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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

KALAINA A. DULA, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

2 KINGS GAMING, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No: 20CV-02289

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

Hearing Date: April 6, 2022
Hearing Time: 8:15 a.m.

Honorable Judge Brian McCabe
Department 8

Trial Date: Not Set
Action Filed: August 12, 2020

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1 **I. INTRODUCTION**

2 Plaintiff KALAINA A. DULA (“Plaintiff”) respectfully submits this memorandum in
3 support of the motion for preliminary approval of the Class Action Complaint (*Dula v. 2 Kings*
4 *Gaming, Inc.*, Case No. 20CV-02289, filed on or about August, 12, 2020) (the “Action”) with
5 Defendant 2 KINGS GAMING, INC. (“Defendant”), and seek entry of an order: (1) preliminary
6 approving the proposed settlement of the Action with Defendant; (2) approving the form and
7 method for providing class-wide notice; (3) directing that notice of the proposed settlement be given
8 to the class; and (4) scheduling a final approval hearing date to consider Plaintiff’s motion for final
9 approval of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of
10 attorneys’ fees and litigation expenses.

11 Plaintiff and Defendant have reached a full settlement of the Action, which is embodied in
12 the Class Action Settlement Agreement (the “Agreement”). A copy of the fully executed
13 Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served
14 and filed herewith.

15 As consideration for this Settlement, the total amount to be paid by Defendant is Ninety-
16 Seven Thousand Five Hundred Dollars (\$97,500) (the “Gross Settlement Amount”). The Gross
17 Settlement Amount will settle all issues pending in the Action between the Plaintiff and the Class
18 Members (defined in the Agreement as “all individuals who are or previously were employed by
19 Defendant in California and classified as non-exempt employees at any time during the Class
20 Period”) (the “Class”), on the one hand, and the Defendant and the Released Parties, on the other
21 hand, including: payment of all Individual Settlement Payments to Participating Class Members,
22 the Class Representative Enhancement Award, the Class Counsel Award (for fees and costs), the
23 payment to the California Labor Workforce Development Agency (“LWDA Payment”), the
24 Individual PAGA Payments, and the expenses of the Settlement Administrator. The Gross
25 Settlement Amount does not include Defendant’s share of employer-side payroll taxes, which it
26 shall pay separately. The Settlement is all-in with no reversion to Defendant and no need to submit
27 a claim form. (Decl. Zakay at ¶ 3).

1 On July 12, 2021 the parties participated in a full-day mediation before Jeffrey Ross, Esq., a
2 respected mediator of wage and hour class actions. At the conclusion of the full-day mediation, the
3 Parties were unable to reach an agreement for settlement. Subsequently, however, the Parties
4 continued settlement negotiations for a few months until they reached a tentative agreement. The
5 Parties then prepared the full Agreement, which was signed by all counsel and the Parties and is
6 now presented to this Court for preliminary approval. (Decl. Zakay at ¶ 5).

7 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
8 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
9 Agreement and enter the proposed order submitted herewith.

10 **II. DESCRIPTION OF THE SETTLEMENT**

11 The Gross Settlement Amount to be paid by Defendant is ninety-seven thousand and five-
12 hundred Dollars (\$97,500). Under the Settlement, the Gross Settlement Amount consists of the
13 following elements: (1) payments of the Individual Settlement Payments to Participating Class
14 Members, (2) the Class Counsel Award (for fees and costs), (3) Settlement Administration Costs,
15 (4) the LWDA Payment, (5) the Individual PAGA Payments, and (6) the Class Representative
16 Enhancement Award to the Plaintiff. The Gross Settlement Amount does not include Defendant's
17 share of employer payroll taxes, which Defendant shall pay to the Administrator separately. The
18 Gross Settlement Amount shall be all-in with no reversion to Defendant. (Decl. Zakay at ¶ 12).

19 After Final Approval (the "Effective Date"), the Defendant will fund the Gross Settlement
20 Amount in one lump sum payment within fourteen (14) calendar days. After the Court grants final
21 approval and within seven (7) calendar days after the Administrator receives payment of the
22 Settlement Sum, the Administrator shall provide the Parties the final calculations of settlement
23 payments to Class Members. Within seven (7) calendar days after the final calculations are
24 distributed by the Administrator, the Administrator, only upon approval by the Parties of the final
25 distribution amounts, will mail to Class Members their pro-rata share of the Net Settlement Sum
26 and Aggrieved Employees their pro-rata share of their PAGA Payment, and will distribute the
27 awarded attorneys' fees and costs, the representative enhancement award, and payment for the costs
28 of Administration. (Decl. Zakay at ¶ 13).

1 The Net Settlement Amount shall equal the net amount available for Individual Settlement
2 Payments to Participating Class Members from the Gross Settlement Amount after deducting the
3 Court-approved amounts for the Class Representative Enhancement Award, the Class Counsel
4 Award, the PAGA Payment, and the Settlement Administration Costs. The Settlement
5 Administrator will pay an Individual Settlement Payment from the Net Settlement Amount to each
6 Participating Class Member. The submission of a claim form is not required in order for the
7 Participating Class Member to be paid his or her Individual Settlement Payment. The Individual
8 Settlement Payment for each Participating Class Member will be calculated as follows: from the
9 Net Settlement Amount, the Individual Settlement Payment for each Participating Class Member in
10 the Class will be calculated by dividing the Net Settlement Amount by the total number of
11 workweeks worked by all Participating Class Members during the Class Period and then
12 multiplying that amount (the “Workweek Value”) by the total number of workweeks worked by
13 each Participating Class Member during the Class Period. The entire Net Settlement Fund shall be
14 distributed. (Decl. Zakay at ¶14).

15 Class Members will have 45 days after the mailing of the Class Notice to exclude
16 themselves, contest the number of workweeks allocated to them, or submit written objections. Class
17 Members may choose to opt-out of the Settlement by following the directions in the Class Notice.
18 All Class Members who do not “opt out” will be deemed Participating Class Members who will be
19 bound by the Settlement and will be entitled to receive a settlement payment. Finally, the Class
20 Notice will advise the Class Members of their right to object to the Settlement. (Decl. Zakay at
21 ¶15).

22 If a check is returned to the Settlement Administrator, the Settlement Administrator will
23 perform a skip-trace for the Participating Class Member and re-mail the check to the Participating
24 Class Member at his or her correct address within three (3) calendar days of receipt of the returned
25 check. If a Participating Class Member’s Individual Settlement Award check is not cashed within
26 180 days after the Settlement Administrator’s last mailing to the Participating Class Member, the
27 funds from such uncashed check will be will be paid out in accordance with California Code of
28

1 Civil Procedure section 384(b) to the Voluntary Legal Services Program – an employment law
2 clinic located in Sacramento, California as the *cy pres* beneficiary. (Decl. Zakay at ¶16).

3 The Parties have agreed to use Simpluris as the Settlement Administrator for the Settlement.
4 Payment of the expenses of the Settlement Administrator from the Gross Settlement Fund shall be
5 made for the expenses of effectuating and administering the Settlement. The Settlement
6 Administrator shall receive payment for services in an amount not to exceed (\$6,000). The costs of
7 the Administrator shall be paid from the Settlement Sum. (Decl. Zakay at ¶17).

8 Subject to Court approval, the Agreement provides, as part of the Class Counsel Award, (a)
9 for Class Counsel to be awarded a sum not to exceed 1/3 of the Gross Settlement Amount for their
10 fees and (b) an award of litigation expenses in an amount not to exceed \$20,000. In support of the
11 request for the Class Counsel Award, Class Counsel will provide evidentiary support, including
12 lodestar method calculations. Subject to Court approval, the Agreement provides for payment of a
13 Class Representative Enhancement Award of no more than \$7,500 for Plaintiff or such lesser
14 amount as may be approved by the Court at Final Approval.¹ Defendant will not oppose a motion
15 for approval of attorneys’ fees, costs and a service award consistent with the Agreement. (Decl.
16 Zakay at ¶18).

17 Subject to Court approval, \$5,000 will be paid from the Gross Settlement Amount for
18 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the
19 requirements of Labor Code §2699(i), the PAGA Payment shall be allocated \$3,750.00 (75%) to
20 the LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and
21 \$1,250.00 (25%) for distribution as Individual PAGA Payments to the Aggrieved Employees.
22 (Decl. Zakay at ¶19).

23 **III. CASE BACKGROUND**

24 On August 12, 2020, Plaintiff filed the Class Action Complaint (Case No. 20CV-02289) in
25 the Superior Court of the State of California County of Merced, asserting claims for: (1) unfair
26

27 ¹ Plaintiff will address the reasonableness of this award when filing their final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick’s Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 competition in violation of Cal. Business & Professions Code § 17200; (2) failure to pay minimum
2 wages in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (3) failure to pay overtime wages
3 in violation of Cal. Labor Code § 510; (4) failure to provide required meal breaks in violation of
4 Cal. Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5) failure to provide required
5 rest breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
6 (6) failure to reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; (7)
7 failure to provide accurate itemized wage statements in violation of Cal. Labor Code § 226; (8)
8 failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203; and (9)
9 violation of the Private Attorneys General Act under Labor Code §§ 2698, *et seq.* (Decl. Zakay at
10 ¶7).

11 Plaintiff seeks to represent a putative class of all persons who were employed by Defendant
12 in California in non-exempt, hourly-paid positions at any time during the Class Period, including
13 current and former employees (the “Class Members”). The Class Period is defined as the period of
14 time from August 12, 2016 through January 8, 2022. The Complaint generally alleges that
15 Defendant failed to properly pay Plaintiff and Class Members minimum and overtime wages, failed
16 to provide them with proper meal breaks and rest breaks, failed to reimburse for required business
17 expenses, failed to provide them with complete and accurate wage statements, engaged in unfair
18 business practices, and failed to timely pay them all wages owed at the time of the separation of
19 their employment. The Action seeks unpaid wages, statutory and PAGA penalties, attorneys’ fees,
20 and litigation costs² due and owing to Plaintiff, Class Members, and Aggrieved Employees by virtue
21 of the foregoing claims. (Decl. Zakay at ¶8).

22 Prior to mediation, the Parties engaged in formal discovery, as well as in investigation and
23 the informal exchange of documents and information in connection with the Action and mediation.
24 As part of this process, Defendant provided a significant sample of time records and payroll records,
25 as well as other documents and information, to Class Counsel to review and analyze. On July 7,
26 2021, the Parties participated in an all-day mediation presided over by Jeffrey Ross, Esq., a mediator
27

28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with
the final approval papers.

1 of wage and hour class actions. At the conclusion of the full-day mediation, the Parties were unable
2 to reach an agreement to settle the Action. Thereafter, for several months, the Parties continued to
3 negotiate and eventually agreed to terms, as reflected in the Settlement Agreement, which was
4 signed by the Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at
5 ¶9).

6 Although a resolution has been reached, Defendant denies that it has violated any applicable
7 law, committed any wrong against Plaintiff or any other current or former employee, or that it has
8 otherwise damaged Plaintiff or any other current or former employee in any way. Further,
9 Defendant contends that class certification would be inappropriate for any reason other than for
10 settlement. (Decl. Zakay at ¶10).

11 Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further
12 contends that the Action is appropriate for class certification on the basis that the Plaintiff's claims
13 meet the requisites for class certification. Without admitting that class certification is proper,
14 Defendant has stipulated that the above Class may be certified for settlement purposes only. The
15 Parties agree that certification for settlement purposes is not an admission that class certification
16 would be proper if the class certification issues were litigated. Further, the Agreement is not
17 admissible in this or any other proceeding as evidence that the Class could be certified absent a
18 settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the
19 requisites for establishing class certification with respect to the Class, as defined above, are
20 satisfied. (Decl. Zakay at ¶10).

21 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
22 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
23 reviewed the production of documents from the Defendant. Prior to the settlement negotiations,
24 counsel for Defendant provided Class Counsel with access to the necessary data and information
25 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
26 of a significant sample of time records and data with the assistance of an expert (Econ One). Based
27 on the foregoing data and their own independent investigation, evaluation and experience, Class
28 Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the

1 Class in light of all known facts and circumstances, including the risk of significant delay, the
2 defenses asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶11).

3 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS**
4 **COURT TO GRANT PRELIMINARY APPROVAL**

5 When a proposed class-wide settlement is reached, the settlement must be submitted to the
6 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
7 p.11-87). California “[p]ublic policy generally favors the compromise of complex class action
8 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
9 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
10 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
11 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
12 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

13 Preliminary approval is the first of three steps that comprise the approval procedure for
14 settlements of class actions. The second step is the dissemination of notice of the settlement to all
15 Class Members. The third step is a final settlement approval hearing, at which evidence and
16 argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented
17 and Class Members may be heard regarding the settlement. (See *Dunk v. Ford Motor Co.*, 48 Cal.
18 App. 4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of
19 Court, rule 3.769.).

20 The primary question presented on an application for preliminary approval of a proposed
21 class action settlement is whether the proposed settlement is “within the range of possible approval.”
22 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
23 (7th Cir. 1982)).³ Preliminary approval is merely the prerequisite to giving notice so that “the
24 proposed settlement... may be submitted to members of the prospective Class for their acceptance

25
26 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts
28 are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure
for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986),
citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010)). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the Class Members and a final settlement hearing is held by the Court.

A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794). Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. (3B J. Moore, *Moore’s Federal Practice* §§23.80 - 23.85 (2003)).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807). The Ninth Circuit explains, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982)). The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of

1 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
2 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
3 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
4 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
5 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

6 With regard to class action settlements, the opinions of counsel should be given considerable
7 weight both because of counsel’s familiarity with this litigation and previous experience with cases
8 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
9 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
10 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
11 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
12 court noted that “[e]xperienced and competent counsel have assessed these problems and the
13 probability of success on the merits... The parties’ decision regarding the respective merits of their
14 position has an important bearing.” (*Id.* at ¶ 92,520). “The recommendations of plaintiffs’ counsel
15 should be given a presumption of reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
16 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
17 significant weight. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
18 Cal. 2004)).

19 **B. Factors To Be Considered In Granting Preliminary Approval**

20 A number of factors are to be considered in evaluating a settlement for purposes of
21 preliminary approval. In determining whether to grant preliminary approval, the court considers
22 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
23 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
24 treatment to class representatives or segments of the class, and (4) falls within the range of possible
25 approval.” (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No
26 one factor should be determinative, but rather all factors should be considered. The analysis has
27 been summarized as follows:
28

1 If the proposed settlement appears to be the product of serious, informed,
2 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
3 preferential treatment to class representatives or segments of the class, and falls
4 within the range of possible approval, then the court should direct that notice be
given to the class members of a formal fairness hearing, at which evidence may be
presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

5 Here, the Settlement meets all of these criteria for preliminary approval.

6 **1. The Settlement is the Product of Serious, Informed and Arm's Length**
7 **Negotiations by Experienced Counsel**

8 This settlement is the result of extensive and hard-fought litigation and negotiations before
9 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny
10 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
11 Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest
12 the Released Class Claims.⁴

13 The Parties scheduled and attended an arms-length private mediation before Jeffrey Ross,
14 Esq., an experienced mediator of wage and hour actions. In preparation for the mediation,
15 Defendant provided Class Counsel with necessary records and information for the members of the
16 Class. Defendant produced a large sample consisting of pay records and time records. Defendant
17 also produced Defendant's relevant employment policies, including compensation policies and
18 timekeeping policies. Plaintiff analyzed the data with the help of an expert, Econ One Research,
19 Inc. ("Econ One"). On July 7, 2021, the Parties participated in a full-day mediation before Jeffrey
20

21 ⁴ Upon the entry of Final Judgment and funding in full of the Gross Settlement Amount by
22 Defendant, any person who is a Participating Class Member of the Class who does not timely and
23 validly opt out shall be deemed to have fully and finally released any and all class action and
24 representative claims made in the Action, or which could have been made based on the facts alleged
25 in the Action, including, but not limited to, any claims for failure to pay minimum wages, failure
26 to pay overtime, failure to provide meal periods, failure to pay meal period premiums, failure to
27 provide rest breaks, failure to provide rest break premiums, failure to reimburse business expenses,
28 failure to provide accurate wage statements, failure to timely pay wages, failure to pay wages at
separation, violations of the California Industrial Welfare Commission's ("IWC") Wage Orders
based on those violations, violations of California Labor Code §§201, 202, 203, 204, 206, 210,
218.6, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, 1198, , 2802, California Business and
Professions Code §§ 17200, *et seq.* arising from those violations, and all claims for costs, attorney's
fees, civil penalties, statutory penalties, premium pay, and liquidated damages arising therefrom."
(See Agreement at ¶ 3(c).)

1 Ross, Esq., at which the Parties were unable to reach an agreement to settle the Action. Thereafter,
2 for several months, the Parties continued to negotiate and eventually reached an agreement, as
3 reflected in the Settlement Agreement, which was signed by all counsel and the Parties. (Decl.
4 Zakay at ¶5).

5 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
6 trying the Action against Defendant through possible appeals which could take several years. Class
7 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in
8 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
9 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
10 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
11 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶20).

12 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
13 capable advocacy on both sides. The Parties were represented by experienced and capable counsel
14 who zealously advocated their respective positions with the assistance of an experienced mediator.
15 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
16 vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash.*
17 *Public Power*, 720 F. Supp. at 1392).

18 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
19 **Approval**

20 **a. The Settlement is Fair, Reasonable, and Adequate**

21 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
22 possible approval. All Class Members will receive an opportunity to participate in the Settlement
23 and receive payment according to the same formula if they do not opt out. (Agreement at ¶ 6.)

24 The amounts to compensate the Class Members for the alleged violations at the time this
25 Settlement was negotiated were calculated by Econ One, Plaintiff’s damage expert. Plaintiff used
26 Econ One to analyze the data and determine the potential damages for the employees. For the Class,
27 Plaintiff estimates that Defendant was subject to maximum liability for *damages* in the amount of
28 \$224,608 consisting of \$22,506 for unpaid wages, \$119,494 for rest periods, \$41,780 for meal

1 periods, and \$40,828 for unreimbursed business expenses. In addition, Plaintiff's expert calculated
2 \$177,277 in waiting time penalties and \$87,012 for wage statement penalties.⁵ Finally, Plaintiff's
3 expert calculated that Defendant could be liable for PAGA penalties in an amount of \$739,000.⁶
4 Consequently, the Settlement of \$97,500 represents approximately 43% of the maximum estimated
5 damages, and 20% of the maximum combination of damages and penalties to the Class, assuming
6 all of these amounts could be proved at trial. Given the amount of the Settlement as compared to
7 the potential value of claims in this case, the Settlement is fair and reasonable. Clearly, the goal of
8 this litigation to provide compensation to Class Members for unpaid time, unreimbursed business
9 expenses, and for allegedly missed rest breaks has been met.

10 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
11 2015) the court approved a settlement of an action claiming unpaid wages where the settlement

12 ⁵ While Plaintiff alleged claims for statutory penalties, she recognizes that this claim is subject to
13 various defenses asserted by Defendant. Plaintiff's claims pursuant to Labor Code Section 226 and
14 various PAGA penalties are also subject to a good faith defense as to whether any premium wages
15 for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and the
16 Class were properly compensated. See *Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
17 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on
18 claim for failure to provide accurate itemized wage statements "because a good faith dispute exists...
19 [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226]
20 statements"); see also *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is
21 no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
22 and when the wages were due."). Additionally, there is serious doubt as to whether violations of
23 the meal/rest period regulations, which require payment of a "premium wage" for each improper
24 meal period, give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro,*
25 *Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
26 5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal.
27 App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums
28 "do not entitle employees to pursue the derivative penalties in sections 203 and 226."

⁶ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
Defendant, including that Class Members may not be able to recover subsequent penalties until, at
a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a "violation" subject to
penalties."). In addition, Plaintiff recognizes that PAGA claims bear some risk. See *Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
2 consideration far exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
3 ruled that the settlement which represented approximately 10% of the estimated loss to the class
4 was fair, reasonable, and adequate. As a result, this settlement, which far exceeds the percentage
5 approved in *Stovall-Gusman*, is entitled to preliminary approval.

6 ***b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses***
7 ***Warrant the Settlement***

8 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
9 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026). Here, a number of defenses asserted by
10 Defendant presented serious threats to the claims of the Plaintiff and the other Class Members. For
11 instance, Defendant asserted that the employment practices complied with all applicable Labor
12 Laws. Defendant also argued that (1) there were vast differences across different types of Class
13 Members; (2) it maintained robust, compliant employment policies; (3) it had high compliance rates
14 for meal periods; and (4) it in fact provided company-issued cell phones or tablets to employees
15 who specifically needed them to perform their jobs and offered monthly reimbursements to those
16 employees who did not, but who were required to use their personal cell phone in any given month.

17 Defendant further argued that the Supreme Court decision in *Brinker v. Superior Court*, 53
18 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
19 certifiability as to the meal and rest period claims. A major component of the damages alleged to
20 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
21 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
22 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
23 Plaintiff *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
24 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
25 strictly enforced lawful policies, and afforded Plaintiff and the Class Members compliant meal and
26 rest breaks. If successful, these defenses could eliminate or substantially reduce any recovery to
27 the Class. While Plaintiff believes that these defenses, and others, could be overcome, Defendant
28

maintains these defenses have merit and therefore present a serious risk to recovery for the Class. (Decl. Zakay at ¶22).

c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and Complexity of Further Litigation Weight in Favor of the Settlement

There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to obtain class certification and thereby not recover on behalf of any employee other than themselves. Defendant argued that the individual experience of each employee varied with respect to the alleged claims. While other cases have approved class certification of wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. (Decl. Zakay at ¶23).

This Settlement is therefore entitled to preliminary approval. Were this case to go to trial, the Plaintiff and other Class Members would need to prove to the satisfaction of the Court, among other things, that wages, premiums, and other damages were owed on a class-wide basis. This was and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and informed counsel, recognized the potential risks and agreed on the settlement. The "risk, expense, complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'" (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000))).

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1 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class**
2 **Representative or Segments of The Class**

3 The relief provided in the Settlement will benefit all members of the Class who do not opt
4 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
5 the Class in any way. Each Participating Class Member will be entitled to a cash payment based
6 on the plan of allocation described herein. Each Participating Class Member's Individual
7 Settlement Payment will be determined based upon the weeks worked by that employee during the
8 prescribed California Class Period. (Decl. Zakay at ¶4).

9 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
10 for her service, and for the risks undertaken on behalf of the Class. Plaintiff performed her duties
11 admirably by working with Class Counsel. The requested Plaintiff's service payment is well within
12 the accepted range of awards for purposes of preliminary approval. *See e.g. Mathein v. Pier 1 Imps.*
13 *(U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class
14 member payment was \$351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS
15 173698 (N.D. Cal. 2014) (approving \$10,000 service award where class member recovery was
16 \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D.
17 Or. 2007) (approving award of \$10,000 where class member recoveries were as little as \$150);
18 *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008)
19 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
20 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in
21 overtime class action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service
22 awards are routinely awarded to class representatives to compensate the employees for the time and
23 effort expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
24 therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. (2007 WL
25 221862 at *16-17.) (Decl. Zakay at ¶25).

26
27
28 ///

1 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
2 **Preliminary Approval Of The Settlement**

3 The stage of the proceedings at which this Settlement was reached also militates in favor of
4 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
5 a thorough investigation into the facts of the class action. Class Counsel began investigating the
6 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel engaged
7 in formal discovery with Defendant. Thereafter, Class Counsel performed significant review and
8 analysis of Defendant's documents, time records and pay records. Class Counsel engaged in a
9 thorough research and analysis of the relevant claims and data. Class Counsel were also
10 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
11 claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel
12 possessed sufficient information to make an informed judgment regarding the likelihood of success
13 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶26).

14 Based on the foregoing data and their own independent investigation and evaluation, Class
15 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
16 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
17 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
18 numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed
19 sufficient information to make an informed judgment regarding the likelihood of success on the
20 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶27).

21 The fact that an informal exchange of information (as opposed to formal discovery) was
22 agreed to by the Parties is of no consequence. In *Glass*, the Northern District of California granted
23 final approval of an unpaid wages action although in *Glass* no formal discovery had been conducted
24 prior to the settlement:

25 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
26 observed, however, '[i]n the context of class action settlements, 'formal discovery
27 is not a necessary ticket to the bargaining table' where the parties have sufficient
28 information to make an informed decision about settlement.'" See *In re Mego*
Financial Corp. Securities Litigation, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

1 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
2 settlement because Class Counsel had the same sufficient information, as well as document
3 production, independent investigations and due diligence, to confirm the accuracy of the
4 information supplied by Defendant.

5 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

6 Plaintiff contends that the proposed settlement meets all the requirements for class
7 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
8 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
9 should conditionally certify the Class for settlement purposes only, defined as follows:

10 The California Class:

11 “all individuals who are or previously were employed by Defendant in California and
12 classified as non-exempt employees at any time during the Class Period.” (Agreement at ¶
13 6(a)).

14 The Class Period is the period of time from August 12, 2016 through January 8, 2022. The Parties
15 estimate that there are 108 California Class Members who collectively worked approximately 2,876
16 workweeks. (Decl. Zakay at ¶28).

17 **A. California Code of Civil Procedure §382**

18 Plaintiff seeks certification of this Class for settlement purposes under California Code of
19 Civil Procedure section 382. The California Supreme Court has summarized the standard for
20 determining whether class certification is appropriate as follows:

21 Code of Civil Procedure Section 382 authorizes class actions “when the question is
22 one of a common or general interest, of many persons, or when the parties are
23 numerous, and it is impracticable to bring them all before the court....” The party
24 seeking certification has the burden to establish the existence of both an
25 ascertainable class and a well-defined community of interest among class members.
26 (*citations omitted*). The “community of interest” requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can
adequately represent the class.

27 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

1 While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these
2 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
3 purposes of settlement and therefore, the proposed Class should be certified for purposes of
4 settlement only.

5 **B. The Proposed Class Is Ascertainable and Numerous**

6 Here, the approximately 108 current and former employees that comprise the California
7 Class can be identified based on Defendant's records and are sufficiently numerous for class
8 certification. All of these employees are ascertainable because the class members can readily be
9 determined through examination of Defendant's employment files. Given that the classes consist of
10 approximately 108 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44
11 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
12 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Moreover,
13 the current and former employees that comprise the Class can be identified based on Defendant's
14 records and are sufficiently numerous for class certification. (Decl. Zakay at ¶28(a)).

15 **C. Common Issues of Law and Fact Predominate**

16 Predominance of common issues of law or fact does not require that the common issues be
17 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
18 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). "Predominance is a comparative
19 concept, and 'the necessity for class members to individually establish eligibility and damages does
20 not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334).

21 Commonality exists if there is a predominant common legal question regarding how an
22 employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
23 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on
24 its drivers.")). Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the
25 certification stage since the question is "essentially a procedural one that does not ask whether an
26 action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
27 (2003)).
28

1 Here, Plaintiff contends that common questions of law and fact are present, and specifically:
2 (i) whether Defendant's failed to pay minimum and overtime wages for all time worked; (ii) whether
3 Defendant failed to provide legally-requisite meal and rest periods to Class Members; (iii) whether
4 Defendant failed to timely furnish accurate, itemized and legal wage statements to Class Members;
5 (iv) whether Defendant failed to properly reimburse Class Members for required business expenses;
6 (v) whether Defendant subjected Class Members to unlawful, unfair and/or fraudulent business
7 acts/practices; and (vi) whether Defendant is liable for attorneys' fees and costs . (Decl. Zakay at
8 ¶28(b)). Defendant will not oppose a finding of commonality for purposes of settlement only.

9 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

10 The typicality requirement requires Plaintiff to demonstrate that the members of the class
11 have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of
12 the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v.*
13 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
14 (9th Cir. 1998), the Ninth Circuit held that "[u]nder the rule's permissive standards, representative
15 claims are 'typical' if they are reasonably coextensive with those of absent class members; they
16 need not be substantially identical." (50 F.3d at 1020).

17 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
18 Plaintiff, like every other member of the Class was employed by Defendant and is a member of the
19 Class—a non-exempt employee who was entitled to meal and rest breaks, and minimum and
20 overtime pay. Plaintiff was subject to the same employment practices concerning payment of
21 wages, the meal and rest periods, and received similar wage statements. Thus, the claims of the
22 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
23 the same employment policies, and are based on the same legal theories. (Decl. Zakay at ¶28(c)).
24 For purposes of settlement, the typicality requirement is met as to the common issues presented in
25 this case. Defendant will not oppose such a finding for purposes of settlement only.

26 **E. The Class Representative Fairly and Adequately Protected the Class**

27 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
28 not have any conflicts of interest with other class members, and (b) will prosecute the case

1 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020). First, Plaintiff is well aware of
2 her duties as a representative of the Class and have actively participated in the prosecution of this
3 case to date. Plaintiff effectively communicated with Class Counsel, provided documents to them
4 and participated in discovery, investigation and negotiations in the Action. Second, Plaintiff
5 retained competent counsel who are experienced in employment class actions. Third, there is no
6 antagonism between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the
7 Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at
8 ¶28(d)).

9 **F. The Superiority Requirement Is Met**

10 To certify a class, the Court must also determine that a class action is superior to other
11 available methods for the fair and efficient adjudication of the controversy. “Where classwide
12 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
13 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
14 1234 (9th Cir. 1996)). As courts have previously observed:

15 Absent class treatment, each individual plaintiff would present in separate,
16 duplicative proceedings the same or essentially the same arguments and evidence,
17 including expert testimony. The result would be a multiplicity of trials conducted
18 at enormous expense to both the judicial system and the litigants. ‘It would be
neither efficient nor fair to anyone, including defendants, to force multiple trials to
hear the same evidence and decide the same issues.’

19 *Sav-On*, 34 Cal. 4th at 340.

20 Here, a class action is the superior mechanism for resolution of the claims as pled by the
21 Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The Parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. In
26 accordance with the Agreement, within seven (7) calendar days after the date that the Court grants
27 preliminary approval of this Agreement, Defendant will provide to the Administrator a list of all
28 Class Members and all information necessary to locate Class Members, process payments, and

1 process claims for payments, including, but not limited to, Class Member workweeks or dates of
2 employment, last known addresses, social security numbers, and any other information required to
3 effectuate the Agreement. Within twenty-one days from the date on which the Court grants
4 preliminary approval, the Settlement Administrator will mail the Class Notice to all Class Members
5 via first-class regular U.S. Mail to their last known addresses. (Agreement at ¶ 6(g)).

6 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
7 counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the
8 Agreement). The Class Notice will include, among other information: (i) information regarding the
9 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
10 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
11 estimated settlement payment for each of the Class Members; (v) the amount of attorneys' fees and
12 litigation expenses to be sought; (vi) the amount of the Plaintiff's Class Representative Service
13 Payment request; (vii) the amount being paid to the LWDA; and (viii) the Settlement Administration
14 Costs. (Decl. Zakay at ¶30).

15 The Class Notice will state that the Class Members shall have forty-five (45) days from the
16 date that the Class Notice is mailed to them to request exclusion or to submit an objection. The
17 Class Members will be given an opportunity to object to the terms of the Agreement and/or the
18 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
19 with the instructions set forth in the Class Notice. Class Members will be instructed to only contact
20 the Settlement Administrator and Class Counsel and not the Court. Class Members who do not opt
21 out will automatically receive a settlement payment. This notice program was designed to
22 meaningfully reach the Class Members and advises them of all pertinent information concerning
23 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
24 process, is the best notice practicable under the circumstances and constitutes due and sufficient
25 notice to all persons entitled thereto. The Class Notice provides information on the terms and
26 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
27 time and place of the final settlement approval hearing; and the procedure and deadline for
28

1 submitting comments, objections, and requests for exclusion. The Class Notice complies with
2 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶30).

3 **VII. CONCLUSION**

4 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement
5 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
6 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
7 Preliminary Approval.

8
9 DATED: March 7, 2022

10 **ZAKAY LAW GROUP, APLC**

11 By: 
12 Shani O. Zakay
13 Attorney for Plaintiffs
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