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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

JAMES F. RACHAL, JR., an individual, on  
behalf of himself, and on behalf of all persons  
similarly situated,

Plaintiff,

v.

ELG METALS, INC., a Pennsylvania  
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 20STCV45861

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

Date: November 18, 2022  
Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice  
Dept.: 1

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## SECONDARY SOURCES

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| 8  | .....                                                                                                   | 9-10, 18 |
| 9  | Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,                    |          |
| 10 | 53 UCLA L. Rev. 1303 (2006)                                                                             |          |
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| 12 | Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i> |          |
| 13 | <i>Study, J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35                 |          |
| 14 | .....                                                                                                   | 20       |
| 15 | Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)         |          |
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1 I. INTRODUCTION

2 Plaintiff JAMES F. RACHAL, JR. (collectively “Plaintiff”) seeks preliminary approval of the  
3 Joint Stipulation of Settlement and Release of Class and PAGA Action (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for approximately 40 members of the Class and 31  
5 PAGA Group Members. The basic terms of the Agreement provide for the following:

6 1. The “**Class**,” and “**Class Period**,” shall mean “all non-exempt employees of ELG  
7 METALS, INC. (“Defendant”) in California (“Class”) from January 18, 2017, to July 27, 2022 (“Class  
8 Period”). Agreement at §§ 1.7, 1.8.

9 2. The “**Settlement Class Members**” mean any and all Class Members who do not timely  
10 and validly opt-out of the Class Settlement. Agreement at § 1.36

11 a. The “**Class Size**” is comprised approximately 40 individuals who collectively  
12 worked approximately 6,400 Workweeks during the Class Period as estimated by Defendant at the time  
13 of mediation. Agreement at § 1.8.

14 3. The “**PAGA Group Members**” and “**PAGA Period**” means all non-exempt employees  
15 of Defendant in California (“PAGA Group Members”) from September 18, 2019, through July 27, 2022  
16 (“PAGA Period”). Agreement at § 1.24. PAGA Group Members do not have the ability to opt-out of  
17 the PAGA portion of the settlement. Agreement at § 8.5.

18 a. At the time of mediation, there were approximately 31 PAGA Group Members  
19 during the PAGA Period. (JCL Dec., ¶ 19).

20 4. The “**Gross Settlement Amount**” is Two Hundred Twelve Thousand, Five Hundred  
21 Dollars (\$212,500.00). Agreement at § 1.17. The Gross Settlement Amount is non-reversionary and  
22 includes the following:

23 a. An “**Incentive Award**” in the amount of \$10,000 to Plaintiff for his services on  
24 behalf of the Class Members, and for agreeing to a broad release. Agreement at § 1.18, 12.3;

25 b. An award of “**Class Counsel’s Attorneys’ Fees and Expenses**” in the amount  
26 not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be  
27

28 <sup>1</sup> 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.

Seventy Thousand, Eight Hundred Thirty-Three Dollars and Thirty-Three Cents (\$70,833.33) and reasonable documented costs not to exceed Twenty Thousand Dollars (\$20,000), to be paid to Class Counsel. Agreement at § 1.5;

c. A “**PAGA Payment**” of \$5,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall pay 75% of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Amount to the PAGA Group Members as part of the Net Settlement Amount. Agreement at § 1.25; and,

d. “**Settlement Administration Fees**” not to exceed \$6,000.00 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §§ 1.35, 7.1, 7.2.

3. The “**Net Settlement Amount**” of approximately \$100,666.67 (Gross Settlement Amount minus the Class Representative Incentive Award, Class Counsel’s Attorneys’ Fees and Expenses, Settlement Administration Fees, and the PAGA Payment) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$2,516.66**. Agreement at § 1.20; JCL Dec., ¶ 7.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payments to

1 the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the  
2 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff  
3 respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

## 4 II. FACTS AND PROCEDURE

### 5 A. Overview of the Litigation

6 Defendant is in the business of trading, processing, and recycling raw materials for the stainless-  
7 steel industry and recycles high performance materials for the aerospace industry throughout  
8 California, including Los Angeles County where Plaintiff worked. Plaintiff worked for Defendant as  
9 a non-exempt employee in California from September of 2003 until March 24, 2020. At all times  
10 during his employment, Plaintiff earned an hourly wage and was entitled to legally complaint meal  
11 and/or rest periods, minimum, regular, and overtime wages, and additional compensation in the form  
12 of non-discretionary incentive wages. Throughout his employment, Plaintiff was subject to  
13 Defendant's written policies and procedures contained in, among other documents, the Employee  
14 Handbook and "California State Supplement." JCL Dec., ¶ 9; Declaration of James F. Rachal, Jr.  
15 ("Rachal Dec.") at ¶¶ 1-5.

16 Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts  
17 that it fully complied with all applicable employment laws and raised several other significant defenses  
18 to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,  
19 compliant wage statements, reimbursed for all required business expenses, and payment of all wages  
20 upon separation. JCL Dec., ¶ 10.

21 On September 18, 2020, Plaintiff served Defendant and the Labor and Workforce Development  
22 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth  
23 the facts and theories supporting Defendant's alleged violations of various provisions of the California  
24 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to  
25 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections  
26 2698 *et seq* ("PAGA"). JCL Dec., ¶ 11.

27 On November 30, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior  
28 Court, Case Number 20STCV45861 (the "Action"). The Action alleged nine causes of action against

1 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§  
2 17200 *et seq*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (3)  
3 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (4) Failure  
4 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to  
5 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (6) Failure to  
6 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to  
7 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Pay  
8 Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; and (9) Violations of the  
9 Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). JCL Dec., ¶ 12.

10 On March 19, 2021, Defendant filed a notice of removal of action to the Central District Court,  
11 asserting diversity jurisdiction pursuant to 28 U.S.C. sections 1332(a), 1441, and 1446. The Central  
12 District Court remanded the case to Los Angeles County Superior Court shortly thereafter. JCL Dec.,  
13 ¶ 13.

14 Plaintiff commenced written discovery in May 2021. Defendant propounded written discovery  
15 in June 2021. After responding to each Party’s respective written discovery requests, the Parties agreed  
16 to mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional  
17 documents and data points subject to the mediation privilege, including but not limited to, all of the  
18 Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel  
19 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and  
20 payroll data. JCL Dec., ¶ 14.

21 On March 29, 2022, the Parties participated in a full day mediation with Hon. Steven Denton  
22 (Ret.), a highly regarded jurist and mediator. After arms-length negotiations and bargaining, the Parties  
23 reached an agreement to settle based on Judge Denton’s Mediator’s proposal and signed a  
24 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and  
25 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶  
26 15.

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

28 Months before filing the Action, Class Counsel began their pre-filing investigation into the

1 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with  
2 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,  
3 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that  
4 each of Plaintiff's complaints appeared to substantiate Plaintiff's claim that Defendant's failed to,  
5 among other things, pay for all time worked, reimburse for mandatory business expenses, and provide  
6 compliant meal and rest periods. JCL Dec., ¶ 16.

7 To prepare for mediation, Class Counsel requested documents and data points to further evaluate  
8 Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class  
9 Counsel's request, Defendant produced, among other things, the time and payroll records for all of the  
10 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,  
11 policies, and agreements. In total, Defendant produced several pages of pertinent policy documents,  
12 time records for Class Members, and more than 73,000 unique cells of payroll data for Class Counsel  
13 to analyze. JCL Dec., ¶ 17.

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

19 BCG analyzed Defendant's time and payroll data to assist in the development of various damage  
20 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of  
21 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average  
22 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal  
23 and rest periods, and the amount of missed meal and rest period premiums paid during the Class Period.  
24 JCL Dec., ¶ 19.

25 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining  
26 Plaintiff's suitability as a putative class representative through interviews, background investigations,  
27 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching  
28 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type

1 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's  
2 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues  
3 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's  
4 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the  
5 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the  
6 claims being settled, as well as the impediments to recovery, such as to make an independent  
7 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

8 Class Counsel only agreed to enter the Settlement following this thorough investigation and  
9 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace  
10 for similar settlements, and considering the risk of significant delay and uncertainty associated with  
11 litigation, and the various defenses asserted by Defendant, Class Counsel believe this Agreement to be  
12 in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and  
13 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

#### 14 **C. The Parties Settled at Mediation**

15 On March 29, 2022, the Parties conducted a full day of mediation with Hon. Steven Denton  
16 (Ret.), a highly regarded jurist and mediator. Judge Denton helped manage the Parties' expectations  
17 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial  
18 progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their  
19 respective claims and defense, including their respective evaluation of the damages. At the conclusion  
20 of the mediation, the Parties reached a settlement, which was subsequently memorialized in the form  
21 of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now  
22 set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and  
23 reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

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

##### 25 1. The Composition of the Settlement Class Members

26 The proposed Settlement Class consists of all non-exempt employees who are or previously were  
27 employed by Defendant in California between January 18, 2017, to July 27, 2022. The Settlement Class  
28 excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior

1 to the Mediation, there were approximately 40 Class Members who worked an estimated 6,400  
2 workweeks through the conclusion of the Class Period. Agreement at § 1.8. Additionally, at the time  
3 of mediation, Plaintiff's expert estimated that there were approximately 31 PAGA Group Members  
4 who worked approximately 1,682 pay periods during the PAGA Period. (JCL Dec., ¶ 20.)

5 2. The Settlement Consideration

6 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement  
7 Amount of \$212,500.00 The Gross Settlement Amount includes: (1) Individual Settlement Payments  
8 to the Settlement Class; (2) an Incentive Award of \$10,000 to Plaintiff for his services on behalf of the  
9 Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the  
10 amount of \$5,000; (4) Settlement Administration Fees estimated at \$6,000.00; (5) Class Counsel's  
11 Attorneys' Fees and Expenses in the amount of \$90,833.33 comprised of attorneys' fees equal to one-  
12 third of the Gross Settlement Amount currently estimated to be \$70,833.33, and an estimated \$20,000  
13 for actually incurred litigation expenses. See generally Agreement at § 1.5.

14 Subject to the Court approving the Incentive Award, Class Counsel's Attorneys' Fees and  
15 Expenses, PAGA Payment, and the Settlement Administration Fees, the Net Settlement Amount will  
16 be distributed to each participating member of the Settlement Class. Agreement at § 1.20. There is no  
17 reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes.  
18 Agreement at § 1.14, 6.1.

19 3. The Funding Date

20 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement  
21 Amount of \$212,500.00 within fifteen (15) calendar days of the Court's entry of the order granting  
22 final approval of this Settlement. Agreement at § 7.2.

23 4. Formula for Calculating Individual Settlement Payments

24 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual  
25 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member  
26 worked for Defendant in California during the Class Period. Each Settlement Class Member's final  
27 Individual Settlement Payment for purposes of payment will be calculated by dividing the total number  
28 of Workweeks attributed to all Settlement Class Members by all Workweeks attributed to members of

1 the Settlement Class, multiplied by the Net Settlement Amount. Agreement at § 9.2.

2 The Class List and Data provided by Defendant to the Settlement Administrator will include the  
3 pay periods worked during the PAGA Period and the workweeks worked during the Settlement Class  
4 Period. Agreement at § 8.2. Each Settlement Class Member's final Individual Settlement Payment for  
5 purposes of payment will be calculated by using a fraction, the numerator of which is the Settlement  
6 Class Member's total number of Workweeks, and the denominator of which is the total number of  
7 Workweeks of all Settlement Class Members. Each Individual Settlement Payment will be reduced by  
8 any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual  
9 Settlement Payments for members of the Settlement Class who submit valid and timely requests for  
10 exclusion will be redistributed to Settlement Class Members who do not submit valid and timely  
11 requests for exclusion on a pro rata basis. Agreement at § 9.2.

12 Given that there are approximately 40 Settlement Class Members, *the average gross recovery is*  
13 *approximately \$2,516.66* (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,  
14 ¶ 7.

15 5. Release by Participating Settlement Class Members

16 Generally, as of the Funding Date, which is fifteen (15) days after the Effective Date, Plaintiff  
17 and the Settlement Class Members will agree to release the Released Parties from the Released Class  
18 Claims, which are all claims and theories that were set forth, or that could have been set forth based on  
19 the facts alleged in the Action during the Class Period, including under California Labor Code sections  
20 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226(a), 226.3, 226.7, 510, 512, 558,  
21 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198, 1199, 2808, and related IWC Wage Orders,  
22 based on the various theories of liability, including, but not limited to, Defendant's alleged failure to:  
23 provide meal periods, provide rest periods, pay for all hours worked, pay overtime wages at the correct  
24 rate, pay minimum wage, provide reimbursement for business expenses, provide accurate wage  
25 statements, and timely pay all final wages at separation of employment. Agreement at §§ 1.31, 6.1.

26 6. PAGA Release by the State of California on behalf of the PAGA Group Members

27 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of  
28 California, on behalf of the PAGA Group Members, will release the Released Parties from all Released

1 PAGA Claims which include all claims for civil penalties under the PAGA, including pursuant to  
2 California Labor Code sections 2698 and 2699, predicated on the theories of liability that were set forth  
3 in the Action and Plaintiff’s notice to the LWDA. Agreement at § 1.32.

### 4 III. ARGUMENT

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

6 The proposed Settlement, including a Gross Settlement Amount of \$212,500.00 meets the  
7 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored  
8 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary  
9 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement  
10 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after  
11 notice of the settlement has been distributed to class members for their comments and objections.  
12 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the  
13 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to  
14 inquire into the fairness of the proposed settlement”).)

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

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

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

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

14           The Parties participated in mediation with Hon. Steven Denton (Ret.), a highly respected jurist  
15 and wage and hour class action mediator. Judge Denton managed the Parties’ expectations and  
16 provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*  
17 *Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)  
18 (mediator’s participation weighs considerably against any inference of a collusive settlement);  
19 *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-  
20 certification settlement negotiations helps to ensure that the proceedings were free of collusion and  
21 undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-  
22 collusive. The mediation concluded with a settlement, after both sides agreed to a Mediator’s proposal,  
23 which was subsequently memorialized in a Memorandum of Understanding (“MOU”). After reaching  
24 an agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the  
25 subject of the instant motion. The Agreement is the final product of these mediated negotiations.  
26 Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the  
27 claims at issue. JCL Dec., ¶ 23.

28       ///

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

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

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

The Gross Settlement Amount of \$212,500.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the

1 ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such  
2 explicit statement of value; [they] require[] a record which allows an understanding of the amount that  
3 is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*  
4 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a  
5 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might  
6 have received if they had succeeded at trial.<sup>2</sup> Indeed, “[t]he determination whether a settlement is  
7 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”  
8 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*  
9 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 24.

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

12 The Gross Settlement Amount of \$212,500.00 is fair and reasonable considering the nature and  
13 magnitude of the claims being settled and the various potential impediments to recovery. Prior to  
14 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s  
15 liability exposure while accounting for the uncertainties of continued litigation. The various models  
16 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time  
17 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding  
18 PAGA Penalties) ranged between \$1,030,249 million dollars for damages and \$1,539,849 million  
19 dollars for damages and statutory penalties if successful at trial. Thus, the Gross Settlement Amount of  
20 \$212,500.00 represents approximately 20.6% of Defendant’s *class-wide* liability exposure for damages,  
21 and approximately 13.8% of Defendant’s *class-wide* liability exposure for damages and statutory  
22 penalties, as estimated by Class Counsel at the time of mediation. The following summarizes

23 <sup>2</sup> 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.* (9<sup>th</sup> 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 Defendant's estimated exposure. JCL Dec., ¶ 25.

2 (1) Estimated Damages for Meal and Rest Period Violations

3 Plaintiff's primary claim in this Action alleges that Defendant failed to provide compliant meal  
4 and rest periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff,  
5 Class Members, and PAGA Group Members were not able to take timely and duty-free meal and rest  
6 periods. Consequently, Plaintiff alleges that he is owed meal period premiums for meal and rest period  
7 violations that occurred during the Class Period. JCL Dec., ¶ 26.

8 Conversely, Defendant argued, among other things, that it provided all their employees, i.e.,  
9 Class Members and PAGA Group Members, with the opportunity to take compliant meal and rest  
10 periods. Defendant also argued that it maintained facially compliant meal and rest period policies.  
11 Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal and rest period  
12 violations and any claimed violations required a highly individualized inquiry not suitable to class  
13 treatment. JCL Dec., ¶ 27. Plaintiff estimated Defendant's exposure for this claim was approximately  
14 \$967,585.00 dollars. JCL Dec., ¶ 28.

15 (2) Estimated Damages for Unreimbursed Business Expenses

16 Additionally, Plaintiff alleged that Defendant required Class Members and PAGA Group  
17 Members to incur personal expenses for the use of their own personal cellular phones. California  
18 employers who require employees to incur personal business expenses for work purposes must  
19 reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n  
20 employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the  
21 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the  
22 directions of the employer..."). Specifically, Plaintiff alleged Defendant required Plaintiff, Class  
23 Members, and PAGA Group Members to use their own cellular phones in order to perform work related  
24 tasks, but Defendant failed to reimburse them for the costs related to the use of their personal cellular  
25 phones in violation of California Labor Code section 2802. JCL Dec., ¶ 29.

26 Defendant argued, among other things, that when employees incurred business expenses, if any,  
27 these expenses were fully reimbursed. Plaintiff estimated that Defendant's exposure for this claim was  
28 approximately \$50,253.33. JCL Dec., ¶ 30.

1                                   (3) Estimated Exposure for Off-the-Clock Work

2           Plaintiff also alleged that Defendant failed to pay for all hours worked. Specifically, Plaintiff  
3 asserted that Defendant required Plaintiff and other employees to work while clocked out during what  
4 was supposed to be their off-duty meal break. JCL Dec., ¶ 31.

5           Defendant vigorously denied liability for claim. In preparation for mediation, Defendant  
6 produced its California specific policies. Defendant asserted that these written policies and procedures  
7 directed its employees to ensure all work is conducted while on-the-clock. Defendant asserted that any  
8 deviation from these written policies were location specific and, thus, created individualized issues of  
9 liability unsuitable for class treatment. JCL Dec., ¶ 32.

10          Plaintiff estimated Defendant's exposure for this claim was approximately \$62,664.00 dollars.  
11 JCL Dec., ¶ 33.

12                                   (4) Exposure for Wage Statement Violations and Waiting Time Penalties

13          Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor  
14 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential  
15 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiff could not prove  
16 the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally,  
17 Defendant could argue that Plaintiff could not show that Class Members suffered an "injury" because  
18 of wage statement violations, as required by Labor Code section 226. Plaintiff could not give the  
19 penalty claims great weight given that they depended on proving the underlying claims, which had their  
20 own risks. Plaintiff estimated Defendant's exposure for these claims to be approximately \$173,200.00  
21 dollars. JCL Dec., ¶ 34.

22                                   (5) Defendant's PAGA Exposure

23          Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At  
24 the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$504,600.00  
25 dollars. JCL Dec., ¶ 35.

26          Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*  
27 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties  
28 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties

1 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no  
2 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186  
3 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class  
4 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, \*40-43 (E.D. Cal. Apr.  
5 6, 2016) (PAGA penalties denied after trial).

6 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the  
7 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS  
8 13126, \*10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on  
9 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the  
10 defendant."). Here, Plaintiff would need to prove that each PAGA Group Member suffered a violation  
11 for each pay period the employee worked. Again, Defendant raised several defenses that presented  
12 serious threats to the claims of the Plaintiff and the PAGA Group Members. Defendant asserted that its  
13 employment practices complied with all applicable Labor Laws. In addition to those arguments  
14 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*  
15 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the  
16 rest period claims. JCL Dec., ¶ 36.

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

23 The proposed Settlement allocates \$5,000 to satisfy the PAGA claims. This amount represents  
24 2.3% of the Gross Settlement Amount. This is well within the range of approved PAGA Payments. *See*,  
25 *e.g., Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation);  
26 *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation  
27 in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 \* 6 (approving  
28 \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010

WL 2196104 \*2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 \* 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.) JCL Dec., ¶ 37.

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

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9<sup>th</sup> Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9<sup>th</sup> Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 38.

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

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

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

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

22 Given the amount of the settlement here, as compared to potential value of the claims, offset by  
23 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

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

25 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*  
26 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient  
27 information to decide whether they should accept the benefits offered, opt out and pursue their own  
28 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.

App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice 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.)<sup>3</sup>

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice 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. See generally Agreement at § 8. 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., ¶ 42.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice 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.”).) JCL Dec., ¶ 43.

### **C. The Court Should Preliminarily Approve the Incentive 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.* (9<sup>th</sup> 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

<sup>3</sup> 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* (7<sup>th</sup> Cir. 1987) 826 F.2d 729, 732.

1 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”  
2 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to  
3 named plaintiffs is that they should be compensated for the expense or risk they have incurred in  
4 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*  
5 (2009) 175 Cal.App.4th 785.)

6 The Settlement provides for an Incentive Award of \$10,000<sup>4</sup> for Plaintiff. The service award is  
7 fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel  
8 with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and  
9 the strategies for prosecuting the claims, responding to Defendant’s written discovery, reviewing the  
10 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement  
11 Class, and agreeing to provide Defendant a general release of all claims arising out of his employment.  
12 JCL Dec., ¶ 44.

13 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Incentive Award  
14 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above

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

showing is sufficient for preliminary approval of the negotiated Incentive Award. JCL Dec., ¶ 45.

**D. The Court Should Preliminarily Approve Class Counsel’s Attorneys’ Fees and Expenses**

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel’s Attorneys’ Fees and Expenses is fair and reasonable. JCL Dec., ¶ 46.

Plaintiff will file a formal motion for the negotiated award of Class Counsel’s Attorneys’ Fees and Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 47.

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

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 48; Rachal Dec. ¶¶ 6-9.

**1. The Standard for Class Certification**

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the

1 court” (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class  
2 certification is appropriate when there is an “ascertainable class and a well-defined community of  
3 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment  
4 is appropriate even if class members at some point may be required to make an individual showing as  
5 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;  
6 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

22 Because all Class Members are Defendant’s current and former employees, the class is readily  
23 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 49.

24 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire  
25 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s  
26 liability can be determined by facts common to all members of the class. The wage and hour issues are  
27 both numerous and substantial, and a class action is the most advantageous method of dealing with the  
28 claims of the Settlement Class. JCL Dec., ¶ 50.

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise  
2 from the same factual basis and are based on the same legal theories applicable to the other Class  
3 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement  
4 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed  
5 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability  
6 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive  
7 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 51.

8 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience  
9 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and  
10 gained state court settlement approval of the same class-wide causes of action that are at issue in this  
11 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to  
12 represent the interests of this Class. JCL Dec., ¶¶ 53-60, Declaration of Shani Zakay, ¶¶ 1-3.

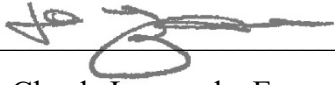
13 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
14 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
15 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each  
16 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case  
17 adjudication. JCL Dec., ¶ 52.

#### 18 IV. CONCLUSION

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

22 Dated: October 25, 2022

JCL LAW FIRM, APC

24 By:   
25 Jean-Claude Lapuyade, Esq.