ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Jackland K Hom (State Bar #327243)
jackland@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292

Attorneys for PLAINTIFFS
(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

REYNALDO RIOS, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, v. ABILITY COUNTS, INC., a California corporation; MOHENI GAJI, individually; and DOES 1 through 100, inclusive, Defendants.	Case No. CVRI2104367 *Consolidated Case No.: CVRI2105433* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: September 22, 2025 Time: 8:30 a.m. Reservation ID: 067215178570 Judge: Hon. Harold Hopp Dept.: 1
REYNALDO RIOS, individually, and on behalf of other members of the general public similarly situated; MICHELLE CHASE, individually, and on behalf of other members of the general public similarly situated; Plaintiffs, v. ABILITY COUNTS, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	

LAWYERS FOR JUSTICE, PC
Edwin Aiwazian, Esq.
edwin@calljustice.com
Vartan Madoyan, Esq.
vartan@calljustice.com
Joanna Ghosh, Esq.
joanna@calljustice.com
Scarlet Tunney, Esq.
scarlet@calljustice.com
450 North Brand Blvd, Suite 900
Glendale, California 91203
Telephone: (818) 265-1020

Attorneys for PLAINTIFFS

/ / /

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTS AND PROCEDURE 3

A. Overview of the Litigation 3

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

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

1. The Composition of the Settlement Class Members 6

2. The Settlement Consideration 7

3. The Funding Date 7

4. Formula for Calculating Individual Settlement Payments 7

5. Formula for Calculating Individual Payments to the Aggrieved Employees 8

6. Mailing of Individual Settlement Payments and Individual PAGA Payments 8

7. Release by Settlement Class Members 9

8. PAGA Release by Plaintiffs and the State of California 10

III. ARGUMENT 10

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement 10

/ / /

1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel 11

2. The Settlement Falls Within the Recognized Range of Reasonableness. 13

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness. 12

(1) Defendant's Estimated Exposure for Unpaid Wages 13

(2) Defendant's Estimated Exposure for Meal Period Violations 14

(3) Defendant's Estimated Exposure for Rest Period Violations 14

(4) Defendant's Estimated Exposure for Unreimbursed Business Expenses 15

(5) Defendant's Estimated Exposure for Wage Statement Violations 15

(6) Defendant's Estimated Exposure for Waiting Time Penalties 16

(7) Defendant's PAGA Exposure 16

b. Inherent Risks of Continued Litigation Support Preliminary Approval. 18

B. The Proposed Notice Informs the Class about the Case and Settlement 20

C. The Court Should Preliminarily Approve the Class Representative Service Award 21

D. The Court Should Preliminarily Approve the Class Counsel Attorneys' Fees and Attorneys' Expenses 22

E. Provisional Certification for Settlement Purposes Is Appropriate 23

/ / /

1. The Standard for Class Certification 22

2. The Proposed Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members 23

IV. CONCLUSION 24

/ / /

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135, 1151……………………………………………………………11
a.S.A. Cab Ltd.
(2009) 176 Cal.App.4th 1333, 1341…………………………………………………………..19
Brinker v. Superior Court
53 Cal. 4th 1004, 1021-22 (2012)……………………………………………………………..19
Brown v. Fed Express Corp.
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88……………………………………………………19
Bufil v. Dollar Financial Group, Inc.
(2008) 162 Cal.App.4th 1193, 1207…………………………………………………………..23
Campbell v. Best Buy Stores, L.P.
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13……………………..………..…………..........19
Carrington v. Starbucks Corp.,
30 Cal. App. 5th 504, 517, 539 (2018)………………………………..…………….........18
Cart v. Super. Ct.
(1975) 50 Cal.App.3d 960, 972………………………………………………………………20
Cellphone Termination Fee Cases
180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010)…………………………………………...21
Chance v. Super. Ct.
(1962) 58 Cal.2d 275, 290……………………………………………………………………20
Chavez v. Netflix, Inc.
(2008) 162 Cal.App.4th 43, 66 n.11…………………………………………………………..22
Clark v. American Residential Services LLC
(2009) 175 Cal.App.4th 785…………………………………………………………………..21
D'Amato v. Deutsche Bank
(2d. Cir. 2001) 236 F.3d 78, 85………………………………………………………………..11
Dunk v. Ford Motor Co.
48 Cal. App. 4th 1794, 1802 (1996)…………………………………………………………..10
Duran v. U.S. Bank National Association
(2014) 59 Cal.4th 1, 31…..……………………………………………………………………18
Fleming v. Covidien
2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011)……………………………………………17
Fontana v. Elrod
(7th Cir. 1987) 826 F.2d 729, 732…………………………………………………………….20
Frank v. Eastman Kodak Co.
(W.D.N.Y. 2005) 228 FRD. 174, 186………………………………………………………...12
Hopson v. Hanesbrands, Inc
(N.D. Cal. 2009) 2009 WL 928133 * 1, 9……………………………………………………17
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)……………11
In re Global Crossing Sec. and ERISA Litig.
(S.D.N.Y 2004) 225 F.R.D. 436, 460…………………………………………………………12
In re IKON Office Solutions, Inc Sec Litig.
(E.D. Pa. 2000) 194 F.R.D. 166, 184…………………………………………………….…...12

/ / /

In re Michael Milken and Assoc. Sec. Litig.
(S.D.N.Y. 1993) 150 F.R.D. 57, 66……………………………………………………………...12
In re Nordstrom Com. Cases
186 Cal.App.4th 576, 589 (2010)……………………………………………………………..18
In re Nvidia Derivs. Litig.
(N.D. Cal. 2008) 2008 WL 5382544, at *3……………………………………………………19
In re Taco Bell Wage & Hour Actions
2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016)……………………………..18
In re Omnivision Tech, Inc.
(N.D. Cal. 2008) 559 F.Supp.2d 1036……………………………………………………...12
Jack v. Hartford Fire Ins. Co.
No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011)………………17
Kass v. Young
(1977) 67 Cal.App.3d 100, 106…………………………………………………………………20
Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116, 133……………………………………………………………..12
Lee v. Dynamex, Inc.
(2008) 166 Cal.App.4th 1325, 1332, 1334……………………………………………….......23
Magadia v. Wal-Mart Associates, Inc.
(9th Cir. 2021) 999 F.3d 668……………………………………………………………18-19
McKenzie v. Fed. Express Corp.
No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)…………17
Misra v. Decision One Mortg. Co.
(C.D. Cal. 2009) 2009 WL 4581276, at *7……………….…………………………………..18
Moniz v. Adecco
(2021) 72 Cal.App.5th 56, 77……………………………………………………………………16
Munoz v. BCI Coca-Cola Bottling Co.
(2010) 186 Cal.App.4th 399, 409……………………………………………………………..12
Nat'l Rural Telecomm. Coop. v. Directv. Inc.
(C.D. Cal. 2004) 221 F.R.D. 523, 526-27…………………………………………..............20
Newman v. Stein
(2d. Cir. 2002) 464 F.2d 689, 693………………………………………………………………12
North County Contractor's Assn., Inc. v. Touchstone Ins. Services
(1994) 27 Cal.App.4th 1085, 1089-90……………………………………………………..10
O'Conner v. Uber Technologies, Inc.
(9th Cir. 2018) 904 F.3d 1087……………………………………………………………...18
Officers for Justice v. Civil Serv. Comm'n
(9th Cir. 1982) 688 F.2d 615, 625, 628…………………………………………………10, 12
Ordonez v. Radio Shack, Inc.
(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11…………………………………………..15
Rebney v. Wells Fargo Bank
(1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990)………………………….19
Rodriguez v. West Publishing Corp.
(9th Cir. 2009) 563 F.3d 948, 958-59……………………………………………….......21
Sav-On Drug Stores, Inc.
(2014) 34 Cal. 4th 319, 326, 333……………………………………………………………..23
Stambaugh v. Super. Ct
(1976) 62 Cal.App.3d 231, 236…………………………………………………………………11

State v. Levi Strauss & Co.
(1986) 41 Cal.3d 460, 482, 485……………………………………………………….………21
Tien v. Tenet Healthcare Corp.
(2012) 209 Cal.App.4th 1077, 1088……………………………………………………………..18
Trotsky v. Los Angeles Fed Savings & Loan Assn.
(1975) 48 Cal.App.3d 143, 151-52…………………………………………………………....20
Villa v. United Site Servs. of California, Inc.
(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8……………………………………………15
Wilner v. Manpower, Inc.
35 F.Supp.3d 1116 (N.D. Cal. 2014)……………………….……………………………………16

RULES, CODES, AND STATUTES

Bus. & Prof. Code § 17200 *et seq*………………………………………………………………..4, 9
Cal. Civ. Proc. Code § 382……………………………………………………………………………23-24
Cal. Civ. Proc. Code § 1021………………………………………………………………………...24
Cal. Lab. Code § 201……………………………………………………………………………………4
Cal. Lab. Code § 202……………………………………………………………………………………4
Cal. Lab. Code § 203……………………………………………………………………………...9, 16
Cal. Lab. Code § 204…………………………………………………………………………......4, 9
Cal. Lab. Code § 210……………………………………………………………………………………9
Cal. Lab. Code § 226……………………………………………………………………4, 9, 15, 16
Cal. Lab. Code § 226.7 *et seq*…….……………………………………………………………4, 9, 16
Cal. Lab. Code § 510………..……………………………………………………………………..4, 9, 16
Cal. Lab. Code § 512………………………………………………………………………......4, 9, 16
Cal. Lab. Code § 558…………………………………………………………………………......16
Cal. Lab. Code § 1174(d)…………………………………………………………………………...4, 9
Cal. Lab. Code § 1194……………………………………………………………………………4, 9, 16
Cal. Lab. Code § 1197……………………………………………………………………………4, 9, 16
Cal. Lab. Code § 1197.1…………………………………………………………………………………4
Cal. Lab. Code § 1198……………………………………………………………………….….4, 9
Cal. Lab. Code § 1199…………………………………………………………………………….….9
Cal. Lab. Code § 2698 *et seq*…………………………………………………………………………4
Cal. Lab. Code § 2800…………………………………………………………………………......4
Cal. Lab. Code § 2802…………………………………………………………………………......4
C.R.C. 3.769(c)-(g)……………………………………………………………………………………….10
C.R.C. 3.776(e)-(f)………………………………………………………………………..…21

/ / /

SECONDARY SOURCES

Conte & Newberg, *Newberg on Class Actions,* §§ 1 1:38, 11.26, 11.51 (4th ed. 2002) 10

Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006) 21

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 22

Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986) 20

I. INTRODUCTION

Plaintiffs Reynaldo Rios and Michelle Chase ("Plaintiffs") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 1,256 Class Members who collectively worked approximately 112,313 Workweeks. The basic terms of the Agreement provide for the following:

1. The **"Class Members," "Settlement Class" and "Class Period"** means all current and former hourly-paid or non-exempt employees of Defendant Ability Counts, Inc. and Moheni Gaji ("Defendants") in California ("Class Member") during the period between November 29, 2017 through September 30, 2024 ("Class Period"). Agreement at §§ I(G), I(J). The "Settlement Class" excludes any Class Member that submitted a valid and timely request for exclusion. Agreement at § I(KK).

a. The "**Class Size**" is comprised of 1,256 individuals who collectively worked approximately 112,313 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean a person employed by Defendants in California and classified as a non-exempt employee ("Aggrieved Employees") during the period between July 14, 2020 through September 30, 2024 ("PAGA Period"). Agreement at §§ I(C), I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(2)(a). At the time of mediation, there were approximately 840 Aggrieved Employees who worked approximately 33,434 pay periods during the PAGA Period.

3. The "**Gross Settlement Amount**" is One Million Four Hundred and Sixteen Thousand, Two Hundred and Sixty-Six Dollars and Ninety Cents ($1,416,266.90). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Class Representative Service Award**" of not more than $10,000 to each Plaintiff in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § I(HH).

/ / /

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

b. A **"Class Counsel Fees and Litigation Expenses Payment"** in the amount not to exceed thirty-five percent of the Gross Settlement Amount for attorney's fees, currently estimated to be $495,693.41 ("Class Counsel Fees") ***and*** litigation expenses not to exceed $35,000 (Class Counsel Litigation Expenses") to be paid to Class Counsel. Agreement at §§ I(D), I(E).

c. A "**PAGA Payment**" of One Hundred Thousand Dollars and Zero Cents ($100,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Penalties ($75,000.00) to the Labor and Workforce Development Agency ("LWDA PAGA Payment"). Twenty-five percent (25%) of the PAGA Penalties ($25,000.00) will be distributed to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at § I(W). The average Individual PAGA Payment is approximately $29.76. The estimated range of Individual PAGA Payments will be provided in Plaintiffs' motion for final approval; and

d. "**Administration Expenses Payment**" not to exceed $14,000.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Class Notice and Administration Expenses Payment. Agreement at § I(F). Class Counsel requested bids from two (2) settlement administration companies and received the lowest bid from Apex Class Action LLC. JKH Dec., ¶ 5.

4. The "**Net Settlement Amount**" of approximately $751,573.49 (Gross Settlement Amount less the requested Class Counsel Fees and Litigation Expenses Payment, Class Representative Service Award, PAGA Payment, and Administration Expenses Payment) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § I(R). 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 ***$598.38***. The range of settlement awards will be provided when Plaintiffs move for final approval of the Settlement. JKH Dec., ¶ 7.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JKH Dec., ¶ 6.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JKH Dec., ¶ 9.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants provide vocational training and employment assistance for adults with mental disabilities in Riverside County, where Plaintiffs worked. Plaintiff Reynaldo Rios worked for Defendants in California from February 2020 to October 2020. Plaintiff Michelle Chase worked for Defendants in California from November 2013 to August 2019. During their employment, Plaintiffs claim that they were denied legally compliant meal and rest periods, not provided with all minimum wages and overtime compensation, not provided with compliant wage statements, and not reimbursed for required business expenses. Throughout their employment, Plaintiffs were subject to Defendants' written policies and procedures. Declaration of Reynaldo Rios ("Rios Dec.") at ¶¶ 2-6; Declaration of Michelle Chase ("Chase Dec.") at ¶¶ 2-6; JKH Dec., ¶ 10.

Generally, Plaintiffs claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish accurate, itemized wage statements. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, asserting that they maintained facially compliant meal and rest period policies, paid their employees for all hours worked, and properly reimbursed all necessary business expenses. JKH Dec., ¶ 11.

On July 14, 2021, Plaintiff Reynaldo Rios served Defendants and the Labor and Workforce

Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Rios's PAGA Notice set forth the facts and theories supporting Defendants' 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"). JKH Dec., ¶ 12.

On September 17, 2021, Plaintiff Rios filed a Complaint in Riverside County Superior Court, Case No. CVRI2104367 for enforcement under the Private Attorneys General Act, California Labor Code § 2698, *et seq*. ("PAGA Action"). JKH Dec., ¶ 13.

On November 19, 2021, Plaintiff Rios filed a class action complaint in the Riverside County Superior Court, Case No. CVRI2105433 ("Class Action"). The Action alleged ten causes of action against Defendants for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq*. On April 13, 2022, a First Amended Complaint was filed in the Class Action for purposes of adding Plaintiff Michelle Chase as a named plaintiff. The Class Action and PAGA Action were deemed consolidated by this Court. JKH Dec., ¶ 14.

The parties engaged in extensive informal discovery and investigation leading up to mediation on September 18, 2023. Prior to the mediation, my office requested and received class member and aggrieved employee data for purposes of the mediation, including timekeeping data and payroll data for class members and aggrieved employees, the total number of class members, the total number of aggrieved employees, total workweeks, total pay periods, applicable employee handbooks and policies related to payment of wages, meal and rest periods, timekeeping, expense reimbursement, and other documents relevant to the litigation. In total, Defendants produced thousands of pages of relevant documents and data prior to the mediation Declaration of Vartan Madoyan ("Madoyan Dec.") at ¶ 5.

On September 18, 2023, the Parties participated in a full-day mediation with Henry J. Bongiovi, Esq., a mediator of wage and hour class and PAGA actions. The Parties did not reach a settlement during the mediation, but the Parties continued to engage in subsequent negotiations with the aid of Mr. Bongiovi for several months, and ultimately reached a resolution. Thereafter, the Parties negotiated the long-form Settlement Agreement, which is now presented to the Court for preliminary approval. Madoyan Dec., ¶ 7.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the PAGA Action and Class Action, respectively, Class Counsel began its pre-filing investigation into the complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff Reynaldo Rios, and later Plaintiff Michelle Chase prior to the amendment which joined her as a named plaintiff. As part of the interview process, Plaintiffs provided detailed information related to their employment. Class Counsel subsequently determined that the claims justified further inquiry and investigation. Madoyan Dec., ¶ 3.

Class Counsel requested Plaintiffs' employee files from Defendants. In response, Defendants produced several documents, including but not limited to, copies of Plaintiffs' payroll records, time records, personnel files, and various company policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claims that Defendants failed to, among other things, provide compliant meal and rest periods, and failed to pay for all hours worked, failed to reimburse necessary business expenses, and failure to furnish accurate itemized wage statements. Madoyan Dec., ¶ 4.

To prepare for mediation, Defendants produced the Class Members' timekeeping and payroll data, total number of Class Members and Aggrieved Employees, total workweeks, total pay periods, applicable employee handbooks and policies related to the payment of wages, meal and rest periods, timekeeping, expense reimbursement, and other documents relevant to the litigation. In total, Defendants produced thousands of pages of relevant documents and data prior to mediation. Madoyan Dec., ¶ 5.

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

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analyses of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' 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. JKH Dec., ¶ 17.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' 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 Defendants, 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. JKH Dec., ¶ 18.

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

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

The proposed Settlement Class consists of all current and former hourly-paid or non-exempt employees of Defendants in California employed during the period from November 29, 2017 through

September 30, 2024. Agreement at §§ I(G), I(H). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(KK). At the time of mediation, Defendants estimated that the Class was comprised of 1,256 individuals who worked approximately 112,313 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $1,416,266.90. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of not more than $10,000 to each Plaintiff for their services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $100,000; (4) Claims Administration Expenses estimated at $14,000; (5) Class Counsel Attorneys' Fees and Attorneys' Expenses in the amount of $530,693.41, comprised of attorneys' fees equal to thirty-five (35%) percent of the Gross Settlement Amount estimated to be $495,693.41 and an estimated $35,000 for actually incurred litigation expenses. See generally Agreement at §§ III(M)(9)-(12).

Subject to the Court approving the Class Representative Service Award, Class Counsel Attorneys' Fees and Attorneys' Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § III(M)(1). There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount, plus any share of Defendants' payroll taxes within thirty (30) calendar days of the Effective Date. Agreement at § III(M).

4. Formula for Calculating Individual Settlement Payments

Each Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendants in California during the Class Period. The Class Data provided by Defendants 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

§§ III(M)(1)-(2). Each Class Member's final Individual Settlement Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Class Member. Individual Settlement Payments for members of the Class who submit valid and timely requests for exclusion will be redistributed to Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(M)(1).

Given that there are approximately 1,256 Class Members, ***the average gross recovery is approximately $598.38*** (Net Settlement Amount divided by Class Members). The range of settlement awards will be provided when Plaintiffs moves for final approval of the Settlement. JKH Dec., ¶ 7.

For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as wages ("Wage Portion"); 40% as penalties ("Penalty Portion"); and 40% as pre-judgment interest ("Interest Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Penalty Portion and Interest Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at § III(M)(3). In calculating Defendants' total damages exposure, Class Counsel determined that the vast majority of damages are for meal and rest premiums, which can be classified as penalties and not wages. Therefore, with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that an allocation of 20% as wages and 80% as penalties and interest is fair and reasonable.

5. Formula for Calculating Individual Payments to the Aggrieved Employees

Each Aggrieved Employee will receive an Individual PAGA Payment. Using the Class Data, each Aggrieved Employee's final Individual PAGA Payment will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (i.e., $25,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Agreement at § III(M)(2). For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099. Agreement at § III(M)(4).

6. Mailing of Individual Settlement Payments and Individual PAGA Payments

The Settlement Administrator will mail the Individual Class Payments and Individual PAGA

Payments by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement at § III(M)(7). Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. Agreement at § III(M)(8). In the event an Individual Settlement Payment and/or Individual PAGA Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks, plus any interest accrued thereon, shall be paid to the Community Law Project, a cy pres, in accordance with the California Code of Civil Procedure section 384. Agreement at § III(M)(8).

7. <u>Release by Settlement Class Members</u>

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all claims under state, federal, or local law, arising out of the claims that were alleged, or that reasonably could have been alleged, in the Operative Complaint in the Class Action and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the Operative Complaint in the Class Action for: (1) failure to pay overtime wages under Labor Code Sec. 510, 1198; (2) failure to provide meal periods and/or pay meal period premiums under Labor Code Sec. 226.7, 512; (3) failure to provide rest periods and/or pay rest period premiums under Labor Code Sec. 226.7; (4) failure to pay minimum wages under Labor Code Sec. 1194, et seq.; (5) failure to timely pay wages upon termination under Labor Code Sec. 203; (6) failure to timely pay wages during employment under Labor Code Sec. 204, 210; (7) failure to provide accurate, itemized wage statements under Labor Code Sec. 226; (8) failure to keep requisite payroll records under Labor Code Sec. 1174(d); (9) failure to reimburse business expenses under Labor Code Sec. 2800, 2802; (10) violation of California's unfair competition law under Business and Professions Code Sec. 17200, in the Operative Complaint in the Class Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(DD).

8. <u>PAGA Release by Plaintiffs and the State of California</u>

Generally, as of the Funding Date, Plaintiffs and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims alleged or that could have been alleged in the Operative Complaint in the PAGA Action and Plaintiff Reynaldo Rios' PAGA notice (July 14,2021 letter) to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation and PAGA claims outside the PAGA Period. Agreement at § I(EE).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $1,416,266.90 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 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 with mediator Henry J. Bongiovi, Esq. Mediator Bongiovi 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.").) The Parties did not reach a settlement during the mediation, but the Parties continued to engage in subsequent negotiations (both through the mediator and directly) for several months following the mediation. Those subsequent negotiations led to a settlement in mid-

December 2023. JKH Dec., ¶ 20.

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

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

The Gross Settlement Amount of $1,416,266.90 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc.*

[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").

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 $1,416,266.90 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 Defendants' 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 Defendants' liability exposure for *class claims* (excluding penalties), if Plaintiffs were to be successful at trial, at $4,685,848.28 and Defendants' *maximum* exposure (including waiting time and wage statement penalties) at $8,785,762.08. Thus, the Gross Settlement Amount of $1,416,266.90 represents approximately 30.22% of Defendants' *class-wide* liability exposure and 16.12% of Defendants' *maximum* exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. JKH Dec., ¶ 24.

(1) <u>Defendants' Estimated Exposure for Unpaid Wages</u>

Plaintiffs' primary claim in this Action alleges that Defendants failed to pay for all hours worked. Specifically, Plaintiffs allege that they and other Class Members were required to perform off-the-clock work pre-shift, post-shift, and during meal periods for which they were not compensated. Plaintiffs allege that Defendants implemented a policy and practice which only permitted putative class members to record their scheduled hours instead of all actual time worked, which meant that Defendants failed to compensate Plaintiffs and other Class Members for time worked off-the-clock. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among other things, that its written policies and procedures directed its employees to perform work only while on-the-clock. Defendants asserted that any deviation from these written policies was individual-specific and thus created individualized issues of liability unsuitable for class treatment. JKH Dec., ¶ 25.

Based on Defendants' alleged practices requiring employees to work off-the-clock, Plaintiffs assumed one (1) hour of unpaid compensable time per workweek by the Class Members during the Class Period. Plaintiffs estimated Defendants' exposure for this claim at $1,018,743.24. JKH Dec., ¶

26.

(2) Defendants' Estimated Exposure for Meal Period Violations

Plaintiffs also allege that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs allege that as a result of their heavy workloads, strict deadlines, and Defendants' severe understaffing, Plaintiffs, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiffs allege that Defendants 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) or sixty (60) minutes. JKH Dec., ¶ 27.

Defendants 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. Defendants also argued that it maintained facially complaint meal period policies. Thus, Defendants argued that there was no potential liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Based on these defenses, Plaintiffs estimated the damages for this claim at $1,487,247.52. JKH Dec. ¶ 28.

(3) Defendants' Estimated Exposure for Rest Period Violations

Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiffs alleged that because of their heavy workloads, strict deadlines, and Defendants' severe understaffing, Plaintiffs, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiffs argued that they were required to work through their rest periods in order to finish work-related tasks. Further, until July of 2022, Plaintiffs argued that Defendants maintained a facially unlawful rest period policy that required Plaintiffs and other Class Members to remain on the work premises during the rest periods, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269-270. JKH Dec., ¶ 29.

Again, Defendants denied liability and asserted that the workload is not such that it prevented employees from taking a break. Defendants maintained legally compliant written policies and actual practices concerning rest periods throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members and Defendants' witnesses, and the ability to rebut depositions and declarations submitted by Defendants. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Accordingly, Plaintiffs estimated the damages for this claim at $1,487,247.52. JKH Dec., ¶ 30.

(4) <u>Defendants' Estimated Exposure for Unreimbursed Business Expenses</u>

Plaintiffs allege that Defendants failed to reimburse its employees for mandatory business expenses. Specifically, Plaintiffs allege that they and other Class Members were required to use their own personal cellular phones and personal vehicles as a result of and in furtherance of their job duties reimbursed for the cost associated with the use of their personal cellular phones and mileage. JKH 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…"

Defendants deny these claims, and also note 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, Plaintiffs estimated Defendants' exposure for this claim at $692,610. JKH Dec., ¶ 32.

(5) <u>Defendants' Estimated Exposure for Wage Statement Violations</u>

Plaintiffs alleged that Defendants failed to provide accurate itemized wage statements that include all items required by Labor Code § 226(a)(1)-(9). Specifically, Plaintiffs alleged that Defendants issued wage statements to Plaintiffs and other Class Members that failed to list all applicable hourly rates in effect each pay period, in violation of Cal. Lab. Code § 226(a)(9). Further, 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 Defendants do not indicate the correct number of hours worked, the amount of gross wages earned, or net wages earned during each pay period. Plaintiffs' expert estimated that Defendants could be liable for $2,553,600 in penalties as a result of these violations. JKH Dec., ¶ 33.

(6) Defendants' Estimated Exposure for Waiting Time Penalties

Plaintiffs allege that Defendants' alleged violations resulted in derivative violations of Labor Code section 203. Defendants contend that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of this claim, Plaintiffs estimated Defendants' exposure for these claims to be approximately $1,546,313.80. JKH Dec., ¶ 34.

(7) Defendants' 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, Plaintiffs 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 from July 14, 2020 through September 30, 2024, and there are approximately 840 Aggrieved Employees who worked a total of 33,434 pay periods. JKH Dec., ¶ 35.

Plaintiffs' 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**
510, 558, 1194 and 1197 (unpaid wages)	840	$50	33,434	50% of total pay periods	$1,671,700
512 and 226.7 (meal period violations)	840	$50	33,434	50% of total pay periods	$1,671,700
512 and 226.7 (rest period violations)	840	$50	33,434	50% of total pay periods	$1,671,700
2802 (unreimbursed business expenses)	840	$50	33,434	50% of total pay periods	$1,671,700

226 (wage statements)	840	$100	33,434	100% of total pay periods	$3,343,400
201/202 (waiting time)	424	$100	424	100%	$42,400
TOTAL					**$10,072,600**

JKH Dec., ¶ 36.

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).

Defendants argued, however, that PAGA penalties would not be assessed if Defendants prevailed on the arguments for the underlying claims, that PAGA penalties cannot be stacked for different Labor Code provisions, and that the Court would exercise its discretion to reduce the amount of PAGA penalties significantly. Ultimately, the Parties negotiated a good faith PAGA penalties allocation of $100,000 which is 7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties ($75,000.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties ($25,000.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Penalties approved by courts and should be approved. JKH Dec., ¶ 37.

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JKH Dec., ¶ 38.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JKH Dec., ¶ 39. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $1,416,266.90 that is approximately 30.22% of Defendants' *class-wide* liability exposure for damages and 16.12% of Defendants' maximum class wide liability exposure for *class-wide* damages and 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. JKH Dec., ¶ 40.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding 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 § III(L)(2). The Parties negotiated this method to

---

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

ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JKH Dec., ¶ 41.

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. See Exhibits B and C to the Agreement. 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 Exhibit 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.").) JKH Dec., ¶ 42.

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

The Settlement provides for a Class Representative Service Award of $10,000 for each Plaintiff. The service award is fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and for providing a general release of claims to Defendants in exchange for the Service Award. JKH Dec., ¶ 43.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by declarations from Plaintiffs that describe the services they each performed to prosecute this action, include an estimate of time incurred by Plaintiffs in performing these services, the risks they assumed or benefits they received in prosecuting this action, and identify any adverse consequences they suffered in prosecuting this action. Plaintiffs have **not** negotiated any settlement of individual claims with Defendants separate from the settlement at bar. Rios Dec., ¶ 10; Chase Dec., ¶ 10; JKH Dec. ¶ 44.

Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JKH Dec., ¶ 45.

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

The purpose of a Class Counsel Attorneys' Fees and Attorneys' Expenses 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 Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Settlement Class Members, and in light of the supporting authority, the proposed Class Counsel Attorneys' Fees and Attorneys' Expenses is fair and reasonable. JKH Dec., ¶ 46.

Plaintiffs will file a formal motion for the negotiated Class Counsel Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration that provides evidence of the total amount of time spent by Class Counsel, a description of the work performed, and the reasonableness of the fees charged. Such declaration will also include a detailed description of the costs actually incurred. This declaration will include details related to fee splitting between Class Counsel, and Plaintiffs' written notice of such. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JKH Dec., ¶ 47.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. JKH Dec., ¶ 48.

1. The Standard for Class Certification

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. JKH Dec., ¶ 49.

The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JKH Dec., ¶ 50.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement 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 Member by initiating this litigation, undertaking class discovery, and evaluating the proposed settlement to assure that it is fair. JKH Dec., ¶ 51.

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. JKH Dec., ¶¶ 52, 54-56; Declaration of Vartan Madoyan, ¶¶ 8-14; 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. JKH Dec., ¶ 53.

IV. CONCLUSION

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

Dated: August 6, 2025

ZAKAY LAW GROUP, APC

By:____________________

Jackland K. Hom, Esq.

Attorney for Plaintiffs