worked.” [See *Morillion v. Royal Packing Co.*
21 (2000) 22 Cal.4th 575, 582 (“hours worked” means the time during which an employee is subject to the
22 control of an employer, and includes all the time the employee is suffered or permitted to work, whether or
23 not required to do so.)] California Labor Code sections 1194, 1197, 1197.1, and 510 and the applicable
24 Wage Orders mandate that employees must be compensated for all hours worked at minimum wage or
25 greater, or at an overtime rate of 1.5 times the regular rate of pay for hours worked in excess of 8 in a
26 workday or 40 in a workweek. Moreover, IWC Wage Order 1-2001, § 7 requires employers to keep
27 accurate information with respect to time records showing when employees being and end each work
28 period, daily hours worked, and meal periods, except meal periods during which all operations cease.

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

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

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

7 In this case, common proof of unpaid minimum and overtime wages for “off-the-clock” work
8 could be difficult given the risks of certification as well as to demonstrate at trial for purposes of finding
9 class-wide liability and damages. As with the preceding claims, Plaintiff had to discount the value of the
10 minimum wage and overtime claim to account for the risks of continued litigation and Defendant’s
11 affirmative defenses. [Jackson Decl. ¶ 30.]

12 For example, Defendant will simply argue: (i) that Plaintiff will not be able to present any
13 evidence of a company-wide, uniform policy requiring employees to work off-the-clock and (ii) it cannot
14 be held liable because it did not know employees were actually performing work off-the-clock. [*Brinker*,
15 53 Cal. 4th at 1017 (“[w]ith respect to the third contested subclass, covering allegations that employees
16 were required to work “off-the-clock,” no evidence of common policies or means of proof was supplied,
17 and the trial court therefore erred in certifying a subclass”); *see also Garcia v. Sun Pacific Farming Coop.*,
18 No. CV F 06-0871 LJO TAG, 2008 U.S. Dist. LEXIS 111969 (E.D. Cal. May 14, 2008) (denying motion
19 for class certification of state wage and hour law and other claims allegedly resulting from off-the-clock
20 work).] [Jackson Decl. ¶ 31.]

21 Furthermore, although employees are permitted to arrive early at the job site, Defendant will argue
22 that its policies align with those in the *See’s Candy Shops, Inc.* matter in that employees were expressly
23 prohibited from working, when on premises before and after their scheduled shift, but allowed to pursue
24 personal activities. [See, e.g. *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907
25 (Court found employees were not subject to control of employer for time spent on employer’s premises
26 prior to the start of a shift, even when clocked in, because employer prohibited employees from
27 performing any work before scheduled start time and employees were free to pursue any personal
28 activities during that time before a shift.)) Moreover, as with the meal and rest break claims, Defendant
29 represented it will likely be able to garner numerous declarations in support of their defense that no such
30 off-the-clock work took place. [Jackson Decl. ¶ 32.]

1 Analysis of the sample of time cards and wage statements, and extrapolation to class members,
2 revealed that, in the aggregate, Defendant underpaid Employees by 4,796 hours with an average blended
3 hourly rate of \$25 equating to \$199,900 in damages. [Jackson Decl. ¶ 33.]

4 Based on certain Discount Factors (i.e. lack of common evidence such as express policies and
5 customer deadlines), the lack of documentary evidence, and Defendant's ability to garner numerous
6 declarations in support of its defense to this claim, Plaintiff's discount is reasonable. [Jackson Decl. ¶ 33.]

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. ¶ 34.]

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, not paid
28 for all hours worked, and not properly compensated for all overtime premium pay - the claim bears the

1 same risk for failure as the factual reasons discussed above. [Jackson Decl. ¶ 35.]

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

5 With the foregoing in mind, any such statutory penalties under Labor Code § 226 needs to be
6 adjusted to account for risks and uncertainties. Labor Code § 226(e)(1) provides that an employee is
7 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
8 a violation occurs and one hundred dollars (\$100) per employee for each violation in a "subsequent pay
9 period," not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
10 of costs and reasonable attorney's fees.

11 First, penalty provisions are limited to the one-year statute of limitation under California Code of
12 Civil Procedure §340. Assuming wage statements dating back one year prior to the filing of the complaint
13 are inaccurate, then the Defendant is liable for approximately \$291,800. Therefore, in light of these
14 considerations and the Discount Factors, Plaintiff assessed the settlement value of the wage statement
15 claim at between **\$0 and \$145,900**. [Jackson Decl. ¶ 37.]

16 **v. Waiting Time Penalties**

17 This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when
18 meal or rest breaks were not provided, and that Employees were not paid all minimum and overtimes
19 premium wages. On the presumption that 81 formerly employed Employees are owed some unpaid
20 wages, then the highest theoretical amount for potential waiting time penalties is calculated as follows: 81
21 former employees x 30 days x 8 hours per day x \$20 average hourly wage = \$388,800. However, for the
22 reasons discussed above, Defendant will argue that it will be difficult for Plaintiff to present substantial
23 common evidence that he and the putative class members were not paid all wages due at the time of
24 termination as to all formerly employed Employees. [Jackson Decl. ¶ 38.]

25 Additionally, the current law for violations of Labor Code's meal break provisions do not entitle
26 employees to pursue the derivative waiting time and itemized wage statement penalties. [See *Naranjo v.*
27 *Spectrum Security Services, Inc., supra*, 40 Cal.App.5th 444.) As such, Plaintiff estimates that the
28 reasonable case scenario is 50% of the theoretical best-case scenario of \$388,800. Therefore, a reasonable

range of potential waiting time penalties is **\$0 to \$99,225**. [Jackson Decl. ¶ 39.]

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

As the above analysis shows, Plaintiff's Counsel objectively and knowledgably balanced the strengths and weaknesses of the claims against the risk of continued litigation and was able to determine the realistic range of settlement recovery of \$0 and \$1,598,340. Therefore, in this case, the settlement value of \$167,500 falls well within the range of reasonableness, and is thus fair, adequate, and reasonable.

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

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

The proposed Class Notice will be mailed to the Class by First Class mail and will include information regarding the nature of the lawsuit, a summary of the Settlement's terms, the class definition, the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Before mailing the Class Notice, the Administrator will verify the addresses produced by Defendant for each Class Member using the National Change of Address Database. In the event Class Notices are returned as undeliverable, the Administrator will attempt to locate a current address through the use of skip tracing or another automated search. [Jackson Decl., **Exhibit A** (¶ 9.)] This method is designed to maximize the Class Member response rate while ensuring cost effective administration of the

⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. [Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986).]

1 settlement. In past cases, similar notice methods to class members have resulted in strong response rates.
2 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy
3 due process and the requirements of California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*,
4 41 Cal. 3d 460, 485 (1986) (The class notice must “fairly apprise the class members of the terms of the
5 proposed compromise and of the options open to dissenting class members.”).]

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

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

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

21 [Declaration of Gary Gonzalez, ¶¶ 1-7.]

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

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

26 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
27 took the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
28 Plaintiffs will seek Court approval of attorneys’ fees of \$55,833.33 which is 33.33% of the Maximum

1 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the
2 time of the Final Approval Hearing.

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

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

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

13 Class actions are statutorily authorized "when the question is one of common or general interest,
14 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
15 court." [Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008) ("*Lee*").]
16 Class certification is appropriate when there is an "ascertainable class and a well-defined community of
17 interest among class members." [*Sav-On Drug Stores, Inc. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004)
18 ("*Sav-On*").] Class treatment is appropriate even if class members at some point may be required to make
19 an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App.
20 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

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

23 Whether a class is "ascertainable" within the meaning of Section 382 is "determined by
24 examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class
25 members." [*Lee*, 166 Cal. App. 4th at 1334.] Class members are ascertainable where they may be readily
26 identified without unreasonable expense or time by reference to official records. [*Id.*] The community of
27 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class
28 representative with claims or defenses typical of the class; and (3) a class representative and counsel who

1 can adequately represent the class. [Cal. Civ. Proc. Code § 382.] Expounding on the element of
2 predominance, the California Supreme Court noted that the “ultimate question” is whether “the issues
3 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
4 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
5 litigants.” [Brinker, 53 Cal. 4th at 1021–22.]

6 The proposed Settlement Class consists of all hourly employees employed by Defendant in
7 California during the Class Period, which is October 22, 2016 through the date the Court enters an order
8 granting preliminary approval of the Settlement. Defendant’s payroll records show that there are
9 approximately 147 employees at the time of mediation in the Class, making joinder of all Class Members
10 impracticable. Further, because all Class Members are either current or former employees of Defendant,
11 the class is readily ascertainable from Defendant’s regular business records.

12 Conditional certification of the proposed group of Class Members is warranted here given the
13 relatively relaxed standard for certification at the preliminary approval stage. [See *Dunk v. Ford Motor*
14 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
15 settlement cases).]⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
16 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
17 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
18 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

19 Here, the California statutes relating to Plaintiff’s claims apply to all Class Members. Plaintiff
20 contends that Defendant’s policies and practices apply class wide and liability can be determined by facts
21 common to all class members, i.e., common policies or de facto common practices that deny Class
22 Members’ meal and rest periods, and pay for all hours worked. The wage and hour issues are numerous
23 and substantial, and a class action is the most advantageous method of adjudicating the claims of the
24 Class. For example, Plaintiff contends that his meal and rest period claims are readily certifiable because
25 whether Defendant’s policies and practices violate the law “is by its nature a common question eminently
26

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

1 suited for class treatment.” [Brinker, 53 Cal. 4th at 1033; see *Faulkinbury v. Boyd & Assocs., Inc.*, 216
2 Cal. App. 220, 237 (2013) (“[Defendant’s] liability, if any, would arise upon a finding that its uniform rest
3 break policy, or lack of policy, was unlawful.”); *Benton v. Telecom Network Specialists, Inc.*, 200 Cal.
4 App. 4th 701 (2013) (reversing denial of class certification and remanding where employer failed to adopt
5 any policy authorizing and permitting meal and rest breaks).]

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

12 Additionally, Plaintiff is represented by competent counsel who has extensive experience in
13 litigating wage and hour class action cases. [Jackson Decl. ¶¶ 17-20.] Plaintiff’s Counsel has successfully
14 briefed, argued, certified, and gained state court settlement approval of the same or similar class-wide
15 causes of action that are at issue in this case. Plaintiff’s Counsels’ wage and hour class action expertise
16 establishes that they are well qualified to represent the interests of this Class. [*Id.*] A class action is
17 superior to a multitude of individual lawsuits. Given the size and amount of each individual Class
18 Member’s claim, Class Members likely have little incentive to litigate their claims on an individual basis
19 because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs
20 any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

21 **IV. CONCLUSION**

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

24 Dated: May 3, 2022

JACKSON LAW, APC

25 By: /s/ Armond M. Jackson

26 Armond M. Jackson, Esq.

27 Andrea M. Fernandez, Esq.

28 Anthony S. Filer Jr., Esq.

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