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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GONZALO ROJAS, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, v. PREFERRED FOOD SERVICE, INC., an unknown business entity; LOS ANGELES POULTRY CO., INC., a California corporation; DROR DAHAN, an individual; DAVID DAHAN, an individual; LILY DAHAN, an individual; ILANA DAHAN, an individual; BAR DAHAN, an individual; and DOES 1 through 100, inclusive; Defendants.	Case No. 21STCV08225 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: October 30, 2024 Time: 10:00 a.m. Judge: Hon. Elihu M. Berle Dept.: 6

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTS AND PROCEDURE 3

A. Overview of the Litigation 3

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues 5

C. The Proposed Settlement Fully Resolves Plaintiff's Claims 6

1. The Composition of the Participating Class Members 6

2. The Settlement Consideration 6

3. The Funding Date 7

4. Formula for Calculating Individual Class Payments 7

5. Release by Participating Class Members 8

6. PAGA Release by the State of California on behalf of the PAGA Members 8

III. ARGUMENT 8

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement 8

1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel. 9

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness. 10

3. The Settlement Falls Within the Recognized Range of Reasonableness. ……………………………………………………………………………………….........10

a. The Total Settlement Amount Meets the Recognized Range of Reasonableness. ………………………………………………………………………………………..11

b. Inherent Risks of Continued Litigation Support Preliminary Approval. ……………………………………………………………………………………….........11

B. The Proposed Notice Informs the Class about the Case and Settlement ……………………………………………………………………………………….........13

C. The Court Should Preliminarily Approve the Enhancement Award ……………………………………………………………………………………….........14

D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs ……………………………………………………………………………………….........15

E. Provisional Certification for Settlement Purposes is Appropriate ………………………………………………………………………………………..…...15

1. The Standard for Class Certification ………………………………………………………………………………………..…...16

2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Participating Class Members. ……………………………………………………………………………………….........16

IV. CONCLUSION ………………………………………………………………..………….…………..18

/ / /

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135, 1151……………………………………………………………..9
Apple Computer, Inc. Derivative Litig,
No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)…………...9
A.S.A Cal Ltd.
(2009) 176 Cal.App.4th 1333, 1341……………………………………………………………..12
Brinker
53 Cal. 4th at 1021-1022……………………………………………………………12, 16
Brown v. Fed Express Corp.
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88……………………………………………………12
Bufil v. Dollar Financial Group, Inc.
(2008) 162 Cal.App.4th 1193, 1207……………………………………………………………..16
Campbell v. Best Buy Stores, L.P.,
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13…………………………………………………12
Cart v. Super. Ct.
(1975) 50 Cal.App.3d 960, 972………………………………………………………………13
Cellphone Termination Fee Cases
180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010) ……………………………………8-9, 14
Chance v. Super. Ct.
(1962) 58 Cal.2d 275, 290……………………………………………………………………13
Chavez v. Netflix, Inc.
(2008) 162 Cal.App.4th 43, 66 n.11…………………………………………….……………15
Clark v. American Residential Services LLC
(2009) 175 Cal.App.4th 785………………………………………………………….………14
D'Amato v. Deutsche Bank
(2d. Cir. 2001) 236 F.3d 78, 85…………………………………………………………………..9
Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794, 1802……………………………………………………….………9
Duran v. U.S. Bank National Association
(2014) 59 Cal.4th 1, 31……………………………………………………………………………..12
Fontana v. Elrod
(7th Cir. 1987) 826 F.2d 729, 732……………………………………………………………..13
Frank v. Eastman Kodak Co.
(W.D.N.Y. 2005) 228 FRD. 174, 186……………………………………………………………...11
Global Crossing Sec. and ERISA Litig.
(S.D.N.Y 2004) 225 F.R.D. 436, 460……………………………………………………………...11
IKON Office Solutions, Inc Sec Litig.
(E.D. Pa. 2000) 194 F.R.D. 166, 184……………………………………………………………11
Kass v. Young
(1977) 67 Cal.App.3d 100, 106.……………………………………………………………….....13
Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116, 133………………………………………………………10-11
Lee v. Dynamex, Inc.
(2008) 166 Cal.App.4th 1325, 1332, 1334……...……………………………………..……..16
Magadia v. Wal-Mart Associates, Inc.
(9th Cir. 2021) 999 F.3d 668…………………………………………………………………12-13

Michael Milken and Assoc. Sec. Litig.
(S.D.N.Y. 1993) 150 F.R.D. 57, 66)……………………………………………………..11
Misra v. Decision One Mortg. Co.
(C.D. Cal. 2009) 2009 WL 4581276, at *7………………………………………………11
Munoz v. BCI Coca-Cola Bottling Co.
(2010) 186 Cal.App.4th 399, 409………………………………………………………..11
Nat'l Rural Telecomm. Coop. v. Directv. Inc.
(C.D. Cal. 2004) 221 F.R.D. 523, 526-27…………………………………………...11, 13
Newman v. Stein
(2d. Cir. 2002) 464 F.2d 689, 693………………………………………………………..11
North County Contractor's Assn., Inc. v. Touchstone Ins. Services
(1994) 27 Cal.App.4th 1085, 1089-90…………………………………………………....8
Nvidia Derivs. Litig.
(N.D. Cal. 2008) 2008 WL 5382544, at *3………………………………………………12
O'Conner v. Uber Technologies, Inc.
(9th Cir. 2018) 904 F.3d 1087…………………………………………………………...12
Officers for Justice v. Civil Serv. Comm'n
(9th Cir. 1982) 688 F.2d 615, 625, 628………………………………………………….8, 11
Omnivision Tech, Inc.
(N.D. Cal. 2008) 559 F.Supp.2d 1036…………………………………………………...11
Rebney v. Wells Fargo Bank
(1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990)……………………....13
Rodriguez v. West Publishing Corp.
(9th Cir. 2009) 563 F.3d 948, 958-59…………………………………………………....14
Sav-On Drug Stores, Inc.
(2014) 34 Cal.4th 319, 326, 333………………………………………………………….16
Stambaugh v. Super. Ct
(1976) 62 Cal.App.3d 231, 236…………………………………………………………......9
State v. Levi Strauss & Co.
(1986) 41 Cal.3d 460, 482, 485………………………………………………………….9, 14
Tien v. Tenet Healthcare Corp.
(2012) 209 Cal.App.4th 1077, 1088……………………………..………………………..12
Trotsky v. Los Angeles Fed Savings & Loan Assn.
(1975) 48 Cal. App. 3d 143, 151-52……………………………………………………….13

STATUTES, RULES AND CODES

Bus. and Prof. Code § 17200……………………………………………………………...4
Cal.Civ.Proc. Code § 382……………………………………………………………......16
Cal. Lab. Code § 201…………………………………………………………………………3
Cal. Lab. Code § 202………………………………………………………………………...3
Cal. Lab. Code § 204………………………………………………………………………...3
Cal. Lab. Code § 226(a)……………………………………………………………………...3
Cal. Lab. Code § 226.7 ……………………………………………………………………….3
Cal. Lab. Code § 510 ………………………………………………………………………...3
Cal. Lab. Code § 512(a)……………………………………………………………………...3
Cal. Lab. Code § 1174(d)…………………………………………………………………….3
Cal. Lab. Code § 1194..………………………………………………………………………3
Cal. Lab. Code § 1197………………………………………………………………………..3
Cal. Lab. Code § 1197.1 ……………………………………………………………………..3

Cal. Lab. Code § 1198……………………………………………………………………………..3
Cal. Lab. Code § 2698……………………………………………………………………......5
Cal. Lab. Code § 2800……………………………………………………………….........3
Cal. Lab. Code § 2802……………………………………………………………….........3
Cal. Rules of Court, rule 3.769(c)-(g)……………………………………………………………..8
Cal. Rules of Court, rule 3.776(e)-(f)…………………………………………………………….14

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I. INTRODUCTION

Plaintiff GONZALO ROJAS ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 369 Class Members and approximately 156 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former hourly-paid or non-exempt employees of either Preferred Food Service, Inc. or Los Angeles Poultry Co., Inc., (collectively, "Defendants") employed in California between March 1, 2017, and December 31, 2023 ("Class Period"). Agreement at § 1.2.

a. **"Participating Class Member"** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.23.

b. The "**Class Size**" is comprised of 369 individuals who collectively worked approximately 42,403 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § 8.

2. The **"PAGA Members"** and **"PAGA Period"** means all current and former hourly-paid or non-exempt employees of either of the Defendants employed in California between February 19, 2020, and December 31, 2023 ("PAGA Period"). Agreement at § 1.27. PAGA Members do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5. Defendants estimate approximately 156 Aggrieved Employees who worked 10,077 pay periods during the PAGA Period.

3. The "**Total Settlement Amount**" is One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00). Agreement at § 1.44. The Total Settlement Amount is non-reversionary and includes the following:

a. A "**Enhancement Award**" of not more than $15,000 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at § 3.2.1.

b. **"Attorneys' Fees and Litigation Costs"** in the amount not to exceed 35% of the

[1] The Agreement is attached as Ex "A" to the Declaration of Elizabeth Parker-Fawley ("EPF Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the EFP Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

Total Settlement Amount for attorney's fees, currently estimated to be $420,000.00 ***and*** litigation expenses not to exceed $25,000, to be paid to Class Counsel. Agreement at §§ 1.1, 3.2.2;

c. A "**PAGA Penalty Amount**" of Two Hundred Thousand Dollars ($200,000) shall be allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment ($150,000) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($50,000) will be distributed to the PAGA Members ("Individual PAGA Payment"). Agreement at §§ 1.15, 1.30, and 3.2.4; and

d. "**Administration Expenses Payment**" not to exceed $10,000 payable to the Settlement Administrator, Atticus Administration, LLC, for, *inter alia*, the administration of the Class Notice and issuance of settlement checks. Agreement at § 3.2.3.

4. The "**Net Settlement Amount**" of approximately $525,000 (Total Settlement Amount less the requested Attorneys' Fees and Litigation Costs, Enhancement Award, PAGA Payment, and Administration Expenses Payment) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ 1.22, 3.2.5. The entire Net Settlement Amount will be paid to all Participating Class Members resulting in an average Individual Class Payment of ***$1,436.31***. EPF Dec., ¶ 7.

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. EPF 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 Class Payment to the

Settlement Class meets 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. EPF Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants produce and distribute poultry items. Defendants operate in California, including in Los Angeles County where Plaintiff worked. Plaintiff worked for Defendants in California from approximately 2015 to approximately July 2020 as a non-exempt employee, paid on an hourly basis. Plaintiff alleges that he was denied legally compliant meal and rest periods, and minimum wages and overtime compensation. During his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Employee Handbook." EPF Dec., ¶ 8.

Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages timely during employment and upon separation. Defendants deny liability for each of Plaintiff's claims. Further, Defendants asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and that it timely paid all wages due upon separation of employment. EPF Dec., ¶ 10.

On March 1, 2021, Plaintiff filed a class action complaint in the Los Angeles County Superior Court, Case No. 21STCV08225 ("Action"). The Action alleged ten causes of action against the Defendants for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed

Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq*. EPF Dec., ¶ 10.

On July 8, 2021, Plaintiff separately filed a PAGA-only action in the Los Angeles County Superior Court, Case No. 21STCV25148 (the "PAGA Action"). The PAGA Action alleged a single cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004. The PAGA Action seeks civil penalties pursuant to the same alleged violation and same factual theories as outlined in the Class Action. EPF Dec., ¶ 11.

On July 22, 2023, the Parties participated in a full day mediation with wage and hour and PAGA mediator Lynn Frank, Esq. The Parties were unable to reach an agreement and Defendants then noticed the Deposition of Gonzalo Rojas on August 3, 2023. EPF Dec., ¶ 12.

On August 8, 2023, Plaintiff propounded multiple sets of written discovery requests on both Defendants (including Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), Requests for Production of Documents (Set One) and Request for Admission (Set One)). On August 23, 2024, Plaintiff served Special Interrogatories (Set Three) and Requests for Production of Documents (Set Two) on both Defendants. On September 6, 2023, Defendant provided responses to Plaintiff's Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), Requests for Production of Documents (Set One) and Request for Admission (Set One) and on September 26, 2023, Defendants provided responses to Plaintiff's Special Interrogatories (Set Three) and Requests for Production of Documents (Set Two). EPF Dec., ¶ 13. On August 18, 2023, both Defendants propounded multiple sets of written discovery requests on Plaintiff (including Form Interrogatories—General (Set One), Form Interrogatories—Employment Law (Set One) and Request for Production of Documents (Set One)). On September 19, 2023, Plaintiff responded to Defendants' discovery requests. EPF Dec., ¶ 14.

On August 7, 2023, Plaintiff noticed the deposition of Defendants person(s) most knowledgeable along with accompanying requests for production of documents and on September 6, 2023, Defendants served their Objections to the notice of deposition. EPF Dec., ¶ 15. On October 11, 2023, after further negotiations through the Mediator, both sides agreed to an updated Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement. EFP Dec. ¶ 16. On October 10, 2024, the Parties filed a Joint Stipulation for Leave to File a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code section 2698, Et Seq. ("First Amended Complaint"). EFP Dec. ¶ 17.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. EFP Dec., ¶ 18.

Defendants also produced Plaintiff's employee file, which included copies of Plaintiff's hiring documents and various time and payroll records. 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, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of documents and data points. EFP Dec., ¶ 19.

Class Counsel evaluated the Class Members' payroll and time data to develop various damage models. Among other things, Class Counsel worked with a third-party data expert to determine the approximate amount of allegedly unpaid wages, amount of allegedly unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. Class Counsel also estimated the number of allegedly missed, late, or truncated meal and rest periods, the amount of allegedly unpaid wages, the amount of allegedly unpaid overtime, and the amount of allegedly missed meal and rest period premiums paid during the Class Period. EFP Dec., ¶ 20.

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 his 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's 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' potential liability for purposes of settlement; (8) drafting the mediation brief; and (9) 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. EFP Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe 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. EFP Dec., ¶ 22.

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Participating Class Members</u>

The proposed Settlement Class consists of all current and former hourly-paid or non-exempt employees of either of the Defendants employed in California between March 1, 2017, and December 31, 2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendants estimated that the Settlement Class was comprised of 369 individuals that worked approximately 42,403 workweeks during the Class Period. Agreement at § 8.

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class and PAGA claims in exchange for the Total Settlement Amount of One Million Two Hundred Dollars and Zero Cents ($1,200,000.00). The Total Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) an Enhancement Award of not more than $15,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of $200,000; (4) Administration Expenses Payment estimated at $10,000; (5) Attorneys' Fees and Litigation Costs in the amount of $445,000.00 comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be $420,000.00 and an estimated $25,000 for actually incurred litigation expenses. See generally Agreement at § 3.

After deducting the amounts approved by the Court for the Enhancement Award, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § 1.22. There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. <u>The Funding Date</u>

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Total Settlement Amount in three installments payments of $400,000 per payment. The first installment payment shall be paid within 60 days after Final Approval. Agreement at § 4.2. All Individual PAGA Payments to PAGA Members, the LWDA Payment, and the Enhancement Award to Plaintiff shall be distributed by the Settlement Administrator within 14 days after Defendants fund the first installment payment. Agreement at § 4.2.1. The second installment payment and the employer's share of payroll taxes shall be made 12 months after the first installment payment. Each Class Member's Individual Settlement Shares shall be distributed by the Settlement Administrator within 14 days after Defendants fund the second installment payment. § 4.2.2. The third and final installment payment shall be made 12 months after the second installment payment. The Attorney's Fees and Costs and the Settlement Administration Costs shall be distributed by the Settlement Administrator within 14 days after Defendants fund the third installment payment. Agreement at § 4.2.3.

4. <u>Formula for Calculating Individual Class Payments</u>

Participating Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for the Defendants in California during the Class Period. Agreement at § 3.2.5. The Class Data provided by Defendants to the Settlement Administrator will include, among other things, the data needed to calculate the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § 1.4. Each Class Member's final Individual Settlement Payment will be calculated by using a fraction, the numerator of which is the Class Member's total number of Workweeks, and the denominator of which is the total number of

Workweeks of all Class Members. Agreement at § 3.2.5. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § 3.2.7. Given that there are approximately 369 Participating Class Members, ***the average gross recovery is approximately $1,436.31*** (Net Settlement Amount divided by Participating Class Members). EFP Dec., ¶ 6.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § 5.2.

6. PAGA Release by the State of California on behalf of the PAGA Members

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the PAGA Members, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of $1,200,000.00 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").)

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

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.</u>

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

The Parties participated in mediation the highly respected mediator Lynn Frank, Esq. Mediator Frank managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.")). EFP Dec. ¶ 23.

Once the Parties agreed to the Mediator's proposal, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. EFP Dec., ¶ 24.

2. <u>Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.</u>

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

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this 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 Defendant, 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. EFP Dec., ¶ 26.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Total Settlement Amount of $1,200,000.00 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. <u>The Total Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Total Settlement Amount of $1,200,000.00 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 worked with a third party to review the data produced by Defendants and develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. EFP Dec. at ¶ 27.

b. <u>Inherent Risks of Continued Litigation Support Preliminary Approval.</u>

"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.)

[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").

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 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. EFP Dec., ¶ 28.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. EFP Dec., ¶ 29. "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.)

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

[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* (7^{th} Cir. 1987) 826 F.2d 729, 732.

the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to submit 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 Released Claims. Agreement at §§ 7.4-7.5. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. EFP Dec., ¶ 30.

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.").) EFP Dec., ¶ 31.

C. The Court Should Preliminarily Approve the Enhancement 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 an Enhancement Award of $15,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general release of all claims arising out of his employment. EFP Dec., ¶ 32.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Enhancement Award. EFP Dec., ¶ 33.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed above, the estimated average Individual Settlement Payment 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 Attorneys' Fees and Costs are fair and reasonable. EPF Dec., ¶ 34.

Attorneys' Fees Payment shall be divided between Class Counsel with 85% apportioned to Lawyers for Justice, APC, 7.5% apportioned to JCL Law Firm, APC, and 7.5% apportioned to Zakay Law Group, APLC. Plaintiff has been apprised of this split in writing and has consented to this fee split. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs 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. EFP Dec., ¶ 35.

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. EFP Dec., ¶ 36.

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. EFP Dec., ¶ 37.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire

Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement. EFP Dec., ¶ 38.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. EFP Dec., ¶ 39.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. EFP Dec., ¶¶ 41-47, Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Jean Claude Lapuyade, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. EFP Dec., ¶ 40.

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IV. CONCLUSION

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

Dated: October 11, 2024

JCL LAW FIRM, APC

By: ______________________________

Jean-Claude Lapuyade, Esq.