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

JUAN SALVADOR VILLANUEVA,
YESENIA BERMUDEZ, ISABEL
HERRERA, as individuals and on behalf of
other similarly situated employees,

Plaintiff,
vs.

LA CARRETA SUPERMARKETS, INC., a
California corporation, and DOES 1-50,
inclusive,

Defendant.

Case No.: 30-2020-01166375-CU-OE-CXC

Assigned for all purposes to:
Hon. Lon F. Hurwitz
Dept. CX 103

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 14, 2023
Time: 1:30 p.m.
Place: Department CX 103

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. FACTS AND PROCEDURE..... 2

 A. Summary of the Litigation. 2

 B. The Parties Settled After the Mediation. 4

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

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

 2. Formula for Calculating Settlement Payments..... 4

 3. Release by the Participating Class Members..... 5

III. ARGUMENT..... 5

 A. The Court Should Preliminarily Approve the Proposed Settlement. 5

 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable..... 5

 2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and Legal Issues and Objectively Assessed the Settlement’s Reasonableness. 7

 3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All Parties Were Represented by Experienced Counsel..... 8

 4. The Proposed Settlement Is Reasonable Given the Strengths of Defendant’s Defenses and the Risks and Expense of Continued Litigation..... 8

 i. Wage Statement Data and Range of Damages.....10

 ii. Meal and Rest Period Claims.....11

 iii. Wage Statement Claim.....12

 iv. Waiting Time Penalties.....13

 5. The Settlement Amount Is Fair and Reasonable Compensation for the Class..... 13

 B. The Proposed Notice Properly Informs Class Members About the Settlement. 13

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

 D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs. 15

 E. California Law Authorizes Provisional Certification for Settlement Purposes. 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. The California Standard for Class Certification 15

2. The Proposed Settlement Class is Ascertainable, and There is a Well-Defined
Community of Interest Among Class Members. 16

IV. CONCLUSION 18

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) 10

4 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151

5 (2000) 6

6 *Benton v. Telecom Network Specialists, Inc.*, 200 Cal. App. 4th 701 (2013) 17

7 *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008)..... 15

8 *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975) 13

9 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009)..... 6

10 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010)..... 6, 14

11 *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962)..... 13

12 *Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008)..... 15

13 *Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009). 14

14 *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (same)..... 8

15 *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473 (E.D. Cal.

16 June 30, 2016)..... 16

17 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996) 6, 16

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20 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) 8

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23 *Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). 9

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26 *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008)..... 15

27 *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409–10 (2010)..... 9

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1	<i>Newman v. Stein</i> , 464 F.2d 689, 693 (2d Cir.)	9
2	<i>North County Contractor’s Ass’n, Inc. v. Touchstone Ins. Servs.</i> , 27 Cal. App. 4th 1085,	
3	1089–90 (1994).....	6
4	<i>Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco</i> , 688 F.2d 615,	
5	628 (9th Cir. 1982)	9
6	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948, 958 (9th Cir. 2009).....	14
7	<i>Sav-On Drug Stores, Inc. v. Super. Ct.</i> , 34 Cal. 4th 319, 326 (2004).....	15, 16
8	<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231, 236 (1976).....	6
9	<i>State v. Levi Strauss & Co.</i> , 41 Cal. 3d 460, 482 (1986).....	8, 14
10	<i>Troester v. Starbucks Corp.</i> (2018) 5 Cal.5th 829	12
11	<i>Trotsky v. Los Angeles Fed. Savings & Loan Ass’n</i> , 48 Cal. App. 3d 143, 151–52 (1975).....	15

STATUTES

14	Cal. Lab. Code section 203.....	7, 10
15	Cal. Lab. Code section 226.....	12
16	Labor Code section 226(a).....	3
17	Cal. Civ. Proc. Code § 382	15, 16
18	Cal. Lab. Code section 2699(e)	10

RULES

21	Rule 3.769(b) and (c)	6
22	Rules 3.769(c)-(g)	6
23	Rule 3.769(f).....	6
24	California Rule of Court (“Rule”), Rule 3.769.....	5
25	C.R.C. 3.776(e)-(f)	14
26	Federal Rules of Civil Procedure, Rule 23	16

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TREATISES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Juan Salvador Villanueva, Yesenia Bermudez, and Isabel Herrera (collectively referred to herein as “Plaintiffs”) 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 current and former employees of Defendants La Carreta Supermarkets, 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 current and former non-exempt employees who or were employed by Defendants in California at any time during the class period [October 21, 2016, through date of preliminary approval].
- (2) A non-reversionary Class Settlement Amount of \$580,000.00. The Maximum Settlement Amount includes:¹
 - (a) A Net Settlement Amount of approximately \$301,686.00 (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 \$193,314.00) and litigation costs and expenses not to exceed \$40,000.00, to Jackson APC (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$10,000.00, to be paid to the jointly selected settlement administrator, ILYM Group, Inc.
 - (d) A \$20,000.00 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. \$15,000.00 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
 - (e) Class Representative Enhancement Payments of \$5,000.00 each to Plaintiffs Juan Salvador Villanueva, Yesenia Bermudez, and Isabel Herrera for their service on behalf of the Settlement Class.

¹ If the Court rejects the provision of payroll taxes being paid as part of the gross settlement amount, the employer shall pay the employer’s share of payroll taxes. (See Jackson Decl. ¶ 2, Ex. A, Article, 1, p. 3. Provision n.)

1 An objective evaluation of the Settlement confirms that the relief negotiated on the Class
2 Members' behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm's-
3 length with helpful guidance from mediator Michael D. Young, Esq., an experienced, well-respected class
4 action mediator, and the Stipulation confers substantial benefits to Class Members. Indeed, by settling
5 now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor
6 will they have to bear the risk of class certification being denied or of Defendant prevailing at trial.

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

11 **II. FACTS AND PROCEDURE**

12 **A. Summary of the Litigation.**

13 Defendant is a company that owns and operates supermarket where Plaintiffs worked. Defendant
14 facilities are in Orange, California. Plaintiffs were employed by Defendant as a non-exempt Employee at
15 the Defendants. [Jackson Decl. ¶ 3.] This Stipulation is limited to Defendants' employees in the State of
16 California, during the Class Period. [*Id.*]

17 On October 9, 2020 Plaintiff Villanueva also submitted a PAGA notice letter to the LWDA. On
18 October 21 2020, Plaintiff filed a Class Action Complaint in the Orange County Superior Court alleging
19 violations of the California Labor Code and applicable wage orders for the following claims: (1) failure to
20 provide meal periods; (2) failure to provide rest breaks; (3) failure to provide and maintain accurate
21 itemized wage statements; (4) failure to pay timely wages upon termination; as well as an addition claim
22 for (5) unlawful business practices under Business and Professions Code section 17200 et. seq. in order to
23 extend the claims back four years to October 21, 2016. [ROA No. 2.] On February 3, 2021, Plaintiff
24 amended its Complaint to add a violation of the California Private Attorney General Act ("PAGA").
25 [ROA No. 9.] On January 10, 2023, Plaintiffs filed a Second Amended Complaint in the Orange County
26 Superior Court adding violations of the California Labor Code and applicable wage orders for failure to
27 provide minimum wages and overtime wages. [ROA No. 154.]

28 Plaintiffs also served a set of written discovery, including a Request for Production of Documents

1 and Special Interrogatories. [Jackson Decl. ¶¶ 7-25.] Plaintiffs also engaged in significant discovery, took
2 depositions and filed a motion for class certification. [*Id.*] After Plaintiffs filed class certification,
3 Defendant agreed to mediation. [Jackson Decl. ¶¶ 7-25.] Plaintiffs reviewed the time records and wage
4 statements of putative class members. (*Id.*)

5 Defendant produced such data for over 85,000 shifts of the class. Prior to the mediation and for
6 purposes of the Settlement, Plaintiffs analyzed the time and pay data. [*Id.*]

7 Plaintiffs' primary theories of liability are as follows:

- 8 • **Minimum Wage Claim:** Plaintiffs allege that Defendant failed to pay for all hours
9 worked due to off-the-clock work. [Jackson Decl. ¶ 10.]
- 10 • **Overtime Wage Claim:** Plaintiffs allege that Defendant failed to pay for overtime wages
11 for all hours worked due to off-the-clock work. [Jackson Decl. ¶ 10.]
- 12 • **Unlawful Meal Period Claim:** Plaintiffs allege that Defendant failed to provide
13 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
14 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 11.]
- 15 • **Unlawful Rest Break Claim:** Plaintiffs allege that Defendant failed to permit and
16 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 12.]
- 17 • **Wage Statement Claim:** Plaintiffs allege that Defendant failed to provide complete and
18 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
19 statements to Plaintiffs and Class Members that failed to reflect the correct total number of hours worked
20 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 14.]
- 21 • **Failure to Pay Upon Termination:** Plaintiffs allege that Defendant failed to provide
22 meal break and rest break premium wages and minimum wages and overtime wages, and not paid these
23 wages upon termination. [Jackson Decl. ¶ 13.]

24 After litigating this case to certification, the Parties agreed to mediate and scheduled mediation for
25 September 23, 2022. Prior to the mediation, Defendant produced Employee Handbooks, time and pay
26 data, relevant wage and hour policies and other information for purposes of evaluation. Plaintiffs' counsel
27 thoroughly reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶¶ 7-25.]
28

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

2 On September 23, 2022, the Parties participated in a full day of mediation with mediator Michael
3 D. Young, Esq., an experienced mediator of wage and hour class actions. [Jackson Decl. ¶ 26.] Mediator
4 Young helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and
5 risks to both sides. At the conclusion of the mediation, the continued to engage Mediator Young that
6 ultimately resulted in the resolution of this case. [Jackson Decl. ¶ 26.] Thereafter, the Parties jointly
7 drafted and executed the Stipulation. [Jackson Decl., ¶ 2, **Exhibit A.**] At all times, the Parties'
8 negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and
9 reasonable compromise of the claims at issue. [Jackson Decl. ¶ 4-18.]

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

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

12 The proposed group of Class Members consists of all hourly paid employees employed by
13 Defendant in California during the Class Period, which is from October 21, 2016, through date of
14 preliminary approval.

15 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-
16 reversionary Maximum Settlement Amount of \$580,000.00. The Maximum Settlement Amount
17 includes: (1) settlement payments to Participating Class Members; (2) \$193,314.00 in requested attorneys'
18 fees and up to \$20,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement
19 Administration Costs capped at \$20,000; (4) an allocation of \$20,000.00. to the LWDA; and (5) a Class
20 Representative Enhancement Payment of \$5,000.00 each to Plaintiffs Juan Salvador Villanueva, Yesenia
21 Bermudez, and Isabel Herrera. [Jackson Decl., ¶ 2, **Exhibit A.**]

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

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

27 Each Class Member's share of the Net Settlement will be proportional to the Workweeks that he
28 or she worked during the Class Period. The Settlement Administrator will calculate Individual Settlement

Payments as follows:

- Defendant will calculate the “Qualifying Workweeks” worked by each Class Member during the Class Period and the aggregate Eligible Workweeks worked by all Class Members during the Class Period, which is from October 21, 2016 through September 23, 2022.
- To determine each Class Member’s settlement payment, the Settlement Administrator will use the following formula: the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class members during the Class period and then allocated on a pro rata basis.

[Jackson Decl., ¶ 2, **Exhibit A** (Section 3.06, pgh. f.)]

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 21, 2016 through date of preliminary approval:

Upon the Date of Finality, Plaintiffs and Participating Class Members who do not opt out of the Settlement, release the Released Parties from, and will be forever barred from pursuing against the Released Parties, any and all claims, demands, rights, liabilities and causes of action alleged in Plaintiffs Operative Complaints, or which could have been alleged in Plaintiffs Operative Complaints based on the factual allegations therein, that arose during the Class Period, including but not limited to causes of action for failure to provide minimum wages, for failure to provide overtime wages, for failure to provide meal periods, and applicable provisions of the relevant Industrial Wage Order; failure to permit rest breaks, and applicable provisions of the relevant Industrial Wage Order; failure to provide accurate itemized wage statements, and applicable provisions of the relevant Industrial Wage Order; failure to pay all wages due upon separation of employment, and applicable provisions of the relevant Industrial Wage Order; and applicable provisions of the relevant Industrial Wage Order; violation of California Business and Professions Code §§17200, et seq., based on the preceding claims (“Released Claims”) and all claims for attorneys’ fees and costs relating to the Released Claims by Class Members, that could have been premised on the facts, claims, causes of action or legal theories described above or that could have been premised on the facts, claims, causes of action or legal theories described above.

[Jackson Decl., ¶ 2, **Exhibit A** (Section 5.01, p. 19)]

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 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for

1 their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
2 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final
3 approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary
4 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the
5 proposed order, and (4) must identify any agreement regarding attorneys’ fees. [Rule 3.769(b) and (c).]

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

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

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

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

3 By engaging in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel
4 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
5 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
6 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
7 defenses asserted by Defendant. [Jackson Decl. ¶¶ 7-25.]

8 Prior to the outset of the litigation, Plaintiffs provided his Counsel with detailed accounts of his
9 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
10 violations. In addition to informing Plaintiffs’ Counsel’s initial evaluation of the lawsuit, the information
11 that Plaintiffs provided also influenced Plaintiffs’ Counsel’s discovery efforts. [Jackson Decl. ¶ 4-25.]

12 Plaintiffs’ discovery requests led to the production of considerable information relied upon for the
13 Settlement, including a statistically significant sampling of time and pay data, and policies and practices
14 directly pertaining to the alleged Labor Code violations at issue. Plaintiffs’ Counsel reviewed Defendant’s
15 written policies provided in its Employee Handbook, and reviewed the entire set of thousands of pages of
16 data and documents produced by Defendant. From this analysis, Plaintiffs’ Counsel was able to analyze
17 Labor Code issues, theories and alleged violations that would have provided direct evidence for use at trial
18 in a class and PAGA action. Plaintiffs’ Counsel analyzed the timekeeping and payroll data, in order to
19 assess, *inter alia*, the incidence of meal and rest period violations, and premiums paid for said violations,
20 the accuracy of the wage statements, and the amount of waiting time penalties under Cal. Labor Code §
21 203. [Jackson Decl. ¶¶ 7-25.]

22 Plaintiffs’ Counsel interviewed Plaintiffs who provided accounts of their own experience, which
23 enabled Plaintiffs’ Counsel to understand the theories explaining the respective frequencies of the alleged
24 violations borne out in the data and records produced and to learn more about the day-to-day
25 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 7-25.] Overall, Plaintiffs’ Counsel
26 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiffs’
27 suitability as a class representative through interviews, background investigations, and analyses of his
28 employment files and related records; (2) researching similar wage and hour class actions as to the claims

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

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 September 23, 2022, the Parties participated in a mediation with mediator Michael D. Young, 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. ¶ 18.]

Experienced class action counsel represented both Parties throughout the case and settlement negotiations. Plaintiff is represented by Armond M. Jackson of Jackson 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. ¶¶ 27-28, 34.] Defendants are represented by Julander, Brown & Bollard who operates wage and hour defense practice.

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

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

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

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

19 Based on the information and evidence provided by Defendant in discovery, the analysis of the
20 time data and pay data, and Plaintiffs’ Counsel’s own independent investigation, Plaintiffs’ Counsel
21 determined an appropriate range of recovery for settlement purposes by offsetting Defendant’s maximum
22 theoretical exposure by: (i) the strength of Defendant’s affirmative defenses; (ii) the risk of losing a
23 motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a class and
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28 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case
and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” [*Id.* at 188
(*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). *See Nat’l Rural Telecomm. Coop. v. Directv,*
Inc., 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be
acceptable even though it amounts to only a fraction of the potential recovery”).

PAGA trial would be unmanageable;³ (iv) the risk of losing on various dispositive or quasi-dispositive motions that Defendant will bring before trial (e.g., motion to strike class and representative allegations, motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or some of Plaintiffs' claims, or bar evidence necessary to prove such claims; (v) the risk of losing some or all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully refuse to pay discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section 203; (vii) the chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e, a good faith failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of the Court exercising its discretion to reduce PAGA penalties (*see* Cal. Lab. Code section 2699(e); (ix) the delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal; and (xi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

[Jackson Decl. ¶¶ 8-9.]

Based on the preceding and considering the aggregate value of the claims, Plaintiffs' Counsel valued the claims for settlement purposes at **\$1,478,968.64**. [Jackson Decl. ¶¶ 11-17.] It must be underscored, however, that the reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery Plaintiffs might have received had he succeeded at trial. Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" [*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)).]

i. Wage Statement Data and Range of Damages

The following is a table of potential damages:

Claim	Damages and Penalties
Minimum Wage and Overtime Violations	\$99,695
Meal Period Violations	\$277,282.50

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

Rest Period Violations	\$9,122.50
Wage Statement Violations	\$185,700
Final Pay Violations	\$209,084
PAGA Exposure	\$363,420
Total:	\$1,144,304
Extrapolated Total:	\$1,478,968.64

[Jackson Decl. ¶ 7-25.]

ii. Meal and Rest Period Claims

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

Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that employees did not take their meal periods within the first five hours of a shift, were less than thirty minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees were not authorized to take rest periods due to understaffing. Analysis of the sample time records Defendant produced pay and time records for over 85,000 shifts.

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

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

The other alternative interpretation anticipated by Defendant is that it demonstrates that Defendant, in fact, does provide employees with complete meal periods which could potentially undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees choose to take them a few minutes late or short on their own volition at other times.

Third, the analysis revealed evidence of an approximate 45.9% violation rate for meal periods and 1% violation rate for rest breaks. Moreover, regarding short meal periods (i.e. less than 30 minutes) and potentially "late" meal periods (i.e. started after the fifth hour), but most of those "meal period violations"

are just a few minutes short or late. While there may be a limited “de minimis” defense in California for meal period claims, see *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, such evidence cuts both ways as it underscores the likelihood of personal choice by employees electing to delay their breaks for a few minutes or knock off a minute or two early and get back to work on their own, as opposed to an express policy that schedules breaks late or the presence of express work deadlines that effectively forces employees to cut breaks short. [Jackson Decl. ¶¶ 11-12.] In conclusion, it was analyzed that 35,088 meal break violations occurred and 1,150 rest break violations occurred. [*Id.*]

iii. Wage Statement Claim

Plaintiff alleges that Defendant failed to provide Plaintiff with timely and accurate wage statements as a derivative claim of the foregoing allegations for failure to provide breaks, pay for all hours worked, and improper overtime premium pay. [Jackson Decl. ¶ 14]

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

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

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

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

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

Decl. ¶ 14.]

It was analyzed that potentially penalties are be entitled to wage statement violations amounting to \$185,700 after applying risk factors. [Jackson Decl. ¶ 14.]

iv. Waiting Time Penalties

This claim is based on Plaintiff's allegations that an extra hour of pay was not provided when meal or rest breaks were not provided, and that Employees were not paid all minimum and overtimes premium wages. It was analyzed that approximately 186 employees were terminated during the class period that could potentially be entitled to wages upon termination that were subjected to meal and rest period violations which amounting to \$209,084 after applying discounts. [Jackson Decl. ¶ 13.]

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 \$1,478,968.64. Therefore, in this case, the settlement value of \$580,000.00 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

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 information regarding the nature of the lawsuit, a summary of the Settlement’s terms, the class definition,
2 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
3 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
4 Released Claims. In the event Class Notices are returned as undeliverable, the Administrator will attempt
5 to locate a current address through the use of skip tracing or another automated search. [Jackson Decl., ¶
6 2, Ex. A, Section 3.03, p. 8, ¶ 9, Exhibit B.]) This method is designed to maximize the Class Member
7 response rate while ensuring cost effective administration of the settlement. In past cases, similar notice
8 methods to class members have resulted in strong response rates. Accordingly, both the method of
9 disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of
10 California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The
11 class notice must “fairly apprise the class members of the terms of the proposed compromise and of the
12 options open to dissenting class members.”).]

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

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

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

1 Class. [Declaration of Juan Salvador Villanueva, ¶¶ 1-7, Declaration of Yesenia Bermudez, ¶¶ 1-7,
2 Declaration of Isabel Herrera, ¶¶ 1-7.]

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

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

7 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
8 took the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
9 Plaintiffs will seek Court approval of attorneys' fees of \$193,314.00 which is 33.33% of the Maximum
10 Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the
11 time of the Final Approval Hearing.

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

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

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

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

4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

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

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

The proposed Settlement Class consists of all hourly employees employed by Defendant in California during the Class Period, which is October 21, 2016 through date of preliminary approval. Defendants’ payroll records will ascertain the Class Members because all Class Members are either current or former employees of Defendant, the class is readily ascertainable from Defendant’s regular business records.

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

⁵ See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class certification 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.”).)

23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

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

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

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

any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

IV. CONCLUSION

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

Dated: March 20, 2023

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