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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

TEISHETTA HOLLIS, LAKESHA MCGEE,
individually, and on behalf of other members
of the general public similarly situated,

Plaintiffs,

v.

DUNGARVIN, INC., an unknown business
entity; DUNGARVIN CALIFORNIA, LLC, a
Minnesota limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No. RG21106102

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

Date: April 8, 2025

Time: 1:30 p.m.

Reservation ID: 801755862981

Judge: Hon. Somnath Raj Chatterjee

Dept.: 21

TABLE OF CONTENTS

I.	INTRODUCTION	1
	1. The “Class Members”, “Settlement Class Members” and “Class Period”	1
	2. The “Aggrieved Employees” and “PAGA Period”	1
	3. The “Gross Settlement Amount”	1
	a. A “Service Awards”	1
	b. “Attorneys’ Fees”	1
	c. “Attorneys’ Expenses”	2
	d. “Paga Payment”	2
	e. “Claims Administration Expenses”	2
	4. The “Net Settlement Amount”	2
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled Following Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiff’s Claims	8
	1. The Composition of the Settlement Class Members	8

1	2. The Settlement Consideration	8
2	3. The Funding Date	8
3	4. Formula for Calculating Individual Settlement Payments	8
4	5. Release by Settlement Class Members	9
5	6. PAGA Release by Plaintiff and the LWDA	9
6		
7	III. ARGUMENT	11
8	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	12
9	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel	12
10	2. The Settlement Falls Within the Recognized Range of Reasonableness	11
11	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	13
12	(1) Estimated Exposure for Unpaid Wages	14
13	(2) Estimated Exposure for Regular Rate Violations	14
14	(3) Estimated Exposure for Meal and Rest Period Violations	15
15	(4) Estimated Exposure for Wage Statement Violations	13
16	(5) Estimated Exposure for Failure to Reimburse for Mandatory Business Expenses	16
17	(6) Estimated Exposure for Waiting Time Penalties	

1	.....	17
2	(7) Defendant’s PAGA Exposure	17
3	.....	17
4	b. Inherent Risks of Continued Litigation Support Preliminary Approval	18
5	.....	18
6	B. The Proposed Notice Informs the Class about the Case and Settlement	20
7	.....	20
8	C. The Court Should Preliminarily Approve the Service Awards	21
9	.....	21
10	D. The Court Should Preliminarily Approve the the Attorneys’ Fees and Attorneys’ Expenses	22
11	.....	22
12	E. Provisional Certification for Settlement Purposes Is Appropriate	23
13	.....	23
14	1. The Standard for Class Certification	23
15	.....	23
16	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined	
17	Community of Interest Among the Settlement Class Members	24
18	.....	24
19	IV. CONCLUSION	23
20	.....	23
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	11
5	<i>Acheson v. Express, LLC</i>	
6	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	22
7	<i>Aguilar v. Cingular Wireless, LLC</i>	
8	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	22
9	<i>Ali v. U.S.A. Cab Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	18
11	<i>In re Apple Computer, Inc. Derivative Litig.</i>	
12	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	12
13	<i>Baker v. LA. Fitness Int'l, LLC</i>	
14	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	22
15	<i>Barrett v. Doyon Security Services, LLC,</i>	
16	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	22
17	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
18	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	22
19	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
20	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	22
21	<i>Brinker</i>	
22	53 Cal. 4th at 1021-1022.....	18
23	<i>Brown v. Fed Express Corp.</i>	
24	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	18-19
25	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
26	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	22
27	<i>Bufile v. Dollar Financial Group, Inc.</i>	
28	(2008) 162 Cal.App.4th 1193, 1207.....	23
	<i>Cacho v. Eurostar, Inc.</i>	
	(2019) 43 Cal.App.5th 885.....	18
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	22
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	17
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	18
	<i>Carrington v. Starbucks Corp.,</i>	
	30 Cal. App. 5th 504, 517, 539 (2018).....	18
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	20-21
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	11
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	20
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	23
	<i>Coleman v. Estes Express Lines, Inc.</i>	
	No. BC429042 (LA. County Super. Ct. Oct. 3, 2013).....	22

1	<i>Contreras v. Serco Inc.</i> , No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012).....	22
2	<i>D’Amato v. Deutsche Bank</i> (2d. Cir. 2001) 236 F.3d 78, 85.....	12
3	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1802.....	11
4	<i>Duran v. U.S. Bank National Association</i> (2014) 59 Cal.4th 1, 31.....	19
5	<i>Ethridge v. Universal Health Services, Inc.</i> No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	22
6	<i>Fleming v. Covidien</i> 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	17
7	<i>Fontana v. Elrod</i> (7 th Cir. 1987) 826 F.2d 729, 732.....	21
8	<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 FRD. 174, 186.....	13
9	<i>Guerrero v. R.R. Donnelley & Sons Co.</i> No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	22
10	<i>In re Global Crossing Sec. and ERISA Litig.</i> (S.D.N.Y 2004) 225 F.R.D. 436, 460.....	13
11	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.</i> , No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	22
12	<i>Hill v. Sunglass Hut Int’l, Inc.</i> , No. BC422934 (LA. County Super. Ct. July 2, 2012).....	22
13	<i>In re IKON Office Solutions, Inc Sec Litig.</i> (E.D. Pa. 2000) 194 F.R.D. 166, 184.....	13
14	<i>Kabamba v. Victoria’s Secret Stores. LLC</i> , No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	22
15	<i>Kass v. Young</i> (1977) 67 Cal.App.3d 100, 106.....	20
16	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 133.....	13
17	<i>Kisliuk v. ADT Security Services, Inc.</i> , No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	22
18	<i>Lee v. Dynamex, Inc.</i> (2008) 166 Cal.App.4th 1325, 1332, 1334.....	23
19	<i>Magadia v. Wal-Mart Associates, Inc.</i> (9 th Cir. 2021) 999 F.3d 668.....	19
20	<i>Magee v. American Residential Services, LLC</i> No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	22
21	<i>Mares v. BFS Retail & Commercial Operations, LLC</i> No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	22
22	<i>In re Michael Milken and Assoc. Sec. Litig.</i> (S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	13
23	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.</i> , No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....	22
24	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 186 Cal.App.4th 399, 409.....	13
25		
26		
27		
28		

1	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
2	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	13
3	<i>Nevarez v. Trader Joe's Co.,</i>	
4	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	22
5	<i>Newman v. Stein</i>	
6	(2d. Cir. 2002) 464 F.2d 689, 693.....	13
7	<i>In re Nordstrom Com. Cases</i>	
8	186 Cal.App.4th 576, 589 (2010).....	17
9	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
10	(1994) 27 Cal.App.4th 1085, 1089-90.....	11
11	<i>In re Nvidia Derivs. Litig.</i>	
12	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	19
13	<i>O'Conner v. Uber Technologies, Inc.</i>	
14	(9 th Cir. 2018) 904 F.3d 1087.....	19
15	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
16	(9 th Cir. 1982) 688 F.2d 615, 625, 628.....	11
17	<i>In re Omnivision Tech, Inc.</i>	
18	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	13
19	<i>Ordaz v. Rose Hills Mortuary, LP.,</i>	
20	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	22
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	20
23	<i>Rodriguez v. West Publishing Corp.</i>	
24	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	19
25	<i>Sheldon v. AHMC Monterey Park Hospital LP</i>	
26	No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	22
27	<i>Silva v. Catholic Moray Services, Inc.,</i>	
28	No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	22
	<i>Stambaugh v. Super. Ct</i>	
	(1976) 62 Cal.App.3d 231, 236.....	11
	<i>State v. Levi Strauss & Co.</i>	
	(1986) 41 Cal.3d 460, 482, 485.....	12
	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
	<i>Tien v. Tenet Healthcare Corp.</i>	
	(2012) 209 Cal.App.4th 1077, 1088.....	19
	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
	(1975) 48 Cal. App. 3d 143, 151-52.....	20
	<i>Weisbarth v. Banc West Investment Services, Inc,</i>	
	No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	22
	<i>Zamora v. Balboa Life & Casualty LLC</i>	
	No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	22

RULES, CODES, AND STATUTES

<i>Cal. Bus & Prof. Code</i> §§ 17200.....	4,10
<i>Cal. Civ. Proc. Code</i> § 382.....	23-24
<i>Cal. Lab. Code</i> § 201.....	4
<i>Cal. Lab. Code</i> § 202.....	4
<i>Cal. Lab. Code</i> § 226.....	16
<i>Cal. Lab. Code</i> § 226.7.....	4,16
<i>Cal. Lab. Code</i> § 246.....	10
<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	4
<i>Cal. Lab. Code</i> § 512.....	4
<i>Cal. Lab. Code</i> § 1194.....	4
<i>Cal. Lab. Code</i> § 1197.....	4
<i>Cal. Lab. Code</i> § 1197.1.....	4
<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	3-4
<i>Cal. Lab. Code</i> § 2802.....	4
<i>Rule of Court Rule</i> 3.769 (c)-(g).....	11

SECONDARY SOURCES

Conte & Newberg, <i>Newberg on Class Actions</i> , §§11.26, 1 1:38, 11.51 (4th ed. 2002)	11
Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study, 53 UCLA L. Rev. 1303 (2006)	21
Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	23
Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	21

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I. INTRODUCTION

Plaintiffs TEISHETTA HOLLIS (“Plaintiff Hollis”), LAKESHA MCGEE (“Plaintiff McGee”), and YASMIN RICO (“Plaintiff Rico”) (collectively, “Plaintiffs”) seek preliminary approval of the Class and PAGA Action Settlement and Release Of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 630 Class Members and 496 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. **“Class Members”, “Settlement Class Members” and “Class Period”** means all current and former non-exempt employees who worked for Dungarvin California, LLC (“Defendant Dungarvin California”) in California at any time during the period of July 22, 2017, through June 30, 2024 (“Class Period”). Agreement at § I(G). The Settlement Class Members exclude any Class Member that submits a valid and timely request for exclusion. Agreement at § I(KK).

2. **“Aggrieved Employees” and “PAGA Period”** mean all current and former non-exempt employees who worked for Defendant Dungarvin California in California at any time during the period of July 14, 2020, through June 30, 2024. Agreement at § I(C). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(H)(8).

3. The **“Gross Settlement Amount”** is Four-Hundred and Fifty Thousand Dollars and Zero Cents (\$450,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. **“Service Awards”** in the amount of \$10,000.00 or in an amount that the Court authorizes to be paid to each Class Representative, in addition to their Individual Settlement Payment and their individual Aggrieved Employee Payment, in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § I(HH);

b. **“Attorneys’ Fees”** that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiffs and the Settlement Class in the Action, currently not to exceed 35% of the Gross Settlement Amount (currently estimated to be \$157,500.00 out of \$450,000.00). Agreement at § I(E);

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

1 c. **“Attorneys’ Expenses”** that the Court authorizes to be paid to Class Counsel for
2 the actual costs they have incurred of up to \$40,000. Agreement at § I(D);

3 d. A **“PAGA Payment”** of \$20,000.00 shall be allocated from the Gross Settlement
4 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004.
5 The Settlement Administrator shall pay 75% of the PAGA Payment to the Labor and Workforce
6 Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the
7 PAGA Payment proportionately to all Aggrieved Employees (“Aggrieved Employee Payment”).
8 Agreement at § I(W); and

9 e. **“Claims Administration Expenses”** not to exceed \$10,000 payable to the
10 Settlement Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Notice
11 Packet and Individual Settlement Payments. Agreement at § III(I)(12).

12 4. The **“Net Settlement Amount”** of approximately \$192,500 (Gross Settlement Amount
13 minus the requested Service Awards, Attorneys’ Fees and Attorneys’ Expenses, PAGA Payment, and
14 Claims Administration Expenses) which will be allocated to all Settlement Class Members on a pro-
15 rata basis according to the number of Workweeks each Settlement Class Member worked during the
16 Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do
17 not opt out of the Settlement Class resulting in an average Individual Settlement Payment of **\$305.55**.
18 Agreement at § III(I)(1); JCL Dec., ¶ 7.

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

26 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
27 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
28 the Settlement Class Members meets or exceeds awards in similar wage and hour class actions.

Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants Dungarvin Inc. (“Defendant Dungarvin Inc.”) and Dungarvin California (collectively, “Defendants”) provide support services to people with intellectual and developmental disabilities, people who are faced with mental health, behavioral or significant medical challenges, and to children and their families, throughout the state of California, including in the county of Alameda. Specifically, Defendants provide in home personal attendants and operate a number of adult day care centers to further its purpose of providing services to disabled persons in California. This action asserts claims on behalf of Defendants’ current and former non-exempt employees employed in California. JCL Dec., ¶ 9.

Plaintiff Hollis worked for Defendants as a non-exempt employee providing support services for developmentally disabled persons in California from approximately January 2019 to August 2019. Plaintiff McGee worked for Defendants as a non-exempt employee also providing support services for developmentally disabled persons in California from approximately February 2019 to July 2020 to August 2019. Plaintiff Rico worked for Defendants as a non-exempt employee providing the same type of support services for disabled persons in California from approximately November 2017 to March 2020. At all times during their employment, Plaintiffs were paid an hourly wage and were subject to Wage Order Number 5. Throughout their employment, Plaintiffs were subject to Defendants’ written policies and procedures. JCL Dec., ¶ 10; Declaration of Teishetta Hollis (“Hollis Dec.”) at ¶¶ 1-4; Declaration of Lakesha McGee (“McGee Dec.”) at ¶¶ 1-4; Declaration of Yasmin Rico (“Rico Dec.”) at ¶¶ 1-4.

Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to furnish accurate itemized wage statements, failed to provide compliant meal and rest periods, failed to pay overtime and sick pay at the correct regular rate of pay, failed to reimburse for mandatory business expenses, and failed to pay all wages when due. Defendants forcefully deny liability for each of Plaintiffs’ claims. Further, Defendants assert that they fully complied with all applicable employment

1 laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to,
2 compliant meal and rest period policies, compliant wage statements, and timely payment all wages due
3 upon separation of employment. JCL Dec., ¶ 11.

4 On July 14, 2021, Plaintiff McGee served Defendants and the Labor and Workforce
5 Development Agency (LWDA) with a Notice of Violations (“PAGA Notice”). Plaintiff McGee’s
6 PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of various
7 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
8 Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General
9 Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 12.

10 On July 22, 2021, Plaintiff Hollis and Plaintiff McGee filed a class action complaint in the
11 Alameda Superior Court, Case No. RG21106102 (“the Class Action”), alleging claims for (1) Failure
12 to pay overtime wages in violation of Cal. Lab. Code §§ 510 et seq; (2) Failure to provide required
13 meal periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable IWC Wage Order; (3)
14 Failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the applicable
15 IWC Wage Order; (4) Failure to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197 &
16 1197.1; (5) Failure to provide wages when due in violation of Cal. Lab. Code §§ 201 and 202; (6)
17 Failure to provide wages when due in violation of Cal. Lab. Code § 204; (7) Failure to provide accurate
18 itemized statements in violation of Cal. Lab. Code § 226; (8) Failure to keep requisite payroll records
19 in violation of Cal. Lab. Code § 1174(d); (9) Failure to reimburse employees for required expenses in
20 violation of Cal. Lab. Code § 2802; and (10) Unfair competition in violation of Cal. Bus. & Prof. Code
21 § 17200 et seq. JCL Dec., ¶ 13.

22 On August 24, 2021, Plaintiff Rico served Defendants and the LWDA with a PAGA Notice.
23 Plaintiff Rico’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations
24 of various provisions of the California Labor Code and applicable IWC Wage Order and of her intent
25 to pursue claims under PAGA. JCL Dec., ¶ 14.

26 On September 20, 2021, Plaintiff McGee filed a lawsuit titled *Lakesha McGee v. Dungarvin*
27 *California, LLC, et al.*, in Alameda Superior Court, Case No. RG21113182 (“PAGA Action”) alleging
28 a single cause of action for violations of PAGA. JCL Dec., ¶ 15.

1 On November 9, 2021, Plaintiff McGee amended the PAGA Action complaint to add Plaintiff
2 Rico as an additional plaintiff. JCL Dec., ¶ 16.

3 In October of 2022, the Parties participated in mediation presided over by Steven Serratore, Esq.,
4 an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without
5 a settlement. JCL Dec., ¶ 17.

6 On April 11, 2023, the Court consolidated the Class Action and the PAGA Action (“the Action”).
7 JCL Dec., ¶ 18.

8 After engaging in further written discovery, the Parties agreed to mediate this action again. To
9 prepare for mediation, the Parties agreed to informally exchange documents and data points subject to
10 the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll
11 data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger
12 Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 19.

13 On August 7, 2024, the Parties participated in mediation presided over by Steven Mehta, Esq.,
14 an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without
15 a settlement. However, after the mediation, the Parties continued to negotiate with the mediator’s
16 assistance, and ultimately reached a settlement based on a mediator’s proposal, which was subsequently
17 memorialized in the form of a Memorandum of Understanding. Subsequently, the Parties drafted and
18 negotiated a long-form settlement agreement, which is the subject of the instant motion. The Parties
19 now seek approval of the entire Agreement. JCL Dec., ¶ 20.

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

21 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs’
22 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiffs. As
23 part of the interview process, Plaintiffs produced documents related to their employment, including
24 time records, payroll records, and written policies and procedures. At the conclusion of the interviews,
25 Class Counsel determined that Plaintiffs’ complaints justified further inquiry. JCL Dec., ¶ 21.

26 Class Counsel subsequently requested Plaintiffs’ employee files from Defendants. In response,
27 Defendants produced hundreds of documents, including but not limited to, copies of Plaintiffs’ time
28 and payroll records and Defendants’ written policies and practices. Class Counsel reviewed and

1 analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claims that
2 Defendants failed to, among other things, pay for all time worked and provide compliant meal and rest
3 periods. JCL Dec., ¶ 22.

4 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
5 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
6 documents and data points to further evaluate Plaintiffs' claims and Defendants' liability exposure to
7 the Class Members. In response to Class Counsel's request, Defendants produced a 51% sample of time
8 and payroll records for the Class Members, aggregate workweek and pay period data for the Class
9 Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies,
10 and agreements containing, *inter alia*, compensation policies. In sum, Class Counsel obtained,
11 reviewed and analyzed nearly 2 million unique data cells of time and payroll records, and more than
12 3,000 pages of wage and hour related documents, e.g., wage statements, handbooks, and pertinent
13 policies. JCL Dec., ¶ 23.

14 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
15 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
16 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
17 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
18 differently, the BCG is uniquely qualified to analyze Defendants' time and payroll data. JCL Dec., ¶
19 24.

20 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
21 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
22 pay periods, average length of shift and average number of hours worked per week and pay periods
23 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
24 periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of
25 underpayment of overtime, premiums, and sick time resulting from miscalculation of the regular rate
26 of pay, the amount of off-the-clock work, and the amount of unreimbursed business expenses incurred
27 by Class Members during the Class Period. JCL Dec., ¶ 25.

28 In advance of mediation, Class Counsel created a damage model predicated on the BCG analysis.

1 Class Counsel's model calculated Defendants' potential liability exposure while accounting for the
2 uncertainties of continued litigation. This damage model informed and guided Class Counsel during
3 the mediated settlement discussions. JCL Dec., ¶ 26.

4 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
5 Plaintiffs' suitability as putative class representatives through interviews, background investigations,
6 and analysis of his employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
7 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
8 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
9 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
10 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants'
11 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
12 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
13 claims being settled, as well as the impediments to recovery, such as to make an independent
14 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 27.

15 **C. The Parties Settled Following Mediation**

16 In October of 2022, the Parties attended an initial mediation with Steven Serratore, Esq., an
17 experienced mediator of wage and hour class and PAGA actions. The mediation concluded without a
18 settlement. After engaging in further written discovery, on August 7, 2024, the Parties attended a full
19 day of mediation with Steven Mehta, Esq., an experienced mediator of wage and hour class and PAGA
20 actions. Mediator Mehta helped manage the Parties' expectations and provided a useful, neutral
21 analysis of the issues and risks to both sides. The Parties made substantial progress with his assistance.
22 Namely, the Parties exchanged information regarding their respective claims and defense, including
23 their respective evaluation of the damages. The mediation concluded without a settlement, but Mediator
24 Mehta made a mediator's proposal, which was subsequently accepted by both Parties. Mediator
25 Mehta's settlement proposal was memorialized in the form of a Memorandum of Understanding. The
26 complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel
27 submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at
28 issue. JCL Dec., ¶ 28.

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

2 1. The Composition of the Settlement Class Members

3 The proposed Settlement Class consists of all current and former non-exempt employees who
4 worked for Defendant Dungarvin California in California from the period beginning July 22, 2017,
5 through June 30, 2024. The Settlement Class excludes any person who submits a timely and valid
6 request for exclusion. At the time of mediation, Defendant estimated that the Class was comprised of
7 630 Class Members that worked an approximately 37,000 workweeks during the Class Period.
8 Agreement at § III(A)(5).

9 2. The Settlement Consideration

10 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
11 Amount of \$450,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments
12 to the Settlement Class; (2) Service Awards of \$10,000 to each Plaintiff for their services on behalf of
13 the Settlement Class; (3) a PAGA Payment in the amount of \$20,000.00; (4) Claims Administration
14 Expenses estimated at \$10,000; and (5) Attorneys' Fees and Attorneys' Expenses in the amount of up
15 to \$197,500, comprised of attorneys' fees equal to 35% of the Gross Settlement Amount estimated to
16 be \$157,500.00 and up to \$40,000 for actually incurred litigation expenses. See generally Agreement
17 at § III(I)(10).

18 Subject to the Court approving the Service Awards, Attorneys' Fees and Attorneys' Expenses,
19 PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be
20 distributed to each participating member of the Settlement Class. There is no reversion to Defendants
21 and Defendants must separately pay for their share of the employer payroll taxes. Agreement at §
22 III(I)(1).

23 3. The Funding Date

24 Dungarvin California shall fund the Gross Settlement Amount in 23 monthly installments, with
25 the first installment in the amount of \$54,000 due to the Settlement Administrator by March 31, 2025,
26 and with the subsequent installments comprised of equal monthly payments of \$18,000 each continuing
27 every month until completed in February 2027. Dungarvin California shall fund the employer's side
28 payroll taxes together with the 15th installment, provided the Settlement Administrator has calculated

1 and sent to Defendants' counsel, the calculated total of payroll taxes due, so that Dungarvin California
2 may include it in its final payment of the Gross Settlement Fund. If the calculation is not completed
3 before Dungarvin California's final payment toward the Gross Settlement Fund is made, Dungarvin
4 California will promptly submit the employer's side payroll taxes after the total due is submitted to
5 Defendants' counsel. Agreement at § I(O).

6 4. Formula for Calculating Individual Settlement Payments

7 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
8 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
9 worked for Defendants in California during the Class Period. The Class Data provided by Defendants
10 to the Settlement Administrator will include the number of Workweeks for each Class Member and the
11 number of Pay Periods worked during the relevant periods. Agreement at § III(I)(1). Each Settlement
12 Class Member's final Individual Settlement Payment for purposes of payment will be calculated by
13 dividing the number of Workweeks for each Class Member by the total number of Workweeks for all
14 Class Members, resulting in a Payment Ratio for each Class Member. The Payment Ratio will then be
15 multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
16 Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated
17 employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for
18 members of the Settlement Class who submit valid and timely requests for exclusion will be
19 redistributed to Class Members who do not submit valid and timely requests for exclusion on a pro rata
20 basis. Agreement at III(I)(1).

21 Given that there are approximately 630 Class Members, the average gross recovery is
22 approximately \$305.55 (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 7.

23 5. Release by Settlement Class Members

24 Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement,
25 Plaintiffs and the Settlement Class Members release the Released Parties (as defined in the Agreement)
26 from any and all causes of action, claims, rights, damages, and penalties under California law that were
27 alleged in the operative complaint in the Action or that could have been alleged based on the facts
28 alleged, including but not limited to: (a) any alleged failure by Defendants (1) to pay minimum wage;

(2) to pay overtime wages, (3) to pay expenses reimbursements, (4) to provide meal periods or pay meal period premium wages, (5) to authorize and permit rest periods or pay rest period premium wages, (6) to issue compliant wage statements, or (7) to timely pay wages at the end of employment; (b) any right or claim for unfair business practices in violation of California Business & Professions Code sections 17200, et seq., based on the alleged failures set forth in (a)(1) through (a)(5) above; and (c) any violation of the California Labor Code arising from or related to the conduct alleged in (a)(1) through (a)(5) above, including, without limitation, violation of California Labor Code sections 201–204, 210, 226, 226.7, 227.3, 246, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802 or any other applicable state statute, rule and/or regulation (Wage Order) during the Class Period (“California Released Claims”). The California Released Claims expressly excludes claims brought under PAGA. With respect to all Class Members with the exception of Plaintiffs, the release expressly excludes all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and class claims outside of the Class Period. (“Released Class Claims”). Agreement at §§ I(DD).

6. PAGA Release by Plaintiff and the LWDA

Generally, upon the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff McGee and Plaintiff Rico on behalf of the LWDA, and the State of California, will release the Released Parties from any and all claims for civil penalties under PAGA based on the allegations in the PAGA Notice that arose during the PAGA Period, including violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698, et seq., and the applicable IWC Wage Order as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice submitted in the Action. It expressly excludes all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and PAGA claims outside of the PAGA Period (“Released PAGA Claims”). As a result of this release, the Aggrieved Employees shall be precluded from bringing claims against Defendants for the Released PAGA Claims Agreement at § I(EE); III(A)(3).

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1 **III. ARGUMENT**

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

3 The proposed Settlement, including a Gross Settlement Amount of \$450,000.00 meets the
4 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
5 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
6 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
7 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
8 notice of the settlement has been distributed to class members for their comments and objections.
9 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
10 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
11 inquire into the fairness of the proposed settlement”).)

12 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
13 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
14 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
15 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
16 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
17 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
18 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
19 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
20 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
21 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
22 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
23 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
24 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
25 action litigation”).)

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

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

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

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

11 The Parties participated in a second mediation with Steven Mehta, Esq., an experienced mediator
12 of wage and hour class and PAGA actions. The mediator managed the Parties’ expectations and
13 provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*
14 *Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
15 (mediator’s participation weighs considerably against any inference of a collusive settlement);
16 *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-
17 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
18 undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-
19 collusive. The matter was resolved only after a full day of mediated negotiations managed by the
20 mediator who heard arguments, reviewed evidence and evaluated the Parties’ respective claims and
21 defenses. JCL Dec., ¶ 29.

22 Once the Parties reached a settlement, the Parties engaged in protracted negotiations regarding
23 the written terms of the class action settlement. The Parties maintained the arm’s length, non-collusive
24 and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the
25 final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
26 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 30.

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

28 The Gross Settlement Amount of \$450,000.00 is within the range of reasonableness. To

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

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

The Gross Settlement Amount of \$450,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding

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

PAGA penalties) ranged between \$1,384,503.08 (“Conservative Model”) and \$6,307,590.11 (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for waiting time penalties. Thus, the Gross Settlement Amount of \$450,000.00 represents approximately between 32.50% (“Aggressive Model”) and 7.13% (“Conservative Model”) of Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Class Counsel’s estimation of Defendants’ exposure. JCL Dec., ¶ 31.

(1) Estimated Exposure for Unpaid Wages

One of Plaintiffs’ primary claims in the Action was that Defendants failed to pay for all hours worked at the minimum wage as they and other Class Members were required to work off-the-clock and were not compensated for that time. Specifically, Plaintiffs alleged that Class Members were required to complete written reports, attend to clients, monitor the facility, complete work-related trainings, and undergo Covid-19 screenings all while clocked out for approximately 18 months during the Class Period. Further, Plaintiffs alleged that Class Members were required to wait in line before punching into Defendants’ timekeeping system. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among other things, that its policies and procedures directed its employees to perform work only while on-the-clock. Defendants asserted that any deviation from these policies was individual-specific and thus, created individualized issues of liability unsuitable for class treatment. JCL Dec., ¶ 32.

Based on Defendants’ practices requiring employees to work off-the-clock, Plaintiffs assumed fifteen (15) minutes of unpaid compensable time per workweek by the Class Members during the Class Period. Considering Defendants’ defenses, Plaintiffs applied 50% discount to this claim. Plaintiffs estimated Defendants’ exposure for this claim ranged between approximately \$91,335.81 and \$182,671.61. JCL Dec., ¶ 33.

(2) Estimated Exposure for Regular Rate Violations

Plaintiffs also alleged that Defendants miscalculated the regular rate of pay for purposes of overtime and redeemed sick pay. Specifically, Plaintiffs alleges that Class Members received non-discretionary incentive compensation labeled on wage statements as “AWD”, “INCOT2”, and “REF”

1 but Defendants failed to consider these non-discretionary bonuses when it calculated the overtime rate
2 and redeemed sick pay rate for Class Members. JCL Dec., ¶ 34.

3 Defendants argued that all “AWD”, “INCOT2” and “REF” payments were discretionary and,
4 thus, were properly excluded from the regular rate of pay. Further, Defendants argued that even
5 assuming these items of compensation were non-discretionary – which Defendants denied – none of
6 the named Plaintiffs ever received such a payment. Thus, Defendants argued Plaintiffs lacked standing
7 to pursue the claim. Finally, Defendants argued that less than 1/3 of the Class Members ever received
8 any of these payments. Consequently, Defendants argued any resulting liability was minimal. Due to
9 the material question of fact as to whether the bonuses paid to the Class Members were non-
10 discretionary, Plaintiffs applied a 75% discount for this claim and estimated that Defendants’ exposure
11 for this claim ranged between \$14,380.75 and \$57,523.00. JCL Dec., ¶ 35.

12 (3) Estimated Exposure for Meal and Rest Period Violations

13 Plaintiffs also alleged that Defendants failed to provide compliant meal and rest periods and
14 further failed to provide all meal period premiums. Specifically, Plaintiffs alleged that because of
15 rigorous work schedules and Defendants’ understaffing, Plaintiffs and Class Members were unable to
16 take timely and duty-free meal periods and rest periods. JCL Dec., ¶ 36.

17 Conversely, Defendants argued, among other things, that Wage Orders Number 5 and 15 applied
18 to its workforce. Defendants contend that Wage Order Number 5, permits on duty meal periods for its
19 employees under certain circumstances. *See* 8 CCCR 11105(10)(E). Defendants also argued that Wage
20 Order Number 15 exempted a portion of its workforce that were employed as “personal attendants”
21 from its meal and rest period obligations altogether. *See* 8 CCR 11150(1)(B). Further, Defendant
22 argued that it, nevertheless did provided Class Members with the opportunity to take compliant meal
23 and rest periods. Further, Defendant argued that any missed meal and rest periods were voluntarily and
24 did not trigger liability for premium payments. Finally, Defendants argued that they had in place an
25 enforceable on-duty meal period agreement. Thus, Defendants argued that there was no potential
26 liability for Plaintiffs’ alleged meal period and rest period violations. Consequently, Plaintiffs applied
27 an 85% discount and estimated that Defendants’ exposure on these claims ranged between \$268,341.94
28 and \$1,788,946.28 for meal periods and between \$272,580 and \$1,817,200.22 for rest periods.

JCL Dec., ¶ 37.

(4) Estimated Exposure for Wage Statement Violations

Further, Plaintiffs alleged that Defendants failed to provide accurate itemized wage statements that include all items required by Labor Code § 226(a)(1)-(9), including the total hours worked, inclusive dates of the period for which the employee is paid, and the name and address of the legal entity that is the employer. Further, as a result of Defendants' failure to pay employees for all time worked, the wage statements issued by Defendants do not indicate the correct number of hours worked, the amount of gross wages earned, or net wages earned during each pay period. JCL Dec., ¶ 38.

Defendants maintain that their wage statements are compliant and further argued that Plaintiffs cannot show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Taking Defendants' defenses into account, Plaintiffs discounted this claim 50%. Plaintiff estimated that Defendants' exposure on this claim ranged between \$405,350 and \$810,700. JCL Dec., ¶ 39.

(5) Estimated Exposure for Failure to Reimburse for Mandatory Business Expenses

Plaintiffs alleged that Class Members were required to use their personal cell phones in connection with their job duties but were not reimbursed by Defendants. Specifically, Plaintiffs allege that Class Members were required to use their personal cell phones for work-related communications and to clock in and out for work. Defendants maintain that necessary expenses for which reimbursements were sought were paid. Further, Defendants argued that they provided a centralized timekeeping system for employees to clock in and out for work and that the use of their personal cell phones to clock in and out was optional. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged reimbursement violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Thus, Plaintiffs applied a 75% discount for this claim and estimated that Defendants' exposure for this claim ranged between \$12,023.75 and \$48,095. JCL Dec., ¶ 40.

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1 (6) Estimated Exposure for Waiting Time Penalties

2 Plaintiffs also alleged that Defendants' labor code violations resulted in derivative liability for
3 waiting time penalties. Although these *penalties* represented Defendants' largest dollar amount of
4 exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendants argued that Plaintiffs could
5 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
6 Thus, Plaintiffs applied an 80% discount for this claim and estimated that Defendant's exposure for
7 this claim ranged between \$320,490.80 and \$1,602,454.00. JCL Dec., ¶ 41.

8 (7) Defendants' PAGA Exposure

9 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the
10 time of mediation, Plaintiffs estimated Defendants' PAGA exposure was approximately \$1,731,550.00.
11 JCL Dec., ¶ 42.

12 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$20,000.00 which is
13 approximately 4.4% of the Gross Settlement Amount. This amount falls well within the range of
14 approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment (\$15,000.00) will be
15 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA
16 Payment (\$5,000) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"),
17 which is within the range of PAGA Payments approved by courts and should be approved. JCL Dec., ¶
18 43.

19 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
20 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
21 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
22 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
23 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
24 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
25 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
26 6, 2016) (PAGA penalties denied after trial).

27 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
28 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS

1 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on
2 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
3 defendant.”). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation
4 for each pay period the employee worked. Again, Defendants raised several defenses that presented
5 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. In addition to those
6 arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v.*
7 *Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs’ claims, on liability, value, and
8 manageability as to the rest period claims. In all, Defendants’ PAGA liability exposure is hotly
9 contested. JCL Dec., ¶ 44.

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

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

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

22 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
23 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
24 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
25 certification because employees’ declarations attesting to having taken meal and rest breaks
26 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
27 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
28 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*

1 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
2 period claims based on the predominance of individual issues). JCL Dec., ¶ 45.

3 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
4 Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
5 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage
6 and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
7 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized
8 questions of fact not susceptible to class treatment."). JCL Dec., ¶ 46.

9 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
10 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and
11 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
12 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
13 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
14 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*
15 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL Dec.,
16 ¶ 47.

17 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
18 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
19 factor favoring settlement. JCL Dec., ¶ 48.

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

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

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

2 Finally, continuing to litigate this action would require continued and extensive resources
3 coupled with significant Court time to proceed through trial and post-trial motions; which can often
4 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
5 extensive expert testimony, particularly with regard to damages. But even if Plaintiffs are successful
6 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
7 that Defendants would appeal any favorable judgment. JCL Dec., ¶ 49. As demonstrated by *Magadia*,
8 *supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “Avoiding such a trial and
9 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
10 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
11 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
12 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

13 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$450,000.00 that is
14 roughly approximately 31.55% of Defendants’ *class-wide* liability exposure for damages and statutory
15 penalties, and approximately 5.60% of Defendants’ maximum class wide liability exposure for
16 damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as
17 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
18 the settlement is fair and reasonable. JCL Dec., ¶ 50.

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

20 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
21 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
22 information to decide whether they should accept the benefits offered, opt out and pursue their own
23 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
24 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
25 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
26 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
27 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
28

1 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

2 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
4 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
5 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
6 procedure and time period within which to request for exclusion or to object to the Settlement, the date
7 for the final approval hearing, the formula used to calculate settlement payments, and the terms and
8 scope of the Released Class Claims. The Parties negotiated this method to ensure delivering the most
9 reasonable method of notice to the Class Members while ensuring cost effective administration of the
10 Settlement. JCL Dec., ¶ 51.

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
13 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
14 of the options open to dissenting class members.”). JCL Dec., ¶ 52.

15 **C. The Court Should Preliminarily Approve the Service Awards**

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

26
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.

(2009) 175 Cal.App.4th 785.)

The Settlement provides for Service Awards of \$10,000⁴ for each Plaintiff. The Service Awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 53.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶ 54.

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

The purpose of Attorneys' Fees and Attorneys' Expenses in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix*,

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

7 Class Counsel took this matter on a contingency fee basis and invested significant time and
8 expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
9 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
10 Members. Considering the positive outcome for the Class Members, and in light of the supporting
11 authority, the proposed Attorneys’ Fees and Attorneys’ Expenses are fair and reasonable. JCL Dec., ¶
12 55.

13 Plaintiffs will file a formal motion for the negotiated Attorneys’ Fees and Attorneys’ Expenses
14 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
15 showing is sufficient for preliminary approval of the negotiated Attorneys’ Fees and Attorneys’
16 Expenses. JCL Dec., ¶ 56.

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

18 For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification
19 of the Class is appropriate. JCL Dec., ¶ 57.

20 1. The Standard for Class Certification

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

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

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

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

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

Because all Class Members are Defendants’ current and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 58.

The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants’ policies and practices apply class-wide, and Defendants’ liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 59.

Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, participating in

1 mediation, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 60.

2 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
3 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
4 certified, and gained state court settlement approval of the same class-wide causes of action that are at
5 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
6 qualified to represent the interests of this Class. JCL Dec., ¶¶ 61; 63-70, Declaration of Shani Zakay,
7 ¶¶ 1-3, Declaration of Joanna Ghosh, ¶¶ 1-5.

8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
11 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
12 adjudication. JCL Dec., ¶ 62.

13 IV. CONCLUSION

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

17
18 Dated: March 13, 2025

JCL LAW FIRM, APC

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21 Attorney for PLAINTIFFS
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