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situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO COUNTY**

MANUEL VILLEGAS, as an individual,
and on behalf of other similarly situated
employees,

Plaintiff,

vs.

FIBER CARE BATHS, INC., a California
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: CIVSB2114736

Assigned for all purposes to:
Hon. David Cohn
Dept. S26

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: January 23, 2023
Time: 10:00 a.m.
Place: Department S26

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4 Newberg on Class Actions (4th ed. 2002) § 11:38 19

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Manuel Villegas (“Plaintiff”) and Plaintiff Ernesto Rivera (“Plaintiff”) seeks preliminary approval of the Parties’ Stipulation of Class Action and PAGA Settlement (hereinafter “Stipulation” or “Settlement”), which if approved by the Court, would provide valuable monetary relief for approximately current and former employees of Defendants Fiber Care Baths, Inc. (“Defendants”), (collectively with Plaintiff, the “Parties”). The Parties jointly prepared and executed the formal long-form Stipulation, attached as **Exhibit A** to the Declaration of Armond M. Jackson (“Jackson Decl.”), the basic terms of which provide for:

- (1) Conditional certification of the Settlement on behalf of Class Members defined as: All hourly paid Employees employed by Defendant in the State of California during the Class Period, which is from November 19, 2016 through October 21, 2022.
- (2) A non-reversionary Class Settlement Amount of \$3,740,000.00 in addition to employer payroll taxes which will be paid separately by Defendant. The Maximum Settlement Amount includes:
 - (a) A Net Settlement Amount of approximately \$2,148,333.33 (the Maximum Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency [“LWDA”], and the requested Class Representative Enhancement Payment), which will be allocated to Participating Class Members on a pro-rata basis according to the Qualified Pay Periods worked by each Class Member during the Class Period. The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class (“Participating Class Members”), and without the need to submit claims for payment.
 - (b) Attorneys’ fees in the amount of one-third of the Class Settlement Amount (or \$1,246,666.67) and litigation costs and expenses not to exceed \$40,000.00, to Jackson Law, APC and Justice Law Corporation (“Class Counsel”).
 - (c) Settlement Administration Costs, currently estimated at \$25,000.00, to be paid to the jointly selected settlement administrator, ILYM Group, Inc.
 - (d) A \$300,000.00 payment of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. \$225,000.00 will be a payment to the LWDA pursuant to the Private Attorneys General Act (“PAGA”).
 - (e) Class Representative Enhancement Payments of \$10,000.00 to Plaintiff Manuel Villegas and \$10,000 to Plaintiff Ernesto Rivera for their services on behalf of the Settlement Class.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class Members’ behalf is fair, reasonable, and valuable. The Stipulation was negotiated by the parties at arm’s-length with helpful guidance from mediators Lynn Frank, Esq. and Marc Feder, Esq., a pair of

1 experienced, well-respected class action mediators, and the Stipulation confers substantial benefits to
2 Class Members. Indeed, by settling now rather than proceeding to trial, Class Members will not have to
3 wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of
4 Defendant prevailing at trial.

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

9 **II. FACTS AND PROCEDURE**

10 **A. Summary of the Litigation.**

11 Defendant is a company that owns and operates a bathware manufacturing facility where Plaintiff
12 worked. Defendant has facilities in Adelanto, California. Plaintiff Villegas and Plaintiff Rivera were
13 employed by Defendant as a non-exempt Employee at the Defendants. [Jackson Decl. ¶ 3.] This
14 Stipulation is limited to Defendants' employees in the State of California, during the Class Period. [*Id.*]

15 On May 18, 2021, Plaintiff Rivera filed a Class Action Complaint in the San Bernardino County
16 Superior Court alleging violations of the California Labor Code and applicable wage orders for the
17 following claims regarding; (1) overtime wages; (2) failure to provide meal breaks; (3) failure to provide
18 rest breaks; (4) minimum wages; (5) claim for failure to pay timely wages (6) claim for failure to maintain
19 accurate and itemized wages; (7) claim for failure to reimburse for necessary business; (8) unlawful
20 business practices. On May 20, 2021, Plaintiff Villegas filed a Class Action Complaint in the San
21 Bernardino County Superior Court alleging violations of the California Labor Code and applicable wage
22 orders for the following claims regarding (1) minimum wages; (2) overtime wages; (3) claim for failure to
23 pay timely wages; (4) unlawful receipt of wages; (5) failure to provide meal breaks; (6) failure to provide
24 rest breaks; (7) claim for failure to maintain accurate and itemized wages; (8) claim for failure to pay
25 timely wages upon termination; (9) unlawful business practices; and (10) violation of the California
26 Private Attorney General Act. On July 6, 2022, Plaintiff filed an Amended Complaint to add a claim for
27 failure to reimburse for necessary business expenses. Plaintiff Villegas also submitted a PAGA notice
28 letter to the LWDA on March 9, 2021. [Jackson Decl. ¶ 4.]

1 Thereafter, Plaintiff Villegas and Plaintiff Rivera worked together to investigate the claims.
2 Defendant produced daily tracking timesheets, the employee handbook, and earnings statements. [Jackson
3 Decl. ¶¶ 6-17] The Parties have stipulated to consolidate the respective actions *Manuel Villegas v. Fiber*
4 *Care Baths, Inc.*, a California Corporation; and DOES 1 through 50, inclusive, Case No. CIVSB2114736
5 and *Ernesto Rivera v. Fiber Care Baths, Inc.*, a California Corporation; and DOES 1 through 50,
6 inclusive, Case No. CIVSB2114174. Prior to the mediation and for purposes of the Settlement, Plaintiff
7 analyzed the time and pay data. [*Id.*]

8 Plaintiff's primary theories of liability are as follows:

- 9 • **Minimum Wage and Overtime Claims:** Plaintiff alleges that Defendant failed to
10 provide compensation for all hours worked. [Jackson Decl. ¶ 10.]
- 11 • **Unlawful Meal Period Claim:** Plaintiff alleges that Defendant failed to provide
12 compliant meal periods by staffing employees too thinly in light of the work demands to allow them to
13 take meal periods on time and for at least 30 minutes. [Jackson Decl. ¶ 11.]
- 14 • **Unlawful Rest Break Claim:** Plaintiff alleges that Defendant failed to permit and
15 authorize rest breaks for the same reason they could not take their meal periods. [Jackson Decl. ¶ 12.]
- 16 • **Wage Statement Claim:** Plaintiff alleges that Defendant failed to provide complete and
17 accurate itemized wage statements in compliance with Labor Code section 226(a) by issuing wage
18 statements to Plaintiff and Class Members that failed to reflect the correct total number of hours worked
19 and therefore, the correct wages earned, on every wage statement. [Jackson Decl. ¶ 14.]
- 20 • **2802 Claim:** Plaintiff alleges that Defendant failed to reimburse Plaintiff to business
21 related expenses. [Jackson Decl. ¶ 15.]

22 After litigating this case for some time, the Parties agreed to mediate and scheduled mediation for
23 July 21, 2022. Prior to the mediation, Defendant produced Employee Handbooks, time and pay data,
24 relevant wage and hour policies and other information for purposes of evaluation. Plaintiff's counsel
25 thoroughly reviewed the foregoing documents prior to mediation. [Jackson Decl. ¶¶ 6-17.]

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

27 On July 21, 2022, the Parties participated in a full day of mediation with mediators Lynn Frank,
28 Esq. and Marc Feder, Esq., an experienced mediators of wage and hour class actions. Mediators Lynn

Frank, Esq. and Marc Feder, Esq. helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. At the conclusion of the mediation, the Parties continued to engage with mediators Lynn Frank, Esq. and Marc Feder, Esq. in negotiations that ultimately resulted in the resolution of this case. [Jackson Decl. ¶ 19.] Thereafter, the Parties jointly drafted and executed the Stipulation. [Jackson Decl., ¶ 2, **Exhibit A.**] At all times, the Parties' negotiations were adversarial and non-collusive, and the Stipulation thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. [Jackson Decl. ¶¶ 6-17.]

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

1. Composition of the Settlement Class and Settlement Consideration

The proposed group of Class Members consists of all hourly paid employees employed by Defendant in California during the Class Period, which is from November 19, 2016 through October 21, 2022.

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the non-reversionary Maximum Settlement Amount of \$3,740,000.00. The Maximum Settlement Amount includes: (1) settlement payments to Participating Class Members; (2) \$1,246,666.67 in requested attorneys' fees and up to \$40,000.00 in requested litigation costs to Plaintiff's Counsel; (3) Settlement Administration Costs capped at \$25,000.00; (4) an allocation of \$225,000.00 to the LWDA; and (5) a Class Representative Enhancement Payment of \$10,000.00 to Plaintiff Villegas and \$10,000.00 to Plaintiff Rivera for their service on behalf of the Class Members. [Jackson Decl., ¶ 2, **Exhibit A.**]

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

2. Formula for Calculating Settlement Payments

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

- Defendant will calculate the "Qualifying Workweeks" worked by each Class Member during the Class Period and the aggregate Eligible Workweeks worked by all Class

Members during the Class Period, which is from November 19, 2016 through October 21, 2022.

- To determine each Class Member's settlement payment, the Settlement Administrator will use the following formula: the Net Settlement Amount will be divided by the total number of Qualifying Workweeks by all Class members during the Class period and then allocated on a pro rata basis.

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

The **average workweek payment will be \$53.38 per workweek**. This average net recovery is significantly higher than many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Dept. Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of about \$65); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of about \$20).

3. Release by the Participating Class Members

In exchange for the Maximum Settlement Amount, Plaintiff and Class Members will agree to release the following Released Claims that accrue from November 19, 2016 through October 21, 2022:

“any and all claims, transactions, occurrences, demands, rights, liabilities, attorneys’ fees and costs, and causes of action alleged or which could have been alleged in the Actions or PAGA Notice that arose during the Class Period, including but not limited to all claims or causes of action for: (a) Failure to provide minimum wages, overtime wages, meal periods, and/or rest breaks, and any claims relating to or that could have been brought under any California Department of Industrial Relations, Industrial Welfare Commission Order, California Labor Code section, or federal, local, or other wage and hour-related law or regulation; (b) Failure to provide accurate itemized wage statements, pay all wages due upon separation of employment, pay for unreimbursed business expenses, and any claims relating to or that could have been brought under any Industrial Wage Order or Labor Code section applicable to such claims and causes of action including for waiting time penalties under Labor Code section 203; (c) Violation of California Business and Professions Code §§17200, et seq.; and (d) all claims for attorneys’ fees and costs relating to any of the foregoing claims. The foregoing released claims will be collectively referred to as the “Released Claims”. It is further acknowledged and agreed that Plaintiffs and Participating Class Members who do not exclude themselves or opt out of the Settlement may discover facts or law different from, or in addition to, the facts or law now known or believed to be true but, nonetheless, this Release shall be and remain effective in all respects, notwithstanding such different or additional facts or discovery of them.”

[Jackson Decl., ¶ 2, **Exhibit A** (Section 5.01, pp. 24-25)]

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement.

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

California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. [Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).] The motion for preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, (3) the proposed order, and (4) must identify any agreement regarding attorneys’ fees. [Rule 3.769(b) and (c).]

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

Although 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 Ass’n, Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089–90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) (“Newberg”). 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;” and (4) the percentage of objectors “is small.” [*Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).] The presumption of fairness is consistent with California’s public policy goal of favoring settlements. [*Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*

1 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
2 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”).]

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

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

10 By engaging in a thorough investigation and evaluation of Plaintiff’s claims, Plaintiff’s Counsel
11 can opine that the Settlement, for the consideration and on the terms set forth in the Stipulation, is fair,
12 reasonable, an adequate, and is in the best interests of the Class Members in light of all known facts and
13 circumstances, including the risk of significant delay and uncertainty associated with litigation, various
14 defenses asserted by Defendant. [Jackson Decl. ¶¶ 6-17.]

15 Prior to the outset of the litigation, Plaintiff provided his Counsel with detailed accounts of his
16 experience working for Defendant and the circumstances that gave rise to the alleged Labor Code
17 violations. In addition to informing Plaintiff’s Counsel’s initial evaluation of the lawsuit, the information
18 that Plaintiff provided also influenced Plaintiff’s Counsel’s discovery efforts. [Jackson Decl. ¶ 6-17.]

19 Plaintiff’s Counsel reviewed Defendant’s written policies provided in its Employee Handbook,
20 and reviewed timesheets and earnings reports produced by Defendant. From this analysis, Plaintiff’s
21 Counsel was able to analyze Labor Code issues, theories and alleged violations that would have provided
22 direct evidence for use at trial in a class and PAGA action. Plaintiff’s Counsel analyzed the timekeeping
23 and payroll data, in order to assess, *inter alia*, the incidence of meal and rest period violations, and
24 premiums paid for said violations, wage violations, the accuracy of the wage statements, and the amount
25 of waiting time penalties under Cal. Labor Code § 203. [Jackson Decl. ¶¶ 6-17.]

26 Plaintiff’s Counsel interviewed Plaintiff who provided accounts of his own experience, which
27 enabled Plaintiff’s Counsel to understand the theories explaining the respective frequencies of the alleged
28 violations borne out in the data and records produced and to learn more about the day-to-day

1 circumstances giving rise to the alleged violations. [Jackson Decl. ¶ 6-17.] Overall, Plaintiff's Counsel
2 performed a searching investigation into the claims at issue, which included: (1) determining Plaintiff's
3 suitability as a class representative through interviews, background investigations, and analyses of his
4 employment files and related records; (2) researching similar wage and hour class actions as to the claims
5 brought, the nature of the positions, and the type of employer; (3) analyzing employee time and wage
6 records; (4) analyzing Defendant's labor policies and practices; (5) researching settlements in similar
7 cases; (6) researching Plaintiff's novel theories of liability; (7) interviewing Plaintiff regarding the alleged
8 claims; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (9)
9 drafting the mediation brief; and (10) participating in the mediation. [Jackson Decl. ¶ 7.]

10 **3. The Settlement Was Reached Through Arm's-Length Bargaining in Which**
11 **All Parties Were Represented by Experienced Counsel.**

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

16 On July 21, 2022, the Parties participated in a mediation with mediators Lynn Frank, Esq. and
17 Marc Feder, Esq., who helped manage the Parties' expectations and provided a useful, neutral analysis of
18 the issues and risks to both sides. [In re Apple Computer, Inc. Derivative Litig., No. C 06-4128 JF (HRL),
19 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
20 against any inference of a collusive settlement); D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir.
21 2001) (same).] At all times, the Parties' negotiations were adversarial and non-collusive. After a full day
22 of mediation, the Parties reached a settlement in principal and executed a detailed Memorandum of
23 Understanding, before entering in the long form Settlement. [Jackson Decl. ¶ 19.]

24 Experienced class action counsel represented both Parties throughout the case and settlement
25 negotiations. Plaintiff is represented by Armond M. Jackson of Jackson Law, APC, and Douglas Han of
26 Justice Law Corporation who regularly litigates wage and hour claims through certification and on the
27 merits, and has considerable experience settling wage and hour class actions. [Jackson Decl. ¶¶ 20-21, 26;
28 Declaration of Douglas Han, Han Dec. ¶¶ 1-23, Ex. 1] Defendants are represented by Finch, Thornton &

1 Baird, LLP who operates a large, respected wage and hour defense practice.

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

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

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

24 Based on the information and evidence provided by Defendant in discovery, the analysis of the
25

26 ¹ Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
27 whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case
28 and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” [*Id.* at 188
(*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.)). *See Nat’l Rural Telecomm. Coop. v. Directv,*
Inc., 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well settled law that a proposed settlement may be
acceptable even though it amounts to only a fraction of the potential recovery”).]

1 time data and pay data, and Plaintiff's Counsel's own independent investigation, Plaintiff's Counsel
2 determined an appropriate range of recovery for settlement purposes by offsetting Defendant's maximum
3 theoretical exposure by: (i) the strength of Defendant's affirmative defenses; (ii) the risk of losing a
4 motion for class certification on some or all of the claims; (iii) the risk of the Court finding that a class and
5 PAGA trial would be unmanageable;² (iv) the risk of losing on various dispositive or quasi-dispositive
6 motions that Defendant will bring before trial (e.g., motion to strike class and representative allegations,
7 motion to decertify a class action, and/or motions for summary judgment) which may eliminate all or
8 some of Plaintiff's claims, or bar evidence necessary to prove such claims; (v) the risk of losing some or
9 all of the claims at trial; (vi) the chances a Court may find Defendant did not willfully refuse to pay
10 discharged or terminated employees (i.e. a good faith failure) under Cal. Lab. Code section 203; (vii) the
11 chances a Court may find Defendant did not willfully and intentionally refuse to comply (i.e. a good faith
12 failure) with the wage statement requirements under Cal. Labor Code section 226(e); (viii) the chances of
13 the Court exercising its discretion to reduce PAGA penalties (*see* Cal. Lab. Code section 2699(e); (ix) the
14 delay in payment to class members due to years of protracted litigation in certifying a class, obtaining a
15 favorable verdict at trial, upholding that verdict on appeal, and administering class notice and payments to
16 the class at that later stage instead of now; (x) the chances of a favorable verdict being reversed on appeal;
17 and (xi) the difficulties attendant to collecting on a judgment (collectively, the "Discount Factors").

18 [Jackson Decl. ¶¶ 10-18.]

19 Based on the preceding and considering the aggregate value of the claims, Plaintiff's Counsel
20 valued the claims for settlement purposes at **\$7,281,509.14**. [Jackson Decl. ¶ 18.] It must be underscored,
21 however, that the reasonableness of a settlement is not dependent upon its actual value approaching the
22 potential recovery Plaintiff might have received had he succeeded at trial. Indeed, "[t]he determination
23 whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a
24 particularized sum.'" [*Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (quoting *In*
25 *re Michael Milken and Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993)).]

26
27 ² Similar to class actions, California trial courts will strike PAGA claims where too many allegedly
28 aggrieved employees would be required to show that they were, in fact, aggrieved, rendering the claim
unmanageable because countless mini-trials would be necessary before the aggrieved employees were
known and the claim could proceed. [*Wesson v. Staples the Office Superstore, LLC* (September 9, 2021)
2021 WL 4099059.]

1 **i. Range of Damages**

2 Review of the wage statements for the sampling revealed the following: (1) approximately 77,069
3 workweeks during class periods; and (2) far above 100 class members. The following is a table of
4 potential damages:

5

Claim	Damages and Penalties
Minimum and Overtime Wage Violations	\$435,513.35
Meal Period Violations	\$3,468,105
Rest Period Violations	\$1,734,052.50
Wage Statement Violations	\$2,235,001
Business Expense Reimbursement Violations	\$231,207
Final Pay Violations	\$604,800
PAGA Exposure	\$1,000,000
TOTAL	\$9,708,678.85
TOTAL DISCOUNTED EXPOSURE DISCOUNT	\$7,281,509.14

10
11

12 [Jackson Decl. ¶ 10-18.]

13 **ii. Meal and Rest Period Claims**

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

17 Plaintiff alleges that Defendant understaffed shifts and scheduled meal periods such that
18 employees did not take their meal periods within the first five hours of a shift, were less than thirty
19 minutes, or did not take a meal period at all, on some occasions. Similarly, Plaintiff alleges employees
20 were not authorized to take rest periods due to understaffing.

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

25 First, Defendant alleged it provided the employees with its Employee Handbook. To the extent
26 Plaintiff may allege he felt pressured by his duties or schedule, this evidence is rebuttable.

27 The other alternative interpretation anticipated by Defendant is that it demonstrates that
28 Defendant, in fact, does provide employees with complete meal periods which could potentially

1 undermine any claim of a systemic pattern or practice of failing to provide meal periods since employees
2 choose to take them a few minutes late or short on their own volition at other times. Furthermore, since
3 employees are not required in California to record their rest periods times, this claim may present
4 difficulties when proving the extent of any rest break violations.

5 It was concluded that there were potential violations of 385,345 for meal breaks and 385,345 for
6 rest breaks. These violation estimates do not take into account Defendant's potential arguments regarding
7 from defense.

8 **iii. Reimbursement Claim**

9 Plaintiff alleged itself, aggrieved employees and class members were subjected to California
10 Labor Code section 2802 violations for failure to reimburse class members and aggrieved employees
11 when using personal cell phones and personal vehicles. (See Cal. Lab. Code section 2802.) It was
12 estimated that class members incurred an expense of \$6 per workweek amounting to \$462,414. Defendant
13 will likely argue that there was no need for employees to use cell phones for work purposes. In light of this
14 anticipated argument, this claim should be discounted by 50% to \$231,207. [Jackson Decl. ¶ 15.]

15 **iv. Wage Statement Claim**

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

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

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

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

...

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

4 Defendant provided wage statements with the itemized information, as required under Cal. Lab.
5 Code section 226, to its Employees, including Plaintiff, on a semi-monthly basis. To the extent this claim
6 is derivative of the claims set forth above - that Plaintiff’s wage statements were not accurate because
7 Plaintiff was not paid an additional hour of pay when he was not provided meal and rest periods. [Jackson
8 Decl. ¶ 14.]

9 It was analyzed that 44,700 pay periods were subjected to potential wage statement violations
10 based upon wages violations, meal break or rest break violations that could potentially be entitled to wage
11 statement violations amounting to amounting to \$4,470,002 in penalties. Also, given this claim is
12 derivative from the meal break, rest break and off-the-clock claims, these claims should be discounted by
13 50% to \$2,235,001. [Jackson Decl. ¶ 14.]

14 **v. Waiting Time Penalties**

15 This claim is based on Plaintiff’s allegations that an extra hour of pay was not provided when
16 meal or rest breaks were not provided, and that Employees were not paid all minimum and overtimes
17 premium wages. It was analyzed that approximately 279 employees were terminated during the class
18 period that could potentially be entitled to wages upon termination that were subjected to wage, meal and
19 rest period violations which amounting to \$1,209,600 (279 * 8 hours* 18 *30 days). Given this claim is
20 derivative from the meal break, rest break and off-the-clock claims, these claims should be discounted by
21 50% to \$604,800. [Jackson Decl. ¶ 13.]

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

23 As the above analysis shows, Plaintiff’s Counsel objectively and knowledgably balanced the
24 strengths and weaknesses of the claims against the risk of continued litigation and was able to determine
25 the realistic range of settlement recovery of \$7,281,509.14. Therefore, in this case, the settlement value of
26 \$3,740,000.00 falls well within the range of reasonableness, and is thus fair, adequate, and reasonable.

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

28 Class members are entitled to the best practical notice under the circumstances. [Kass v. Young,
67 Cal. App. 3d 100, 106 (1977) (“Kass”).] The purpose of the notice is to give class members sufficient

1 information to decide whether to accept the benefits offered, opt out and pursue their own remedies, or
2 object to the settlement. [*Trotsky v. Los Angeles Fed. Savings & Loan Ass'n*, 48 Cal. App. 3d 143, 151–
3 52 (1975).] The notice must advise class members “that they may be excluded from the class if they so
4 request and that they will be bound by the judgment, whether favorable or not, if they do not request
5 exclusion.” [Kass, 67 Cal. App. 3d at 106.] In a case such as this involving a significant number of class
6 members, California authorities generally require service of the class notice by mail or similar reliable
7 means. [*Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
8 (1975).]³

9 The proposed Class Notice will be mailed to the Class by First Class mail and will include
10 information regarding the nature of the lawsuit, a summary of the Settlement’s terms, the class definition,
11 the procedure and time period within which to opt out, exclude, or object to the Settlement, the date for the
12 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
13 Released Claims. In the event Class Notices are returned as undeliverable, the Administrator will attempt
14 to locate a current address through the use of skip tracing or another automated search. [Jackson Decl., ¶
15 2, Ex. A, Section 3.03, p. 12, Exhibit B.)) This method is designed to maximize the Class Member
16 response rate while ensuring cost effective administration of the settlement. In past cases, similar notice
17 methods to class members have resulted in strong response rates. Accordingly, both the method of
18 disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of
19 California law. [See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (The
20 class notice must “fairly apprise the class members of the terms of the proposed compromise and of the
21 options open to dissenting class members.”).]

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

23 Enhancement payments “are fairly typical in class action cases.” [*Cellphone Termination Fee*
24 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000.00); *Rodriguez v.*
25 *West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed.
26 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiff: An Empirical Study*,

27
28 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).]

53 UCLA L. Rev. 1303 (2006).] Enhancement payments “are intended to compensate class representative 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; *see also Clark v. American Residential Svcs., LLC*, 175 Cal. App. 4th 785 (2009).]

Subject to Court approval, therefore, the Settlement provides for a Class Representative Enhancement Payment of \$10,000.00 for Plaintiff Villegas and Class Representative Enhancement Payment of \$10,000 to Plaintiff Rivera. The enhancement payment is fair and reasonable compensation for Plaintiffs’ efforts in representing the putative Class and the interests of the State of California, for assisting counsel with the litigation, at mediation, and settlement, regularly conferring with counsel on the status of the 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. [Declaration of Manuel Villegas, ¶¶ 1-7; Declaration of Ernesto Rivera, ¶¶ 1-19.]

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

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

The purpose of an attorneys’ fee award 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. Plaintiffs will seek Court approval of attorneys’ fees of \$1,246,666.67 which is one-third of the Maximum Settlement Amount, and reasonable and necessary litigation costs and expenses according to proof at the time of the Final Approval Hearing.

California courts routinely award attorneys’ fees equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) (“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). At final approval, Class Counsel will fully brief the merits of its request for attorneys' fees and costs.

E. California Law Authorizes Provisional Certification for Settlement Purposes.

1. The California 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.*, 166 Cal. App. 4th 1325, 1332 (2008) (“*Lee*”).] 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. v. Super. Ct.*, 34 Cal. 4th 319, 326 (2004) (“*Sav-On*”).] Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. [*Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.]

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

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

The proposed Settlement Class consists of all hourly employees employed by Defendant in California during the Class Period, which is November 19, 2016 through October 21, 2022. Defendants' payroll records will ascertain the Class Members because all Class Members are either current or former

1 employees of Defendant, the class is readily ascertainable from Defendant’ regular business records.

2 Conditional certification of the proposed group of Class Members is warranted here given the
3 relatively relaxed standard for certification at the preliminary approval stage. [See *Dunk v. Ford Motor*
4 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
5 settlement cases).]⁴ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
6 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
7 class for purposes of litigation; the *Dunk* Court provided that the Federal Rules of Civil Procedure, Rule
8 23 allows for “a lesser standard of scrutiny for settlement cases.” [*Id.* at n.19.]

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

21 Plaintiffs also contend their wage and hour claims are typical of the proposed group of Class
22 Members because they arise from the same factual basis and are based on the same legal theories
23 applicable to the Class. Likewise, Plaintiffs’ interests are coextensive with the interests of the Class and
24 they allege that they were injured by the same company-wide practices to which the proposed Settlement
25 Class was subject and seeks the same relief. Plaintiffs have already demonstrated their ability to advocate

26
27 ⁴ See also Newberg on Class Actions § 13:18 (5th ed.) (Courts “declin[e] to treat formal class certification
28 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the
preliminary approval stage.”) (citing, e.g., *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016
WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
cursory approach appears the norm.”).)

1 for the interests of the Class by initiating this litigation and evaluating the fairness of the proposed
2 settlement.

3 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
4 litigating wage and hour class action cases. [Jackson Decl. ¶¶ 20-21, 26; Han Dec. ¶¶ 1-23, Ex. 1]
5 Plaintiffs' Counsel have successfully briefed, argued, certified, and gained state court settlement approval
6 of the same or similar class-wide causes of action that are at issue in this case. Plaintiffs Counsels' wage
7 and hour class action expertise establishes that they are well qualified to represent the interests of this
8 Class. [Id.] A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims
10 on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate
11 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-
12 case adjudication.

13 **IV. CONCLUSION**

14 The Parties have negotiated a fair, reasonable settlement and satisfied all requirements for
15 preliminary approval, and as such, request that the Court preliminarily approve the settlement.
16

17 Dated: September 28, 2022

JACKSON LAW, APC

18 By: /s/ Armond M. Jackson

19 Armond M. Jackson, Esq.

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23 similarly situated employees
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