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situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

TAYLOR SANIT, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

ANO DOUKA, INC., a California Corporation;
and DOES 1 through 50, Inclusive,

Defendants.

Case No.: 37-2021-00046578-CU-OE-CTL

*[Assigned for all purposes to Hon. Eddie C.
Sturgeon, Dept. C-67]*

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

Date: January 27, 2023
Time: 9:00 a.m.
Complaint filed: November 2, 2021
Trial Date: Not Assigned

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1 **I. INTRODUCTION**

2 Plaintiff TAYLOR SANIT (collectively “Plaintiff”) respectfully submits this memorandum in
3 support of the unopposed motion for preliminary approval of the proposed class action settlement with
4 Defendant ANO DOUKA, Inc., a California Corporation (“Defendant”), and seeks entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for settlement
6 purposes only, conditionally certifying the Class, which is comprised of “All current and former
7 non-exempt employees of Defendant employed in California at any time during the Class Period at any
8 time between November 17, 2017 to December 24, 2022”; (3) provisionally appointing Plaintiff as the
9 representative of the Class; (4) provisionally appointing Nicole Barvie, Esq., of Barvie Law, APC, Shani
10 Zakay, Esq. of Zakay Law Group, APLC, and Jean-Claude Lapuyade, Esq., of the JCL Law Firm, APC
11 as Class Counsel; (5) approving the form and method for providing class-wide notice; (6) directing that
12 notice of the proposed settlement be given to the class; (7) appointing ILYM Group, Inc. as the Settlement
13 Administrator, and (8) scheduling the final approval hearing in or around May 2023 to consider both
14 Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and Plaintiff’s motion
15 for approval of attorneys’ fees and expenses.

16 Plaintiff and Defendant (collectively the “Parties”) have reached a full and final settlement of the
17 above-captioned action, which is embodied in Class, Collective, and Representative Settlement
18 Agreement and Class Notice (“Agreement”) filed concurrently with the Court.¹ A copy of the fully
19 executed Agreement is attached as Exhibit #1 to the Declaration of Nicole Barvie (“Barvie Dec.”), served
20 and filed herewith.

21 The basic terms of the Agreement provide for the following:

22 1. The “**Class Member(s)**” or “**Settlement Class**” and “**Class Period**” shall mean “All
23 current and former non-exempt employees of Defendant employed in California at any time during the
24 Class Period (“**Settlement Class**”). Class Period means the period beginning November 1, 2017, and
25 continuing through to December 24, 2022. (“**Class Period**”). Agreement §I (1.8 and 1.11). The Settlement
26 Class Members exclude any Class Member that submit a valid and timely request for exclusion.
27 Agreement at §I (1.26).

28 _____
¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 2. The “**Aggrieved Employees**” and “**PAGA Released Claims Period**” means all current
2 and former non-exempt employees of Defendant employed in California (“Aggrieved Employees”) during
3 the period from August 29, 2020 to July 26, 2022. (“PAGA Period”). Agreement at §1 (1.2 and 1.29).
4 Aggrieved employees do not have the ability to opt out of the PAGA portion of the settlement.

5 3. The “**Class Settlement Amount**” or “**Gross Settlement Amount**” is Three Hundred
6 Twenty-Five Thousand Dollars and zero cents (\$325,000.00). Agreement at § I (1.14). The Gross
7 Settlement Amount is non-reversionary and includes the following:

8 a. A “**Class Representative Enhancement Payment**” in the amount of \$10,000 to
9 Plaintiff for his services on behalf of the Class Members, and for agreeing to a broad release. Agreement
10 at §I (1.12 and 1.13).

11 b. “**Attorneys’ Fees and Costs**” in the amount not to exceed one-third of the Gross
12 Settlement Amount for attorney’s fees, currently estimated to be \$108,333.33 *and* litigation costs and
13 expenses not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at §I (1.3).

14 c. A payment of “**PAGA Penalties**” of \$16,000 shall be allocated from the Gross
15 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of
16 2004 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the
17 Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
18 distribute 25% of the PAGA Amount to the Aggrieved Employees. Agreement at §I (1.31).

19 d. “**Claims Administrator Costs**” not to exceed \$15,000 payable to the Settlement
20 Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual
21 Settlement Payments. Agreement at §I (1.5).

22 The “**Net Settlement Payment**” of approximately \$155,666.67 (Gross Settlement Amount minus
23 the requested Class Representative Service Payment to Plaintiff, Class Counsel Attorneys’ Fees and
24 Litigation Costs, Payment of PAGA Penalties, and Administrative Costs) will be allocated to all
25 Settlement Class members on a pro-rata basis according to the number of Workweeks each Settlement
26 Class member worked during the Released Class Claims Period. The entire Net Settlement Payment will
27 be paid to all Settlement Class members who do not timely and validly opt out of the Settlement Class
28 resulting in an average Individual Settlement Share of **\$905.00**. Barvie Dec., ¶ 7.

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

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

13 **II. FACTS AND PROCEDURE**

14 **A. Overview of the Litigation**

15 Defendant operates restaurants in the County of San Diego. Defendant operated one facility in
16 San Diego, California, where Plaintiff worked. This action asserts claims on behalf of Defendant's
17 non-exempt employees who are or previously were employed in California. Plaintiff worked for
18 Defendant as a non-exempt employee in California from April 2021 to July 2021. At all times during his
19 employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest
20 periods, and minimum, regular and overtime wages for all hours worked. Barvie Dec. ¶ 9.

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

27 1. On November 2, 2021, Plaintiff filed a class action complaint in the San Diego Superior
28 Court, Case Number 37-2021-00046578-CU-OE-CTL (the "Action"). The Action alleged nine causes of

1 action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions
2 Code § 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197
3 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure
4 to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
5 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate
6 Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure Provide Wages When Due
7 In Violation of Cal. Labor Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees For Required
8 Expenses in Violation of Cal. Lab. Code §2802 (“Class Claims”); and (9) Violation of the Private Attorney
9 General Act Pursuant to Labor Code Sections 2698, *et seq.* Barvie Dec. ¶11.

10 Before commencing formal written discovery, the Parties agreed to mediate the Action and stay
11 formal discovery. To prepare for mediation, the Parties agreed to informally produce certain documents
12 and data points subject to the mediation privilege, including but not limited to, the Class Members’ time
13 data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic
14 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data.
15 Barvie Dec. ¶12.

16 On July 26, 2022, the Parties participated in a full day mediation with highly regarded wage and
17 hour mediator Steven G. Mehta, Esq. The mediation concluded with a settlement after both sides agreed
18 to a Mediator’s Proposal which was subsequently memorialized in the form of a Memorandum of
19 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form
20 settlement agreement, which is the subject of the instant motion. Barvie Dec. ¶13.

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

22 Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff’s
23 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part
24 of the interview process, the Plaintiff produced documents related to his employment, including time and
25 payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiff’s
26 complaints appeared to substantiate Plaintiff’s claim that Defendant failed to, among other things, pay for
27 all time worked and to provide compliant meal and rest periods. Barvie Dec., ¶ 14.

28 ///

1 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
2 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
3 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and
4 Defendant's liability exposure to the Settlement Class members. In response to Class Counsel's request,
5 Defendant produced a sample of time records for the Settlement Class members, aggregate workweek and
6 pay period data for the Settlement Class members, wage statements for the Class Members, and copies of
7 applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and
8 meal and rest period policies. In total, Defendant produced over 106 pages of pertinent policy documents,
9 and more than 6,495 unique cells of payroll and time data for Class Counsel to analyze. Barvie Dec., ¶ 15.

10 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
11 members' payroll and time data. BCG provides data analysis and damage modeling consulting services
12 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
13 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
14 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. Barvie Dec. ¶16.

15 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
16 models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay
17 periods, average length of shift and average number of hours worked per week and pay periods during the
18 Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, and the
19 amount of paid missed meal period premiums paid during the Class Period during the Released Class
20 Claims Period. BCG calculated and created a damage model for Defendant's potential liability exposure
21 while accounting for the uncertainties of continued litigation. The damage model informed and guided
22 Class Counsel during the mediated settlement discussions. Barvie Dec. ¶17.

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

1 settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of
2 settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation
3 allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the
4 impediments to recovery, such as to make an independent assessment of the reasonableness of the terms
5 to which the Parties have agreed. Barvie Dec. ¶18.

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 marketplace
8 for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation,
9 and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in
10 the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate,
11 the Court should preliminarily approve the Settlement. Barvie Dec. ¶19.

12 C. The Parties Settled at Mediation

13 On July 26, 2022, the Parties conducted a full day of mediation with Steven G. Mehta, Esq., a
14 highly regarded mediator of wage and hour class actions. Mediator Mehta helped manage the Parties'
15 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made
16 substantial progress with Mediator Mehta's assistance. Namely, the Parties exchanged information
17 regarding their respective claims and defense, including their respective evaluation of the damages. At the
18 conclusion of the mediation, Mediator Mehta made a mediator's proposal which was accepted by the
19 Parties, then subsequently memorialized in the form of a Memorandum of Understanding. The complete
20 and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
21 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. At all times,
22 the Parties' negotiations were at an arm's length, adversarial and non-collusive. The matter resolved and
23 the Parties reached a settlement, which was memorialized in a Memorandum of Understanding after a full
24 day of mediation. Barvie Dec. ¶20.

25 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
26 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written terms
27 of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial
28 negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these

mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. Barvie Dec. ¶21.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class members

The proposed Settlement Class consists of all non-exempt employees who are or previously were employed by Defendant in California between November 1, 2017 to December 24, 2022. The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the Mediation, there were approximately 172 Settlement Class members who worked an estimated 9,150 workweeks from November 1, 2017 through July 26, 2022.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$325,000.00. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Payment to Plaintiff of \$10,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$16,000; (4) Claim Administration costs up to \$15,000; (5) Class Counsel Attorneys' fees in the amount of \$108,333.33 comprised of attorneys' fees equal to one-third (33-1/3) of the Gross Settlement Amount and an estimated \$20,000.00 for actually incurred litigation expenses. See generally Agreement at §3 (3.2.1, 3.2.2, 3.2.3, and 3.2.4).

Subject to the Court approving the Class Representative Service Payment to Plaintiff, Class Counsel Attorneys' Fees and Costs, PAGA Settlement, and the Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §I (1.14) and §3(3.1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$325,000.00 Gross Settlement Amount within fourteen (14) days of the effective date. Agreement at §4 (4.3).

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1 4. Formula For Calculating Individual Settlement Payments

2 The Individual Settlement Amount for each Settlement Class Member shall be determined on a
3 *pro rata* basis based on his or her number of Workweeks as compared to the total Workweeks of all
4 Settlement Class Members. Workweeks are calculated by determining the number of days between the
5 Settlement Class Member's start and end dates of employment from November 1, 2017 up to and
6 including December 24, 2022 and then dividing by seven (7). If a Settlement Class Member was hired
7 prior to November 1, 2017, then his or her "start date" will be November 1, 2017. The calculations of all
8 Eligible Workweeks worked shall be based on Defendant's records.

9 Given that there are approximately 172 Settlement Class members, the average gross recovery is
10 approximately \$905 (Net Settlement Amount divided by Settlement Class Members). Barvie Dec., ¶ 7.

11 5. Release by Participating Class Members

12 Upon the Effective Date, named Plaintiff and all other Participating Class Members (individually
13 and on behalf of their respective heirs, executors, administrators, representatives, attorneys, successors,
14 and assigns) will release all claims for (1) Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*);
15 (2) Failure to Pay Minimum Wage in Violation of Labor Code sections 1194, 1197 and 1197.1; (3) Failure
16 to Pay Overtime Wages in Violation of Labor Code sections 510, *et seq.*; (4) Failure to Provide Meal
17 Periods in violation of Labor Code sections 226.7 and 512 and the applicable IWC Wage Order; (5) Failure
18 to Provide Rest Periods in Violation of Labor Code sections 226.7 and 512 and the applicable IWC Wage
19 Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Labor Code section 226;
20 (7) Failure to Provide Wages When Due in Violation of Labor Code section 201, 202, and 203; (8) Failure
21 to Reimburse Employees For Required Expenses in Violation of Labor Code 2802, as well as claims for
22 unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation,
23 overtime compensation, double-time compensation, and interest; failure to properly calculate the regular
24 rate of pay and associated claims; failure to timely pay wages; failure to timely pay final wages;
25 missed/short/late/interrupted meal period, rest period, and/or recovery period wages/premiums; failure to
26 provide meal periods; failure to authorize and permit rest periods and/or recovery periods; the calculation
27 of meal period, rest period, and/or recovery period premiums; reimbursement for all necessary business
28 expenses, including work-related cell-phone expenses; payment for all hours worked, including

1 off-the-clock work; failure to provide accurate itemized wage statements; deductions; failure to keep
2 accurate records; unlawful deductions and/or withholdings from wages; unfair business practices;
3 penalties, including, but not limited to, recordkeeping penalties, wage statement and payroll reporting
4 penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs related to
5 the Released Class Claims. The Released Class Claims also include, without limitation all claims arising
6 under: California Labor Code sections 201, 201.5, 202, 203, 204, 205.5, 206.5, 210, 218.5, 226, 226.7,
7 246, 510, 512, 515, 558, 1194, 1194.2, 1197, 1197.1, *et seq.*, 1198, 2695, *et seq.*, 2698 *et seq.*, 2699,
8 2699.3, 2699.5, 2802 and the applicable Industrial Welfare Commission Wage Order(s); California Code
9 of Regulations tit. 8 section 3395; all claims relating to the Released Class Claims under the California
10 Business and Professions Code section 17200, *et seq.*; the Release shall also include all claims relating to
11 the Released Claims under the applicable Wage Orders of the California Industrial Welfare Commission
12 (including, but not limited to, IWC Wage Order Nos. 4-2001, 5-2001, 10-2001 and 8 CCR § 11100) for
13 failure to provide accurate itemized wage statements, failure to provide right to inspect or copy personnel
14 files, failure to keep accurate records, for civil and statutory penalties, including wage statement penalties,
15 record keeping penalties, reporting time pay, and penalties for personnel file violation. The Released
16 Claims include those under the Fair Labor and Standards Act ("FLSA"), including those related to
17 recordkeeping obligations, 29 U.S.C. §211(c); 29 C.F.R. §§ 516, 778.223, 778.315, *et seq.*; and all state
18 and federal law equivalents arising from or related to the facts and claims alleged in the Action and/or
19 PAGA Notice or that could have been alleged in the Action and/or PAGA Notice; California Code of
20 Civil Procedure sections 382, 395, and 395.5. This release excludes the release of claims not permitted by
21 law, including but not limited to claims brought for workers' compensation benefits. Agreement §5 (5.3).

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

23 Generally, upon the Effective Date, Plaintiff, acting as the representative of the State of California,
24 on behalf of the Aggrieved Employees, will release the Released Parties all claims during the PAGA
25 Release Claim Period for PAGA penalties that were alleged, or reasonably could have been alleged based
26 on the facts stated in the Operative Complaint, and the PAGA Notice, including, without limitation, Labor
27 Code sections 201, 202, 203, 204, 205.5, 206.5, 210, 218.5, 226, 226.7, 246, 510, 512, 515, 558, 1194,
28 1197, 1197.1, 1198, 2695, *et seq.*, 2698 *et seq.*, 2699, 2699.3, 2699.5, 2802, and the applicable Industrial

Welfare Commission Wage Order(s), and expressly excluding all other claims, including claims for vested benefits (other than vacation and/or paid time off to the extent those are alleged in the operative complaint and Plaintiff's PAGA Notice to the LWDA), wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §5 (5.1.1, 5.2).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$325,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

1 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action
2 litigation”).)

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

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

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

15 The Parties participated in mediation the highly respected mediator Steven G. Mehta, Esq.
16 Mr. Mehta managed the Parties’ expectations and provided a useful, neutral analysis of the issues and
17 risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S.
18 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
19 inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
20 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings
21 were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s
22 length, adversarial and non-collusive. The matter resolved and the Parties reached a settlement,
23 which was memorialized in a Memorandum of Understanding after a full day of mediation. Barvie
24 Dec., ¶¶ 20, 21.

25 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
26 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written
27 terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
28 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final

product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. Barvie Dec., ¶ 21.

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

As set forth in greater detail above, Class Counsel thoroughly investigated including: (1) determining Plaintiff’s suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff’s 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 Defendant’s labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff’s claims and estimating Defendant’s liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Barvie Dec., ¶ 18.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff’s claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes 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. Barvie Dec. ¶ 19.

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

The Gross Settlement Amount of \$325,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of

1 reasonableness.” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit
2 statement of value; [they] require[] a record which allows an understanding of the amount that is in
3 controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co.*
4 (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not
5 dependent upon its actual value approaching the potential recovery plaintiffs might have received if they
6 had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve
7 the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.*
8 (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y.
9 1993) 150 F.R.D. 57, 66).)

10 **B. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.**

11 In conclusion, the settlement of \$325,000.00 represents approximately 36% of the value of the
12 maximum potential *damages* at issue. Even when including the penalties for Plaintiff’s claim for wage
13 statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement
14 represents up to 13.76% of the maximum potential liability, assuming all of these amounts could be
15 proved at trial. This is well within the bounds of reasonableness. (*See Vicerel v. Mistras Grp., Inc.* (N.D.
16 Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class
17 received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017)
18 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18%
19 of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. 2015) 2015 WL
20 3776765 at *4 (Approving California wage and hour misclassification settlement where the class received
21 ///

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

approximately 7.3% of the estimated trial award was within the “range of reasonableness.”.) The following summarizes Defendant’s estimated exposure. Barvie Dec., ¶ 23.

1. Estimated Damages for Meal Period Violations

One of Plaintiff’s claims against Defendant was that they failed to provide compliant meal periods and failed to provide meal premiums. Barvie Dec., ¶ 25. 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 providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours. California Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Accounting for the strength of Defendant’s defenses and the arguably individualized nature of the claim, Plaintiff heavily discounted Defendant’s potential liability for meal period violations. Plaintiff estimated the damages for this claim at \$220,657. Barvie Dec., ¶ 25.

2. Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and duty-free rest periods. Barvie Dec., ¶ 26. WC Wage Orders 5-2001 and 7-2001 provide that “[a]uthorized rest period times shall be counted as hours worked for which there shall be no deduction from wages.” Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff’s rest

period claim would rely, almost entirely, on Settlement Class member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Settlement Class members missed their rest breaks. Certification likely would have required depositions of Settlement Class members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *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 defendant 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.”). Plaintiff’s valuation of the case was estimated at \$645,135. Barvie Dec., ¶ 27.

3. Estimated Exposure for Off The Clock Work

Plaintiff alleged Defendant failed to pay Plaintiff and other Settlement Class Members for off the clock time worked. The Class Members were denied wages and overtime pay due to not being compensated for time spent donning specific work apparel at the beginning and end of their shift. *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014), cert. denied, 135 S. Ct. 2835, 192 L. Ed. 2d 886 (2015) (“[A] plaintiff may establish liability for an off-the-clock claim by proving that (1) he performed work for which he did not receive compensation; (2) that defendants knew or should have known that plaintiff did so; but that (3) the defendants stood idly by.”) (internal quotation marks omitted). Plaintiff also alleged Defendant’s COVID-19 Screening Off the Clock was unlawful. Plaintiff estimated Defendant’s exposure for this claim at \$187,992. Barvie Dec., ¶ 28.

4. Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class Members suffered an “injury” because of wage statement violations, as required by Labor Code section 226. Defendant could also argue that meal and

rest period violations do not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, Case No, B256232; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) These claims represented Plaintiff's most legally precarious and uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's *maximum* exposure for these claims at approximately \$461,769 (approximately \$259,319 for waiting time and \$202,450 for wage statement penalties). Barvie Dec., ¶ 29.

5. Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$846,000. Barvie Dec., ¶ 30.

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Barvie Dec., ¶ 31.

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 Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

C. **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

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

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
5 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
6 judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to
7 enter judgment in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018)
8 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank*
9 *National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and
10 hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason,
11 if any, that employees might not take their breaks were predominantly individualized questions of fact
12 not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
13 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
14 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
15 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
16 proposed off-the-clock and rest and meal break classes due to lack of uniform policy (*Brinker Rest. Corp.*
17 *v. Superior Court*, 53 Cal. 4th 1004 (2012)); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D.
18 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of
19 individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation.
20 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
21 factor favoring settlement. *Barvie Dec.*, ¶ 32.

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

26 [N]othing is assured when litigating against commercial giants with vast litigative
27 resources, particular in such complex litigation as this, which would strain the cognitive
28

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 Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. Barvie Dec., ¶34. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “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 \$325,000 that is roughly 36% of Defendant’s liability exposure for damages, and 13.76% of Defendant’s liability exposure for 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. Barvie Dec., ¶ 35.

D. 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

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

3 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class
4 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
5 proposed Class Notice to all Settlement Class members. The Notice will include information regarding
6 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
7 procedure and time period within which to requests for exclusions or objections to the Settlement, the
8 date for the final approval hearing, the formula used to calculate settlement payments, and the terms and
9 scope of the Released Claims. Agreement at §4. This method was negotiated by the Parties to ensure
10 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
11 administration of the Settlement. Barvie Dec., ¶ 36.

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

16 **E. The Court Should Preliminarily Approve the Class Representative Enhancement**
17 **Award**

18 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
19 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
20 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
21 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*,
22 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class
23 representatives for work done on behalf of the class, to make up for financial or reputational risk
24 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
25 attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive
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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.

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 Enhancement of \$10,000⁴ for Plaintiff. The enhancement award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his 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 agreeing to provide Defendant a general release of all claims arising out of his employment. Barvie Dec., ¶ 38.

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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); *Aguiar 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 on behalf of Plaintiff will file a formal motion for the negotiated Enhancement
2 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
3 showing is sufficient for preliminary approval of the negotiated Enhancement to the Named Plaintiff
4 Award. Barvie Dec., ¶ 39.

5 **F. The Court Should Preliminarily Approve the Class Counsel Attorneys' Fees**

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

16 Class Counsel took this matter on a contingency fee basis and invested significant time and
17 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual
18 Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members.
19 Considering the positive outcome for the Settlement Class members, and in light of the supporting
20 authority, the proposed Class Counsel attorneys' fees is fair and reasonable. Barvie Dec., ¶ 40.

21 Plaintiff will file a formal motion for the negotiated Class Counsel attorneys' fees once
22 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is
23 sufficient for preliminary approval of the negotiated attorneys' fees. Barvie Dec., ¶ 41.

24 **G. Provisional Certification for Settlement Purposes Is Appropriate**

25 For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional
26 certification of the Class is appropriate. Barvie Dec., ¶ 42; Sanit Dec. ¶¶ 6-9.

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1 1. The Standard for Class Certification

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

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

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

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

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

25 Because all Settlement Class members are Defendant’s current and former employees, the class is
26 readily ascertainable from Defendant’s regular business records, i.e., payroll records. Barvie Dec., ¶ 43.

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

1 liability can be determined by facts common to all members of the class. Plaintiff alleges that the wage
2 and hour issues are both numerous and substantial, and a class action is the most advantageous method of
3 dealing with the claims of the Settlement Class members. Barvie Dec., ¶ 44.

4 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
5 from the same factual basis and are based on the same legal theories applicable to the other Settlement
6 Class members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
7 Class. Plaintiff alleges that he was injured by the same alleged company-wide practices to which the
8 proposed Settlement Class members were subject to and seek the same relief. Plaintiff has already
9 demonstrated his ability to advocate for the interests of the Settlement Class members by initiating this
10 litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it
11 is fair. Barvie Dec., ¶ 45.

12 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
13 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
14 gained state court settlement approval of the same class-wide causes of action that are at issue in this case.
15 Class Counsel's wage and hour class action experience establishes they are well qualified to represent the
16 interests of this Class. Barvie Dec., ¶ 47, Declaration of Jean-Claude Lapuyade, ¶¶ 3-4, Declaration of
17 Shani Zakay, ¶¶ 1-3.

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

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1 **IV. CONCLUSION**

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

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6 Dated: January 4, 2023

BARVIÉ LAW, A.P.C.

7
8 By: _____
9 Nicole Barvié
Attorneys for PLAINTIFF