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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ANA RAYOS, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

RESTAURANT LEADERSHIP GROUP, LLC,
an unknown business entity and DOES 1 through
100, inclusive,

Defendants.

Case No. CVRI2000689

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

Date: August 26, 2024
Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 1
Reservation #: 948006425521

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1 I. INTRODUCTION

2 Plaintiff Ana Rayos (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA
3 Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for
4 approximately 2,343 Class Members who collectively worked approximately 54,594 Workweeks. The
5 basic terms of the Agreement provide for the following:

6 1. The “**Class Members**,” “**Settlement Class**” and “**Class Period**” all persons employed
7 by Defendant Restaurant Group, LLC (“Defendant”) in California and classified as a nonexempt
8 employee (“Class Member”) during the period between December 28, 2016, through March 12, 2024
9 (“Class Period”). Agreement at §§ 1.5, 1.12. The “Settlement Class” excludes any Class Member that
10 submitted a valid and timely request for exclusion. Agreement at § 1.9.

11 a. The “**Class Size**” is comprised of 2,343 individuals who collectively worked
12 approximately 54,594 Workweeks during the Class Period as estimated by Defendant at the time of
13 mediation. Agreement at § 8.

14 2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean a person employed by
15 Defendant in California and classified as a non-exempt employee (“Aggrieved Employees”) during the
16 period between May 23, 2020 through March 12, 2024 (“PAGA Period”). Agreement at §§ 1.4; 1.28.
17 Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.
18 Agreement at § 7.5.4. At the time of mediation, there were approximately 1,330 Aggrieved Employees
19 who worked approximately 23,317 pay periods during the PAGA Period.

20 3. The “**Gross Settlement Amount**” is Two Million Dollars and Zero Cents
21 (\$2,000,000.00). Agreement at § 1.19. The Gross Settlement Amount is non-reversionary and includes
22 the following:

23 a. A “**Class Representative Service Award**” of not more than \$20,000 to Plaintiff
24 in recognition of her efforts and risks in assisting with the prosecution of the Action. Agreement at §
25 3.2.1.

26 b. A “**Class Counsel Fees and Litigation Expenses Payment**” in the amount not

27 ¹ The Agreement is attached as Ex “A” to the Declaration of Vartan Madoyan, Esq. (“LFJ.”) at ¶ 3. All citations to the
28 Agreement incorporate by this reference a citation to the LFJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

1 to exceed thirty-five percent of the Gross Settlement Amount for attorney's fees, currently estimated
2 to be \$700,000 ("Class Counsel Fees Payment") *and* litigation expenses not to exceed \$30,000 (Class
3 Counsel Litigation Expenses Payment") to be paid to Class Counsel. Agreement at §§ 1.7; 3.2.1.

4 c. A "**PAGA Penalties**" of Four Hundred Thousand Dollars and Zero Cents
5 (\$400,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil
6 penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay
7 seventy-five (75%) of the PAGA Penalties (\$300,000) to the Labor and Workforce Development
8 Agency ("LWDA PAGA Payment"). Twenty-five percent (25%) of the PAGA Penalties (\$100,000)
9 will be distributed to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at § 3.2.5.
10 The average Individual PAGA Payment is approximately \$75.18. The estimated range of Individual
11 PAGA Payments will be provided in Plaintiff's motion for final approval; and

12 d. "**Administration Expenses Payment**" not to exceed \$21,000 payable to the
13 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class
14 Notice and Administration Expenses Payment. Agreement at §§ 1.3, 1.4. Class Counsel requested
15 bids from three (3) settlement administration companies and received the lowest bid from Apex Class
16 Action LLC. LFJ Dec., ¶ 5.

17 4. The "**Net Settlement Amount**" of approximately \$829,000 (Gross Settlement Amount
18 less the requested Class Counsel Fees and Litigation Expenses Payment, Class Representative Service
19 Award, PAGA Penalties, and Administration Expenses Payment) which will be allocated to all
20 Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement
21 Class Member worked during the Class Period. Agreement at § 3.2.4. The entire Net Settlement
22 Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in
23 an average Individual Class Payment of **\$353.82**. The range of settlement awards will be provided when
24 Plaintiff moves for final approval of the Settlement. LFJ Dec., ¶ 6.

25 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
26 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
27 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
28 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage

1 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
2 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
3 denied or of Defendant prevailing at trial. LFJ Dec., ¶ 6.

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

9 II. FACTS AND PROCEDURE

10 A. Overview of the Litigation

11 Defendant operates restaurants in Riverside County, where Plaintiff worked. Plaintiff worked
12 for Defendant in California from November 2013 to January 2021. During her employment, Plaintiff
13 claims that she was denied legally compliant meal and rest periods, and minimum wages and overtime
14 compensation. Throughout her employment, Plaintiff was subject to Defendant's written policies and
15 procedures. Declaration of Ana Rayos ("Rayos Dec.") at ¶¶ 1-5; LFJ Dec., ¶ 8.

16 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
17 failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish
18 accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further,
19 Defendant asserts that it fully complied with all applicable employment laws and raised several other
20 significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained
21 facially compliant meal and rest period policies, paid their employees for all hours worked, and properly
22 reimbursed all necessary business expenses. LFJ Dec., ¶ 9.

23 On May 21, 2021, Plaintiff served Defendant and the Labor and Workforce Development
24 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
25 the facts and theories supporting Defendant's alleged violations of various provisions of the California
26 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
27 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
28 2698 *et seq* ("PAGA"). LFJ Dec., ¶ 10.

1 On December 28, 2020, Plaintiff filed a class action complaint in the Riverside County Superior
2 Court, Case No. CVRI2000689 (“Class Action”). The Action alleged ten causes of action against
3 Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2)
4 Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation
5 of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor
6 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code
7 §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages
8 Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-
9 Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep
10 Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed
11 Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.* LFJ
12 Dec., ¶ 11.

13 On July 27, 2021, Plaintiff filed a separate Complaint in Riverside County Superior Court, Case
14 No. CVRI2103478 for enforcement under the Private Attorneys General Act, California Labor Code §
15 2698, *et seq.* (“PAGA Action”). On January 20, 2022, the Class Action and PAGA Action were
16 consolidated. LFJ Dec., ¶ 12.

17 Plaintiff commenced written discovery in October 2021. Before responding to discovery, the
18 Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally
19 exchange additional documents and data points subject to the mediation privilege, including but not
20 limited to, the Class Members’ time data and certain payroll data points. LFJ Dec., ¶ 13.

21 On December 4, 2023, the Parties participated in a full day mediation with Paul Grossman, Esq.,
22 a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after
23 both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a
24 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
25 agreement, which is the subject of the instant motion. LFJ Dec., ¶ 14.

26 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

27 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s
28 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As

1 part of the interview process, the Plaintiff produced documents related to her employment. Class
2 Counsel subsequently determined that Plaintiff's complaints justified further inquiry. LFJ Dec., ¶ 15.

3 Class Counsel then requested Plaintiff's employee files from Defendant. In response, Defendant
4 produced several documents, including but not limited to, copies of Plaintiff's payroll records, time
5 records and various company policies. Class Counsel reviewed and analyzed the documents and
6 determined the documents appeared to substantiate Plaintiff's claims that Defendant failed to, among
7 other things, provide compliant meal and rest periods, and failed to pay for all hours worked, failed to
8 reimburse necessary business expenses, and failure to furnish accurate itemized wage statements. LFJ
9 Dec., ¶ 16.

10 To prepare for mediation, Defendant produced time and payroll records for the Class Members,
11 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the
12 Class Members, average hourly rate for the Class Members, average shift length for Class Members,
13 number of current Class Members, number of former Class Members who were employed during the
14 Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel
15 reviewed dozens of files and pages of documents of time and payroll data. LFJ Dec., ¶ 17.

16 Class Counsel analyzed Defendant's time and payroll data to assist in the development of various
17 damage models. Among other things, Class Counsel estimated the approximate amount of unpaid
18 wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts
19 and average number of hours worked per week. Class Counsel also estimated the number of missed,
20 late, or truncated meal and rest periods, the amount of off-the-clock work, and the amount of missed
21 meal and rest period premiums paid during the Class Period. LFJ Dec., ¶ 18.

22 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
23 Plaintiff's suitability as a putative class representative through interviews, background investigations,
24 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
25 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
26 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's
27 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
28 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's

liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. LFJ Dec., ¶ 19.

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

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period during the period between December 28, 2016, through March 12, 2024. Agreement at §1.12. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 2,343 individuals that worked approximately 54,594 Workweeks during the Class Period. Agreement at § 8.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$2,000,000. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) a Class Representative Service Award of not more than \$20,000 to Plaintiff for her services on behalf of the Settlement Class; (3) a PAGA Penalties in the amount of \$400,000; (4) Administration Expenses Payment estimated at \$21,000; (5) Class Counsel Fees and Litigation Expenses Payment in the amount of \$730,000, comprised of attorneys' fees equal to thirty-five (35%) percent of the Gross Settlement Amount estimated to be \$700,000 and an estimated \$30,000 for actually incurred litigation expenses. See generally Agreement at § 3.2.2.

Subject to the Court approving the Class Representative Service Award, Class Counsel Fees and

Litigation Expenses Payment, PAGA Penalties, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § 1.25. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount in three installments as follows: one-third of the Gross Settlement Amount (\$666,666.66) shall be transmitted to the Administrator within thirty (30) calendar days after the Effective Date. Defendant shall transmit an additional one-third of the Gross Settlement Amount (\$666,666.66) no later than March 31, 2025. Finally, Defendant shall transmit the remaining one-third of the Gross Settlement (\$666,666.66) no later than March 31, 2026. Agreement at § 4.2.

4. Formula for Calculating Individual Class Payments

Each Settlement Class Member will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. The Class Data provided by Defendant to the Settlement Administrator will include the information required to calculate the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the PAGA Period. Agreement at § 1.8. Each Settlement Class Member's final Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member. Individual Class Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.2.4.

Given that there are approximately 2,343 Settlement Class Members, *the average gross recovery is approximately \$353.82* (Net Settlement Amount divided by Settlement Class Members). The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. LFJ Dec., ¶ 6.

1 For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as
2 wages (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is
3 subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not
4 be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at § 3.2.4.1. In
5 calculating Defendant’s total damages exposure, Class Counsel determined that the vast majority of
6 damages are for meal and rest premiums, which can be classified as penalties and not wages. Therefore,
7 with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that
8 an allocation of 20% as wages and 80% as penalties and interest is far and reasonable. LFJ Dec., ¶ 21.

9 5. Formula for Calculating Individual Payments to the Aggrieved Employees

10 Each Aggrieved Employee will receive an Individual PAGA Payment. Using the Class Data,
11 each Aggrieved Employee’s final Individual PAGA Payment will be calculated by (a) dividing the
12 amount of the Aggrieved Employees’ 25% share of PAGA Penalties (i.e. \$100,000) by the total number
13 of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
14 multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Agreement at §
15 3.2.5.1. For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties
16 and shall be reported on IRS Form 1099. *Id.*

17 6. Mailing of Individual Class Payments and Individual PAGA Payments

18 The Settlement Administrator will mail the Individual Class Payments and Individual PAGA
19 Payments by regular First-Class U.S. Mail to Settlement Class Members’ and/or Aggrieved Employees’
20 last known mailing address no later than fourteen (14) calendar days after the Funding Date. Agreement
21 at § 4.3. Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid
22 and negotiable for one hundred and eighty (180) days from the date of their issuance. Agreement at §
23 4.3.1. In the event an Individual Class Payment and/or Individual PAGA Payment check has not been
24 cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class
25 Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such
26 uncashed checks will be transmitted to the California Controller’s Unclaimed Property Fund in the
27 name of the Class Member. Agreement at § 4.3.3.

28 ///

1 7. Release by Settlement Class Members

2 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
3 release the Released Parties from the Released Class Claims. Agreement at § 5.2. The Released Class
4 Claims are any and all claims, damages, or causes of action that arose during the Class Period and
5 which were alleged, or could have been alleged, by Plaintiff based on any of the factual allegations
6 contained in the operative complaint in the Action, including, but not limited to, claims for unpaid
7 minimum and overtime wages (including, *inter alia*, in connection with off-the-clock work), claims
8 related to non-compliant meal and rest breaks or periods and nonpayment of premium pay for such,
9 failure to comply with itemized employee wage statement provisions, failure to pay wages due at
10 separation and associated waiting time penalties, failure to timely pay wages during employment,
11 failure to maintain compliant time and payroll records, failure to reimburse for business expenses, and
12 unfair or unlawful business practices in violation of California Business and Professions Code § 17200,
13 *et seq.* based on the aforementioned. The Released Class Claims specifically include, but are not limited
14 to, all claims arising under, or through which Plaintiff may seek recovery, including California Labor
15 Code sections 201, 202, 203, 204, 210, 218, 218.5, 226, 226.7, 510, 512, 558, 558.1, 1174, 1174.5,
16 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800 and 2802 and the applicable Wage Order(s) of the
17 California Industrial Welfare Commission, California Business and Profession Code sections 17200,
18 *et seq.*, California Code of Civil Procedure section 1021.5, and claims for attorney's fees relating in
19 any way to those claims alleged and mentioned in the operative complaint(s) in the Action. Agreement
20 at § 1.33.

21 8. PAGA Release by Plaintiff and the State of California

22 Generally, as of the Funding Date, Plaintiff and the State of California will release the Released
23 Parties from the Released PAGA Claims. Agreement at § 5.3. The Released PAGA Claims are all
24 claims for statutory penalties that could have been sought by the Labor Commissioner for the violations
25 identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved
26 employee's individual claims for wages or damages. Agreement at § 1.34.

27 ///

28 ///

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$2,000,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

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

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

11 The Parties participated in mediation with mediator Paul Grossman, Esq. Mediator Grossman
12 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
13 sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
14 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
15 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
16 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
17 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties reached an
18 agreement and the mediation session concluded with a settlement. LFJ Dec., ¶ 22.

19 Once the Parties reached a settlement, they engaged in protracted negotiations regarding the
20 written terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
21 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
22 product of these settlement negotiations. Objectively, the Settlement terms are fair, adequate and
23 represent a reasonable compromise of the claims at issue. LFJ Dec., ¶ 23.

24 2. The Settlement Falls Within the Recognized Range of Reasonableness.

25 The Gross Settlement Amount of \$2,000,000.00 is within the range of reasonableness. To
26 determine whether a settlement is fair and reasonable, the court should “consider enough information
27 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
28 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”

(*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$2,000,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to settlement, Class Counsel developed economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA penalties), if Plaintiff was to be successful at trial, ranged between \$2,327,982.00 (“Realistic Damages”) and \$8,178,866.00 (“Maximum Damages”). This range reflects the uncertainty regarding

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

several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 85.91% (“Realistic Damages”) and 24.45% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure: LFJ Dec., ¶ 24.

(1) Defendant’s Estimated Exposure for Unpaid Wages

Plaintiff primary claim in this Action alleges that Defendant failed to pay for all hours worked. Specifically, Plaintiff alleges that she and other Class Members were required to perform pre- and post-shift work off-the-clock and were not compensated for that time. Defendant vigorously denied liability for this claim. Collectively, Defendant asserted, among other things, that its written policies and procedures directed its employees to perform work only while on-the-clock. Defendant asserted that any deviation from these written policies was individual-specific and thus created individualized issues of liability unsuitable for class treatment. LFJ Dec., ¶ 25.

Based on Defendant’s alleged practices requiring employees to work off-the-clock, Plaintiff assumed ten (10) minutes of unpaid compensable time per workweek by the Class Members during the Class Period. Plaintiff estimated Defendant’s exposure for this claim ranged between approximately \$163,559.25 and \$218,079.00. LFJ Dec., ¶ 26.

(2) Defendant’s Estimated Exposure for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff alleges that Defendant failed to record the actual time that Class Members worked. As a result, a substantial amount of the meal periods were rounded to exactly thirty (30) minutes. LFJ Dec., ¶ 27.

Defendant argued, among other things, that it did not engage in meal rounding and provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendant also argued that it maintained facially complaint meal period policies, including enforceable meal period waivers. Thus, Defendant argued that there was no potential liability for Plaintiff’s alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Additionally, Defendant’s time records revealed

1 a meal period violation rate of 5.5%. Based on these low violations rates and Defendant's defenses,
2 Plaintiff estimated the damages for this claim ranged from approximately \$37,422.00 and \$49,896.00.
3 LFJ Dec. ¶ 28.

4 (3) Defendant's Estimated Exposure for Rest Period Violations

5 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
6 Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved
7 Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff argued that
8 she was required to work through her rest periods in order to finish work-related tasks. LFJ Dec., ¶ 29.

9 Again, Defendant denied liability and asserted that the workload is not such that it prevented
10 employees from taking a break. Defendant maintained legally compliant written policies and actual
11 practices concerning rest periods throughout the Class Period. Moreover, Plaintiff recognizes the
12 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,
13 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
14 stages. Certification likely would have required depositions of Class Members and Defendant's
15 witnesses, and the ability to rebut depositions and declarations submitted by Defendant. *See, e.g.,*
16 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the
17 competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written
18 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*
19 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's
20 own evidence confirms that the written policy does not generate uniform practices"). Accordingly,
21 Plaintiff applied a 25% discount to the rest break claim. Plaintiff estimated the range of potential
22 outcomes for this claim was between approximately \$37,422.00 and \$49,896.00. LFJ Dec., ¶ 30.

23 (4) Defendant's Estimated Exposure for Unreimbursed Business Expenses

24 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business
25 expenses. Specifically, Plaintiff alleges that she and other Class Members were required to use their
26 own personal cellular phones as a result of and in furtherance of their job duties reimbursed for the cost
27 associated with the use of their personal cellular phones. Plaintiff also alleges that she was required to
28 incur costs for the purchase and maintenance of her work uniform. LFJ Dec., ¶ 31. Cal. Labor Code §

2802, provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”

Defendant denies these claims, and also notes that the Class is comprised of all non-exempt employees, and even if these claims were true, they would affect only a small subset of that Class. Considering these defenses, Plaintiff applied an 85% discount to this claim. Plaintiff estimated Defendant’s exposure for this claim ranged from approximately \$91,923.75 to approximately \$367,695.00. LFJ Dec., ¶ 32.

(5) Defendant’s Estimated Exposure for Wage Statement Violations

Plaintiff alleged that Defendant failed to provide accurate itemized wage statements that include all items required by Labor Code § 226(a)(1)-(9). As a result of the failure to pay employees for all time worked and failure to pay for all premiums owed, the wage statements issued by Defendant do not indicate the correct number of hours worked, the amount of gross wages earned, or net wages earned during each pay period. Plaintiff’s expert estimated that Defendant could be liable for \$1,440,375 to approximately \$1,920,500 in *derivative* penalties as a result of these violations. LFJ Dec., ¶ 33.

(6) Defendant’s Estimated Exposure for Waiting Time Penalties

Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor Code section 203. Defendant contends that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. As this claim is legally precarious, Plaintiff applied a 90% discount. Plaintiff estimated Defendant’s exposure for these claims to be approximately \$557,280.00 to approximately \$5,572,80.00. LFJ Dec., ¶ 33.

(7) Defendant’s PAGA Exposure

"Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between May 23, 2020

through March 12, 2024, and there are approximately 1,330 Aggrieved Employees who worked a total of 23,317 pay periods. LFJ Dec., ¶ 34.

Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
351, 510, 558, 1194 and 1197 (unpaid wages)	1,330	\$100	23,317	100% of total pay periods	\$2,331,700
512 and 226.7 (meal period violations)	1,330	\$50	23,317	50% of total pay periods	\$1,165,850
512 and 226.7 (rest period violations)	1,330	\$50	23,317	50% of total pay periods	\$1,165,850
2802 (unreimbursed business expenses)	1,330	\$100	23,317	100% of total pay periods	\$2,331,700
226 (wage statements)	1,330	\$100	23,317	100% of total pay periods	\$2,331,700
TOTAL					\$9,412,000

LFJ Dec., ¶ 34.

The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a good faith amount” for PAGA Payment and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Defendant argued, however, that PAGA penalties would not be assessed if defendant prevailed

1 on the arguments for the underlying claims, that PAGA penalties cannot be stacked for different Labor
2 Code provisions, and that the Court would exercise its discretion to reduce the amount of PAGA
3 penalties significantly. Ultimately, the Parties negotiated a good faith PAGA penalties allocation of
4 \$400,000 which is 20% of the Gross Settlement Amount. This amount falls well within the range of
5 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$300,000.00) will be
6 paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the
7 PAGA Penalties (\$100,000.00) will be distributed to the Aggrieved Employees, which is within the
8 range of PAGA Penalties approved by courts and should be approved. LFJ Dec., ¶ 35.

9 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
10 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
11 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
12 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
13 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
14 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
15 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
16 6, 2016) (PAGA penalties denied after trial).

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

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

25 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

26 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
27 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
28 the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a

1 relatively weak case or a sell-out of an extraordinary strong case.” (*Misra v. Decision One Mortg. Co.*
2 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
5 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
6 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
7 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
8 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
9 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
10 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
11 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
12 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
13 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
14 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
15 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
16 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
17 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
18 certification of driver meal and rest period claims based on the predominance of individual issues).
19 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
20 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
21 settlement. LFJ Dec., ¶ 36.

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

26 [N]othing is assured when litigating against commercial giants with vast
27 litigative resources, particular in such complex litigation as this, which
28 would strain the cognitive capacities of any jury. Defense judgments were

1 hardly beyond the realm of possibility. Accordingly, this factor weighs in
2 favor of preliminary approval.

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

4 Finally, continuing to litigate this action would require continued and extensive resources
5 coupled with significant Court time to proceed through trial and post-trial motions; which can often
6 take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates
7 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
8 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
9 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
10 the risk of an appeal and subsequent reversal is real. LFJ Dec., ¶ 37. “Avoiding such a trial and the
11 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
12 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
13 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
14 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

15 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$2,000,000.00 that is
16 roughly between approximately 24.45% and 85.91% of Defendant’s *class-wide* liability exposure for
17 damages and statutory penalties, and between 11.37% and 80.44% of Defendant’s maximum class wide
18 liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the
19 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
20 continued litigation, the settlement is fair and reasonable. LFJ Dec., ¶ 38.

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

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. LFJ Dec., ¶ 39.

The Class Notice includes an exclusion form that Class Members can fill out in order to exclude themselves from the Settlement, and an Objection Form that Class Members can fill out in order to object to the terms of the Settlement. The Class Notice informs Class Members of where they can find the full text of the settlement agreement, the court address, and court website address. See Ex. A to the Agreement.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).) LFJ Dec., ¶ 40.

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53

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

1 UCLA L. Rev. 1303 (2006).) Service Awards “are intended to compensate class representatives for
2 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
3 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
4 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
5 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
6 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
7 (2009) 175 Cal.App.4th 785.)

8 The Settlement provides for a Class Representative Service Award of \$20,000 for Plaintiff. The
9 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
10 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
11 the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement
12 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and for providing
13 a general release of claims to Defendant in exchange for the Service Award. LFJ Dec., ¶ 41.

14 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
15 Representative Service Award once preliminary approval of the Settlement is granted. Such motion
16 will be accompanied by a declaration from Plaintiff that describes the services she performed to
17 prosecute this action, includes an estimate of time incurred by Plaintiff in performing these services,
18 the risks she assumed or benefits she received in prosecuting this action, and identify any adverse
19 consequences she suffered in prosecuting this action. Plaintiff has **not** negotiated any settlement of
20 individual claims with Defendant separate from the settlement at bar. Rayos Dec., ¶ 10; LFJ Dec. ¶ 42.

21 Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the
22 negotiated Class Representative Service Award. LFJ Dec., ¶ 43.

23 **D. The Court Should Preliminarily Approve the Class Counsel Fees and Litigation Expenses**
24 **Payment**

25 The purpose of a Class Counsel Fees and Litigation Expenses Payment in class action litigation
26 is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
27 positive result for the class. California courts routinely award attorneys’ fees equaling one-third *or*
28 *more* of the potential value of the common fund, the amount requested under this settlement. (*See*

1 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless
2 whether the percentage method or the lodestar method is used, fee awards in class actions average
3 around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class*
4 *Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March
5 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion
6 that a one-third fee is consistent with market rates).)

7 Class Counsel took this matter on a contingency fee basis and invested significant time and
8 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
9 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class
10 Members. Considering the positive outcome for the Settlement Class Members, and in light of the
11 supporting authority, the proposed Class Counsel Fees and Litigation Expenses Payment is fair and
12 reasonable. LFJ Dec., ¶ 44.

13 Plaintiff will file a formal motion for the negotiated Class Counsel Fees and Litigation Expenses
14 Payment once preliminary approval of the Settlement is granted. Such motion will be accompanied by
15 a declaration that provides evidence of the total amount of time spent by Class Counsel, a description
16 of the work performed, and the reasonableness of the fees charged. Such declaration will also include
17 a detailed description of the costs actually incurred. This declaration will include details related to fee
18 splitting between Class Counsel, and Plaintiff’s written notice of such. Plaintiff respectfully submits
19 that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. LFJ
20 Dec., ¶ 45.

21 **E. Provisional Certification for Settlement Purposes Is Appropriate**

22 For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional
23 certification of the Class is appropriate. LFJ Dec., ¶ 46.

24 1. The Standard for Class Certification

25 Class actions are statutorily authorized “when the question is one of common or general interest,
26 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
27 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
28 certification is appropriate when there is an “ascertainable class and a well-defined community of

1 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
2 is appropriate even if class members at some point may be required to make an individual showing as
3 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
4 *Sav-On*, 34 Cal.4th at 333.)

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

7 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
8 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
9 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where
10 they may be readily identified without unreasonable expense or time by reference to official records.
11 (*Id.*)

12 The community of interest requirement embodies three factors: (1) predominant common
13 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
14 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

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

20 Because all Class Members are Defendant’s current and former employees, the class is readily
21 ascertainable from Defendant’s regular business records, i.e., payroll records. LFJ Dec., ¶ 47.

22 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
23 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
24 liability can be determined by facts common to all members of the class. The wage and hour issues are
25 both numerous and substantial, and a class action is the most advantageous method of dealing with the
26 claims of the Settlement Class. LFJ Dec., ¶ 48.

27 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
28 from the same factual basis and are based on the same legal theories applicable to the other Class

Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. LFJ Dec., ¶ 49.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. LFJ Dec., ¶¶ 51-56; Declaration of Jean-Claude Lapuyade, ¶ 3-8; Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. LFJ Dec., ¶ 50.

IV. CONCLUSION

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

Dated: August 29, 2024

JCL LAW FIRM, APC

By: 
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Attorney for Plaintiff