

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KEVIN WYATT and KIMBERLEE CALIFANO,
individuals, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

BH-SD OPCO, LLC, dba ALVARADO
PARKWAY INSTITUTE BEHAVIORAL
HEALTH SYSTEMS, a Delaware Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2021-00021168-CU-OE-CTL

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

Date: July 26, 2024

Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack

Dept.: C-71

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled After Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiffs' Claims	7
	1. The Composition of the Settlement Class	7
	2. The Settlement Consideration	7
	3. The Funding Date and Installment Plan	8
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Participating Class Members	9
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	9
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.	10

///

1	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness.	
2	.....	11
3	3. The Settlement Falls Within the Recognized Range of Reasonableness.	
4	.....	11
5	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.	
6	.....	12
7	(1) Estimated Exposure for Regular Rate Violations	
8	.....	13
9	a. Regular Rate Violations for Purposes of Overtime and Double-Time Wages	
10	.....	13
11	b. Regular Rate Violations for Purposes of Meal Period Premiums	
12	.....	13
13	c. Regular Rate Violations for Purposes of Redeemed Sick Pay	
14	.....	14
15	(2) Estimated Exposure for Meal Period Violations	
16	.....	14
17	(3) Estimated Exposure for Rest Period Violations	
18	.....	15
19	(4) Estimated Exposure for Unpaid Wages	
20	.....	15
21	(5) Estimated Exposure for Unreimbursed Business Expenses	
22	.....	16
23	(6) Estimated Exposure for Wage Statement and Waiting Time Penalties	
24	.....	17
25	(7) Defendant’s PAGA Exposure	
26	.....	17
27	b. Inherent Risks of Continued Litigation and Defendant’s Financial Condition Support Preliminary Approval	
28	.....	19
	B. The Proposed Notice Informs the Class about the Case and Settlement	
	.....	21

1	C. The Court Should Preliminarily Approve the Class Representative Payment	22
2	.....	
3	D. The Court Should Preliminarily Approve the Class Counsel Fees Payment and Class	
4	Counsel Expenses Payment	23
5	.....	
6	E. Provisional Certification for Settlement Purposes is Appropriate	23
7	.....	
8	1. The Standard for Class Certification	24
9	.....	
10	2. The Proposed Participating Class is Ascertainable and there is a Well-Defined	
11	Community of Interest Among the Class Members	24
12	.....	
13	IV. CONCLUSION	25
14	.....	

///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	10
5	<i>Apple Computer, Inc. Derivative Litig,</i>	
6	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
7	<i>Alvarado v. Dart Container Corp. of California</i>	
8	(2018) 4 Cal.5th 542, 552-554.....	13
9	<i>A.S.A Cal Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	19
11	<i>Brinker</i>	
12	53 Cal. 4th at 1021-1022.....	19, 24
13	<i>Brown v. Fed Express Corp.</i>	
14	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	19
15	<i>Bufile v. Dollar Financial Group, Inc.</i>	
16	(2008) 162 Cal.App.4th 1193, 1207.....	24
17	<i>Campbell v. Best Buy Stores, L.P.,</i>	
18	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	19
19	<i>Carrington v. Starbucks Corp.,</i>	
20	30 Cal. App. 5th 504, 517, 539 (2018).....	18
21	<i>Cart v. Super. Ct.</i>	
22	(1975) 50 Cal.App.3d 960, 972.....	21
23	<i>Cellphone Termination Fee Cases</i>	
24	180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010)	9-10, 22
25	<i>Chance v. Super. Ct.</i>	
26	(1962) 58 Cal.2d 275, 290.....	21
27	<i>Chavez v. Netflix, Inc.</i>	
28	(2008) 162 Cal.App.4th 43, 66 n.11.....	23
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	22
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	11
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	10
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	19
	<i>Ferra v. Lowes Hollywood Hotel, LLC</i>	
	(2021) 11 Cal.5th 858.....	13
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	18
	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	21
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009).....	18

1	<i>IKON Office Solutions, Inc Sec Litig.</i>	
2	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
3	<i>Jack v. Hartford Fire Ins. Co.</i>	
4	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	18
5	<i>Kass v. Young</i>	
6	(1977) 67 Cal.App.3d 100, 106).....	21
7	<i>Kullar v. Foot Locker Retail, Inc.</i>	
8	(2008) 168 Cal.App.4th 116, 133.....	11
9	<i>Lee v. Dynamex, Inc.</i>	
10	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	24
11	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
12	(9 th Cir. 2021) 999 F.3d 668.....	19-20
13	<i>McKenzie v. Fed. Express Corp.</i>	
14	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	18
15	<i>Michael Milken and Assoc. Sec. Litig.</i>	
16	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	12
17	<i>Misra v. Decision One Mortg. Co.</i>	
18	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	19
19	<i>Moniz v. Adecco USA, Inc.</i>	
20	(2021) 72 Cal.App.5th 56, 77.....	17
21	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
22	(2010) 186 Cal.App.4th 399, 409.....	11
23	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
24	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	12, 20
25	<i>Naranjo v. Spectrum Security Services</i>	
26	(2022) 13 Cal. 5th 93.....	17
27	<i>Newman v. Stein</i>	
28	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	18
	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	20
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	19
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	15
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	20
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	22
	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 319, 326, 333.....	24
	///	

1	<i>Stambaugh v. Super. Ct</i>	
2	(1976) 62 Cal.App.3d 231, 236.....	10
3	<i>State v. Levi Strauss & Co.</i>	
4	(1986) 41 Cal.3d 460, 482, 485.....	10, 22
5	<i>Taco Bell Wage & Hour Actions</i>	
6	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	18
7	<i>Tien v. Tenet Healthcare Corp.</i>	
8	(2012) 209 Cal.App.4th 1077, 1088.....	19
9	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
10	(1975) 48 Cal. App. 3d 143, 151-52.....	21
11	<i>Villa v. United Site Servs. of California, Inc.</i>	
12	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	15

STATUTES, RULES AND CODES

13	<i>Cal.Civ.Proc. Code § 382</i>	24
14	<i>Cal. Lab. Code § 2698 et seq</i>	4-5
15	<i>Bus. and Prof. Code § 17200</i>	4
16	<i>Cal. Lab. Code § 1194</i>	4
17	<i>Cal. Lab. Code § 1197</i>	4
18	<i>Cal. Lab. Code § 1197.1</i>	4
19	<i>Cal. Lab. Code § 510, et seq</i>	4
20	<i>Cal. Lab. Code § 226.7</i>	4
21	<i>Cal. Lab. Code § 512</i>	4
22	<i>Cal. Lab. Code § 226</i>	4
23	<i>Cal. Lab. Code § 201</i>	4
24	<i>Cal. Lab. Code § 202</i>	4
25	<i>Cal. Lab. Code § 203</i>	4
26	<i>Cal. Lab. Code § 204</i>	5
27	<i>Cal. Lab. Code § 2802</i>	4
28	<i>Cal. Lab. Code § 2802(a)</i>	16
29	<i>Cal. Rules of Court, rule 3.769</i>	9
30	<i>Cal. Rules of Court, rule 3.776(e)-(f)</i>	22

SECONDARY SOURCES

31	Conte & Newberg, <i>Newberg on Class Actions</i> , § 1 1:38, §§ 11.26, 11.51 (4th ed. 2002)	
32	.....	10, 22
33	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
34	53 UCLA L. Rev. 1303 (2006)	
35	.....	22
36	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
37	<i>Study, J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
38	.....	23
39	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
40	.....	21

1 I. INTRODUCTION

2 Plaintiffs Kevin Wyatt (“Plaintiff Wyatt”) and Kimberlee Califano (“Plaintiff Califano”)
3 (collectively, “Plaintiffs”) seek preliminary approval of the Stipulation for Class and PAGA Action
4 Settlement and Release of Claims (“Agreement” or “Settlement Agreement”)¹, which if approved,
5 would provide valuable monetary relief for approximately 1,229 Class Members and 765 PAGA
6 Employees. The basic terms of the Agreement provide for the following:

7 1. The “**Class**” and “**Class Period**” means all current and former non-exempt employees of
8 BH-SD OPCO, LLC, dba Alvarado Parkway Institute Behavioral Health Systems (“Defendant”) who
9 worked in California (“Class”) during the period beginning May 12, 2017, to September 30, 2023.
10 (“Class Period”). Agreement at §§ I(E), I(K).

11 a. “**Participating Class Member**” means a Class Member who does not submit a
12 valid and timely Request for Exclusion from the Settlement. Agreement at § I(JJ).

13 2. The “**Class Size**” is comprised of 1,229 individuals who collectively worked
14 approximately 103,717 Workweeks during the Class Period as estimated by Defendant at the time of
15 mediation. Agreement at § IV(A); PPR Dec., ¶ 19.

16 3. “**PAGA Employees**” and “**PAGA Period**” means all current and former non-exempt
17 employees of Defendant who worked for Defendant in California (“PAGA Employees”) at any time
18 during the period beginning May 12, 2020, to September 30, 2023 (“PAGA Period”). Agreement at §§
19 I(EE), I(GG). PAGA Employees do not have the ability to opt-out of the PAGA portion of the
20 settlement. Agreement at § VII(C)(7). At the time of mediation, there were approximately 1,558 PAGA
21 Employees during the PAGA Period. PPR Dec., ¶ 19.

22 4. The “**Gross Settlement Amount**” is Seven Hundred Thousand Dollars and Zero Cents
23 (\$700,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes
24 the following:

25 a. A “**Class Representative Payment**” of not more than \$10,000 to each Plaintiff
26 (\$20,000 total) in recognition of their efforts and risks in assisting with the prosecution of the Action.

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

Agreement at § III(A)(1)(a).

b. “**Class Counsel Fees Payment**” and “**Class Counsel Expenses Payment**” in the amount not of not more than \$258,333.33, comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$233,333.33 *and* litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at §§ III(A)(1)(b);

c. A “**PAGA Penalties**” of Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Penalties (\$37,500) to the Labor and Workforce Development Agency (“LWDA PAGA Payment”). Twenty-five percent (25%) of the PAGA Penalties (\$12,500) will be distributed to the PAGA Employees (“Individual PAGA Payments”). Agreement at § I(HH); and

d. “**Administration Costs**” not to exceed \$13,000.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and costs associated with administration of the settlement. Agreement at §§ I(J), VII(B).

4. The “**Net Settlement Amount**” of approximately \$358,666.67 (Gross Settlement Amount less the requested Class Counsel Fees Payment and Class Counsel Expenses Payment, Class Representative Payment, PAGA Penalties, and Administration Costs) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at §§ III(A). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Class payment of **\$291.84**. PPR Dec., ¶ 7.

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

denied or of Defendant prevailing at trial. Finally, the Settlement considers Defendant's financial condition and ability to satisfy a larger settlement. PPR Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Participating Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. PPR Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a behavioral health system that operates outpatient psychiatric and substance use disorder services throughout California, including San Diego county, where Plaintiffs worked. PPR Dec., ¶ 9. Plaintiff Wyatt was employed by Defendant from September of 2015 through July of 2020 as a Housekeeper. Declaration of Kevin Wyatt ("Wyatt Dec.") at ¶ 4. Plaintiff Califano has been employed by Defendant since 2005 as a Staffing Coordinator and Purchasing Agent in the Nursing Department. Declaration of Kimberlee Califano ("Califano Dec.") at ¶ 4. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Califano Dec., ¶ 4; Wyatt Dec., ¶ 4. Throughout their employment, Plaintiffs were subject to Defendant's policies and procedures. PPR Dec., ¶ 9.

Generally, Plaintiffs claim that Defendant failed to provide compliant meal and rest periods, failed to pay for all time worked, including time spent undergoing COVID-19 screenings, failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due upon separation of employment. PPR Dec., ¶ 10.

On May 12, 2021, Plaintiff Wyatt served Defendant and the Labor and Workforce Development

Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). On April 29, 2024, Plaintiff Wyatt served Defendant and the LWDA with an Amended PAGA Notice. Plaintiff Wyatt’s PAGA Notices set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). PPR Dec., ¶ 11.

On May 12, 2021, Plaintiff Wyatt filed a class action complaint in the San Diego County Superior Court, Case No. 37-2021-00021168-CU-OE-CTL (the “Action”). The Action alleged nine causes of action against Defendant for: (1) Failure to Pay Overtime Compensation (2) Failure to Pay Wages for All Hours Worked; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Pay Wages Due and Payable Twice Monthly; (7) Failure to Reimburse for Business Expenses; (8) Failure to Pay Wages Upon Termination of Employment; and (9) Unlawful Competition and Unlawful Business Practices. PPR Dec., ¶ 12.

On February 4, 2022, Plaintiff Califano filed a class action complaint in San Diego County Superior Court, Case No. 37-2022-00004654-CU-OE-CTL alleging the same causes of action as those alleged by Plaintiff Wyatt, but excluding a cause of action for Failure to Pay Wages Due and Payable Twice Monthly. In November of 2022, Plaintiffs’ cases were consolidated by the Court, with Plaintiff Wyatt’s case being the lead case. PPR Dec., ¶ 13.

On October 20, 2023, Plaintiffs filed a first amended complaint (“Operative Complaint”), alleging ten causes of action for: (1) Unfair Competition in Violation of Cal. Lab. Code § 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable wage order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code §226; (7) Failure to Pay Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse for Required Expenses in Violation of Cal. Lab. Code § 2802); (9) Failure to Pay Wages At

Least Twice in a Calendar Month in Violation of Cal. Lab. Code § 204; and (10) Violations of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) PPR Dec., ¶ 14.

After engaging in written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at Baker Tilly US, LLP ("Baker Tilly") to analyze Defendant's time and payroll data. PPR Dec., ¶ 15.

On April 14, 2023, the Parties participated in an all-day private mediation presided over by Tripper Ortman, Esq. (the "Mediator"), an experienced mediator of wage and hour class and PAGA actions. At the mediation, the Parties were unable to reach a settlement. The Parties continued settlement negotiations, and at the recommendation of the Mediator, enlisted Hon. Mitchel Goldberg (Ret.) to review Defendant's financials and assess its ability to pay a monetary settlement. With the assistance of the Mediator and Judge Goldberg's evaluations, the Parties ultimately reached the settlement which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. PPR Dec., ¶ 16.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

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

Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited to, copies of Defendant's written policies and Plaintiffs' hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendant failed to, among other things, provide compliant meal and rest periods, provide accurate wage statements, and reimburse for mandatory business expenses. PPR Dec., ¶ 18.

1 To prepare for mediation, Defendant produced time and payroll records for the Class Members,
2 aggregate workweek and pay period data for the Class Members, average hourly rate for the Class
3 Members, and copies of applicable handbooks, policies, and agreements. PPR Dec., ¶ 19.

4 Class Counsel then retained the statisticians and economists at Baker Tilly US, LLP to evaluate
5 the Class Members' payroll and time data. Baker Tilly provides data analysis and damage modeling
6 consulting services in wage and hour class actions. Baker Tilly's team of financial and data analysts
7 are credentialed and experienced experts in their fields. PPR Dec., ¶ 20.

8 Baker Tilly analyzed Defendant's time and payroll data to assist in the development of various
9 damage models. Among other things, Baker Tilly determined the approximate amount of unpaid
10 wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts
11 and average number of hours worked per week. Baker Tilly also estimated the number of missed, late,
12 or truncated meal and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses,
13 the amount of unpaid overtime, the amount of unreimbursed business expenses, and the amount of
14 missed meal and rest period premiums paid during the Class Period. PPR Dec., ¶ 21.

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

26 Class Counsel only agreed to enter the Settlement following this thorough investigation,
27 evaluation of Plaintiffs' claims, and evaluation of Defendant's financial condition. Based on its
28 investigation of the facts, applicable law, and marketplace for similar settlements, and considering the

1 risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by
2 Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class
3 Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should
4 preliminarily approve the Settlement. PPR Dec., ¶ 23.

5 **C. The Parties Settled After Mediation**

6 On April 14, 2023, the Parties conducted a full day of mediation with Tripper Ortman, Esq. (the
7 "Mediator"). The Mediator helped manage the Parties' expectations and provided a useful, neutral
8 analysis of the issues and risks to both sides. The Parties made substantial progress with the Mediator's
9 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
10 including their respective evaluation of the damages. The mediation concluded without a settlement.
11 However, the Parties continued settlement negotiations, and at the recommendation of the Mediator,
12 enlisted Hon. Mitchel R. Goldberg (Ret.) to review Defendant's financials and assess its ability to pay
13 a monetary settlement. With the assistance of the Mediator and Judge Goldberg's evaluations, the
14 Parties ultimately reached a settlement. The complete and final terms of the Parties' settlement are now
15 set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and
16 reasonable compromise of the claims at issue. PPR Dec., ¶ 24.

17 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

18 1. The Composition of the Settlement Class

19 The proposed Class consists of all current and former non-exempt employees of Defendant who
20 worked in California during the period beginning May 12, 2017, to September 30, 2023. Agreement at
21 § I(E). The Settlement Class excludes any person who submits a timely and valid request for exclusion.
22 Agreement at § I(RR). At the time of mediation, Defendant estimated that the Class was comprised of
23 comprised of 1,229 individuals who collectively worked approximately 103,717 Workweeks during
24 the Class Period. PPR Dec., ¶ 19.

25 2. The Settlement Consideration

26 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
27 Amount of \$700,000. The Gross Settlement Amount includes: (1) Individual Class payments to the
28 Participating Class Members; (2) Class Representative Payment of not more than \$10,000 to each

1 Plaintiff (or \$20,000 total) for their services on behalf of the Class; (3) a PAGA Penalties in the amount
2 of \$50,000.00; (4) Administration Costs not to exceed \$13,000.00; (5) Class Counsel Fees Payment
3 and Class Counsel Expenses Payment in the amount of \$258,333.33.00, comprised of attorneys' fees
4 equal to one-third of the Gross Settlement Amount estimated to be \$233,333.33.00 and an estimated
5 \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § III(A).

6 Subject to the Court approving the Class Representative Payment, Class Counsel Fees Payment
7 and Class Counsel Expenses Payment, PAGA Penalties, and the Administration Costs, the Net
8 Settlement Amount will be distributed to each Participating Class Member. Agreement at §§ I(P), I(T).
9 There is no reversion to Defendants and Defendants must separately pay for their share of the employer
10 payroll taxes. Agreement at § I(AA).

11 3. The Funding Date and Installment Plan

12 Assuming there are no objectors, and no appeal is filed, Defendant will make an initial payment
13 of \$20,000 within sixty (60) days of the Court's Final Approval. Thereafter, Defendant will make thirty-
14 four (34) equal installment payments of \$20,000 by the end of each month for thirty-four (34) months,
15 after which the Gross Settlement Amount will be fully funded by Defendant. If Defendant fails to make
16 a payment under this funding schedule, Defendant shall be given written notice of such missed payment
17 and will have sixty (60) days to cure. Any interest accrued will be added to the Net Settlement Amount
18 and distributed to the Settlement Class Members except that if final approval is reversed on appeal,
19 then Defendant is entitled to prompt return of the principal and all interest accrued. Agreement at
20 §IV(C).

21 4. Formula for Calculating Individual Class Payments

22 Each Participating Class Member will receive an Individual Class Payment. The Individual Class
23 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
24 in California during the Class Period. Agreement at § III(A)(1)(e). The Class Data provided by
25 Defendant to the Settlement Administrator will include Class Members' start and end dates of
26 employment. Agreement at § I(H). The Settlement Administrator will calculate each Class Member's
27 final Individual Class Payment by dividing the particular Class Member's total number of Workweeks
28 by the total number of Workweeks for all Class Members, resulting in a Class Payment Ratio for each

Class Member. Agreement at § III(A)(1)(e). Each Class Member’s Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member’s estimated Individual Class Payment. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.*

Given that there are approximately 1,229 Class Members, **the average gross recovery is approximately \$291.84** (Net Settlement Amount divided by Class Members). PPR Dec., ¶ 7.

5. Release by Participating Class Members

Generally, as of the Effective Date, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § V(A).

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

Generally, as of the Effective Date, Plaintiff, the PAGA Employees, and the State of California will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § V(B).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$700,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th

1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

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

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

The Parties participated in mediation mediator Tripper Ortman, Esq (the “Mediator”). The Mediator managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against

any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations, negotiations continued, and the Parties reached an agreement. PPR Dec., ¶ 25.

Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. PPR Dec., ¶ 26.

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

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

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

The Gross Settlement Amount of \$700,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*

1 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
2 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
3 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
4 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
5 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
6 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

8 The Gross Settlement Amount of \$700,000.00 is fair and reasonable considering the nature and
9 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
10 mediation, Class Counsel retained Baker Tilly US, LLP to develop economic damage models
11 measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation.
12 The various models were informed by Class Counsel’s investigation, including the analysis of a
13 significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for
14 *class claims* (excluding PAGA Penalties) ranged between \$2,117,571.05 (“Realistic Damages”) and
15 \$9,041,981.61 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty
16 regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between
17 33.06% (“Realistic Damages”) and 7.74% (“Maximum Damages”) of Defendant’s class-wide exposure
18 – well within the recognized range of reasonableness. The following summarizes Defendant’s liability
19 exposure. PPR Dec., ¶ 28.

20
21
22
23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 (1) Estimated Exposure for Regular Rate Violations

2 a. Regular Rate Violations for Purposes of Overtime and Double-Time
3 Wages

4 Plaintiffs allege that Defendant failed to include certain non-discretionary payments when
5 calculating the regular rate of pay for purposes of overtime and double-time wages. The regular rate of
6 pay, which can change from pay period to pay period, includes adjustments to the straight time rate,
7 reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-
8 hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container*
9 *Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a
10 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553. Here, Defendant failed to
11 include non-discretionary payments, including flat rate on-call payments, shift differentials, and non-
12 discretionary bonuses when calculating the regular rate of pay when paying Plaintiffs and Class
13 Members overtime and double-time wages. PPR Dec., ¶ 29.

14 Conversely, Defendant denied liability and asserted that it correctly calculated the regular rate
15 of pay for purposes of paying overtime and double-time wages. PPR Dec., ¶ 30.

16 Based on Defendant’s defenses, Class Counsel applied a 90% discount to this claim and
17 estimated that the damages for this claim ranged from approximately \$15,591.30 to approximately
18 \$155,913.00. PPR Dec., ¶ 31.

19 b. Regular Rate Violations for Purposes of Meal Period Premiums

20 Plaintiffs further allege that Defendant failed to include non-discretionary payments when
21 calculating the regular rate of pay for purposes of meal period premiums. California law requires meal
22 period premiums and rest period premiums to be paid at an employee’s regular rate of pay. See *Ferra*
23 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) The *Ferra* decision applies retroactively.
24 (*Ferra*, 11 Cal. at p. 1179 – 1180). Here, to the extent that Defendant paid meal period premiums,
25 Defendant failed to include non-discretionary payments, including flat rate on-call payments, shift
26 differentials, and non-discretionary bonuses when calculating the regular rate of pay when paying
27 Plaintiffs and Class Members meal period premiums. PPR Dec., ¶ 32.

28 Conversely, Defendant denied liability and asserted that it correctly calculated the regular rate

1 of pay for purposes of paying meal period premiums. Class Counsel estimated Defendant's exposure
2 for this claim at \$72,475. PPR Dec., ¶ 33.

3 c. Regular Rate Violations for Purposes of Redeemed Sick Pay

4 Plaintiffs further allege that Defendant failed to include non-discretionary payments when
5 calculating the regular rate of pay for purposes of sick pay. California Labor Code section 246(1)(1)
6 expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay
7 for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days
8 preceding the use of the sick leave. Here, Defendant failed to include non-discretionary payments,
9 including flat rate on-call payments, shift differentials, and non-discretionary bonuses when calculating
10 the regular rate of pay when paying Plaintiffs and Class Members for redeemed sick pay.

11 Conversely, Defendant denied liability and asserted that it correctly calculated the regular rate
12 of pay. Class Counsel estimated Defendant's exposure for this claim at \$58,692.60. PPR Dec., ¶ 34.

13 (2) Estimated Exposure for Meal Period Violations.

14 Plaintiffs alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiffs
15 alleged that because of rigorous work schedules and Defendant's understaffing, Plaintiffs and Class
16 Members were unable to take timely and duty-free meal periods. An analysis of the Class Members'
17 time and payroll data revealed a modest 8.46% meal period violation rate. A majority of these violations
18 were seen in shifts between 5 and 6 hours. Defendant had in place a meal period waiver that was signed
19 by a majority of the Class Members. However, Plaintiffs alleged that a majority of these signed meal
20 period waivers were unenforceable. PPR Dec., ¶ 35.

21 Defendant argued, *inter alia*, that it provided the Class Members with compliant meal periods and
22 maintained facially compliant meal period policies, such that any missed meal periods were by choice
23 of each individual Class Member. Further, Defendant argued that its meal period waiver was
24 enforceable. Thus, Defendant argued that there was no potential liability for Plaintiffs' alleged meal
25 period violations and any claimed violations required a highly individualized inquiry not suitable to
26 class treatment. PPR Dec., ¶ 36.

27 Consequently, Plaintiff applied a 90% discount to this claim and estimated that the damages for
28 this claim ranged from approximately \$162,554.20 to approximately \$1,625,542.00. PPR Dec., ¶ 37.

1 (3) Estimated Exposure for Rest Period Violations

2 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
3 Defendant required Plaintiffs and Class Members to carry a pager, which was later replaced with a
4 requirement to carry a cell phone. Class Members were required to keep these devices on them even
5 on rest breaks, so that employees could be reached during a break if need be. Class Members frequently
6 received communications on these devices, interrupting or cutting short their rest breaks. Importantly,
7 even when rest breaks were not interrupted, they were always on-call. These breaks are non-compliant,
8 as they are not a period of true rest. PPR Dec., ¶ 38.

9 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
10 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
11 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
12 on Class Member testimony, making it a riskier claim at class certification and liability stages.
13 Certification likely would have required depositions of Class Members who provided declarations, and
14 Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or
15 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
16 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
17 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
18 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
19 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
20 generate uniform practices."). PPR Dec., ¶ 39.

21 Accordingly, Plaintiffs applied a 90% discount to the rest break claim. Plaintiffs estimated the
22 range of potential outcomes for this claim was between approximately \$108,557.40 to approximately
23 \$1,085,574.01. PPR Dec., ¶ 40.

24 (4) Estimated Exposure for Unpaid Wages

25 Plaintiff also alleged that Defendant failed to pay its employees for all hours worked.
26 Specifically, Plaintiffs asserted that Defendant failed to pay employees for time spent undergoing
27 COVID-19 screenings before the start of their shifts. Based on Plaintiffs' testimony and Class
28 Counsel's investigation, Employees were required to arrive on-site, underdo an antigen test, and wait

1 in their car until they were cleared to work. The amount of time spent waiting could exceed 30 minutes.
2 As a result, Plaintiffs and Class Members forfeited compensation for all the time they spent working
3 under Defendant's control. PPR Dec., ¶ 41.

4 Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in
5 place a written policy requiring its employees to accurately record all their time worked and argued
6 that such written policies and procedures directed its employees not to work while off the clock.
7 Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because
8 individualized issues predominated. For example, even assuming Plaintiffs performed work while
9 off-the-clock, which Defendant dispute, the time spent would vary drastically from class member to
10 class member that it could not be established by common proof. PPR Dec., ¶ 42.

11 Class Counsel estimated Defendant's exposure for this claim at \$376,867.00. PPR Dec., ¶ 43.

12 (5) Estimated Exposure for Unreimbursed Business Expenses

13 Plaintiffs alleged that Defendant required Plaintiffs and Class Members to use their personal cell
14 phones and personal vehicles as a result of and in furtherance of their job duties but were not reimbursed
15 by Defendant. California employers who require employees to incur personal business expenses for
16 work purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code § 2802(a),
17 providing that "An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
19 her obedience to the directions of the employer..."). Specifically, Plaintiff and Class Members were
20 required to use their cell phones to send and receive work-related communications. However, they were
21 not reimbursed or indemnified by Defendant for the cost associated with the use of the personal cell
22 phones for Defendant's benefit. Additionally, Plaintiffs and Class Members were required to use their
23 personal vehicles to travel between Defendant's facilities, and travel to and from medical supply
24 retailers, and similarly were not reimbursed. PPR Dec ¶ 44.

25 Again, Defendant denied any liability for this claim and asserted that it maintained legally
26 compliant expense reimbursement policies and practices throughout the Class. Further, Defendant
27 argued that a vast majority of Class Members were not required to use their personal cell phones or
28 travel. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing

1 Plaintiffs' unreimbursed business expenses claim would rely, almost entirely, on Class Member
2 testimony, making it a riskier claim at class certification and liability. Thus, Defendant argued that there
3 was no potential liability for this claim and any claimed violations required a highly individualized
4 inquiry not suitable to class treatment. PPR Dec ¶ 45.

5 Consequently, Plaintiff applied a 90% discount to this claim and estimated that the damages for
6 this claim ranged from approximately \$62,597.30 to approximately \$625,973.00. PPR Dec., ¶ 46.

7 (6) Estimated Exposure for Wage Statement and Waiting Time Penalties

8 Plaintiffs also alleged that Defendant failed to furnish its employees with accurate itemized wage
9 statements. Specifically, Plaintiffs alleges that as a result of Defendant's failure to provide meal and
10 rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled
11 to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th
12 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement
13 penalties). Plaintiffs also alleged that the Defendant's labor code violations resulted in derivative
14 liability for waiting time penalties. PPR Dec., ¶ 47.

15 Defendant argued that these claims would fail because the underlying claims would fail. Further,
16 Defendant argued that even if it failed to furnish accurate wage statements, Plaintiffs could not establish
17 the injury requirement on a class-wide basis. Finally, Defendant argued that Plaintiffs could not prove
18 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. PPR Dec.,
19 ¶ 48.

20 Consequently, Plaintiffs applied a 75% discount to these claims and estimated that the damages
21 for these claims ranged from approximately \$1,260,236.25 to approximately \$5,040,945.00. PPR Dec.,
22 ¶ 49.

23 (7) Defendant's PAGA Exposure

24 In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between
25 \$139,400.00 ("Conservative Model") and \$4,454,272.00 ("Aggressive Model") if successful at trial.
26 PPR Dec., ¶ 50. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and
27 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a
28 good faith amount" for PAGA penalties and "there is no indication that this amount was the result of

1 self-interest at the expense of class members,” such amounts are generally considered reasonable.
2 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
3 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the
4 settlement. *See id.* at *1, 9 (approving a PAGA Penalties of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
5 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
6 Penalties of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
7 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
8 in the range of zero to two percent of the total settlement).

9 Here, the Parties negotiated a good faith PAGA Penalties payment in the amount of \$50,000.00
10 which is 7.14% of the Gross Settlement Amount. This amount falls well within the range of approved
11 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500) will be paid to the
12 LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA
13 Penalties (\$12,500) will be distributed to the PAGA Employees (“Individual PAGA Payments”), which
14 is within the range of PAGA Penalties approved by courts and should be approved. PPR Dec., ¶ 51.

15 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
16 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
17 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
18 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
19 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
20 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
21 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
22 6, 2016) (PAGA penalties denied after trial).

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

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

3 **b. Inherent Risks of Continued Litigation and Defendant's Financial Condition**
4 **Support Preliminary Approval.**

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

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
12 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
13 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
14 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
15 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
27 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
28 settlement. PPR Dec., ¶ 52.

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

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

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

11 Finally, continuing to litigate this action would require continued and extensive resources
12 coupled with significant Court time to proceed through trial and post-trial motions; which can often
13 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
14 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs is successful at
15 trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that
16 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
17 the risk of an appeal and subsequent reversal is real. PPR Dec., ¶ 53. “Avoiding such a trial and the
18 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
19 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
20 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
21 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

22 Further, Defendant’s poor financial condition supports preliminary approval of the settlement.
23 During the litigation, Defendant represented that it would be unable to satisfy a larger class-wide
24 settlement due to its financial condition. At the recommendation of the Mediator, Class Counsel
25 enlisted Hon. Mitchel Goldberg (Ret.) to review Defendant’s financials and assess its ability to satisfy
26 a class-wide settlement. Judge Goldberg analyzed Defendant’s publicly available financial information,
27 and a number of Defendant’s financial documents. Based on Judge. Goldberg’s review, he determined
28 that Defendant could afford the settlement contemplated here without a significant disruption of its

business based on its current financial condition. Moreover, the payment plan contemplated by the Agreement is appropriate here because it allows for Defendant to work toward accumulating the settlement funds. PPR Dec., ¶ 54; Declaration of Hon. Mitchel R. Goldberg (Ret.), ¶¶ 3-7.

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$700,000.00 that is roughly between approximately 33.06% of Defendants' *class-wide* liability exposure for damages, and approximately 7.74% of Defendant's maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. PPR Dec., ¶ 55.

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

The Settlement Class Members are entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet 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

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 and scope of the Released Claims. Agreement at § VII(C). The Parties negotiated this method to ensure
2 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
3 administration of the Settlement. PPR Dec., ¶ 56.

4 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
5 Packet satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
6 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
7 compromise and of the options open to dissenting class members.”).) PPR Dec., ¶ 57.

8 **C. The Court Should Preliminarily Approve the Class Representative Payment**

9 Class Representative Payments “are fairly typical in class action cases.” (*Cellphone Termination*
10 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v.*
11 *West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed.
12 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical*
13 *Study*, 53 UCLA L. Rev. 1303 (2006).) Class Representative Payments “are intended to compensate
14 class representatives for work done on behalf of the class, to make up for financial or reputational risk
15 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
16 attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or
17 incentive awards to named plaintiffs is that they should be compensated for the expense or risk they
18 have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential*
19 *Services LLC* (2009) 175 Cal.App.4th 785.)

20 The Settlement provides for a Class Representative Payment of \$10,000 to each Plaintiff (or
21 \$20,000 total). The Class Representative Payment is fair and reasonable compensation for the
22 Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement,
23 regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the
24 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
25 for the Settlement Class Members, and agreeing to provide Defendant a general release of all claims
26 arising out of their employment. PPR Dec., ¶ 58.

27 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
28 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully

submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. PPR Dec., ¶ 59.

D. The Court Should Preliminarily Approve the Class Counsel Fees Payment and Class Counsel Expenses Payment

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Fees Payment and Class Counsel Expenses Payment is fair and reasonable. PPR Dec., ¶ 60.

Plaintiffs will file a formal motion for the negotiated Class Counsel Fees Payment and Class Counsel Expenses Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees and expenses. PPR Dec., ¶ 61.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiffs contend, and Defendant does not dispute, that provisional certification of the Class is appropriate. PPR Dec., ¶ 62.

///

1 1. The Standard for Class Certification

2 Class actions are statutorily authorized “when the question is one of common or general interest,
3 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
4 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
5 certification is appropriate when there is an “ascertainable class and a well-defined community of
6 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
7 is appropriate even if class members at some point may be required to make an individual showing as
8 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
9 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

25 Because all Class Members are Defendant’s current and former employees, the class is readily
26 ascertainable from Defendant’s regular business records, i.e., payroll records. PPR Dec., ¶ 63.

27 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
28 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be

determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. PPR Dec., ¶ 64.

Plaintiffs' wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. PPR Dec., ¶ 65.

Additionally, Plaintiffs are 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. Declaration of Jean-Claude Lapuyade ("JCL Dec.") ¶¶ 5-9, Declaration of Shani O. 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. JCL Dec., ¶ 4.

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: July 3, 2024

JCL LAW FIRM, APC

By: Perssia Razma
Perssia Razma, Esq.