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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

HECTOR KOSONROY, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

v.

WELDCRAFT INDUSTRIES, INC.; and
DOES 1-50, Inclusive,

Defendant(s).

Case No. VCU291864

Action Filed: May 26, 2022

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 20, 2023

Time: 8:30 AM

Dept.: 7

Judge: Hon. Brett Hillman

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 20, 2023, at 8:30 a.m., or as soon thereafter as counsel
3 may be heard, in Department 7 of the Tulare County Superior Court, the Honorable Brett Hillman
4 presiding, Plaintiff HECTOR KOSONNOY (hereinafter "Plaintiff") will, and hereby does, move this
5 Court to:

6 1. Preliminarily approve the settlement described in the Class Action and PAGA
7 Settlement Agreement ("Agreement") attached as Exhibit A to the Declaration of Nicole Barvie filed
8 concurrently herewith;

9 2. Conditionally certify the Settlement Class;

10 3. Approve distribution of the proposed Notice of Proposed Settlement of Class Action
11 and Hearing Date for Final Court Approval;

12 4. Appoint Plaintiff HECTOR KOSONNOY as the Class Representative;

13 5. Appoint Barvie Law, APC, JCL Law Firm, APC and Zakay Law Group, APLC as Class
14 Counsel; and

15 7. Set a hearing date for final approval of the settlement.

16 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points
17 and Authorities in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement;
18 (3) the Declaration of Nicole Barvie, Esq.; (4) the Declaration of Shani O. Zakay, Esq.; (5) the
19 Declaration of Jean-Claude Lapuyade, Esq; (6) the Class Action and PAGA Settlement Agreement
20 and exhibit attached thereto; (7) the [Proposed] Order Granting Preliminary Approval of Class Action
21 and PAGA Settlement and exhibits attached thereto; (8) the records, pleadings, and papers filed in this
22 action; and (9) upon such other documentary and oral evidence or argument as may be presented to
23 the Court at or prior to the hearing of this Motion.

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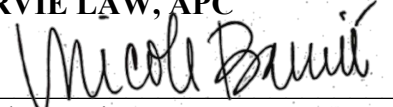
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1 As this Motion is unopposed, the Parties respectfully request relief from the page limit
2 requirement set by California Rules of Court, Rule 3.1113(d).

3
4 Dated: May 17, 2023

BARVIE LAW, APC

5 By: 
6 Nicole Barvie

7 Attorneys for Plaintiff
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I. INTRODUCTION

Plaintiff HECTOR KOSONNOY(hereinafter “Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement” or “Settlement”)¹, which if approved, would provide valuable monetary relief for approximately 95 members of the Settlement Class and 32 allegedly Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. **“Class” and “Class Period”** means “all non-exempt employees who are currently or previously were employed by Weldcraft Industries, Inc., and performed work in California during the period of May 26, 2018 to March 31, 2023 (the “Class Period”).” Agreement at §1.5.

2. The **“Aggrieved Employees”** and **“PAGA Period”** means “all non-exempt employees who are currently or previously were employed by Weldcraft Industries, Inc., and performed work in California during the period of January 5, 2021 to March 31, 2023 (the “PAGA Period”).” Agreement at §1.4.

3. The **“Gross Settlement Amount”** is Two Hundred Sixty-Five Thousand Dollars (\$265,000). Agreement at §1.22. The Gross Settlement Amount is non-reversionary and includes the following:

a. **“Class Representative Service Awards”** in the amount of \$10,00 to Plaintiff Hector Kosonoy for his services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §§ 1.15, 3.2(a) and 6.1(a).

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 Eighty-Eight Thousand Three Hundred and Thirty Three Dollars (\$88,333.00) out of \$265,000 plus costs and expenses not to exceed Twenty Thousand Dollars (\$20,000), to be paid to Class Counsel. Agreement at §3.2(b).

c. A **“PAGA Settlement”** of Five Thousand Dollars (\$10,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (\$7,500) (“LWDA Payment”) the California Labor and Workforce

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

1 Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Settlement
2 (\$2,500) (“Aggrieved Employee Payment”) to the Aggrieved Employees. Agreement at §3.2(d).

3 d. A “**Settlement Administration Costs**” not to exceed \$5,601.95 payable to the
4 proposed Settlement Administrator, APEX Class Action., for, *inter alia*, the administration of the Notice
5 Packet and Individual Settlement Payments. Agreement at §3.2(c).

6 4. The “**Net Settlement Amount**” of approximately \$131,065.05 (Gross Settlement Amount
7 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
8 Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata
9 basis according to the number of Workweeks each Settlement Class Member performed work in
10 California during the Class Period. The entire Net Settlement Amount will be paid to all Settlement
11 Class Members who do not opt out of the Settlement Class. Barvie Dec., ¶ 5.

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

19 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
20 approval under California law and is within the range of reasonableness. The average Individual
21 Settlement Payment to the Settlement Class meet or exceeds awards in similar wage and hour class
22 actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly,
23 Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement. Barvie
24 Dec., ¶ 6.

25 II. FACTS AND PROCEDURE

26 A. Overview of the Litigation

27 Defendant supplies farming equipment in Tulare County where Plaintiffs worked. Barvie
28 Dec., ¶ 7.

1 Plaintiff worked for Defendant between February 15, 2021 to July 23, 2021. Throughout his
2 employment, Plaintiff worked for Defendant in California and was classified as non-exempt hourly
3 employee. Plaintiff is a member of the Class and during his employment was subject to Defendant's
4 Employee Handbook and the other employment policies generally applicable to all non-exempt
5 employees. Barvie Dec., ¶ 8; Declaration of Hector Kosonoy ("Kosonoy Dec."), ¶¶ 1-7.

6 Generally, Plaintiff claims that Defendant (1) maintained unlawful meal and rest period policies
7 and practices that failed to provide duty free meal and rest periods; (2) failed to pay for time spent
8 working off-the-clock; (3) failed to pay reporting time pay; (4) issued inaccurate itemized wage
9 statements; (5) failed reimburse for required business expenses; and (6) failed to pay all wages when
10 due. Barvie Dec., ¶ 9. Defendant completely denies any liability or wrongdoing associated with these
11 allegations, but is settling this matter to buy its peace from this litigation.

12 On January 5, 2022, Plaintiff served Defendant and the Labor and Workforce Development
13 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
14 the facts and theories supporting Defendant's alleged violations of various provisions of the California
15 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of their intent to
16 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code
17 Sections 2698, *et seq* ("PAGA"). Barvie Dec., ¶ 10.

18 On May 26, 2022, Plaintiff filed a class action complaint in the Tulare County Superior Court for:
19 (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, *et seq*; (2) Failure to Pay
20 Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime
21 Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in
22 Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to
23 Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC
24 Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code
25 §§ 226 and 226.2; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202
26 and 203; and (8) Violations of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]. Barvie
27 Dec. ¶ 11.

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1 Prior to conducting any formal discovery, the Parties agreed to mediate this action. In
2 anticipation of mediation, the Parties agreed to stay formal discovery. To prepare for mediation, the
3 Parties agreed to informally exchange relevant documents and data points subject to the mediation
4 privilege. Pursuant to that agreement, Defendant produced a sample of the Class Members' time and
5 payroll data along with itemized wage statements and relevant policies applicable to Class Members.
6 As discussed *infra*, Plaintiff's counsel retained Berger Consulting Group to analyze Defendant's time
7 and payroll data. Barvie Dec., ¶ 12.

8 On March 31, 2023, the Parties participated in a full day mediation with a respected and
9 experienced wage and hour class action and PAGA mediator, Mr. Steven Mehta, Esq. After arms-length
10 negotiations and bargaining, the Parties reached an agreement to settle after both sides agreed to a
11 Mediator's proposal which was subsequently memorialized in the form of a Memorandum of
12 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form
13 settlement agreement, which is the subject of the instant motion. Barvie Dec., ¶ 13.

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

15 In November of 2021, Class Counsel began its pre-filing investigation into Plaintiff's complaints.
16 Class Counsel's investigation started with several lengthy interviews with the Plaintiff. As part of the
17 interview process, Plaintiff produced documents related to his employment for Defendant, including
18 itemized wage statements, and time and payroll records. At the conclusion of the interviews, Class
19 Counsel determined that Plaintiff's complaints justified further inquiry. Barvie Dec., ¶ 14.

20 Next, Class Counsel reviewed and analyzed the documents and believed the documents support
21 Plaintiff's claim that Defendant furnished inaccurate wage statements, maintained unlawful meal and
22 rest period policies and practices that failed to provide duty free meal and rest periods, and failed to pay
23 all wages when due. Shortly thereafter, Class Counsel summarized the known factual and legal issues
24 in the PAGA Notice addressed to the LWDA. Several months later, Class Counsel filed this action.
25 Barvie Dec., ¶ 15.

26 To prepare for mediation, Class Counsel requested several documents and data points to further
27 evaluate Plaintiff's claims and Defendant's potential liability exposure to the Class Members. In
28 response to Class Counsel's request, Defendant produced a sample of time and payroll records, itemized

1 wage statements, data for the Class, full and complete copies of applicable handbooks containing, *inter*
2 *alia*, compensation, timekeeping, and meal and rest period policies. Barvie Dec., ¶ 16.

3 Class Counsel then retained the business valuation, asset appraisal and litigation consultants at
4 Berger Consulting Group (“Berger”) to analyze Defendant’s time and payroll data. Berger provides
5 data analysis and damage modeling consulting services specializing in wage and hour class
6 actions. Berger’s team of financial and data analysts are credentialed and experienced experts in their
7 fields and have provided their expertise on thousands of cases. Stated differently, Berger is uniquely
8 qualified to analyze Defendant’s time and payroll data. Barvie Dec., ¶ 17.

9 Berger analyzed Defendant’s time and payroll data to assist in the development of various damage
10 models. Among other things, Berger determined the approximate number of work shifts, workweeks,
11 pay periods, average rate of pay, average length of shift and average number of hours worked shift
12 during the Class Period. Additionally, Berger estimated the number of allegedly unpaid wages,
13 reporting time premiums, missed, late or truncated meal and rest periods, the amount of meal period
14 premiums paid during the Class Period, and the amount of off-the-clock work performed by the Class
15 Members during the Class Period. Barvie Dec., ¶ 18.

16 Berger calculated and created a damage model for Defendant’s potential liability exposure while
17 accounting for the uncertainties of continued litigation. This damage model informed and guided Class
18 Counsel during the mediated settlement discussions. Barvie Dec., ¶ 19.

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

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1 to recovery, such as to make an independent assessment of the reasonableness of the terms to which the
2 parties have agreed. Barvie Dec., ¶ 20.

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

4 On March 31, 2023, the Parties participated in mediation with Mr. Steve Mehta, Esq. Mr. Mehta
5 is renowned for managing the expectations of the parties and providing a useful, neutral analysis of the
6 issues and risks to both sides. Prior to mediation, the parties exchanged information regarding their
7 respective claims and defenses, including their respective evaluation of the damages. While the Parties
8 attended the mediation voluntarily, it was always at arm's length and adversarial. Without revealing
9 any confidential information about the mediation itself, the Parties believe that a settlement could not
10 have been reached without the specific action of Mr. Mehta. At the conclusion of the mediation, each
11 side, represented by its respective counsel, agreed to settle the Action based on a Mediator's proposal
12 which was memorialized in the form of a Memorandum of Understanding. The complete and final terms
13 of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
14 constitutes a fair, adequate, and reasonable compromise of the claims at issue. Barvie Dec., ¶ 21.

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

16 1. The Composition of the Settlement Class Members

17 The proposed Settlement Class consists of all of Defendant's current and former non-exempt
18 employees employed in California during the Class Period. The Settlement Class excludes any person
19 who submits a timely and valid request for exclusion. Agreement at §8. There are approximately
20 95 members of the Settlement Class who collectively worked an estimated 6,034 Workweeks during the
21 Class Period. Agreement at §4.1.

22 2. The Settlement Consideration

23 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
24 Amount of \$265,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
25 the Class Members; (2) Class Representative Service Award in the amounts of \$10,000 to Plaintiff
26 Hector Kosonoy for his services on behalf of the Class Members and, equally important, for a general
27 release of claims, *except* as provided for in the Agreement at §6.1; (3) a PAGA Settlement in the amount
28 of \$10,000; (4) Settlement Administration costs estimated at \$5,601.95, (5) Class Counsel Award in the

1 amount of \$108,333.00 comprised of attorneys' fees not to exceed one-third of the Gross Settlement
2 Amount, estimated to be \$108,333, and actual litigation expenses not to exceed \$20,000. Agreement at
3 §3.2(a)-(d).

4 Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,
5 PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed
6 to the Settlement Class Members. Agreement at §1.28. There is no reversion to Defendant and
7 Defendant must separately pay for its share of the employer payroll taxes. Agreement at §3.1.

8 3. Formula for Calculating Individual Class Payments

9 Each Settlement Class Member will receive an Individual Class Payment. The Individual Class
10 Payment will be proportional to the number of Workweeks each member of the Settlement Class
11 Member worked for Defendant in California during the Class Period. Using the Class Data, the
12 Settlement Administrator shall add up the total number of Workweeks for the entire Settlement Class.
13 Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
14 calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the
15 Settlement Class Member's total number of Workweeks, and the denominator of which is the total
16 number of Workweeks of all Settlement Class Members. Agreement at §3.2(e).

17 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
18 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for any Class Member
19 who submits valid and timely requests for exclusion will be redistributed to Settlement Class on a pro
20 rata basis. Agreement at §3.2(e)(i).

21 Given that there are approximately 95 Settlement Class Members, **the average gross recovery is**
22 **approximately \$1,379.63** (Net Settlement Amount divided by Settlement Class Members). Barvie Dec.,

23 ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by
24 California state and federal courts. (*See, e.g., Shachno et al. v. KT Hotels, LLC, et al.*, San Diego Superior
25 Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The Express Group*
26 *Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery \$174.68);
27 *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625

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(average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98)).

4. Release by Participating Settlement Class Members

Generally, as of the funding in full of the Gross Settlement Amount, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims (all class claims alleged in the operative complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period). Agreement at §6.

5. Release by the LWDA and the Aggrieved Employees

Generally, as of the funding in full of the Gross Settlement Amount, the LWDA and the allegedly Aggrieved Employees will release the Released Parties from any all PAGA claims alleged in the operative complaint and Plaintiffs' PAGA notice to the LWDA which occurred during the PAGA Period. Agreement at §6.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$265,000, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")). In California, class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement")).

Although California Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th

1 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).)
2 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
3 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
4 intelligently;” (3) counsel is “experienced in similar litigation. ...” (*Dunk v. Ford Motor Co.* (1996) 48
5 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy goal
6 of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors
7 settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy
8 generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
9 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
10 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action
11 litigation”).)

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

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

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

24 On March 31, 2023, the Parties agreed to conduct a full day of mediation with Mr. Steve Mehta,
25 Esq. Mr. Mehta is renowned for managing the expectations of the parties and providing a useful, neutral
26 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-
27 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
28 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.

1 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
2 to ensure that the proceedings were free of collusion and undue pressure.”).) Barvie Dec., ¶ 21.

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

5 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
6 the factual and legal issues in dispute. In addition to the extensive exchange of documents and data for
7 mediation, document review, data analysis and legal research, Class Counsel also researched similar
8 wage and hour actions. Although no two cases are identical, this research provided Class Counsel with
9 a marker to inform settlement discussions and, ultimately, to measure this settlement against. The
10 investigation allowed to Class Counsel to realistically assess the value of Plaintiff’s claims and
11 intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement
12 now before the Court. Barvie Dec., ¶¶ 14-21.

13 Class Counsel only agreed to enter the Settlement after comprehensively investigating and
14 evaluating Plaintiff’s claims. Based on Class Counsel’s investigation of the facts, applicable law, and
15 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
16 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
17 Agreement to be in the best interests of Class Members. Because the Settlement’s terms are fair,
18 reasonable, and adequate, the Court should preliminarily approve the Settlement. Barvie Dec., ¶ 21.

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

20 The Gross Settlement Amount of \$265,000 is well within the range of reasonable for preliminary
21 approval. To determine whether a settlement is fair and reasonable, the court should “consider enough
22 information about the nature and magnitude of the claims being settled, as well as the impediments to
23 recovery, to make an independent assessment of the reasonableness of the terms to which the parties
24 have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.). In making this
25 determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement
26 is within the ‘ballpark of reasonableness.’” (*Id.*) For this analysis, courts do “not require any such explicit
27 statement of value; [they] require[] a record which allows an understanding of the amount that is in
28 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).) Barvie Dec., ¶ 22.

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

In conclusion, the settlement of \$265,000 represents approximately 20% of the value of the maximum potential *damages* at issue. Even when including the penalties for Plaintiffs’ claim for wage statement violations and waiting time penalties under Labor Code Sections 203 and 226, the settlement represents up to 14.67% of the maximum potential liability, assuming all of these amounts could be proved at trial. This is well within the bounds of reasonableness. (*See Viceral v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. 2015) 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the “range of reasonableness.”).) The following summarizes Defendant’s estimated exposure. Barvie Dec., ¶ 23.

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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”).

1 (1) Estimated Exposure for Unpaid Wages due to Rounding

2 One of Plaintiff's claims in the action is that Defendant had unlawful policies and procedures that
3 rounded time instead of paying Class members to the minute. This was evidenced in the time sheets
4 produced by Defendant. Defendant denied liability for this claim. Defendant asserted that it paid for all
5 time worked to the minute. Plaintiff estimated Defendant's liability for illegal rounding was
6 approximately \$114,027. Barvie Decl. ¶24.

7 (2) Estimated Exposure for Off-the-Clock Work

8 Another of Plaintiff's claims in the Actions was that Defendant failed to pay for all hours worked.
9 Specifically, Plaintiff asserted that Defendant required Plaintiff to work while clocked out during what
10 was supposed to be Plaintiff's off-duty meal break, as well as before Plaintiff's shift started and after it
11 ended. Barvie Dec., ¶ 25.

12 Defendant vigorously denied liability for claim. Defendant asserted that its written policies and
13 procedures directed its employees to ensure all work is conducted while on-the-clock. Defendant
14 asserted that any deviation from these written policies were employee specific and, thus, created
15 individualized issues of liability unsuitable for class treatment. Barvie Dec., ¶ 26.

16 Assuming five (5) minutes of unpaid compensable time for each shift for each Class Members,
17 during the Class Period, BCG estimated Defendant's exposure for this claim at \$91,565. Barvie
18 Dec., ¶ 27.

19 (3) Estimated Damages for Meal Period Violations

20 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Plaintiff contended
21 that because of Plaintiff's and Class Members' rigorous work requirements, the Class Members were
22 often denied complaint meal periods. Barvie Dec., ¶ 28. Labor Code § 512 requires employers to
23 provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five
24 hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive
25 a second thirty (30) minute uninterrupted and duty-free meal period. California Lab. Code § 226.7(c)
26 provides that "if an employer fails to provide an employee a meal or rest or recovery period in
27 accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer

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1 shall pay the employee one additional hour of pay at the employee's regular rate of compensation for
2 each workday that the meal or rest or recovery period is not provided."

3 Conversely, Defendant again argued that its policies and procedures required uninterrupted,
4 statutorily compliant meal breaks. Similarly, Defendant argued any divergence from these written
5 policies were not systematic and, if they existed at all, were employee specific. Defendant also asserted
6 that it maintained facially compliant meal period policies and practices throughout the Class Period.
7 Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations.
8 Barvie Dec., ¶ 29.

9 Plaintiff's meal period claim (together with the rest period claim) likely represented the most
10 factually contested claim in the Action. Accounting for the strength of Defendant's defenses, and the
11 arguably individualized nature of the claim, Plaintiff discounted Defendant's potential liability for meal
12 period violations. Plaintiff estimated the damages for this claim at \$544,593. Barvie Dec., ¶ 30.

13 (4) Estimated Damages for Rest Period Violations

14 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
15 Plaintiff alleged that because of his rigorous work schedule he was not able to take timely and duty-free
16 rest periods. Barvie Dec., ¶ 31. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized rest
17 period times shall be counted as hours worked for which there shall be no deduction from wages." Lab.
18 Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery
19 period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission,
20 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
21 compensation for each workday that the meal or rest or recovery period is not provided."

22 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
23 policies and practices throughout the Class Period. Moreover, Plaintiff recognized the evidentiary
24 burdens in establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
25 on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant
26 likely would have argued that only a small number of Class Members missed their rest breaks.
27 Certification likely would have required depositions of Class Members who provided declarations, and
28 Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or

1 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
2 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence
3 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
4 common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
5 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not
6 generate uniform practices.”). Accordingly, the rest break claim was valued an estimated at \$721,938.
7 Barvie Dec., ¶ 32.

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

9 Plaintiff alleged that Defendant’s alleged violations resulted in derivative violations of Labor
10 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
11 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove
12 the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,
13 Defendant could argue that Plaintiffs could not show that Class Members suffered an “injury” because
14 of wage statement violations, as required by Labor Code section 226. Defendant could also argue that
15 that meal and rest period violations do not entitle employees like Plaintiffs and the Class Members to
16 pursue the derivative waiting time and itemized wage statement penalties. (*See Maldonado v. Epsilon*
17 *Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiff would have to overcome precedent to prove the
18 Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406
19 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus,*
20 *Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or
21 actual injury). These claims represented Plaintiff’s most legally precarious and uncertain claims.
22 Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant’s *maximum* exposure
23 for these claims at approximately \$481,093 (approximately \$355,343 for waiting time and \$125,750 for
24 wage statement). Barvie Dec., ¶ 34.

25 (6) Defendant’s PAGA Exposure

26 Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties. At
27 the time of mediation, Plaintiff estimated Defendant’s PAGA exposure was approximately \$632,200.
28 Barvie Dec., ¶ 35.

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
2 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
3 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
4 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
5 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
7 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
8 6, 2016) (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
10 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
14 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
15 threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that its
16 employment practices complied with all applicable Labor Laws. In addition to those arguments
17 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
18 (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the
19 rest period claims. In all, Plaintiff’s PAGA liability exposure is hotly contested. Barvie Dec., ¶ 36.

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

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

27 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
28 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to

1 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
2 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
3 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

4 Assuming Plaintiff successfully argued against the defenses discussed above, Plaintiff then faced
5 the challenge of a contested class certification. The risks attendant to the certification of similar wage
6 and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d
7 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an
8 employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in
9 favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
10 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
11 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
12 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that
13 employees might not take their breaks were predominantly individualized questions of fact not
14 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
15 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
16 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
17 *L.P.* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker Rest. Corp. v. Superior Court of*
18 *San Diego Cnty.*, 53 Cal.4th 1004 (Cal. 2012), and denying certification of proposed off-the-clock and
19 rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008)
20 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the
21 predominance of individual issues).) Collectively, the examples cited above illustrate the uncertain
22 nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested
23 motion is a significant risk factor favoring settlement. Barvie Dec., ¶ 37.

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 inherently
27 perilous regardless of the strengths of merits of the claims:

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation and expects that Defendant would appeal any unfavorable judgment. *Barvie Dec.*, ¶ 38. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$265,000 that is roughly 20% of Defendant’s liability exposure for damages, and 14.67% of Defendant’s liability exposure for damages and penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. *Barvie Dec.*, ¶ 38.

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

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

1 of class members, California authorities generally require service of the class notice by mail or similar
2 reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50
3 Cal.App.3d 960, 972.)³

4 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement
5 Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses,
6 then mail the proposed Class Notice to entire Settlement Class. The Notice will include information
7 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
8 definition, the procedure and time period within which to requests for exclusions or objections to the
9 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
10 and the terms and scope of the Released Claims. Agreement at §5. This method was negotiated by the
11 Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring
12 cost effective administration of the Settlement. Barvie Dec., ¶ 39.

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

17 **C. The Court Should Preliminarily Approve the Class Representative Service Awards**

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

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.

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

4 The Settlement provides for Class Representative Service Awards of \$10,000⁴ to Plaintiff Hector
5 Kosonoy. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the
6 action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class
7 Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed
8 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and
9 agreeing to provide Defendant a general release of all claims arising out of their employment, *except* as
10 provided for in the Agreement at §6.1 and 6.1(a). Barvie Dec., ¶ 41.

11 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
12 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff

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15 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both
16 federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*,
17 No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue*
18 *v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement
19 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
20 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
21 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
22 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
23 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct.
24 July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No.
25 BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs along with
26 additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County
27 Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967
28 (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 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class
2 Representative Service Award. Barvie Dec., ¶ 42.

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

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

14 Class Counsel took this matter on a contingency fee basis and invested significant time and
15 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
16 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
17 The Agreement provides for a Class Counsel Award in the amount of up to one-third of the Gross
18 Settlement Amount and litigation costs and expenses not to exceed \$20,000. Agreement at §3.2(b). In
19 light of the positive outcome for the Settlement Class, and in light of the supporting authority, the
20 proposed Class Counsel award is fair and reasonable. Barvie Dec., ¶ 43.

21 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
22 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
23 for preliminary approval of the negotiated attorneys' fees. Barvie Dec., ¶ 44.

24 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

25 For the purpose of Settlement, Plaintiff contend, and Defendant does not dispute, that provisional
26 certification of the Settlement Class is appropriate. Barvie Dec., ¶ 45.

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1 1. The California Standard for Class Certification

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

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

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

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

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

25 Generally, the proposed Class consists of all of Defendant’s current and former non-exempt
26 employees employed in California during the Class Period. Defendant’s records show that the Class
27 consists of approximately 95 individuals, making joinder of all Class Members impracticable. Further,

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1 because all Class Members are Defendant's current and former employees, the class is readily
2 ascertainable from Defendant's regular business records, i.e., payroll records. Barvie Dec., ¶ 46.

3 The California statutes relating to each of Plaintiff's claims apply with equal force and effect to
4 the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Plaintiff
5 contends that Defendant's liability can be determined by facts common to all members of the class. The
6 wage and hour issues are both numerous and substantial, and a class action is the most advantageous
7 method of dealing with the claims of the Class Members. Barvie Dec., ¶ 47.

8 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
9 from the same factual basis and are based on the same legal theories applicable to the other Class
10 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
11 Class. Plaintiff alleged that he was injured by the same company-wide practices to which the proposed
12 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
13 to advocate for the interests of the Class Members by initiating this litigation, assisting in the
14 investigation of claims alleged in the action, and evaluating the proposed settlement to assure that it is
15 fair. Barvie Dec., ¶ 48.

16 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
17 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
18 gained state court settlement approval of the same class-wide causes of action that are at issue in this
19 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
20 represent the interests of this Class. Barvie Dec., ¶¶ 49, 51-52; Declaration of Shani Zakay, ¶¶ 1-3, and
21 Declaration of Jean-Claude Lapuyade, ¶¶ 1-3

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

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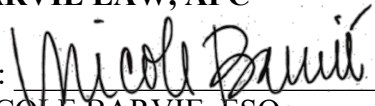
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IV. CONCLUSION

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

BARVIE LAW, APC

By: 
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