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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

SUKHAJ KAUR, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

ACES 2020 I, LLC, a Delaware limited
liability company (fka Comprehensive
Educational Services, Inc.), ACES 2020,
LLC, a California limited liability company
(fka Comprehensive Educational Services,
Inc.); and DOES 1 through 50, inclusive,

Defendants.

Case No. MSC20-02482

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

Date: July 14, 2022

Time: 9:00 a.m.

Judge: Hon. Judge Edward G. Weil

Dept.: 39

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I. INTRODUCTION

Plaintiff SUKHAJ KAUR (“Plaintiff”) seeks preliminary approval of the Stipulation of Class Action Settlement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 10,491 Class Members and approximately 6,010 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all persons who are or previously were employed by defendant ACES 2020 I, LLC, a Delaware limited liability company (formerly known as Comprehensive Educational Services, Inc., a California Corporation), known in California as ACES 2020 I, LLC, doing business as ACES (“Defendant”), in California, and who were classified as non-exempt employees (“Class”) from April 16, 2016 to December 31, 2021 (“Class Period”). Agreement at §§ I(G) and (H). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(HH).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all persons who were employed by Defendant in California and who were classified as non-exempt employees (“Aggrieved Employees”) at any time during the period of April 6, 2019 to December 31, 2021 (“PAGA Period”). Agreement at §§ I(B) and (U). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is One Million Seven Hundred Fifteen Thousand Dollars (\$1,715,000). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” of not more than \$5,000 to Plaintiff in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ I(I), III(L)(9);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$571,666.66 **and** litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at §III(L)(10);

¹ The Agreement is attached as Ex “A” 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. A “**PAGA Settlement**” of Eighty Thousand Dollars (\$80,000) shall be allocated
2 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
3 Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay seventy-
4 five (75%) of the PAGA Settlement (\$60,000) to the Labor and Workforce Development Agency
5 (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$20,000) will be distributed
6 to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §III(L)(11); and

7 d. “**Settlement Administration Costs**” not to exceed \$60,000 payable to the
8 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
9 and Settlement Administration Costs. Agreement at § III(L)(12).

10 3. The “**Net Settlement Amount**” of approximately \$973,333.34 (Gross Settlement
11 Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA
12 Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class
13 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
14 worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class
15 Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
16 Payment of **\$92.78**. Agreement at §§ I(Q), III(L)(1); JCL Dec., ¶ 6.

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

24 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
25 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
26 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
27 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
28 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides a comprehensive suite of services dedicated to enhancing the quality of life for individuals and families impacted with Autism or other special needs. Defendant operates across eight states, including California. In California, Defendant operates thirty-six locations spread throughout the State. This action asserts claims on behalf of Defendant's non-exempt employees working at those California locations. Plaintiff worked for Defendant as a non-exempt Behavioral Interventionist employee in California between September of 2018 to January of 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and general employment practices. JCL Dec., ¶ 8.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, written policies requiring all loss prevention security checks to take place while on-the-clock, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On September 12, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On November 18, 2020, Plaintiff filed an Amended Notice of Violations with the LWDA and served the same on Defendant. Plaintiff's Amended PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10.

On November 19, 2020, Plaintiff filed a class action complaint in the Contra Costa County

Superior Court, Case No. C20-02482 (“Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in violation of *Bus. and Prof. Code* §§ 17200; (2) failure to pay minimum wages in violation of California *Labor Code* sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California *Labor Code* sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California *Labor Code* sections 226.7 and 512; (5) failure to provide required rest periods in violation of California *Labor Code* sections 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California *Labor Code* section 226; (7) failure to reimburse employees for required expenses in violation of California *Labor Code* section 2802; (8) failure to provide wages when due in violation of California *Labor Code* sections 201, 202, and 203; and (9) violations of the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 11.

After serving written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Econ One Research, Inc. (“Econ One”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

On September 14, 2021, the Parties participated in a full day mediation with highly regarded wage and hour mediator Jeff Krivis, Esq. The mediation concluded without a settlement. However, following the mediation the Parties continued settlement negotiations until they reached an agreement. The agreement was memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment, including portions of Defendant’s handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 14.

1 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
2 Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff's
3 hiring documents, payroll and time records, performance reviews and separation documents. Class
4 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
5 Plaintiff's claim that Defendant's failed to, among other things, provide accurate wage statements and
6 to provide compliant meal and rest periods. JCL Dec., ¶ 15.

7 Prior to mediation, Defendant produced the time and payroll records for the Class Members,
8 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the
9 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
10 policies, and agreements. In total, Class Counsel reviewed more than 2,000 pages of documents and
11 more than 10 million unique cells of time and payroll data. JCL Dec., ¶ 16.

12 Class Counsel then retained the statisticians and economists at Econ One to evaluate the Class
13 Members' payroll and time data. Econ One provides data analysis and damage modeling consulting
14 services specializing in wage and hour class actions. Econ One's team of financial and data analysts
15 are credentialed and experienced experts in their fields and have provided their expertise on thousands
16 of cases. JCL Dec., ¶ 17.

17 Econ One analyzed Defendant's time and payroll data to assist in the development of various
18 damage models. Among other things, Econ One determined the approximate number of work shifts,
19 workweeks, pay periods, average length of shift and average number of hours worked per week and
20 pay periods during the Class Period. Econ One also estimated the number of missed, late or truncated
21 meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period,
22 and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL
23 Dec., ¶ 18.

24 Prior to mediation, Class Counsel created several damage models predicated on Econ One's
25 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting
26 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
27 during the mediated settlement discussions. JCL Dec., ¶ 19.

28 ///

1 **C. The Parties Settled with the Assistance of the Mediator**

2 On September 14, 2021, the Parties conducted a full day of mediation with Jeff Krivis, Esq., a
3 highly regarded wage and hour mediator. After more than eight hours of arm's length and adversarial
4 negotiations, the mediation concluded without a settlement. However, the Parties continued to
5 negotiate and ultimately reached an agreement with this assistance of Mediator Krivis. The complete
6 and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits
7 that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL
8 Dec., ¶¶ 23-25.

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

10 1. The Composition of the Settlement Class Members

11 The proposed Settlement Class consists of all Defendant's current and former non-exempt
12 employees who are or previously were employed by Defendant and performed work in California
13 between April 6, 2016 and December 31, 2021. The Settlement Class excludes any person who submits
14 a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the
15 Settlement Class was comprised of 10,491 individuals that worked approximately 160,902 workweeks
16 between April 6, 2016, through December 31, 2021. Agreement at §III(A)(2).

17 2. The Settlement Consideration

18 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
19 Amount of \$1,715,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments
20 to the Settlement Class; (2) a Class Representative Service Award of \$5,000 to Plaintiff for her services
21 on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
22 Settlement in the amount of \$80,000; (4) Settlement Administration costs estimated at \$60,000; (5)
23 Class Counsel Award in the amount of \$596,666.66, comprised of attorneys' fees equal to one-third
24 of the Gross Settlement Amount estimated to be \$571,666.66 and an estimated \$25,000 for actually
25 incurred litigation expenses. See generally Agreement at §III(L).

26 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
27 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
28 distributed to each participating member of the Settlement Class Member. Agreement at §III(L)(1).

1 There is no reversion to Defendant and Defendant must separately pay for its share of the employer
2 payroll taxes. Agreement at §III(A)(1).

3 3. The Funding Date

4 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
5 Amount within sixty-five (65) days of the Court's entry of the order granting final approval of this
6 Settlement. Agreement at §I(M-N).

7 4. Formula for Calculating Individual Settlement Payments

8 Each Class Member will receive an Individual Settlement Payment. The Individual Settlement
9 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
10 in California during the Class Period. The Class Data provided by Defendant to the Settlement
11 Administrator will include the number of Workweeks for each Class Member and the number of PAGA
12 Workweeks worked during the relevant periods. Agreement at §I(F). Each Class Member's final
13 Individual Settlement Payment for purposes of payment will be calculated by using a fraction, the
14 numerator of which is the Class Member's total number of Workweeks, and the denominator of which
15 is the total number of Workweeks of all Class Members. For purposes of these calculations, a
16 Workweek shall mean each 40 hours worked during the Class Period by a Class Member as a non-
17 exempt employee in California. Class Members who worked less than 40 hours shall be credited with
18 one Workweek. Each Individual Settlement Payment will be reduced by any legally mandated
19 employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for
20 members of the Settlement Class who submit valid and timely requests for exclusion will be
21 redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion
22 on a pro rata basis. Agreement at §III(L)(1).

23 Given that there are approximately 10,491 Settlement Class Members, *the average gross*
24 *recovery is approximately \$92.78* (Net Settlement Amount divided by Settlement Class Members).
25 JCL Dec., ¶ 6.

26 5. Release by Participating Settlement Class Members

27 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
28 release the Released Parties from the Released Class Claims (those that were asserted in the Actions,

1 or could have been asserted in the Actions, based on the facts, claims and theories plead in the operative
2 complaint) that accrued during the Class Period. Agreement at §§I(BB) and III(B).

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

4 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
5 on behalf of the Aggrieved Employees, will release the Released Parties from any all claims or causes
6 of action *for civil penalties* arising under PAGA based on the facts and allegations contained in either
7 the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period.
8 Agreement at §§ I(CC) and III(C).

9 **III. ARGUMENT**

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

11 The proposed Settlement, including a Gross Settlement Amount of \$1,715,000 meets the
12 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
13 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
14 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
15 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
16 notice of the settlement has been distributed to class members for their comments and objections.
17 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
18 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
19 inquire into the fairness of the proposed settlement”).)

20 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
21 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
22 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
23 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
24 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
25 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
26 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
27 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
28 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely

1 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
2 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
3 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
4 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
5 action litigation”).)

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

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

14 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
15 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
16 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
17 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
18 § 11.51.)

19 The Parties participated in mediation the highly respected mediator Jeff Krivis, Esq. Mediator
20 Krivis managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks
21 to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist.
22 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
23 inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
24 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
25 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
26 at an arm’s length, adversarial and non-collusive. In fact, despite a full day of mediated negotiations,
27 the Parties reached an impasse and the mediation session concluded without a settlement. The matter
28 resolved only when Mediator Krivis issued a mediator’s proposal several months later that the Parties

1 accepted. Mediator Krivis only arrived at his proposal after hearing arguments, reviewing evidence,
2 and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 24.

3 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
4 regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-
5 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
6 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
7 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

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

10 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
11 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
12 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
13 Although no two cases are identical, this research provided Class Counsel with a marker to inform
14 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
15 Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense
16 counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL
17 Dec., ¶ 21.

18 Class Counsel only agreed to enter the Settlement following their thorough investigation and
19 evaluation of Plaintiff's claims. Based on his investigation of the facts, applicable law, and marketplace
20 for similar settlements, and considering the risk of significant delay, uncertainty associated with
21 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
22 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
23 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

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

25 The Gross Settlement Amount of \$1,715,000 is within the range of reasonableness. To determine
26 whether a settlement is fair and reasonable, the court should "consider enough information about the
27 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
28 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar*

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

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

14 The Gross Settlement Amount fair and reasonable considering the nature and magnitude of the
15 claims being settled and the various potential impediments to recovery. Prior to mediation, Class
16 Counsel retained Econ One to develop economic damage models measuring Defendant’s liability
17 exposure while accounting for the uncertainties of continued litigation. The various models were
18 informed by Class Counsel’s investigation, including the analysis of a significant sample of time and
19 payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA
20 Penalties) ranged between \$7,587,167.28 (“Realistic Damages”) and \$24,046,493.30 (“Maximum
21 Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims,
22 together with the uncertainty surrounding derivative liability for inaccurate wage statements and

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

1 waiting time penalties. Thus, the Gross Settlement Amount represents a recovery of between 7.1% and
2 22.6% of Defendant's class-wide exposure – well within the recognized range of reasonableness. The
3 following summarizes Defendant's liability exposure. JCL Dec., ¶ 26.

4 (1) Defendant's Estimated Exposure for Wage Statement Violations

5 Plaintiff's primary claim in the Action alleged that Defendant failed to furnish its employees
6 with accurate itemized wage statements. Specifically, Plaintiff alleges that Defendant issued wage
7 statements that failed to include Defendant's correct legal name in violation of Labor Code Section
8 226(a)(8). *See e.g. Noori v. Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957,
9 964-966 (providing serious truncations of the employer's name on issued wage statements can violate
10 Labor Code Section 226(a)(8) where confusion *might* ensue.) Defendant denied liability for the claim
11 and argued that it substantially complied with its obligation to provide its correct legal name on the
12 wage statements issued to its employees. Further, Defendant argued that even if it failed to furnish
13 accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. As
14 a result, Plaintiff discounted this claim 25% to account for this risk. Plaintiff estimated that Defendant's
15 exposure on this claim ranged between \$5,502,450 and \$7,336,600. JCL Dec., ¶ 27.

16 (2) Estimated Damages for Meal Period Violations

17 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
18 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and the Class Members were
19 not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that she is owed meal
20 period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 28.

21 Conversely, Defendant denied these claims. Defendant maintains that it fully complied with
22 California meal period laws and maintained legally compliant policies and practices. Defendant also
23 argued that it paid meal period premiums to Class Members in those pay periods when meal period
24 violations occurred. Courts have found that where an employer's meal period policies are compliant,
25 individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g. Lampe*
26 *v. Queen of the Valley Medical Center*, (2018) 19 Cal.App.5th 832, 851 (holding that although only
27 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not
28 certifiable because individualized issues existed as to the reasons for the late meal periods). If

1 successful, Defendant availed itself to a complete defense of Plaintiff's meal period claim. Defendant
2 also asserted that it paid meal period premiums to its employees in those pay periods when meal period
3 violations occurred throughout the Class Period. Thus, Defendant argued that there was no potential
4 liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 29.

5 Plaintiff's meal period claim (together with the rest period claim) likely represented the most
6 factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the
7 arguably individualized nature of the claim, Plaintiff's Realistic Damage model applied a 75% discount
8 to Defendant's potential liability for meal period violations. Plaintiff estimated the damages for this
9 claim ranged between **\$111,668.98** and **\$446,675.90**. JCL Dec., ¶ 30.

10 (3) Estimated Damages for Rest Period Violations

11 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
12 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
13 able to take timely and duty-free rest periods. JCL Dec., ¶ 31.

14 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
15 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
16 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
17 on Class Member testimony, making it a riskier claim at class certification and liability stages.
18 Defendant likely would have argued that only a small number of Class Members missed their rest
19 breaks. Certification likely would have required depositions of Class Members who provided
20 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
21 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
22 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
23 plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this
24 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
25 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
26 written policy does not generate uniform practices."). Accordingly, Plaintiff's Realistic Damage model
27 applied a 75% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for
28 this claim was between \$113,702.90 and \$454,808.75. JCL Dec., ¶ 32.

1 (4) Defendant's Estimated Exposure for Off-the-Clock Work

2 Plaintiff also alleges that Defendant failed to pay its employees for all hours worked.
3 Specifically, Plaintiff asserts that she and other Class Members performed a substantial amount of
4 work off-the-clock, including, but not limited to: preparing lesson plans, creating materials for student
5 activities, purchasing learning materials, and researching new learning activities for students. As a
6 result, Plaintiff and Class Members forfeited compensation for all the time they spent working under
7 Defendant's control. JCL Dec., ¶ 33.

8 Defendant vigorously denied liability for claim. Further, Defendant asserted that it had in place
9 a written policy required its employees to accurately record all their time worked daily and argued
10 that such written policies and procedures directed its employees not to work while off the clock.
11 Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because
12 individualized issues predominated. For example, even assuming Plaintiff performed work while off-
13 the-clock, which Defendant disputes, the tasks performed, and time spent would vary drastically from
14 class member to class member that it could not be established by common proof. Plaintiff recognized
15 the risks and uncertainties of certifying this claim. Consequently, Plaintiff's Realistic Damage model
16 applied a 75% discount to this claim. Plaintiff estimated Defendant's exposure for this claim ranged
17 between \$213,606.66 and \$854,426.65. JCL Dec., ¶ 34.

18 (5) Defendant's Estimated Exposure for Unreimbursed Business Expenses

19 Plaintiff alleged that Defendant required the Class Members to use their personal cellular phones
20 as a result of and in furtherance of their job duties but were not reimbursed by Defendant. JCL Dec.,
21 ¶ 35.

22 California employers who require employees to incur personal business expenses for work
23 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a),
24 providing that "An employer shall indemnify his or her employee for all necessary expenditures or
25 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
26 or her obedience to the directions of the employer..."). Specifically, Plaintiff and other Class Members
27 were required to use personal cell phones to (1) obtain navigation information; (2) communicate with
28

1 fellow employees; (3) receive work-related calls, emails, and text messages; and (4) contact clients.
2 JCL Dec., ¶ 35.

3 Again, Defendant vigorously denied any liability for this claim. Defendant argued that its written
4 policies provide for reimbursement to employees for necessary business expenses incurred in the
5 discharge of the employees' duties or at Defendant's direction. Defendant also argued that when
6 employees did incur business expenses, these expenses were fully reimbursed. This claim was also
7 heavily discounted – 85% in the Realistic Damage Model – based on Defendant's defenses. Plaintiff
8 estimated Defendant's exposure for this claim ranged between approximately **\$250,568.75** and
9 \$1,002,275. JCL Dec., ¶ 36.

10 (6) Defendant's Exposure for Waiting Time Penalties

11 Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability
12 for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
13 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could
14 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
15 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for
16 waiting time penalties ranged between \$1,395,170 and \$13,951,707. However, Class Counsel's
17 Conservative Model discounted the waiting time penalty claim by 90% to approximately \$1,395,170.70
18 because of the aforementioned risk factors. JCL Dec., ¶ 37.

19 (7) Defendant's PAGA Exposure

20 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
21 the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between \$408,360.00
22 and \$21,419,400. JCL Dec., ¶ 35. The proposed PAGA allocation of the Gross Settlement Amount is
23 fair, just and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
24 "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was
25 the result of self-interest at the expense of class members," such amounts are generally considered
26 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
27 Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two
28 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*

1 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
2 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
3 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
4 in the range of zero to two percent of the total settlement).

5 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$80,000 which is
6 4.6% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
7 Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$3,750.00) will be paid to the
8 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed to the
9 Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be
10 approved. JCL Dec., ¶ 39.

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

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

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

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

28 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot

1 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
2 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
3 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
4 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

5 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
6 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
7 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
8 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
9 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
10 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
13 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
14 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
17 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
20 certification of driver meal and rest period claims based on the predominance of individual issues).
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
23 settlement. JCL Dec., ¶¶ 41.

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

28 [N]othing is assured when litigating against commercial giants with vast

1 litigative resources, particular in such complex litigation as this, which
2 would strain the cognitive capacities of any jury. Defense judgments were
3 hardly beyond the realm of possibility. Accordingly, this factor weighs in
4 favor of preliminary approval.

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

6 Finally, continuing to litigate this action would require continued and extensive resources
7 coupled with significant Court time to proceed through trial and post-trial motions; which can often
8 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
9 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
10 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
11 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
12 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 42. “Avoiding such a trial and the
13 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
14 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
15 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
16 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

17 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,715,000 that is
18 roughly between approximately 22.6% (“Conservative Class Model”) and 71.3% (“Aggressive Class
19 Model”) Defendant’s maximum class wide liability exposure for damages. Given the amount of the
20 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
21 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 43.

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

23 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
24 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
25 information to decide whether they should accept the benefits offered, opt out and pursue their own
26 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
27 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
28 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not

request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §III(K). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 44.

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

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

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

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

1 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
2 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
3 (2009) 175 Cal.App.4th 785.)

4 The Settlement provides for a Class Representative Service Award of \$5,000 for Plaintiff. The
5 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
6 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
7 the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement
8 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to
9 provide Defendant a general release of all claims arising out of her employment. JCL Dec., ¶ 46.

10 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
11 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
12 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
13 Class Representative Service Award. JCL Dec., ¶ 47.

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

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

25 Class Counsel took this matter on a contingency fee basis and invested significant time and
26 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
27 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
28 Members. Considering the positive outcome for the Class Members, and in light of the supporting

1 authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 48.

2 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
3 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
4 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 49.

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

6 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
7 of the Class is appropriate. JCL Dec., ¶ 50.

8 1. The Standard for Class Certification

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

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

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

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

27 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
28 question” the element of predominance presents is whether “the issues which may be jointly tried, when

1 compared with those requiring separate adjudication, are so numerous or substantial that the
2 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
3 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

4 Because all Class Members are Defendant’s current and former employees, the class is readily
5 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 51.

6 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
7 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
8 liability can be determined by facts common to all members of the class. The wage and hour issues are
9 both numerous and substantial, and a class action is the most advantageous method of dealing with the
10 claims of the Settlement Class. JCL Dec., ¶ 52.

11 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
12 from the same factual basis and are based on the same legal theories applicable to the other Class
13 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
14 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
15 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
16 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
17 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 53.

18 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
19 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
20 gained state court settlement approval of the same class-wide causes of action that are at issue in this
21 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
22 represent the interests of this Class. JCL Dec., ¶¶ 55-62, Declaration of Shani Zakay, ¶¶ 1-3.

23 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
24 each individual claim, the Class Members likely have little incentive to litigate their claims on an
25 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
26 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
27 adjudication. JCL Dec., ¶ 54.

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Dated: June 17, 2022

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade, Esq.