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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DAVID STEVENS and MICHAEL ADAMS,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiff,

v.

KAMPS PROPANE, INC., a California
Corporation; and DOES 1-50, Inclusive;

Defendants.

Case No: 37-2021-00016367-CU-OE-CTL

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

Date: May 21, 2027

Time: 9:00 a.m.

Judge: Hon. Michael T. Smyth

Dept.: C-67

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I. INTRODUCTION

Plaintiffs David Stevens and Michael Adams (“Plaintiffs”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)¹ and Addendum No. 1 to the Agreement, which if approved, would provide valuable monetary relief for approximately 416 Class Members who have collectively worked approximately 26,558 Workweeks. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all individuals who are or previously were employed by Defendants Kamps Propane, Inc. and Superior Plus Energy Services Inc. (“Defendants”) in California and classified as non-exempt employees (“Class”) at any time during the period beginning December 15, 2019 through May 13, 2026 (“Class Period”). Agreement at §§ 1.7, 1.12.

a. The “**Settlement Class Members**” all Class Members who have not submitted a timely and valid request for exclusion. Agreement at § 1.46.

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all individuals who are or previously were employed by Defendants in California and classified as non-exempt employees (“Aggrieved Employees”) at any time during the period beginning December 4, 2019, through May 13, 2026 (“PAGA Period”). Agreement at §§ 1.4, 1.36. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 7.5.1, 7.5.4. At the time of mediation, there were approximately 416 Aggrieved Employees during the PAGA Period. SCJ Dec., ¶ 4.

3. The “**Gross Settlement Amount**” is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Agreement at § 1.23. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Payment**” in the amount of \$10,000 to each Class Representative (\$20,000 total), or in an amount that the Court authorizes to be paid to each Class Representative, in addition to their Individual Class Payment and their individual Aggrieved Employee Payment, in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at §§ 1.14, 3.2.1.

¹ The Agreement is attached as Ex “1” to the Declaration of Sydney Castillo-Johnson (“SCJ Dec.”) at ¶ 2. All citations to the Agreement and Addendum No. 1 incorporate by this reference a citation to the SCJ Dec., ¶ 2. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 b. **“Attorneys’ Fees and Litigation Costs”** consisting of attorneys’ fees not to
2 exceed thirty-three percent (33%) of the Gross Settlement Amount currently estimated to be
3 \$247,500.00 *plus* costs of up to \$60,000.00. Agreement at §§ 1.6, 3.2.2. Attorneys’ fees will be divided
4 between Class Counsel in the following percentages (30% to JCL Law Firm, APC, 30% to Zakay Law
5 Group, APLC, and 40% to Blumenthal Nordrehaug Bhowmik De Blouw). Agreement at § 1.6;

6 c. A **“PAGA Payment”** of Twenty Thousand Dollars and Zero Cents (\$20,000.00)
7 to be allocated from the Gross Settlement Amount, with 25% of the payment (\$5,000.00) going to the
8 Aggrieved Employees (**“Aggrieved Employee Payment”**) and 75% of the payment (\$15,000.00) going
9 to the Labor and Workforce Development Agency (**“LWDA Payment”**). Agreement at §§ 1.5, 1.28,
10 1.35, 3.2.5; and

11 d. **“Administration Expenses Payment”** not to exceed Eight Thousand, Nine
12 Hundred Ninety Dollars and Zero Cents (\$8,990.00) payable to the Administrator, Apex Class Action,
13 LLC, for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement
14 at §§ 1.2, 1.3, 3.2.3.

15 4. The **“Net Settlement Amount”** of approximately \$394,010.00 (Gross Settlement
16 Amount, less the requested Attorneys’ Fees and Litigation Costs, Class Representative Payment,
17 PAGA Payment, and Administration Expenses Payment) which will be allocated to all Settlement Class
18 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
19 worked during the Class Period. Agreement at § 3.2.4. The entire Net Settlement Amount will be paid
20 to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
21 Class Payment of **\$947.14**. SCJ Dec., ¶ 5.

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

1 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
2 approval and falls within the range of reasonableness. The average Individual Class Payment to the
3 Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
4 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request
5 the Court grant preliminary approval of the Settlement. SCJ Dec., ¶ 7.

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation and Mediated Settlement

8 Defendants operate a propane distribution business throughout the state of California, including
9 San Diego County, where Plaintiffs worked. Plaintiff Stevens was employed by Defendants as a non-
10 exempt employee from October 2004 to October 2020. Declaration of David Stevens (“Stevens Dec.”)
11 at ¶ 4. Plaintiff Adams was employed by Defendants as a non-exempt employee, from October 2021
12 to March 2023. Declaration of Michael Adams (“Adams Dec.”) at ¶ 4. Throughout their employment,
13 Plaintiffs were subject to Defendants’ written policies and procedures contained in, among other
14 documents, the Employee Handbook. SCJ Dec., ¶ 7.

15 Generally, Plaintiffs claim that Defendants failed to pay wages at the correct regular rate of pay,
16 failed to provide compliant meal and rest periods, failed to pay for all hours worked, failed to reimburse
17 employees for all necessary business expenses, failed to issue accurate itemized wage statements, and
18 failed to pay all wages when due. Defendants deny liability for each of Plaintiffs’ claims. Further,
19 Defendants asserted that they fully complied with all applicable employment laws and raised several
20 other significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant meal and
21 rest period policies, compliant wage statements, compliant reimbursement practices, and they timely
22 paid all wages due upon separation of employment. SCJ Dec., ¶ 8.

23 On December 4, 2020, Plaintiff Stevens served Defendant Kamps Propane, Inc. and the Labor
24 and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
25 Plaintiffs’ PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of
26 various provisions of the California Labor Code and applicable Industrial Welfare Commission
27 (“IWC”) Wage Order and of their intent to pursue claims under California Labor Code Private
28 Attorneys General Act of 2004, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). SCJ Dec., ¶ 9.

1 On April 13, 2021, Plaintiff Stevens filed a class and representative action complaint in the San
2 Diego County Superior Court, Case Number 37-2021-00016367-CU-OE-CTL (“Action”), alleging
3 various causes of action pursuant to the California Labor Code. SCJ Dec., ¶ 10.

4 On September 20, 2021, Plaintiff Stevens filed a First Amended Complaint pursuing solely a
5 representative cause of action under PAGA. On October 14, 2022, Plaintiff Stevens filed a Second
6 Amended Complaint restoring the class claims. SCJ Dec., ¶ 11.

7 On November 30, 2023, Plaintiffs served an Amended PAGA Notice adding Plaintiff Adams as
8 a named plaintiff and thereafter filed the Third Amended Complaint (“Operative Complaint”) adding
9 Plaintiff Adams as a named plaintiff. On October 16, 2025, Plaintiffs served a Second Amended PAGA
10 Notice and filed an amendment to the operative complaint naming Superior Plus Energy Services Inc.
11 as an additional Defendant. SCJ Dec., ¶ 12.

12 On February 1, 2024, the Court granted in part and denied in part Defendants’ motions to compel
13 arbitration, compelling certain of Plaintiffs’ individual claims to arbitration while staying the
14 representative PAGA claims. SCJ Dec., ¶ 13. On March 6, 2024, Plaintiff Stevens filed a demand for
15 arbitration with the Judicial Arbitration and Mediation Services (“JAMS”), and Plaintiff Adams filed a
16 demand for arbitration with the American Arbitration Association (“AAA”). SCJ Dec., ¶ 14.

17 The Parties agreed to mediate the case. To prepare for mediation, the Parties agreed to informally
18 exchange documents and data points subject to the mediation privilege, including but not limited to,
19 the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel
20 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and
21 payroll data. SCJ Dec., ¶ 15.

22 The Parties participated in two mediation sessions with Hon. Brian C. Walsh (Ret.), a retired
23 judge and experienced mediator of wage and hour class and PAGA actions. With the assistance of
24 Judge Walsh (Ret.), the Parties ultimately reached an agreement to settle the case. The agreement was
25 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and
26 negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec., ¶
27 16.

28 ///

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their employment, including wage statements and portions of their time records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. SCJ Dec., ¶ 17.

Class Counsel subsequently requested Plaintiffs' employee files from Defendant Kamps Propane, Inc.. In response, Defendant Kamps Propane, Inc. produced various documents, including but not limited to, copies of Plaintiffs' hiring documents, payroll and time records, and written policies and agreements. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendants failed to, among other things, provide compliant meal and rest periods, to provide accurate wage statements, to pay for all hours worked, to compensate overtime and sick pay wages at the correct regular rate of pay, and to reimburse for mandatory business expenses. SCJ Dec., ¶ 18.

To prepare for mediation, Defendants produced a sample of the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of thousands of unique cells of time and payroll data. SCJ Dec., ¶ 19.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. SCJ Dec., ¶ 20.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods

1 during the Class Period. BCG also determined the amount of underpaid overtime hours, estimated the
2 number of missed, late or truncated meal and rest periods, the amount of paid meal period premiums
3 paid during the Class Period, and the amount of unreimbursed business expenses. SCJ Dec., ¶ 21.

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

15 Class Counsel only agreed to enter the Settlement following this thorough investigation and
16 evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace
17 for similar settlements, and considering the risk of significant delay and uncertainty associated with
18 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this
19 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
20 reasonable, and adequate, the Court should preliminarily approve the Settlement. SCJ Dec., ¶ 23.

21 **C. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

22 1. The Composition of the Settlement Class Members

23 The proposed Class consists of all individuals who are or previously were employed by
24 Defendants as non-exempt employees in the State of California at any time during the Class Period.
25 Agreement at § 1.7. The Settlement Class excludes any person who submits a timely and valid Request
26 for Exclusion. Agreement at § 1.46. At the time of mediation, Defendants estimated that there are
27 approximately 416 Class Members who have collectively worked approximately 26,558 Workweeks
28 during the Class Period, and approximately 416 Aggrieved Employees who have worked

1 approximately 13,279 PAGA Pay Periods. Agreement at § 4.1.

2 2. The Settlement Consideration

3 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
4 Amount of \$750,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the
5 Settlement Class Members; (2) a Class Representative Payment of \$10,000 to each Plaintiff for their
6 services on behalf of the Class; (3) a PAGA Payment in the amount of \$20,000; (4) Administration
7 Expenses Payment estimated at \$8,990; (5) Attorneys' Fees and Litigation Costs comprised of
8 Attorneys' Fees equal to thirty-three percent (33%) of the Gross Settlement Amount estimated to be
9 \$247,500.00 plus Litigation Costs of up to \$60,000.00. See generally Agreement at § 3.2.

10 Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation
11 Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be
12 distributed to each Settlement Class Member. Agreement at § 3.2.4. There is no reversion to
13 Defendants and Defendants must separately pay for their share of the employer payroll taxes.
14 Agreement at §§ 3.1, 4.3.

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendants shall fully fund the Gross
17 Settlement Amount and the amounts necessary to fully pay Defendants' share of payroll taxes no later
18 than fourteen (14) days after the Effective Date. Agreement at § 4.3.

19 4. Formula for Calculating Individual Class Payments

20 Settlement Class Members will receive an Individual Class Payment. The Individual Class
21 Payment will be proportional to the number of Workweeks each Class Member worked for Defendants
22 in California during the Class Period. Using the Class Data, the Administrator will calculate each
23 Individual Class Payment by (a) dividing the Net Settlement Amount by the total number of
24 Workweeks worked by all Settlement Class Members during the Class Period and (b) multiplying the
25 result by each Settlement Class Member's Workweeks worked during the Class Period. Agreement at
26 § 3.2.4. Each Individual Class Payment will be reduced by any legally mandated employee tax
27 withholdings (e.g., employee payroll taxes, etc.). Agreement at § 3.2.4.1. Individual Class Payments
28 allocated to Non-Settlement Class Members who submit valid and timely Requests for Exclusion will

1 be retained in the Net Settlement Amount for distribution to the Settlement Class Members on a pro
2 rata basis. Agreement at § 3.2.4.2.

3 5. Release by Settlement Class Members

4 Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to
5 release the Released Parties from the Released Class Claims that accrued during the Class Period.
6 Agreement at § 5.2. The Released Class Claims are defined as “all claims based on the allegations in
7 the operative complaint or which reasonably could have been asserted in the Action, including but not
8 limited to claims for failure to provide compliant meal and rest periods and premium pay, failure to pay
9 all wages owed, failure to pay for all time worked, failure to pay wages at the correct regular rate of
10 pay, failure to pay timely wages during employment or upon separation, failure to provide accurate and
11 itemized wage statements, failure to reimburse business expenses, and violation of California Business
12 and Professions Code section 17200 *et seq.*, which occurred during the Class Period, and expressly
13 excluding all other claims, including claims for vested benefits, wrongful termination, unemployment
14 insurance, disability, social security, workers’ compensation, and class claims outside of the Class
15 Period.” Agreement at § 1.40.

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

17 Generally, as of the Funding Date, Plaintiffs, the Aggrieved Employees, and the State of
18 California (including the LWDA) will release the Released Parties from the Released PAGA Claims
19 that accrued during the PAGA Period. Agreement at § 5.3. The Released PAGA Claims are defined as
20 “all PAGA claims asserted or pled in the operative Complaint and the PAGA Notices and are limited
21 in scope to the specific facts and theories stated in the PAGA Notices that occurred during the PAGA
22 Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
23 termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA
24 claims outside of the PAGA Period.” Agreement at § 1.41.

25 **III. ARGUMENT**

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

27 The proposed Settlement, including a Gross Settlement Amount of \$750,000.00 meets the
28 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored

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

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

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

28 ///

1 1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by
2 Experienced Counsel.

3 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
4 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
5 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
6 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
7 § 11.51.)

8 The Parties participated in two mediation sessions in front of Judge Walsh (Ret.), who managed
9 the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides.
10 (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195
11 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a
12 collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
13 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
14 of collusion and undue pressure.”).) After two full days of mediated negotiations, the second mediation
15 concluded with a settlement after both sides agreed to a Mediator’s proposal, which was subsequently
16 memorialized in the form of a Memorandum of Understanding (“MOU”). SCJ Dec., ¶ 19.

17 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
18 the written terms of the class action settlement. The Agreement is the final product of the mediated
19 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
20 compromise of the claims at issue. SCJ Dec., ¶ 20.

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

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

1 in settlement discussions that culminated in the proposed settlement now before the Court. SCJ Dec.,
2 ¶ 21.

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

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

10 The Gross Settlement Amount of \$750,000.00 is within the range of reasonableness. To
11 determine whether a settlement is fair and reasonable, the court should "consider enough information
12 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
13 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
14 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
15 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
16 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
17 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
18 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
19 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
20 settlement is not dependent upon its actual value approaching the potential recovery Plaintiffs might
21 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

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

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).)

B. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

The Gross Settlement Amount of \$750,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$1,793,014.36 (“Realistic Damages”) and \$6,009,177.31 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 41.83% (“Realistic Damages”) and 12.48% (“Maximum Damages”) of Defendants’ class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants’ liability exposure. SCJ Dec., ¶ 23.

(1) Defendants’ Estimated Exposure for Regular Rate Violations

Plaintiffs’ primary claim alleges that Defendants failed to pay overtime wages at the correct regular rate of pay. Specifically, Plaintiffs assert that Defendants paid overtime at 1.5 times the base hourly rate without including non-discretionary bonuses and incentive compensation, including among others “US ACT INCENTIVE,” “US IGNITER BONUS,” “US ON CALL FLAT PAYMENT,” “US PERFORMANCE-BASED BONUS,” “US SAFETY BONUS,” and “US COMMISSION,” in the regular rate of pay. Moreover, Defendants failed to include non-discretionary bonuses into the regular rate of pay calculation for purposes of redeemed sick pay. Plaintiffs’ expert determined that Defendants’ miscalculation of the regular rate of pay affected 49% of employees and resulted in an underpayment in overtime wages and redeemed sick pay. SCJ Dec., ¶ 24.

The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift

1 differentials and the per-hour value of any non-hourly compensation the employee has earned.
2 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an
3 employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553.

4 Conversely, Defendants denied liability and asserted, among other things, that the incentive
5 payments identified by Plaintiffs were discretionary in nature and otherwise not required to be included
6 in the regular rate of pay for purposes of calculating overtime and redeemed sick pay. In light of
7 Defendants’ defenses, Plaintiffs applied a 60% discount to this claim and estimated that Defendants’
8 exposure for this claim ranged from approximately \$13,387.20 to \$33,468.00. SCJ Dec., ¶ 25.

9 (2) Estimated Damages for Meal Period Violations

10 Plaintiffs alleged that Defendants failed to provide compliant meal periods under several theories
11 of liability. First, Plaintiffs’ expert found that 46.6% of first meal periods were exactly thirty (30)
12 minutes in length, raising a rebuttable presumption of meal period violations. Second, Plaintiffs alleged
13 that Defendants required employees to perform work during unpaid meal periods. Third, Plaintiffs’
14 expert found that 65.1% of shifts greater than twelve hours, during which a second meal break cannot
15 be waived, were without a recorded second meal period. SCJ Dec., ¶ 29.

16 Defendants contend that they fully complied with California meal period laws and maintained
17 compliant policies and practices. Defendants also argued that they provided Class Members and
18 Aggrieved Employees with the opportunity to take compliant meal periods, paid meal period premiums,
19 and maintained facially compliant meal period policies. Further, Defendants argued that any claimed
20 violations required a highly individualized inquiry not suitable to class. In light of the foregoing, and
21 considering Defendants’ defenses, Plaintiffs applied a 50% discount and estimated that Defendants’
22 exposure for this claim ranged from \$425,924.29 and \$851,848.58. SCJ Dec., ¶ 30.

23 (3) Defendants’ Estimated Exposure for Unpaid Wages

24 Plaintiffs also alleged that Defendants failed to pay their employees for all hours worked.
25 Specifically, Plaintiffs alleged that they and other Class Members were required to wait in line for
26 approximately five (5) minutes before each shift to clock in using a limited number of shared
27 computers, and that they performed additional off-the-clock work after clocking out, including
28 cleaning, refueling, and ensuring trucks were functioning properly. Based on Plaintiffs’ testimony and

1 Class Counsel's investigation, BCG assumed approximately two (2) minutes of off-the-clock work per
2 shift. SCJ Dec., ¶ 31.

3 Defendants denied liability and asserted that their employees were paid for all time worked and
4 that this claim resulted in minimal actual damage to the Class Members. Additionally, Defendants
5 argued that the off-the-clock claim was not suitable for class treatment because individualized issues
6 predominated. Thus, Plaintiffs applied a 75% discount to this claim and estimated Defendants'
7 exposure for this claim ranged between \$60,302.69 and \$241,210.75. SCJ Dec., ¶ 32.

8 (4) Defendants' Estimated Exposure of Rest Period Violations

9 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
10 Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs, Class Members, and
11 Aggrieved Employees were not able to take timely and duty-free rest periods and were forced to remain
12 on-duty under Defendants' control. SCJ Dec., ¶ 31.

13 Defendants denied liability and asserted that it maintained legally compliant rest period policies
14 and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens
15 establishing this claim. Establishing Plaintiffs' rest period claim would rely almost entirely on Class
16 Member testimony, making it a riskier claim at class certification and liability stages. Certification
17 likely would have required depositions of Class Members who provided declarations, and Defendants
18 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
19 were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
20 210223, at *11 ("Because of the competing testimony before the Court, Plaintiffs' evidence that
21 defendant may have an illegal, written rest break policy is insufficient for this Court to find that
22 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
23 2012 WL 5503550, at *8 ("Indeed, Plaintiffs' own evidence confirms that the written policy does not
24 generate uniform practices."). SCJ Dec., ¶ 32.

25 Accordingly, Plaintiffs applied a 50% discount to the rest break claim. Plaintiffs estimated the
26 range of potential outcomes for this claim was between \$425,924.29 and \$851,848.58. SCJ Dec., ¶ 33.

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1 (5) Defendants’ Estimated Exposure for Unreimbursed Business Expenses

2 Plaintiffs alleged that Defendants required Class Members and Aggrieved Employees to use their
3 personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by
4 Defendants. Specifically, Plaintiffs assert that, as a result of consistently waiting in line to clock in and
5 out, they were required to use their personal cell phones to record their time using the ADP application,
6 but Defendants failed to reimburse Class Members for this cost, in violation of Labor Code Section
7 2802. (SCJ Dec., ¶ 38.) California employers who require employees to incur personal business
8 expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code
9 § 2802(a), providing that “An employer shall indemnify his or her employee for all necessary
10 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
11 duties, or of his or her obedience to the directions of the employer...”). BCG estimated a reasonable \$5
12 monthly reimbursement rate for Class Members for the use of their personal cell phones. SCJ Dec., ¶
13 34.

14 Again, Defendants denied any liability for this claim. Defendants argued that its written policies
15 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
16 the employees’ duties or at Defendants’ direction. Plaintiffs applied an 85% discount and estimated
17 that Defendants’ exposure for this claim ranged between approximately \$10,787.25 and \$71,915.00.
18 SCJ Dec., ¶ 35.

19 (6) Defendants’ Estimated Exposure for Wage Statement Violations

20 Plaintiffs also alleged that Defendants failed to furnish their employees with accurate itemized
21 wage statements. Specifically, Plaintiffs alleged that as a result of Defendants’ failure to provide meal
22 and rest periods as required by the California Labor Code, failure to adequately compensate for off-
23 the-clock work performed, and failure to correctly calculate employee’s regular rate of pay, Plaintiffs
24 and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum*
25 *Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are “wages” entitling
26 employees to derivative wage statement penalties). Further, Defendants argued that even if it failed to
27 furnish accurate wage statements, Plaintiffs could not establish the injury requirement on a class-wide
28 basis. As a result, Plaintiffs discounted this claim 60% to account for this risk. Plaintiffs estimated

1 that Defendants' exposure on this claim ranged between \$614,400.00 and \$1,536,000.00. SCJ Dec., ¶
2 36.

3 (7) Defendants' Estimated Exposure for Waiting Time Penalties

4 Plaintiffs also alleged that the Defendants' labor code violations resulted in derivative liability
5 for waiting time penalties. Specifically, Defendants argued that Plaintiffs could not prove the "willful"
6 prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the
7 uncertain nature of the claims, Class Counsel's Realistic Model discounted the waiting time penalty
8 claim by 90% and estimated Defendants' exposure for these claims ranged between \$242,288.64 and
9 \$2,422,886.40. SCJ Dec., ¶ 37.

10 (8) Defendants' PAGA Exposure

11 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
12 the time of mediation, Plaintiffs estimated Defendants' exposure for PAGA penalties ranged from
13 \$104,130.00 to \$3,229,000.00. SCJ Dec., ¶ 38. The proposed PAGA allocation of the Gross Settlement
14 Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where
15 settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this
16 amount was the result of self-interest at the expense of class members," such amounts are generally
17 considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9
18 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero
19 to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford*
20 *Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011)
21 (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF
22 (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA
23 claim settlements in the range of zero to two percent of the total settlement).

24 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$20,000.00 which is
25 2.7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
26 Payment. Seventy-five percent (75%) of the PAGA Payment (\$15,000.00) will be paid to the LWDA
27 ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$5,000.00)
28

1 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the
2 range of PAGA Payment approved by courts and should be approved. SCJ Dec., ¶ 39.

3 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
4 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
5 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
6 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
7 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
8 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
9 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
10 6, 2016) (PAGA penalties denied after trial).

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

17 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,
18 just, and reasonable.

19 **a. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

25 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
26 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
27 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
28 certification because employees’ declarations attesting to having taken meal and rest breaks

1 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
2 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
3 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
4 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
5 period claims based on the predominance of individual issues). SCJ Dec., ¶ 40.

6 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
7 Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
8 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor Plaintiffs in a
9 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077,
10 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
11 individualized questions of fact not susceptible to class treatment."). SCJ Dec., ¶ 41.

12 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
13 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and
14 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
15 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
16 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
17 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
18 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
19 action). SCJ Dec., ¶ 42.

20 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
21 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
22 factor favoring settlement. SCJ Dec., ¶ 43.

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

27 [N]othing is assured when litigating against commercial giants with vast
28 litigative resources, particular in such complex litigation as this, which

1 would strain the cognitive capacities of any jury. Defense judgments were
2 hardly beyond the realm of possibility. Accordingly, this factor weighs in
3 favor of preliminary approval.

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

5 Finally, continuing to litigate this action would require continued and extensive resources
6 coupled with significant Court time to proceed through trial and post-trial motions; which can often
7 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
8 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs is successful at
9 trial, Plaintiffs is acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that
10 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
11 the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 44. “Avoiding such a trial and the
12 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
13 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
14 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
15 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

16 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that is
17 between approximately 41.83% of Defendants’ *class-wide* liability exposure for damages, and 12.48%
18 of Defendants’ maximum class wide liability exposure for damages and statutory penalties. Given the
19 amount of the settlement here, as compared to potential value of the claims, offset by the various
20 inherent risks to continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 45.

21 **C. The Proposed Notice Informs the Class about the Case and Settlement**

22 The Settlement Class Members are entitled to the best practical notice under the circumstances.
23 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
24 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
25 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
26 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
27 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
28 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service

1 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
2 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

3 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
4 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
5 mail the proposed Class Notice to all Class Members. The Class Notice will include information
6 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
7 definition, the procedure, and time period within which to requests for exclusions or objections to the
8 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
9 and the terms and scope of the Released Claims. Agreement at §§ 1.11, 7.4.2; Ex. A to the Agreement.
10 The Parties negotiated this method to ensure delivering the most reasonable method of notice to the
11 Class Members while ensuring cost effective administration of the Settlement. SCJ Dec., ¶ 46.

12 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
13 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
14 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
15 of the options open to dissenting class members.”).) SCJ Dec., ¶ 47.

16 **D. The Court Should Preliminarily Approve the Class Representative Payment**

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

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

1 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
2 (2009) 175 Cal.App.4th 785.)

3 The Settlement provides for a Class Representative Payment of \$10,000.00 to each Plaintiff.
4 The Class Representative Payment is fair and reasonable compensation for the Plaintiffs’ efforts
5 bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with
6 Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the
7 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class
8 Members, and agreeing to provide Defendants a general release of all claims arising out of their
9 employment. SCJ Dec., ¶ 48.

10 Class Counsel, on behalf of Plaintiffs, will file a formal motion for the negotiated Class
11 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully
12 submit that the above showing is sufficient for preliminary approval of the negotiated Class
13 Representative Payments. SCJ Dec., ¶ 49.

14 **E. The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs**

15 The purpose of a payment of Attorneys’ Fees and Litigation Costs in class action litigation is to
16 reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
17 positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more
18 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
19 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
20 percentage method or the lodestar method is used, fee awards in class actions average around one-third
21 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
22 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
23 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
24 one-third fee is consistent with market rates).)

25 Class Counsel took this matter on a contingency fee basis and invested significant time and
26 expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
27 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class
28 Members. Considering the positive outcome for the Class Members, and in light of the supporting

authority, the proposed Attorneys' Fees and Litigation Costs are fair and reasonable. SCJ Dec., ¶ 50.

Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ Dec., ¶ 51.

F. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiffs contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 52.

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 Participating Class is Ascertainable and there is a Well-Defined Community of Interest Among the 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.)

In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when

1 compared with those requiring separate adjudication, are so numerous or substantial that the
2 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
3 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

4 Because all Class Members are Defendants’ current and former employees, the class is readily
5 ascertainable from Defendants’ regular business records, i.e., payroll records. SCJ Dec., ¶ 53.

6 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
7 Class. Factually, Defendants’ policies and practices apply class-wide, and Defendants’ liability can be
8 determined by facts common to all members of the class. The wage and hour issues are both numerous
9 and substantial, and a class action is the most advantageous method of dealing with the claims of the
10 Settlement Class Members. SCJ Dec., ¶ 54.

11 Plaintiffs’ wage and hour claims are typical of the proposed Class because they arise from the
12 same factual basis and are based on the same legal theories applicable to the other Class Members.
13 Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class. Plaintiffs allege
14 that they were injured by the same company-wide practices to which the proposed Class Members were
15 subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for
16 the interests of the Class Member by initiating this litigation, undertaking extensive class discovery,
17 and evaluating the proposed settlement to assure that it is fair. SCJ Dec., ¶ 55.

18 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
19 each individual claim, the Class Members likely have little incentive to litigate their claims on an
20 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
21 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
22 adjudication. SCJ Dec., ¶ 57.

23 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
24 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
25 certified, and gained state court settlement approval of the same class-wide causes of action that are at
26 issue in this case. Class Counsel’s wage and hour class action experience establishes that they are well
27 qualified to represent the interests of this Class. SCJ Dec., ¶ 56, Declaration of Jean-Claude Lapuyade,
28 ¶¶ 3-8, Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Nicholas De Blouw ¶ 4-5.

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Dated: September 4, 2026

By: Sydney Castillo-Johnson
Sydney Castillo-Johnson Esq.