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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ANGEL CHAPPARO, individually and on
behalf of all persons similarly situated

Plaintiffs,

vs.

IMMANUEL BAPTIST CHURCH OF SAN
BERNADINO AND HIGHLAND,
CALIFORNIA, a California non-profit
corporation; IMMANUEL BAPTIST
CHURCH, a California non-profit
corporation, and Does 1 through 50, Inclusive,

Defendants.

Case No. CIVSB2101240

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

Date: June 27, 2022

Time: 9:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

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I. INTRODUCTION

Plaintiff ANGEL CHAPPARO (“Plaintiff”) seeks preliminary approval of the Class Action Settlement Agreement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 150 members of the Class and 109 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Settlement Period**” shall mean “all current or former non-exempt employees of IMMANUEL BAPTIST CHURCH OF SAN BERNARDINO AND HIGHLAND, CALIFORNIA, and IMMANUEL BAPTIST CHURCH (hereinafter “Defendants” and/or “IBC”) in California (“Class Members”) during the time period from January 22, 2017, through December 22, 2021 (“Settlement Period”). Agreement at §§ 1.7, 1.42.

2. The “**Settlement Class**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § 1.35.

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to Class Members who were employed by Defendants during the PAGA Period (“Aggrieved Employee”). Agreement at § 1.44. The “PAGA Period” refers to the time period from November 16, 2019, through December 22, 2021. Agreement at § 1.43. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

4. The “**Gross Settlement Amount**” is Two Hundred Ten Thousand Dollars (\$210,000.00). Agreement at § 1.18. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$5,000 to Plaintiff for her services on behalf of the Class Members, and for agreeing to a general release including all claims arising from Plaintiff’s relationship with IBC. Agreement at §§ 5.3, 6.2;

b. A “**Class Counsel Payment**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$70,000 **and** litigation costs and expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at §5.2;

c. A “**PAGA Payment**” of \$10,000 shall be set aside from the Gross Settlement

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.

Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay \$7,500 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute \$2,500 representing 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §5.4; and

d. “**Administrative Costs**” not to exceed \$8,500 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and Individual Settlement Payments. Agreement at §§ 1.34, 5.1.

3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount that remains after accounting for any Class Representative Service Award, the PAGA Payment, Administrative Costs, and the Class Counsel Payment. Agreement at §1.22. The Net Settlement Amount is approximately \$116,500 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Settlement Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Share of approximately **\$776.66**. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants own, operate, and manage two church campuses located in California, including a 40-acre plot with two education buildings and an administration building that are approximately 33,000 square feet each. This action asserts claims on behalf of Defendants' non-exempt employees working at those California church campus locations. Plaintiff worked for Defendants as a non-exempt custodial supervisor in California from July 2002 to May 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Immanuel Employee Handbook." JCL Dec., ¶ 8; Declaration of Angel Chapparo ("AC Dec.") at ¶¶ 1-5.

Generally, Plaintiff claims that Defendants failed to pay for all time worked, including, time spent on-call after working hours and on weekends, failed to provide compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, compliant reimbursement policies, facially compliant meal and rest period policies, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On November 16, 2020, Plaintiff served Defendants 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 Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* ("PAGA"). JCL Dec., ¶ 10.

On January 22, 2021, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB2101240 ("Action"). The Action alleged nine causes of action against

Defendants for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (4) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Plaintiff for Required Expenses in Violation Of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (8) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] (“Class Claims”). JCL Dec., ¶ 11.

The Parties collectively agreed to mediate the Action, stay formal discovery, and continue deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

On October 21, 2021, the Parties participated in a full day mediation with Tripper Ortman, Esq., a respected mediator of wage and hour class and representative actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her wage statements, separation documents, and portions of Defendants’ handbooks. At the conclusion of the interviews, Class Counsel determined that each Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 14.

1 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,
2 Defendants produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's
3 employment agreements, performance evaluations, timekeeping policies, payroll and time records, and
4 separation documents. Class Counsel reviewed and analyzed the documents and determined the
5 documents appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, pay
6 for all time worked, issue accurate itemized wage statements, provide compliant meal and rest periods,
7 and reimburse for required business expenses. JCL Dec., ¶ 15.

8 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
9 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
10 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims
11 and Defendants' liability exposure to the Class Members. In response to Class Counsel's request,
12 Defendants produced the time records for the Class Members, aggregate workweek and pay period data
13 for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for
14 the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter*
15 *alia*, compensation, timekeeping, and meal and rest period policies. In total, Defendants produced
16 approximately 1,365 pages of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 16.

17 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
18 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
19 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
20 credentialed and experienced experts in their fields and have provided their expertise on thousands of
21 cases. Stated differently, the BCG is well-qualified to analyze Defendants' time and payroll data. JCL
22 Dec., ¶ 17.

23 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
24 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
25 pay periods, average length of shift and average number of hours worked per week and pay periods
26 during the Settlement Period. BCG also estimated the number of missed, late or truncated meal and
27 rest periods, the amount of missed meal period premiums paid during the Settlement Period, the amount
28 of unpaid wages due to rounding, the amount of unreimbursed business expenses and the amount of

off-the-clock work performed by the Class Members during the Settlement Period. JCL Dec., ¶ 18.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 19.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) holding phone interviews with several putative class members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following his thorough investigation and evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

C. The Parties Settled at Mediation

On October 21, 2021, the Parties conducted a full day of mediation with Tripper Ortman, Esq., a respected mediator of wage and hour class and representative actions. Mediator Ortman helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties

exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 23-24.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all Defendants' current and former non-exempt employees who are or previously were employed by Defendants and performed work in California between January 22, 2017, through December 22, 2021, who do not file a timely and valid Request for Exclusion. In the data exchanged at the time the Agreement was executed, there were approximately 150 Class Members that worked approximately 20,000 workweeks. Agreement at §5.5.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$210,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of \$5,000 to Plaintiff for her services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of \$10,000; (4) Administrative Costs estimated at \$8,500; (5) Class Counsel Payment in the amount of \$70,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$210,000 and an estimated \$15,000 for actually incurred litigation expenses. *See generally* Agreement at §5.

Subject to the Court approving the Class Representative Service Award, Class Counsel Payment, PAGA Payment, and the Administrative Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at §5.5. There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at §§ 1.8, 5.5.2.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$210,000 Gross Settlement Amount within fifteen (15) calendar days of the Court's entry of the order granting final

approval of this Settlement. Agreement at §5.6.

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data provided by Defendants to the Settlement Administrator will include the number of eligible Workweeks for each Settlement Class Member. Agreement at §3.3. The Individual Settlement Payment will be proportional to the number of Eligible Workweeks each Settlement Class Member worked for Defendants in California during the Settlement Period. Each Settlement Class Member's final Individual Settlement Share for purposes of payment will be calculated by dividing the number of Eligible Workweeks attributed to the Settlement Class Member by all Eligible Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement Amount. Agreement at § 5.5.1. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

Given that there are approximately 150 Settlement Class Members, the average gross recovery is approximately \$776.66 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, which is fifteen (15) days after the Effective Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims, including failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock and on-call work), failure to provide meal and authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to reimburse business expenses, failure to timely pay wages and final wages, failure to furnish accurate wage statements including claims derivative and/or related to these claims that accrued during the Class Period. Agreement at §§ 6.1.

6. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from any all claims or causes of action **for**

civil penalties arising under PAGA based on the facts and allegations contained in either the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period. Agreement at §§ 6.2.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$210,000, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

9 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
10 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
11 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
12 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
13 § 11.51.)

14 The Parties participated in mediation with the highly respected mediator Tripper Ortman, Esq..
15 Mediator Ortman managed the Parties’ expectations and provided a useful, neutral analysis of the issues
16 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
17 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
18 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
19 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
20 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
21 at an arm’s length, adversarial, and non-collusive. Mediator Ortman only arrived at his proposal after
22 hearing arguments, reviewing evidence, and evaluating the Parties’ respective claims and defenses.
23 JCL Dec., ¶ 24.

24 Once the Parties agreed to the Mediator’s proposal, the parties subsequently executed a binding
25 and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated
26 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
27 compromise of the claims at issue. JCL Dec., ¶ 24.

28 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the

1 Settlement's Reasonableness.

2 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
3 the factual and legal issues in dispute. In addition to informal discovery, witness interviews, document
4 review, data analysis, and legal research, Class Counsel also researched similar wage and hour actions.
5 Here, Class Counsel's investigation uncovered *Chavez v. Adidas America, Inc.*, United States District
6 Court, Northern District of California, Case Number 5:16-cv-6533 LHK a prior wage and hour class
7 action against Defendant. In that case, Defendant resolved the class claims asserted on behalf of 3,700
8 class members (a number similar to class members covered by this Settlement) for the period between
9 October 11, 2012, and September 15, 2017 for \$1.5 Million Dollars. Although no two cases are
10 identical, this research provided Class Counsel with a marker to inform settlement discussions and,
11 ultimately, to measure this settlement against. The investigation allowed to Class Counsel to
12 realistically assess the value of the claims and intelligently engage defense counsel in settlement
13 discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 20.

14 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
15 Plaintiff's suitability as a putative class representative through interviews, background investigations,
16 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
17 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
18 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendants'
19 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
20 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
21 liability for purposes of settlement; (8) holding phone interviews with several putative class members;
22 (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed
23 Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the
24 impediments to recovery, such as to make an independent assessment of the reasonableness of the terms
25 to which the Parties have agreed. JCL Dec., ¶ 21.

26 Class Counsel only agreed to enter the Settlement following his thorough investigation and
27 evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace
28 for similar settlements, and considering the risk of significant delay, uncertainty associated with

litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

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

The Gross Settlement Amount of \$210,000 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² 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.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. **The Gross Settlement Amount Meets the Recognized Range of Reasonableness.**

The Gross Settlement Amount of \$210,000 is fair and reasonable considering the nature and

² Federal district courts 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." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to 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 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
2 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants'
3 liability exposure while accounting for the uncertainties of continued litigation. The various models
4 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
5 and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding
6 PAGA Penalties) ranged between \$1,138,533.00 million dollars ("Conservative Model") and
7 \$1,622,678.83 million dollars ("Aggressive Model") if successful at trial. This range reflects the
8 uncertainty regarding several of the claims, together with the uncertainty surrounding derivative
9 liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount
10 of \$210,000 represents approximately between 12.94% ("Aggressive Model") and 18.44%
11 ("Conservative Model") of Defendants' *class-wide* liability exposure as estimated by Class Counsel at
12 the time of mediation. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 25.

13 (1) Estimated Damages for Meal Period Violations.

14 Plaintiff's primary claim in the Action alleged that Defendants failed to provide compliant meal
15 periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the
16 Class Members were not able to take timely and duty-free meal periods. JCL Dec., ¶ 26. Labor Code
17 § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free
18 meal period within the first five (5) hours of work. Moreover, an employee who works more than ten
19 (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal
20 period. Moreover, the second meal period may not be waived if the total hours worked is more than
21 twelve (12) hours. Labor Code § 226.7(c) provides that "if an employer fails to provide an employee a
22 meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial
23 Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's
24 regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

25 Conversely, Defendants argued, among other things, that its policies and procedures required
26 Class Members take uninterrupted, statutorily compliant meal breaks. Similarly, Defendants argued
27 that any divergence from these written policies were not systematic and, if they existed at all, were
28 location specific. Defendants also asserted that they maintained facially compliant meal period policies

1 and practices throughout the Settlement Period. Defendants further argued that they had in place a
2 written policy which required a waiver of Plaintiff's second meal period to be in writing and they in
3 fact obtained a signed meal period waiver from Plaintiff and other Class Members during their
4 employment with Defendants. Finally, Defendants argued that they paid meal period premiums when
5 missed, late, or truncated meal periods were reported. Thus, Defendants argued that there was no
6 potential liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 27.

7 Notwithstanding Defendants' arguments, Plaintiff perceived the meal break claim as the
8 strongest claim in the Action. Plaintiff estimated the damages for this claim was approximately
9 \$582,741 dollars. JCL Dec., ¶ 28.

10 (2) Estimated Damages for Rest Period Violations

11 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
12 Plaintiff alleged that because of their rigorous work schedule, Class Members were not able to take
13 timely and duty-free rest periods. JCL Dec., ¶ 29. WC Wage Orders 5-2001 and 7-2001 provide that
14 "[a]uthorized rest period times shall be counted as hours worked for which there shall be no deduction
15 from wages." Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal
16 or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial
17 Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's
18 regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

19 Defendants denied liability and asserted, among other things, that it maintained legally compliant
20 rest period policies and practices throughout the Settlement Period. Moreover, Plaintiff recognizes the
21 evidentiary burdens present in establishing this claim. Establishing Plaintiff's rest period claim would
22 rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and
23 liability stages. Defendants likely would have argued that only a small number of Class Members
24 missed their rest breaks. Certification likely would have required depositions of Class Members who
25 provided declarations, and Defendants surely would have obtained opposing declarations stating either
26 rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.*
27 (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the
28 Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient

for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, the rest break claim was heavily discounted in Plaintiff’s valuation of the case and ranged between approximately \$548,360 and \$582,741 dollars. JCL Dec., ¶ 30-31.

(3) Exposure for Unpaid Wages due to Rounding

Plaintiff alleged that because of Defendants’ unlawful rounding policy, they failed to pay Plaintiff and the Class Members all wages due for purposes of straight pay, overtime pay, and double-time pay. Defendants denied liability and asserted that its employees were paid for all time worked. Defendants argued that their employees review and verify that their pay is correct, and they understand how they are paid. Defendants also argued that its rounding policy, if any, was neutral. Plaintiff estimated that Defendants’ exposure for this claim to be approximately \$7,432. JCL Dec., ¶ 32.

(4) Estimated Exposure for Off-the-Clock

Plaintiff further alleged that Defendants failed to pay for all hours worked. Specifically, Plaintiff asserted that Defendants failed to pay for all time spent on-call after work hours and on weekends answering questions regarding job duties and the location of supplies and resetting the security alarm. JCL Dec., ¶ 33.

Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among other things, that its written policies and procedures directed its California employees to perform work only while on-the-clock. Defendants asserted that any deviation from these written policies were location specific and, thus, created individualized issues of liability unsuitable for class treatment. JCL Dec., ¶ 34.

Based on Plaintiff being on-call after working hours and on weekends, Plaintiff assumed ten (10) minutes of unpaid compensable time per workweek by the Class Members during the Settlement Period. Plaintiff estimated Defendants’ exposure for this claim ranged between approximately \$0 and \$64,988.33. JCL Dec., ¶ 35.

(5) Exposure for Unpaid Overtime

Plaintiff further alleged that Defendants failed to accurately compensate Plaintiff and the

California Class Members for overtime hours worked. Defendants denied liability and argued that they accurately compensated Plaintiff and the Class Members for all overtime hours worked. Plaintiff estimated that Defendants' exposure for this claim ranged between approximately \$0 and \$1,035. JCL Dec., ¶ 36.

(6) Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendants required Class Members to incur personal expenses for the use of their own personal cellular phones. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...."). Specifically, Plaintiff alleged Defendants required Plaintiff and Class Members to use their own personal cellular phones in order to perform work-related tasks, but Defendants failed to reimburse Plaintiff and Class Members for the required business expenses in violation of California Labor Code section 2802. JCL Dec., ¶ 37.

Again, Defendants denied any liability for this claim. Defendants argued, among other things, that on the rare occasion where employees did incur business expenses, these expenses were fully reimbursed. This claim was heavily discounted based on Defendants' defenses. Plaintiff estimated Defendants' exposure for this claim ranged between \$0 and approximately \$149,177.50. JCL Dec., ¶ 38.

(7) Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Defendants could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement

penalties. (See *Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App.5th 444 (review granted); *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiff would have to overcome precedent to prove the Class deserved the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Plaintiff estimated Defendants' exposure for this claim to be between \$0 and approximately \$234,564 dollars. JCL Dec., ¶ 39.

(5) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure was approximately \$2.9 million dollars. JCL Dec., ¶ 40.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendants raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments

discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 41.

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

In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between \$1,858,133 million dollars ("Conservative Model") and \$2,776,878.83 million dollars ("Aggressive Model") if successful at trial. Thus, the Gross Settlement Amount of \$210,000 represents approximately between 7.56% ("Conservative Model") and 11.30% ("Aggressive Model") of Defendants' total liability for damages and penalties. JCL Dec., ¶ 42.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th

1 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
2 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
4 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
5 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
6 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
7 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
10 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
11 settlement. JCL Dec., ¶¶ 44.

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

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

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

22 Finally, continuing to litigate this action would require continued and extensive resources
23 coupled with significant Court time to proceed through trial and post-trial motions; which can often
24 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
25 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
26 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
27 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
28 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 43. “Avoiding such a trial and the

subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$210,000 that is roughly between 12.94% (“Conservative Model”) and 18.44% (“Aggressive Model”) of Defendants’ maximum class wide liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 46.

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

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.App.3d 143, 151-52.) 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.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the

³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). 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.

Released Claims. Agreement at § 3.1. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 47-48.

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

C. The Court Should Preliminarily Approve the Class Representative Service Award

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

The Settlement provides for a Class Representative Service Award of \$5,000⁴ for Plaintiff. The

⁴ The amount of the requested enhancement payment-\$5,000-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. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. 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

1 service award is fair and reasonable compensation for the 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 her 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 Defendants a general release of all claims arising out of her employment. JCL Dec., ¶ 49.

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. JCL Dec., ¶ 50.

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

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

21 Class Counsel took this matter on a contingency fee basis and invested significant time and
22 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average

23 named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
24 \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
25 \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
26 Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
27 Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
28 (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).

Individual Settlement Share illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Payment is fair and reasonable. JCL Dec., ¶ 51.

Plaintiff will file a formal motion for the negotiated Class Counsel Payment 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. JCL Dec., ¶ 52.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 53.

1. The Standard for Class Certification

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

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

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure 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.)

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

6 Because all Class Members are Defendants’ current and former employees, the class is readily
7 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 54.

8 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
9 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
10 liability can be determined by facts common to all members of the class. The wage and hour issues are
11 both numerous and substantial, and a class action is the most advantageous method of dealing with the
12 claims of the Settlement Class. JCL Dec., ¶ 55.

13 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
14 from the same factual basis and are based on the same legal theories applicable to the other Class
15 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
16 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
17 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
18 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
19 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 56.

20 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
21 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
22 gained state court settlement approval of the same class-wide causes of action that are at issue in this
23 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
24 represent the interests of this Class. JCL Dec., ¶¶57-64, Declaration of Shani Zakay, ¶¶ 1-3.

25 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
26 each individual claim, the Class Members likely have little incentive to litigate their claims on an
27 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
28 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case

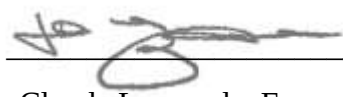
1 adjudication. JCL Dec., ¶ 57.

2 **IV. CONCLUSION**

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

6
7 Dated: May 20, 2022

JCL LAW FIRM, APC

8 By: 
9 Jean-Claude Lapuyade, Esq.