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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

JESSICA BARACKMAN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,,

Plaintiff,

vs.

TEAZ N PLEAZ, INC., a California
Corporation dba SEDUCTIONS; and DOES 1
through 50, inclusive,

Defendant.

Case No. SC 20200179

Action Filed: December 21, 2020

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

Date: October 8, 2021
Time: 1:30 p.m.

Judge: Hon. Michael J. McLaughlin
Dept.: 4

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1 I. INTRODUCTION

2 Plaintiff JESSICAN BARACKMAN (“Plaintiff”) seeks preliminary approval of the Stipulation
3 of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for approximately 167 members of the Settlement Class. The basic
5 terms of the Agreement provide for the following:

6 1. The “**Settlement Class**” and “**Settlement Class Period**” shall mean with respect to the
7 class, all of defendant TEAZ N PLEAZ, INC. dba SEDUCTIONS, (“Defendant”) current and former
8 non-exempt employees employed in California October 12, 2016 and March 10, 2021 (“Class Period”).
9 The Settlement Class excludes any person who submits a timely and valid request for exclusion.
10 Agreement at §§ I (CC).

11 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all of Defendant’s current and
12 former non-exempt employees employed in California between October 12, 2019 and March 10, 2021
13 (“PAGA Period”). Agreement at §I(T).

14 3. The “**Total Settlement Amount**” is Two Hundred Twenty-Five Thousand Dollars
15 (\$225,000). Agreement at §§I (GG). The releases granted to Defendant only become effective upon
16 the funding of the Total Settlement Amount. §III(B). The Total Settlement Amount is non-reversionary
17 and includes the following:

18 a. A “**Class Representative Service Award**” in the amount of \$10,000 to Plaintiff
19 for his services on behalf of the Settlement Class, and for agreeing to a broad general release of
20 California Civil Code section 1542. Agreement at § III(M)(9).

21 b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Total
22 Settlement Amount for attorney’s fees, currently estimated to be \$75,000 **and** litigation costs and
23 expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §III(M)(10).

24 c. A “**PAGA Settlement**” of \$10,000 shall be allocated from the Total Settlement
25 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
26 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA
27

28 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 Payment”) the California Labor and Workforce Development Agency. The Settlement Administrator
2 shall distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to members of the
3 Aggrieved Employees. Agreement at §III(M)(11).

4 d. And “**Settlement Administration Costs**” not to exceed \$8,500 payable to the
5 proposed Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice
6 Packet and Individual Settlement Payments. Agreement at §III(M)(12).

7 4. The “**Net Settlement Fund**” of approximately \$116,500.00 (Total Settlement Amount
8 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
9 Settlement Administration Costs) which will be allocated to all participating members of the Settlement
10 Class on a pro-rata basis according to the number of Workweeks each Settlement Class member
11 performed during the Class Period. The entire Net Settlement Amount will be paid to all Settlement
12 Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
13 Share of **\$687.60**. Agreement at §III(M)(1); Zakay Dec., ¶ 5.

14 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
15 Settlement Class is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
16 length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the
17 Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs
18 pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class
19 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
20 certification being denied or of Defendant prevailing at trial. Zakay Dec., ¶ 5.

21 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
22 approval under California law and falls within the range of reasonableness. The average Individual
23 Settlement Share to the Settlement Class meet or exceeds awards in similar wage and hour class actions.
24 Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly,
25 Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement. Zakay Dec.,
26 ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates a chain of adult novelty and lingerie brick and mortar stores and online retail stores located throughout the United States with three locations in California, including in El Dorado County. Zakay Dec., ¶ 7.

Plaintiff worked for Defendant as an hourly, non-exempt manager between January 2018 and his termination in June 2020. As a non-exempt employee, Plaintiff was subject to Defendant's written policies and procedures and general employment practices. Zakay Dec., ¶ 8.

Generally, Plaintiff claims that Defendant failed to pay her for all hours worked, including for overtime, failed to provide complaint meal and rest periods, failed to reimburse mandatory business expenses, failed to provide accurate itemized wage statements, and failed to pay all wages due at the time of her separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws. Defendant asserts that it had clear compliant policies and procedures such as for taking rest and meal periods as outlined in its policies and additional technical assistance for accurate time keeping. Defendant raised several other significant defenses to Plaintiff's claims, including but not limited to, lack of any evidence of overtime and minimum wage violations, and the opportunity and encouragement to take all meal and rest-breaks compliant with its policies and the law. Additionally, Defendant maintains that any claims that Plaintiff required use of her personal cell phone are unsupported by the facts. Zakay Dec., ¶ 9.

On October 12, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). Zakay Dec., ¶ 10.

On December 21, 2020, Plaintiff filed a class action complaint in the El Dorado Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime

1 wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal
2 periods in violation of California Labor Code sections 226.7 and 512; (5) failure to provide required
3 rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure to reimburse
4 employees for required business expenses in violation of California Labor Code sections 2802; (7)
5 failure to provide accurate itemized wage statements in violation of California Labor Code section 226;
6 (8) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203;
7 and (9) violations of the California Labor Code Private Attorney General Act (“PAGA”). Zakay Dec.,
8 ¶ 11.

9 After the Action was filed, the Parties met and conferred and agreed to mediate this action as
10 deemed in the best interest of the parties in particular in light of the many anticipated factual disputes.
11 In anticipation of mediation, the Parties engaged in formal and informal discovery. To prepare for
12 mediation, Defendant agreed to informally produce certain documents and data points subject to the
13 mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data.
14 As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting Group, to analyze Defendant’s
15 time and payroll data. Defendant, on the other hand, served Plaintiff with formal written discovery, to
16 which Plaintiff responded in advance of the mediation. Zakay Dec., ¶ 12.

17 On March 10, 2021, the Parties participated in a full day mediation with (Ret.) Hon. Carl West.
18 After arms-length negotiations and bargaining, the parties reached an agreement to settle and signed a
19 Memorandum of Understanding. After reaching an agreement in principle, the parties drafted and
20 negotiated a long-form settlement agreement, which is the subject of the instant motion. Zakay Dec., ¶
21 13.

22 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

23 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s
24 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As
25 part of the interview process, Plaintiff produced documents related to her employment for Defendant,
26 including portions of Defendant’s handbooks, compensation policies and time and payroll records. At
27 the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further
28 inquiry. Zakay Dec., ¶ 14.

1 Class Counsel reviewed and analyzed the documents further, and determined the documents
2 appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, provide
3 compliant meal and rest periods. Shortly thereafter, Class Counsel summarized the known factual and
4 legal issues in the PAGA Notice addressed to the LWDA. Approximately 65 days later, Class Counsel
5 filed this class action. Zakay Dec., ¶ 15.

6 After filing the complaint, and in light of the many anticipated factual disputes, the parties agreed
7 it would be in the best interest of both parties to mediate the matter. To prepare for mediation, Class
8 Counsel requested several documents and data points to further evaluate Plaintiff's claims and
9 Defendant's liability exposure to the Settlement Class members. In response to Class Counsel's
10 request, Defendant produced the time and payroll records for the Settlement Class members, aggregate
11 workweek and pay period data for the Settlement Class, and copies of applicable handbooks, policies,
12 and agreements containing, *inter alia*, compensation, timekeeping and, meal and rest period policies.
13 In total, Defendant produced hundreds of pages containing thousands of unique cells of time and payroll
14 data for Class Counsel to analyze. Zakay Dec., ¶ 16.

15 Class Counsel then retained the statisticians and economists at Berger Consulting Group
16 ("BCG"), to evaluate the Settlement Class Members' payroll and time data. BCG provides data
17 analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's
18 team of financial and data analysts are credentialed and experienced experts in their fields and have
19 provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to
20 analyze Defendant's time and payroll data. Zakay Dec., ¶ 17.

21 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
22 models. Among other things, BCG determined the approximate number of work shift, work weeks,
23 pay periods, average rate of pay, average length of shift and average number of hours worked per week
24 and pay period during the Class Period. BCG also estimated the number of missed or late meal and
25 rest periods, the amount of paid missed meal period premiums paid during the Class Period. Zakay
26 Dec., ¶ 18.

27 In advance of mediation, Class Counsel created a damage model predicated on BCG analysis.
28 Class Counsel's model calculated Defendant's potential liability exposure while accounting for the

1 uncertainties of continued litigation. This damage model informed and guided Class Counsel during
2 the mediated settlement discussions. Zakay Dec., ¶ 19.

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

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

15 On March 10, 2021, the Parties conducted a full day of mediation with (Ret.) Carl West, a highly
16 regarded mediator, and former Los Angeles County Superior Court Judge. Hon. West helped to
17 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
18 sides. The Parties made substantial progress with Judge West's assistance. Namely, the parties
19 exchanged information regarding their respective claims and defense, including their respective
20 evaluation of the damages. After nearly eight hours arm's length and adversarial negotiations, the
21 mediation nearly concluded without a settlement. However, at the conclusion of the mediation, Judge
22 West issued a proposal for settlement that the Parties accepted. The complete and final terms of the
23 Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
24 constitutes a fair, adequate, and reasonable compromise of the claims at issue. Zakay Dec., ¶ 21.

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

26 1. The Composition of the Settlement Class Members

27 The proposed Settlement Class consists of all Defendant's current and former non-exempt
28 employees employed in California between October 12, 2016 and March 10, 2021. The Settlement

1 Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I
2 (FF). There are approximately 167 members of the Settlement Class that worked an estimated 3,100
3 workweeks during the Class Period. Agreement at §III(A)(2).

4 2. The Settlement Consideration

5 The Parties agreed to settle the underlying class claims in exchange for the Total Settlement
6 Amount of \$225,000. The Total Settlement Amount Fund: (1) Individual Settlement Payments to the
7 Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services on
8 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
9 Settlement in the amount of \$10,000; (4) Settlement Administration costs estimated at \$8,500, (5) Class
10 Counsel Award in the amount of \$90,000, comprised of attorneys' fees equal to one-third of the Total
11 Settlement Amount estimated to be at least \$75,000 and an estimated \$15,000 for actually incurred
12 litigation expenses. Agreement at §III(M).

13 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
14 PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed
15 to each participating member of the Settlement Class Member. Agreement at §III(M)(1). There is no
16 reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes.
17 Agreement at §III(A)(1).

18 3. Formula for Calculating Individual Settlement Payments

19 Each participating member of the Settlement Class will receive an Individual Settlement
20 Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each
21 member of the Settlement Class worked for Defendant during the Class Period. Using the Class Data,
22 the Settlement Administrator shall add up the total number of Workweeks for the entire Settlement
23 Class. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment
24 will be calculated by multiplying the NSF by a fraction, the numerator of which is the Settlement Class
25 Member's total number of Workweeks, and the denominator of which is the total number of
26 Workweeks of all Settlement Class Members. Agreement at §III(M)(1).

27 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
28 withholdings (e.g., employee payroll taxes, etc.). Agreement at §III(M)(3). Individual Settlement

1 Payments for members of the Settlement Class who submit valid and timely requests for exclusion will
2 be redistributed to Settlement Class member who do not submit valid and timely requests for exclusion
3 on a pro rata basis. Agreement at §III(M)(1).

4 Given that there are approximately 167 Settlement Class Members, the average gross recovery
5 is approximately \$687.60 (Net Settlement Amount divided by Settlement Class Members). This
6 average net recovery exceeds many wage and hour class action settlements approved by California state
7 and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego Superior Court Case
8 No. 37-2018-00043601 (average net recovery of \$283.35); and *Crawford et al. v. Outlook Amusements,*
9 *Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

10 4. Release by Participating Settlement Class Members

11 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
12 release the Released Parties from the Released Claims, defined as all class claims alleged in the
13 operative complaint which occurred during the Class Period, and expressly excluding all other claims,
14 including claims for vested benefits, wrongful termination, unemployment insurance, disability, social
15 security, workers' compensation, and class claims outside of the Class Period. Agreement at §I(Z).

16 5. Release by the LWDA and the Aggrieved Employees

17 Generally, upon the Funding Date the LWDA and the Aggrieved Employees will release all
18 PAGA Claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which
19 occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested
20 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
21 compensation, and PAGA claims outside the PAGA Period. Agreement at §§I(AA).

22 **III. ARGUMENT**

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

24 The proposed Settlement, including a Total Settlement Amount of \$225,000 meets the standards
25 for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy.
26 (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation
27 and settlement are the preferred means of dispute resolution.")) In California, class action settlement
28 approval requires an early "preliminary" review by the trial court and a subsequent "final" review after

1 notice of the settlement has been distributed to class members for their comments and objections.
2 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
3 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
4 inquire into the fairness of the proposed settlement”).)

5 Although California Rule of Court Rule 3.769 does not provide detail as to the scope of review
6 of the proposed settlement, preliminary approval is warranted if the settlement falls within a
7 “reasonable range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27
8 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002)
9 (“Newberg”).) Reasonableness and fairness are presumed where: (1) the settlement is reached through
10 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court
11 to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.*
12 (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public
13 policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law
14 wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118
15 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners*
16 *for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation
17 and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
18 action litigation”).)

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

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

27 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
28 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
3 § 11.51.)

4 The Parties participated in mediation with highly respected mediator and former Los Angeles
5 Superior Court judge (Ret.) Hon. Carl West. Judge West managed the Parties' expectations and
6 provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*
7 *Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
8 (mediator's participation weighs considerably against any inference of a collusive settlement);
9 *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-
10 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
11 undue pressure.")) At all times, the Parties' negotiations were at an arm's length, adversarial and non-
12 collusive. In fact, despite a full day of mediated negotiations, the Parties reached an impasse and the
13 mediation session nearly concluded without a settlement. The matter resolved only when Judge West
14 issued a mediator's proposal that the Parties accepted. Judge West only arrived at his proposal after
15 hearing arguments, reviewing evidence and evaluating the Parties' respective claims and defenses.

16 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
17 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
18 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
19 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
20 fair, adequate and represent a reasonable compromise of the claims at issue. Zakay Dec., ¶ 23.

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

23 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
24 the factual and legal issues in dispute. In addition to informal discovery, document review, data
25 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
26 two cases are identical, this research provided Class Counsel with a marker to inform settlement
27 discussions and, ultimately, to measure this settlement against. The investigation allowed to Class
28 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel

1 in settlement discussions that culminated in the proposed settlement now before the Court.

2 Class Counsel only agreed to enter the Settlement following their thorough investigation and
3 evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace
4 for similar settlements, and in light of the risk of significant delay, uncertainty associated with litigation,
5 and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in
6 the best interests of Settlement Class. Because the Settlement's terms are fair, reasonable, and
7 adequate, the Court should preliminarily approve the Settlement. Zakay Dec., ¶ 24.

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

9 The Total Settlement Amount of \$225,000 is well within the range of reasonable for preliminary
10 approval. To determine whether a settlement is fair and reasonable, the court should "consider enough
11 information about the nature and magnitude of the claims being settled, as well as the impediments to
12 recovery, to make an independent assessment of the reasonableness of the terms to which the parties
13 have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this
14 determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement
15 is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not
16 require any such explicit statement of value; [they] require[] a record which allows an understanding
17 of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v.*
18 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The
19 reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery
20 plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a
21 settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized
22 sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael*

23 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
24 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184
("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in
itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers*
for Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than
the individual component parts, that must be examined for overall fairness").

1 *Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

4 The Total Settlement Amount of \$225,000 is fair and reasonable considering the nature and
5 magnitude of the claims being settled and the various factual and legal issues in disputes and potential
6 impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop varied economic
7 damages models measuring Defendant's liability exposure while accounting for the uncertainties of
8 continued litigation. The various models were informed by Class Counsel's investigation, including the
9 analysis of time and payroll data. For the Class, Plaintiff estimated that Defendant was subject to
10 maximum liability for *damages* in the amount of \$666,867 consisting of \$59,379 for unpaid wages,
11 \$570,038 for meal and rest break periods, and \$37,450 for unreimbursed expenses. In addition,
12 Plaintiffs calculated that Defendants could be liable for \$45,050 for wage statement penalties and
13 \$600,576 waiting time penalties. Finally, Plaintiffs' expert calculated that Defendants could be liable
14 for PAGA penalties in an amount exceeding \$802,450. Plaintiff's claims and damages can be broken
15 down as follows:

16 (1) Estimated Damages for Unpaid Wages

17 Plaintiff alleges that Defendant required Plaintiff to work off the clock without compensation.
18 Specifically, Plaintiff alleges that Defendant required Plaintiff to perform work before her shift started
19 and after her shift ended while clocked out and without compensation. Consequently, Plaintiff alleges
20 that she is owed compensation for the off-the-clock work performed. Zakay Dec., ¶ 25.

21 Defendant has denied these claims. Defendant maintains that it paid Plaintiff for every minute that
22 they claimed they worked, and that it instructed Plaintiff to clock in as soon as she arrived at the store and
23 refrain from performing any work unless clocked-in. If successful, Defendant availed itself to a complete
24 defense of Plaintiff's unpaid wages claim. Plaintiff estimated the exposure for this claim was
25 approximately \$59,379. Zakay Dec., ¶ 26.

26 (2) Estimated Damages for Meal Period

27 Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff
28 alleges that because of their rigorous work schedules, Plaintiff and the Settlement Class Members

1 regularly worked through what should have been off-the-clock and duty-free meal periods without
2 compensation. Consequently, Plaintiff alleges that she is owed meal period premiums and
3 compensation for the off-the-clock work performed during what should have been her duty-free meal
4 periods. Zakay Dec., ¶ 27.

5 Defendant has denied these claims. Defendant maintains that it paid Plaintiff for every minute that
6 they claimed they worked. Defendant argued that it fully complied with California meal period laws and
7 maintained legally compliant policies and practices as outlined in its Handbook and other policies. Courts
8 have found that where an employer's meal period policies are compliant, individualized issues exist as to
9 the reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*,
10 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees' time punches for meal
11 periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as
12 to the reasons for the late meal periods). Defendant argued that it not only provided meal and rest breaks
13 but also installed technical enhancements that reminded employees to timely take their meal-and rest
14 breaks. If successful, Defendant availed itself to a complete defense of Plaintiff's meal period claim.
15 Plaintiff estimated the exposure for this claim was approximately \$285,019. Zakay Dec., ¶ 28.

16 (3) Estimated Damages for Rest Period Violations

17 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff
18 alleged that as a result of their rigorous work schedule class members were not able to take timely and duty-
19 free rest periods.

20 Again, Defendant denied liability and asserted that they maintained legally compliant rest period
21 policies and practices throughout the Class Period. Moreover, Defendant argued that it not only provided
22 all rest breaks but reminded Plaintiff and employees to take them. Plaintiff recognizes the evidentiary
23 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on
24 Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely
25 would have argued that only a small number of Class Members missed their rest breaks. Certification likely
26 would have required depositions of Class Members who provided declarations, and Defendant surely would
27 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
28 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11

1 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an
2 illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”);
3 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed,
4 Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”).
5 Accordingly, the rest break claim was subject to significant defenses. If successful, Defendant availed
6 itself to a complete defense of Plaintiff’s rest period claim. Plaintiff estimated the exposure for this
7 claim was approximately \$285,019. Zakay Dec., ¶ 29.

8 (4) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

9 Plaintiff alleged that Defendant required the Settlement Class Members to use their personal cell
10 phone to obtain and view work schedules and remain in communication with supervisors during their
11 work shifts.

12 Again, Defendant vigorously denied any liability for this claim. Defendant maintains that
13 employees were never required to use their personal cell phone for work at the store, which offered
14 telephone service for any employees work related use, if any. Instead, Defendant argued that any cell
15 phone use was completely voluntary and for their own personal not work related use. Plaintiff
16 estimated the exposure for this claim was approximately \$37,450. Zakay Dec., ¶ 30.

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

18 Generally, Plaintiff alleges that Defendant’s aforementioned violations resulted in derivative
19 violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of
20 various penalties and weighed the potential recoveries against probable defenses. Specifically,
21 Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time
22 penalties under Cal. Lab. Code § 203. Additionally, Defendant could argue that Plaintiff could not show
23 that Class Members suffered an “injury” because of wage statement violations, as required by Cal. Lab.
24 Code § 226. Defendant could also argue that that meal and rest period violations do not entitled
25 employees like Plaintiff and the Settlement Class Members to pursue the derivative waiting time and
26 itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.
27 App. 5th 444; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the
28 Settlement Class arguably could have seen a payout of more than \$645,000 for these penalties if

1 Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they
2 failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging precedent
3 to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist.
4 LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims);
5 *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient
6 evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given
7 that they depended on proving the underlying claims, which according to Defendant were not supported
8 by the facts. Nevertheless, Plaintiff estimated the potential exposure for these claim, if substantiated,
9 was approximately \$645,626. Zakay Dec., ¶ 31.

10 (6) Conclusion

11 In conclusion, the settlement of \$225,000.00 represents almost **33.7%** of the value of the
12 maximum *damages* at issue. Even when including the penalties for Plaintiff's claim for wage statement
13 violations and waiting time penalties under Labor Code Section 226 and 203, the settlement represents
14 17.1% of the maximum potential liability, assuming all of these amounts could be proved at trial. This
15 is well within the bounds of reasonableness. (*See Viceria v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016
16 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6%
17 of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL
18 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the
19 estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765
20 at * 4 (Approving California wage and hour misclassification settlement where the class received
21 approximately 7.3% of the estimated trial award was within the "range of reasonableness.")

22 (7) Defendant's PAGA Exposure

23 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties arising
24 from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendant's PAGA
25 exposure at approximately \$802,450. Zakay Dec., ¶ 31.

26 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
27 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
28 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties

1 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
2 civil penalties, even when Labor Code violations are established. *See also In re Nordstrom Com. Cases*,
3 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
4 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
5 6, 2016) (PAGA penalties denied after trial).

6 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
7 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
8 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
9 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
10 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
11 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
12 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the
13 employment practices complied with all applicable Labor Laws. In addition to those arguments
14 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
15 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
16 rest period claims. In all, Plaintiff's PAGA liability exposure is hotly contested. *Zakay Dec.*, ¶ 32.

17 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
18 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
19 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
20 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
21 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
22 penalties were reduced by 90%

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

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated in *Duran v. U.S. Bank National*
3 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
4 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any,
5 that employees might not take their breaks were predominantly individualized questions of fact not
6 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
7 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
8 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
9 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
10 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
11 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
12 period claims based on the predominance of individual issues.) Plaintiff is confident about the strength
13 of her claims. Nonetheless, Plaintiff recognizes that Defendant has factual and legal defenses that, if
14 successful, would potentially defeat or substantially impair the value of Plaintiff’s lawsuit.
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. Zakay Dec., ¶ 33.

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

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

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

28 Finally, continuing to litigate this action would require continued and extensive resources

1 coupled with significant Court time to proceed through trial and post-trial motions; which can often
2 take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates
3 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
4 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
5 Defendant would appeal any favorable judgment. Zakay Dec., ¶ 34. “Avoiding such a trial and the
6 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 In this matter, Class Counsel negotiated a Total Settlement Amount of \$225,000 that is roughly
11 33.7% Defendant’s maximum liability exposure for damages. Given the amount of the settlement here,
12 as compared to potential value of the claims, offset by the various inherent risks to continued litigation,
13 the settlement is fair and reasonable. Zakay Dec., ¶ 35.

14 **B. The Proposed Notice Informs the Class about the Case and Settlement**

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

25 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement

27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 Class of their rights and remedies in this action. The Settlement Administrator will first verify
2 addresses, then mail the proposed Class Notice to entire Settlement Class. The Notice will include
3 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,
4 the class definition, the procedure and time period within which to requests for exclusions or objections
5 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
6 payments, and the terms and scope of the Released Claims. Agreement at §III(L). This method was
7 negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement
8 Class while ensuring cost effective administration of the Settlement. Zakay Dec., ¶36.

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

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

14 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
15 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
16 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
17 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
18 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
19 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
20 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
21 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
22 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
23 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
24 (2009) 175 Cal.App.4th 785.)

25 Approximately 167 members of the Settlement Class will share in the estimated \$116,500 Net
26 Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval,
27 therefore, the Settlement provides for a Class Representative Service Award of \$10,000⁴ for Plaintiff.

28 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No.

1 The service award is fair and reasonable compensation for Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement
4 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to
5 provide Defendant a general release of all claims arising out of his employment. Zakay Dec., ¶ 38.

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
8 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
9 Class Representative Service Award. Zakay Dec., ¶ 39.

10 **D. The Court Should Preliminarily Approve the Negotiated Class Counsel Award**

11 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
12 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
13 California courts routinely award attorneys' fees equaling one-third or more of the potential value of
14 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
15 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the

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

lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Total Settlement Amount and litigation costs and expenses not to exceed \$15,000. Agreement at §III(M)(10). In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. Zakay Dec., ¶ 40.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. Zakay Dec., ¶ 41.

E. California Law Authorizes Provisional Certification for Settlement Purposes

For the purpose of Settlement only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Settlement Class is appropriate. Zakay Dec., ¶ 42.

1. The California Standard for Class Certification

Cal. Rules of Court, 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n. 19. Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment

1 is appropriate even if class members at some point may be required to make an individual showing as
2 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
3 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

19 Generally, the proposed Settlement Class consists of all of Defendant’s current and former
20 California employees during the Class Period. Defendant’s records show that the Settlement Class
21 Members consists of approximately 167 individuals, making joinder of all Settlement Class Members
22 impracticable. Further, because all Settlement Class Members are Defendant’s current and former
23 employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll
24 records. *Zakay Dec.*, ¶ 43.

25 The California statutes relating to each of Plaintiff’s claims apply with equal force and effect to
26 the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and
27 Defendant’s liability can be determined by facts common to all members of the class. Defendant agrees
28 to class certification for purposes of this settlement only. The wage and hour issues are both numerous

1 and substantial, and a class action is the most advantageous method of dealing with the claims of the
2 Settlement Class. Zakay Dec., ¶ 44.

3 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
4 from the same factual basis and are based on the same legal theories applicable to the other Class
5 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
6 Class. Plaintiff alleges that they were injured by the same company-wide practices to which the
7 proposed Settlement Class was subject and seeks the same relief. Plaintiff has already demonstrated
8 her ability to advocate for the interests of the Settlement Class by initiating this litigation, undertaking
9 discovery, and evaluating the proposed settlement to assure that it is fair. Again, the Defendant agrees
10 for the purposes of this settlement only that Plaintiffs assert claims that are typical of the Settlement
11 Class, including claims for meal and rest break practices and reimbursement. Zakay Dec., ¶ 45.

12 Additionally, Plaintiff is represented by competent Class Counsel who has extensive experience
13 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
14 gained state court settlement approval of the same class-wide causes of action that are at issue in this
15 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
16 represent the interests of this Class. Zakay Dec., ¶¶ F.

17 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
18 each individual Settlement Class Member's claim, Class Settlement Members likely have little
19 incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal
20 commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment
21 is superior to individual, case-by-case adjudication. Zakay Dec., ¶ 46.

22 IV. CONCLUSION

23 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
24 presented the materials and information necessary for preliminary approval, the Parties request that
25 the Court preliminarily approve the settlement.

26 Dated: September 10, 2021

ZAKAY LAW GROUP, APC

27 By: 
28 Shani O. Zakay, Esq.