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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PATRICK CLEGG, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

POULIN VENTURES, LLC a California
Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 37-2021- 00033824-CU-OE-CTL

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

Date: September 2, 2022

Time: 8:30 a.m.

Judge: Hon. Keri G. Katz

Dept: C-74

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1
2 **I. INTRODUCTION**

3 Plaintiff PATRICK CLEGG (collectively “Plaintiff”) seeks preliminary approval of the
4 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹,
5 which if approved, would provide valuable monetary relief for approximately 201 members of the Class
6 and 85 Aggrieved Employees. The basic terms of the Agreement provide for the following:

7 1. The **“Class Members,” “Settlement Class Members” and “Settlement Class Period”**
8 shall mean “all non-exempt employees who are or previously were employed by POULIN
9 VENTURES, LLC dba LadyBoss and BRANDON POULIN. (“Defendants”) in California (“Class”)
10 between August 6, 2017 to June 17, 2022 (“Class Period”). Agreement at §III (b). The Settlement Class
11 Members exclude any Class Member that submit a valid and timely request for exclusion. Agreement
12 at §III(g).

13 2. The **“Aggrieved Employees” and “PAGA Period”** means all employees who are or
14 previously were employed by Defendants in California and who were classified as non-exempt
15 employees (“Aggrieved Employees”) during the period between July 14, 2020 until June 17, 2022
16 (“PAGA Period”). Agreement at §§ I(1) and (23). Aggrieved employees do not have the ability to opt
17 out of the PAGA portion of the settlement.

18 3. The **“Gross Settlement Amount”** is One Hundred and Twenty-five Thousand Dollars
19 (\$125,000). Agreement at § I(15) §III(1)(a). The Gross Settlement Amount is non-reversionary and
20 includes the following:

21 a. A **“Class Representative Service Award”** in the amount of \$10,000 to Plaintiff
22 for his services on behalf of the Class Members, and for agreeing to a broad release. Agreement at
23 §II(12)(i);

24 b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross
25 Settlement Amount for attorney’s fees, currently estimated to be \$41,250.00 *and* litigation costs and
26 expenses not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at §I(5);

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

1 c. A **“PAGA Settlement”** of \$10,000 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
3 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the
4 Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
5 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
6 Agreement at §I (24); and,

7 d. **“Settlement Administration Costs”** not to exceed \$8,000 payable to the
8 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and
9 Individual Settlement Payments. Agreement at §III(12)(m).

10 4. The **“Net Settlement Amount”** of approximately \$55,750.00 (Gross Settlement Amount
11 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
12 Settlement Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis
13 according to the number of Workweeks each Settlement Class Member worked during the Class Period.
14 The entire Net Settlement Amount will be paid to all Settlement Class Members who do not timely and
15 validly opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$277.36**.
16 Barvie Dec., ¶ 6.

17 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class
18 is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The
19 Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is
20 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
21 and hour cases (*see infra*). Indeed, by settling now, rather than proceeding to trial, Class Members will
22 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
23 denied or of Defendants prevailing at trial. Barvie Dec., ¶ 7.

24 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
25 approval and falls within the range of reasonableness. The average Individual Settlement Share to the
26 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
27 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully
28 requests the Court grant preliminary approval of the Settlement. Barvie Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants promote and sell women’s health supplements and weight loss programs and coaching. Defendants operated one facility in San Diego, California, where Plaintiff worked. This action asserts claims on behalf of Defendants’ non-exempt employees who are or previously were employed in California. Plaintiff worked for Defendants as a non-exempt employee in California from September 2019 to November 2020. At all times during his employment, Plaintiff earned an hourly wage, and was eligible for commissions and entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Barvie Dec., ¶ 9.

On July 14, 2021, Plaintiff served Defendants and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’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”). Barvie Dec., ¶ 10.

On August 6, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021- 00033824-CU-OE-CTL (the “Action”). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code § 17200; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure Pay Wages When Due In Violation of Cal. Labor Code §§ 201, 202 and 203. Barvie Dec., ¶ 11.

On October 6, 2021, Plaintiff amended his Class Action Complaint to add a Violation of the Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”), and individual FEHA claims for (1) Hostile Work Environment In Violation of FEHA, California Government Code §12940(J); (2) Failure to Take All Reasonable Steps to Prevent Harassment, Discrimination and

1 Retaliation from Occurring in Violation of FEHA (Cal. Gov't Code §12950(K); (3) Discrimination and
2 Harassment in Violation of FEHA; (4) Wrongful Termination; and (13) Intentional Infliction of
3 Emotional Distress ("FEHA Claims"). Barvie Dec., ¶ 12.

4 Before commencing formal written discovery, the Parties agreed to mediate the Action and stay
5 formal discovery. To prepare for mediation, the Parties agreed to informally produce certain documents
6 and data points subject to the mediation privilege, including but not limited to, a sampling of Class
7 Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the
8 forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data.
9 Barvie Dec., ¶ 13.

10 On April 18, 2022, the Parties participated in a full day mediation with highly regarded wage and
11 hour mediator Steven Serratore, Esq. The mediation concluded with a settlement after both sides agreed
12 to a Mediator's proposal that was subsequently memorialized in the form of a Memorandum of
13 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form
14 settlement agreement, which is the subject of the instant motion. Barvie Dec., ¶ 14.

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

16 Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into
17 the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
18 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
19 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
20 each of Plaintiff's complaints appeared to substantiate Plaintiff's claim that Defendants' failed to, among
21 other things, pay for all time worked and to provide compliant meal and rest periods. Barvie Dec., ¶ 15.

22 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
23 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
24 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
25 Defendants' liability exposure to the Class Members. In response to Class Counsel's request,
26 Defendants produced a sample of time records for the Class Members, aggregate workweek and pay
27 period data for the Class Members, wage statements for the Class Members, and copies of applicable
28 handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and

1 rest period policies. In total, Defendant produced over 5,709 pages of pertinent policy documents, time
2 records for Class Members, and more than 17,312 unique cells of payroll and time data for Class Counsel
3 to analyze. Barvie Dec., ¶ 16.

4 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
5 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
6 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
7 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
8 differently, the BCG is uniquely qualified to analyze Defendants' time and payroll data. Barvie
9 Dec., ¶ 17.

10 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
11 models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay
12 periods, average length of shift and average number of hours worked per week and pay periods during
13 the Class Period. BCG also estimated the number of overtime, missed, late or truncated meal and rest
14 periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount
15 of off-the-clock work performed by the Class Members during the Class Period. BCG calculated and
16 created a damage model for Defendants' potential liability exposure while accounting for the
17 uncertainties of continued litigation. The damage model informed and guided Class Counsel during the
18 mediated settlement discussions. Barvie Dec., ¶ 18.

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

1 of the reasonableness of the terms to which the Parties have agreed. Barvie Dec., ¶ 19.

2 Prior to the Parties' scheduled mediation, Defendant stated it was dissolving due to financial
3 hardship. Prior to mediation Defendant provided its tax returns and profit and losses statements in
4 support of their representations. Barvie Dec., ¶ 20.

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

6 1. On April 18, 2022, the Parties conducted a full day of mediation with Steve Serratore,
7 Esq., a highly regarded mediator of wage and hour class actions. Mediator Serratore helped manage the
8 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
9 Parties made substantial progress with Mediator Serratore's assistance. Namely, the Parties exchanged
10 information regarding their respective claims and defenses, including their respective evaluation of the
11 damages and Defendants' financial hardship. At the conclusion of the mediation, Mediator Serratore
12 made a mediator's proposal which was accepted by the Parties, then subsequently memorialized in the
13 form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are
14 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,
15 and reasonable compromise of the claims at issue. At all times, the Parties' negotiations were at an arm's
16 length, adversarial and non-collusive. Barvie Dec., ¶¶ 21, 22 and 23.

17 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

18 1. The Composition of the Settlement Class Members

19 The proposed Settlement Class consists of all non-exempt employees who are or previously were
20 employed by Defendant in California between August 6, 2017 to June 17, 2022. The Settlement Class
21 excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior
22 to the Mediation, there were approximately 201 Class Members who worked an estimated 2,700
23 workweeks through the conclusion of the Class Period. Agreement at §III(b).

24 2. The Settlement Consideration

25 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
26 Amount of \$125,000. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the
27 Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for his services on
28 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA

1 Settlement in the amount of \$10,000; (4) Settlement Administration costs estimated at \$8,000; (5) Class
2 Counsel Award in the amount of \$41,250.00 comprised of attorneys' fees equal to one-third of the
3 Gross Settlement Amount and an estimated \$20,000.00 for actually incurred litigation expenses. See
4 generally Agreement at §II(12)(k)(l) and (m).

5 Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,
6 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
7 distributed to each participating member of the Settlement Class. There is no reversion to Defendant
8 and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §II(1)(a).

9 3. The Funding Date

10 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$125,000 Gross
11 Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final approval
12 of this Settlement. Agreement at §I(13), (14) and (15).

13 4. Formula for Calculating Individual Settlement Payments

14 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
15 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
16 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
17 the Settlement Administrator will include the number of Workweeks for each Class Member and the
18 number of PAGA Pay Periods worked during the relevant periods. Agreement at §I (6). Using the Class
19 Data, the Settlement Administrator will add up the total number of workweeks for all Class members.
20 The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class
21 Members, resulting in the Payment Ratio for each Class Member. Each Class Member's payment ratio
22 will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated
23 Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally
24 mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
25 Payments for members of the Settlement Class who submit valid and timely requests for exclusion will
26 be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion
27 on a pro rata basis. Agreement at §III(12)(a).

28 Given that there are approximately 201 Settlement Class Members, the average gross recovery

1 is approximately \$277.36 (Net Settlement Amount divided by Settlement Class Members). Barvie
2 Dec., ¶ 6.

3 5. Release by Participating Settlement Class Members

4 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
5 release the Released Parties from the Released Claims, which are all class claims alleged in the operative
6 complaint, including those claims for allege failure to pay overtime in violation of Labor Code §§ 512
7 *et seq.*, failure to pay minimum wages in violation of Labor Code §1194, 1197, and 1197.1, failure to
8 provide rest breaks and meal periods in violation of Labor Code §§ 226.7 and 512, failure to provide
9 accurate itemized wage statements, failure to pay wages when due in violation of Labor Code
10 §§201-203, and expressly excluding all other claims, including claims for vested benefits (other than
11 vacation and/or paid time off to the extent those are alleged in the operative complaint), wrongful
12 termination, unemployment insurance, disability, social security, workers' compensation, and class
13 outside of the Class Period. Agreement at §§I(29).

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

15 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of California,
16 on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims alleged
17 in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA
18 Period, and expressly excluding all other claims, including claims for vested benefits (other than
19 vacation and/or paid time off to the extent those are alleged in the operative complaint and Plaintiff's
20 PAGA Notice to the LWDA), wrongful termination, unemployment insurance, disability, social
21 security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§I(31).

22 **III. ARGUMENT**

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

24 The proposed Settlement, including a Gross Settlement Amount of \$125,000 meets the standards
25 for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy.
26 (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation
27 and settlement are the preferred means of dispute resolution.")) Class action settlement approval
28 requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of

1 the settlement has been distributed to class members for their comments and objections.
2 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court
3 first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into
4 the fairness of the proposed settlement”).)

5 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
6 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
7 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
8 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness
9 and fairness are presumed where: (1) the settlement is reached through “arms-length bargaining;”
10 (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;”
11 (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
12 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal of favoring
13 settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settle-
14 ments”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally
15 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
16 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
17 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”).)

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

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

26 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
27 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
28 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;

1 thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

2 The Parties participated in mediation the highly respected mediator Steven Serratore, Esq.
3 Mr. Serratore managed the Parties' expectations and provided a useful, neutral analysis of the issues and
4 risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S.
5 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against
6 any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
7 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
8 were free of collusion and undue pressure.".) At all times, the Parties' negotiations were at an arm's
9 length, adversarial and non-collusive. The matter resolved and the Parties reached a settlement, which
10 was memorialized in a Memorandum of Understanding after a full day of mediation. Barvie Dec., ¶ 22.

11 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
12 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written
13 terms of the class action settlement. The Parties maintained the arm's length, non-collusive and
14 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
15 product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
16 represent a reasonable compromise of the claims at issue. Barvie Dec., ¶ 23.

17 2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the
18 Settlement's Reasonableness.

19 As set forth in greater detail above, Class Counsel including: (1) determining Plaintiff's
20 suitability as a putative class representative through interviews, background investigations, and analysis
21 of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage
22 and hour class actions as to the claims brought, the nature of the positions, and the type of employer;
23 (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies
24 and practices; (6) researching settlements in similar cases as well as outstanding issues which could
25 affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for
26 purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This
27 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
28

1 as well as the impediments to recovery, such as to make an independent assessment of the reasonableness
2 of the terms to which the Parties have agreed. Barvie Dec., ¶ 19.

3 Defendants stated Poulin Ventures was dissolving due to financial hardship. Prior to mediation
4 Defendant provided its tax returns and profit and losses statements in support of their representations.
5 Plaintiff was able to review and evaluate financial documents prior to mediation. Barvie Dec., ¶ 20.

6 Class Counsel only agreed to enter the Settlement following their thorough investigation and
7 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and
8 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
9 with litigation, and the various defenses asserted by Defendant, including its financial hardship, Class
10 Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the
11 Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the
12 Settlement. Barvie Dec., ¶ 21.

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

14 The Gross Settlement Amount of \$125,000 is within the range of reasonableness. To determine
15 whether a settlement is fair and reasonable, the court should "consider enough information about the
16 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
17 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v.*
18 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is
19 "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of
20 reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit
21 statement of value; [they] require[] a record which allows an understanding of the amount that is in
22 controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling*
23 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is
24 not dependent upon its actual value approaching the potential recovery plaintiffs might have received if
25 they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is reasonable does not

26
27 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
28 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

involve the use of a ‘mathematical equation yielding a particularized sum.’ “ (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

In conclusion, the settlement of \$125,000.00 represents approximately 37.07% of the value of the maximum potential *damages* at issue. Even when including the penalties for Plaintiff’s claim for wage statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement represents up to 15.6% of the maximum potential liability, assuming all of these amounts could be proved at trial. This is well within the bounds of reasonableness. (*See Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015) 2015 WL 3776765 at *4 (Approving California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the “range of reasonableness.”).) The following summarizes Defendant’s estimated exposure. Barvie Dec., ¶ 25.

(1) Estimated Damages for Meal Period Violations

Plaintiff’s primary claim against Defendants were that they failed to provide compliant meal periods and failed to provide meal premiums. Barvie Dec., ¶ 26. Labor Code §512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code §512, an employer may not employ an employee for a work period of more than ten (10) hours, without

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 providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the
2 second meal period may not be waived if the total hours worked is more than twelve (12) hours.
3 California Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or
4 rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare
5 Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular
6 rate of compensation for each workday that the meal or rest or recovery period is not provided.”

7 Accounting for the strength of Defendants’ defenses, their financial hardship and the arguably
8 individualized nature of the claim, Plaintiff heavily discounted Defendants’ potential liability for meal
9 period violations. Plaintiff estimated the damages for this claim at \$75,542. Barvie Dec., ¶ 27.

10 (2) Estimated Damages for Rest Period Violations

11 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
12 Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and duty-
13 free rest periods. Barvie Dec., ¶ 28. WC Wage Orders 5-2001 and 7-2001 provide that “[a]uthorized
14 rest period times shall be counted as hours worked for which there shall be no deduction from wages.”
15 Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or rest or
16 recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare
17 Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular
18 rate of compensation for each workday that the meal or rest or recovery period is not provided.”

19 Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff’s rest
20 period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class
21 certification and liability stages. Defendant likely would have argued that only a small number of Class
22 Members missed their rest breaks. Certification likely would have required depositions of Class
23 Members who provided declarations, and Defendants surely would have obtained opposing declarations
24 stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio*
25 *Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony
26 before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is
27 insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of*
28 *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, the rest break claim was heavily discounted in Plaintiff’s valuation of the case and was estimated at \$184,254.00. Barvie Dec., ¶ 29.

(3) Estimated Exposure for Failure to Pay Overtime Wages

Plaintiff alleged Defendants failed to accurately calculate and pay Plaintiff and other Settlement Class Members for their overtime hours worked. The Labor Code defines “wages” as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” (§ 200, subd. (a).) Courts have recognized that “wages” also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay. (E.g., *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 780 [183 Cal. Rptr. 846, 647 P.2d 122].) Plaintiff estimated Defendant’s exposure for this claim at \$61,338.00. Barvie Dec., ¶ 30.

(4) Estimated Exposure for Off-the-Clock Work

Plaintiff’s claim Defendants failed to pay for all hours worked. Specifically, Plaintiff asserted that Defendants required Plaintiff to work while clocked out during what was supposed to be Plaintiff’s off-duty meal break, as well as before Plaintiff’s shift started and after it ended. Barvie Dec., ¶ 31.

Plaintiff perceived the off-the-clock as a strong claim in the Action. Assuming fifteen (15) minutes of unpaid compensable time per shift worked by the Class Members during the Class Period, BCG estimated Defendant’s exposure for this claim at \$61,338.00. Barvie Dec., ¶ 31.

(5) Estimated Exposure for Failure to Include Non-Discretionary Compensation Into The Regular Rate of Pay for Purposes of Overtime Compensation, Meal and Rest Period Premiums and Sick Pay

Another of Plaintiff’s claims is that Defendants failed to include and/or inaccurately calculated certain non-discretionary compensation in the regular rate from which overtime wages were paid. Plaintiff and other California Class Member’s compensation was a flat-sum non-discretionary incentive program that paid Plaintiff and Class Members flat-sum incentive wages based on their performance for Defendants. Plaintiff alleged Defendants failed to calculate the regular rate of pay in those where Plaintiff and the Settlement Class Members worked overtime and earned this flat sum non-discretionary

1 bonus, Defendants failed to accurately include the flat-sum non-discretionary bonus compensation as
2 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
3 non-overtime hours worked. Barvie Dec., ¶ 32.

4 Under California law, overtime work must be paid at a rate of "no less than one-and-one-half
5 times the regular rate of pay" for that employee. Cal. Lab. Code § 510(a); California IWC Wage
6 Order No. 7 § 3(A)(1). Significantly, an employee's "regular rate of pay" for purposes of Labor Code
7 section 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or
8 her normal hourly wage rate). The regular rate of pay, which can change from pay period to pay period,
9 includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses
10 and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has
11 earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552–54. Barvie Dec., ¶ 33.

12 "When the amount of [a] bonus can be ascertained, it must be apportioned back over the
13 workweeks of the period during which it may be said to have been earned. The employee must then
14 receive an additional amount of compensation for each workweek that he worked overtime during the
15 period." *Marin v. Costco Wholesale Co.*, 169 Cal. App. 4th 804, 807 (2008) (quoting 29 C.F.R.
16 § 778.209(a) as support for the conclusion that, under California law, retroactive overtime pay is needed
17 upon receipt of a bonus earned over an extended period of time); see also 29 C.F.R. § 778.303 ("Where
18 a retroactive pay increase is awarded to employees ... it operates to increase the regular rate of pay of
19 the employees for the period of retroactivity."). The total amount of additional Compensation was
20 \$18.00.00. Barvie Dec., ¶ 34.

21 (6) Estimated Exposure for Unreimbursed Business Expenses

22 Plaintiff alleged that Defendants required the Settlement Class Members to incur personal
23 expenses for the use of their personal cell phones and internet. California employers who require
24 employees to incur personal business expenses for work purposes must reimburse the employee for the
25 cost incurred. (See Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
27 discharge of his or her duties, or of his or her obedience to the directions of the employer...").
28 Specifically, Plaintiff alleged Defendants required Plaintiff and Class Members to use their personal cell

1 phones and internet in order to perform work-related tasks, but Defendants failed to reimburse Plaintiff
2 and Class Members for the required business expenses in violation of Labor Code Section 2802. This
3 claim was also heavily discounted based on Defendants' defenses. Plaintiff estimated Defendant's
4 exposure for this claim at \$42,386.00. Barvie Dec., ¶ 35.

5 (7) Exposure for Wage Statement Violations and Waiting Time Penalties

6 Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor
7 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
8 recoveries against probable defenses. Specifically, Defendants could argue that Plaintiff could not prove
9 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
10 Defendants could argue that Plaintiff could not show that Class Members suffered an "injury" because
11 of wage statement violations, as required by Labor Code section 226. Defendants could also argue that
12 that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to
13 pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum*
14 *Security Services, Inc.*, Case No, B256232; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th
15 1308.) These claims represented Plaintiff's most legally precarious and uncertain claims.
16 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendants' *maximum* exposure
17 for these claims at approximately \$467,621 (approximately \$407,871 for waiting time and \$59,750 for
18 wage statement). Barvie Dec., ¶ 36.

19 (8) Defendant's PAGA Exposure

20 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
21 the time of mediation, Plaintiff estimated Defendants' PAGA exposure was approximately \$571,900
22 dollars. Barvie Dec., ¶ 37.

23 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
24 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
25 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
26 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
27 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
28 each pay period the employee worked. Barvie Dec., ¶ 38.

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

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

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

13 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
14 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
15 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
16 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
17 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
18 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
19 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
20 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
21 reason, if any, that employees might not take their breaks were predominantly individualized questions
22 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
23 (affirming denial of certification because employees’ declarations attesting to having taken meal and
24 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
25 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
26 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy
27 (*Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012))); *Brown v. Fed Express Corp.* (C.D.
28 Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on

1 the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain
2 nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested
3 motion is a significant risk factor favoring settlement. Barvie Dec., ¶ 39.

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

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

11 Accordingly, this factor weighs in favor of preliminary approval.

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

13 Finally, continuing to litigate this action would require continued and extensive resources coupled
14 with significant Court time to proceed through trial and post-trial motions; which can often take years.
15 Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert
16 testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is
17 acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would
18 appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal
19 and subsequent reversal is real. Barvie Dec., ¶ 40. “Avoiding such a trial and the subsequent appeals
20 in this complex case strongly militates in favor of settlement rather than further protracted and uncertain
21 litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus,
22 “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and
23 expensive litigation with uncertain results.” (*Id.* at 526.)

24 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$125,000 that is roughly
25 37.07% of Defendants’ liability exposure for damages, and 15.6% of Defendants’ liability exposure for
26 damages and penalties. Given the amount of the settlement here, as compared to potential value of the
27 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
28 Barvie Dec., ¶ 42.

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

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

11 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members
12 of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the
13 proposed Class Notice to all Class Members. The Notice will include information regarding the nature
14 of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure
15 and time period within which to requests for exclusions or objections to the Settlement, the date for the
16 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
17 the Released Claims. Agreement at §III(11)(b). This method was negotiated by the Parties to ensure
18 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
19 administration of the Settlement. Barvie Dec., ¶ 43.

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

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27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 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.

C. The Court Should Preliminarily Approve the Class Representative Enhancement 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).) Enhancement payments “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 \$10,000⁴ for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting

⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int’l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
2 of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure
3 that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide
4 Defendants a general release of all claims arising out of his employment. Barvie Dec., ¶ 45.

5 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
6 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
7 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class
8 Representative Service Award. Barvie Dec., ¶ 46.

9 **D. The Court Should Preliminarily Approve the Class Counsel Award**

10 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
11 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
12 California courts routinely award attorneys' fees equaling one-third or more of the potential value of the
13 common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008)
14 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method
15 or the lodestar method is used, fee awards in class actions average around one-third of the recovery.");
16 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
17 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
18 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
19 with market rates).)

20 Class Counsel took this matter on a contingency fee basis and invested significant time and
21 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
22 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
23 Members. Considering the positive outcome for the Class Members, and in light of the supporting
24 authority, the proposed Class Counsel award is fair and reasonable. Barvie Dec., ¶ 47.

25 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
26 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
27 for preliminary approval of the negotiated attorneys' fees. Barvie Dec., ¶ 48.

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

2 For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional
3 certification of the Class is appropriate. Barvie Dec., ¶ 49; Clegg Declaration ¶¶ 6-9.

4 1. The Standard for Class Certification

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

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

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

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

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

1 Because all Class Members are Defendants' current and former employees, the class is readily
2 ascertainable from Defendants' regular business records, i.e., payroll records. Barvie Dec., ¶ 50.

3 The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire
4 Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants'
5 alleged liability can be determined by facts common to all members of the class. Plaintiff alleges that
6 the wage and hour issues are both numerous and substantial, and a class action is the most advantageous
7 method of dealing with the claims of the Settlement Class. Barvie Dec., ¶ 51.

8 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
9 from the same factual basis and are based on the same legal theories applicable to the other Class
10 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
11 Class. Plaintiff alleges that he was injured by the same alleged company-wide practices to which the
12 proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated
13 his ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
14 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. Barvie
15 Dec., ¶ 52.

16 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
17 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
18 gained state court settlement approval of the same class-wide causes of action that are at issue in this
19 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
20 represent the interests of this Class. Barvie Dec., ¶ 54, Declaration of Jean-Claude Lapuyade, ¶¶ 3-10,
21 Declaration of Shani Zakay, ¶¶ 1-3.

22 A class action is superior to a multitude of individual lawsuits. Given the size and amount of each
23 individual claim, the Class Members likely have little incentive to litigate their claims on an individual
24 basis because the out-of-pocket expense and personal commitment necessary to litigate each claim
25 outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
26 adjudication. Barvie Dec., ¶ 53.

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Dated: August 11, 2022

BARVIÉ LAW, APC

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