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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

THOMAS HAVEN, BRETT OWENS, AND
DONAVON PATTERSON individuals, on
behalf of themselves and on behalf of all
persons similary situated,

Plaintiffs,

v.

CALIFORNIA VOCATIONS, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 20CV01514

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

Date: October 19, 2022

Time: 9:00 a.m.

Judge: Stephen E. Benson

Dept.: 6

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I. INTRODUCTION

Plaintiffs Thomas Haven, Brett Owens, and Donavon Zachariah Patterson (collectively “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 739 members of the Class. The basic terms of the Agreement provide for the following:

1. The “**Settlement Class Members**” “**Class Members**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by California Vocations, Inc. (“Defendant”) and performed work in California during the Class Period (“Class”). The Class Period is the period of time between April 6, 2016, to May 5, 2022 (“Class Period”). Agreement at §§ I(G) and (H). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(GG).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means “all non-exempt employees who are or previously were employed by Defendant and performed work in California during the PAGA Period (“Aggrieved Employees”) The PAGA Period is the period of time between August 3, 2019, to May 5, 2022 (“PAGA Period”). Agreement at §§ I(B) and (V). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is Five Hundred Eighty-Five Thousand Dollars (\$585,000). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §III(M)(9);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$195,000 *and* litigation costs and expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §III(M)(10);

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

1 c. A “**PAGA Settlement**” of \$30,000 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
3 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the
4 Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
5 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
6 Agreement at §III(M)(11); and,

7 d. “**Settlement Administration Costs**” not to exceed \$13,000 payable to the
8 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
9 and Individual Settlement Payments. Agreement at §III(M)(12).

10 4. The “**Net Settlement Amount**” of approximately \$297,000 (Gross Settlement Amount
11 minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and
12 Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-
13 rata basis according to the number of Workweeks each Settlement Class Member worked during the
14 Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do
15 not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$401.89**.
16 Agreement at §III(O)(1); JCL Dec., ¶ 6.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides residential and vocational support to developmentally disabled adults. Defendant operates a facility in Butte County where Plaintiff worked. This action asserts claims on behalf of Defendant's non-exempt employees who are or previously were employed in California. Plaintiffs worked for Defendant in various non-exempt job positions at various times during the Class Period. At all times during their employment, Plaintiff earned hourly wage, were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. JCL Dec., ¶ 8.

Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to reimburse for required business expenses. Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and reimbursed for all required business expenses. JCL Dec., ¶ 9.

On May 27, 2020, Plaintiff Haven served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). On January 19, 2022, Plaintiff Haven and Plaintiff Owens served Defendant and the LWDA with an amended notice. JCL Dec., ¶ 10.

On August 3, 2020, Plaintiff Haven filed a class action complaint in the Butte County Superior Court (the "Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in

1 Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation
2 of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in
3 Violation of Cal. Lab. Code § 226; (7) Failure to Reimburse Employees for Required Business
4 Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to provide wages when due in violation of
5 Cal. Lab. Code Sections § 201, 202, and 203, and (9) Violations of the Private Attorney General Act
6 at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). On March 29, 2022 Plaintiff Haven filed an amended
7 complaint adding Plaintiff Owens to the Action. On July 11, 2022, Plaintiffs filed a second amended
8 complaint adding Plaintiff Patterson to the Action. JCL Dec., ¶ 11.

9 After the Action was commenced, the Parties engaged in motion practice and significant written
10 discovery, including the dissemination of the *Belaire-West* notice to the Class Members. After
11 answering each party’s respective written discovery, and after Class Counsel had an opportunity to
12 contact many of the Class Members and discuss Plaintiffs’ claims with them, the Parties agreed to
13 mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional
14 documents and data points subject to the mediation privilege, including but not limited to, the Class
15 Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the
16 forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll
17 data. JCL Dec., ¶ 12.

18 On May 5, 2022 the Parties participated in a full day mediation with highly regarded wage and
19 hour mediator Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the Parties
20 reached an agreement to settle based on Judge Walsh’s mediator proposal, and signed a Memorandum
21 of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
22 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

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

24 Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into
25 the Plaintiff Haven’s complaints. Class Counsel’s investigation started with several lengthy interviews
26 with Plaintiff Haven. As part of the interview process, Plaintiff Haven produced documents related to
27 her employment, including time and payroll records. At the conclusion of the interviews, Class Counsel
28 determined that each of Plaintiff’s complaints appeared to substantiate Plaintiff’s claim that

1 Defendant's failed to, among other things, pay for all time worked and to provide compliant meal and
2 rest periods. Class Counsel continued its' investigation via formal discovery, including conducting
3 telephone interviews with numerous Class Members. JCL Dec., ¶ 14.

4 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
5 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
6 documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to
7 the Class Members. In response to Class Counsel's request, Defendant produced the time records for
8 the Class Members, aggregate workweek and pay period data for the Class Members, wage statements
9 for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter*
10 *alia*, compensation, timekeeping and meal and rest period policies. In total, Defendant produced over
11 thousands of pages of pertinent policy documents, time records for Class Members, and thousands of
12 unique cells of payroll data for Class Counsel to analyze. JCL Dec., ¶ 15.

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

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 number of work shifts, workweeks,
21 pay periods, average length of shift and average number of hours worked per week and pay periods
22 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
23 periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount
24 of off-the-clock work performed by the Class Members during the Class Period. BCG calculated and
25 created a damage model for Defendant's potential liability exposure while accounting for the
26 uncertainties of continued litigation. The damage model informed and guided Class Counsel during
27 the mediated settlement discussions. JCL Dec., ¶ 17.

28 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining

1 Plaintiff's suitability as a putative class representative through interviews, background investigations,
2 and analysis of her employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
3 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
4 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
5 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
6 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
7 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
8 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
9 claims being settled, as well as the impediments to recovery, such as to make an independent
10 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 19.

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

12 On May 5, 2022, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.),
13 a highly regarded jurist and mediator of wage and hour class actions. Judge Walsh helped manage the
14 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
15 Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged
16 information regarding their respective claims and defense, including their respective evaluation of the
17 damages. At the conclusion of the mediation, the Parties reached a settlement, which was subsequently
18 memorialized in the form of a Memorandum of Understanding. The complete and final terms of the
19 Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
20 constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 21-22.

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

22 1. The Composition of the Settlement Class Members

23 The proposed Settlement Class consists of all non-exempt employees who are or previously were
24 employed by Defendant in California between April 6, 2016 to May 5, 2022. The Settlement Class
25 excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior
26 to the Mediation, there were approximately 739 Class Members who worked an estimated 77,511
27 workweeks through the conclusion of the Class Period. Agreement at §III(A)(2).
28

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of \$585,000. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the
4 Settlement Class; (2) a Class Representative Service Award of \$10,000 to each Plaintiff for their
5 services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a
6 PAGA Settlement in the amount of \$30,000; (4) Settlement Administration costs estimated at \$13,000;
7 (5) Class Counsel Award in the amount of \$195,000 comprised of attorneys' fees equal to one-third of
8 the Gross Settlement Amount and an estimated \$20,000 for actually incurred litigation expenses. See
9 generally Agreement at §III(M).

10 Subject to the Court approving the Class Representative Service Awards, Class Counsel Award,
11 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
12 distributed to each participating member of the Settlement Class. Agreement at §III(M)(1). There is
13 no reversion to Defendant and Defendant must separately pay for its share of the employer payroll
14 taxes. Agreement at §III(A)(1).

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$585,000 Gross
17 Settlement Amount as follows: (1) \$400,000 within sixty-five (65) days of the Court's entry of the
18 order granting final approval of this Settlement, and (2) \$185,000 in twelve installments of \$15,416.67
19 paid monthly thereafter. Agreement at §III(A)(3).

20 4. Formula for Calculating Individual Settlement Payments

21 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
22 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
23 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
24 the Settlement Administrator will include the number of Workweeks for each Class Member and the
25 number of PAGA Pay Periods worked during the relevant periods. Agreement at §III(O). Each
26 Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
27 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
28 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class

Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(O)(1). Given that there are approximately 739 Settlement Class Members, the average gross recovery is approximately \$401.89 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Claims, which are all class claims alleged in the operative complaint which occurred during the Class Period. Agreement at §III(B).

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

Generally, upon the Funding Date, Plaintiffs, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period. Agreement at § III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$585,000 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.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the

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

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

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

22 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
23 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
24 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
25 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
26 § 11.51.)

27 The Parties participated in mediation the highly respected mediator Hon. Brian C. Walsh (Ret.).
28 Judge Walsh managed the Parties’ expectations and provided a useful, neutral analysis of the issues

1 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
2 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
3 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
4 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
5 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
6 at an arm’s length, adversarial and non-collusive. The matter resolved and the Parties reached a
7 settlement, which was memorialized in a Memorandum of Understanding after a full day of mediation.
8 JCL Dec., ¶ 21.

9 Once the Parties agreed to a settlement which was subsequently memorialized in the form of a
10 Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written
11 terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
12 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
13 product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
14 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

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

17 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
18 the factual and legal issues in dispute. In addition to formal and informal discovery, witness interviews,
19 document review, data analysis and legal research, Class Counsel also researched similar wage and
20 hour actions. The investigation allowed to Class Counsel to realistically assess the value of the claims
21 and intelligently engage defense counsel in settlement discussions that culminated in the proposed
22 settlement now before the Court. JCL Dec., ¶ 18.

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

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

2 The Gross Settlement Amount of \$585,000 is within the range of reasonableness. To determine
3 whether a settlement is fair and reasonable, the court should “consider enough information about the
4 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
5 independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar*
6 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
7 is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of
8 reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit
9 statement of value; [they] require[] a record which allows an understanding of the amount that is in
10 controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling*
11 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement
12 is not dependent upon its actual value approaching the potential recovery plaintiffs might have received
13 if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not
14 involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak*
15 *Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.*
16 (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 23.

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

19 In conclusion, the settlement of \$585,000.00 represents approximately 14.8% of the value of the
20 maximum potential *damages* at issue. Even when including the penalties for Plaintiff’s claim for wage
21 statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement
22 represents up to 8.3% of the maximum potential liability, assuming all of these amounts could be

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

proved at trial. This is well within the bounds of reasonableness. (*See Vicerol 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. JCL Dec., ¶ 24.

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

One of Plaintiffs’ primary claim in the Actions was that Defendant failed to pay for all hours worked. Specifically, Plaintiff asserted that Defendant required Plaintiff to undertake Covid-19 screenings before their shifts while clocked out. JCL Dec., ¶ 25. Defendant vigorously denied liability for this claim. Defendant asserted that these written policies and procedures directed its leadership to ensure all work is conducted while on-the-clock, including the Covid-19 screenings. Defendant further asserted that these screenings were only conducted for a short period of time during the Class Period. JCL Dec., ¶ 25.

Notwithstanding Defendant’s arguments, Plaintiff perceived the off-the-clock as the strongest claim in the Actions. Assuming five (5) minutes of unpaid compensable time per shift worked by the Class Members during 2020 and 2021, BCG estimated Defendant’s exposure for this claim at \$127,091.40. JCL Dec., ¶ 26.

(2) Estimated Damages for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Plaintiff contended that because of Plaintiff and Class Members’ rigorous work requirements, the Class Members were often denied meal periods. JCL Dec., ¶ 27. Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a

1 second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be
2 waived if the total hours worked is more than twelve (12) hours. California Lab. Code § 226.7(c) provides
3 that “if an employer fails to provide an employee a meal or rest or recovery period in accordance with a
4 state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the
5 employee one additional hour of pay at the employee's regular rate of compensation for each workday that
6 the meal or rest or recovery period is not provided.”

7 Conversely, Defendant argued that the vast majority of the Class Members were caretakers, who
8 supervised disabled individuals, and were therefore exempt from the Labor Codes requiring off-duty
9 meal and rest breaks, and instead subject to Wage Order 5’s requirement that such employees be
10 provided on-duty meal and rest breaks. Defendant argued, therefore, that the time records that did not
11 show punch outs for meal breaks did not reflect violations, but rather reflected on-duty, paid meal
12 breaks, consistent with Wage Order 5. Thus, Defendant argued that there was very little, if any,
13 potential liability for Plaintiff’s alleged meal period violations. JCL Dec., ¶ 28.

14 Plaintiff’s meal period claim (together with the rest period claim) likely represented the most
15 factually and legally contested claim in the Actions. Accounting for the strength of Defendant’s
16 defenses, the likely applicability of Wage Order 5, and the arguably individualized nature of those
17 claims, Plaintiffs heavily discounted Defendant’s potential liability for meal period violations. Plaintiff
18 estimated the damages for this claim at \$1,599,445.33. JCL Dec., ¶ 29.

19 (3) Estimated Damages for Rest Period Violations

20 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff
21 alleged that because of their rigorous work schedule they were not able to take timely and duty-free rest
22 periods. JCL Dec., ¶ 30. WC Wage Orders 5-2001 and 7-2001 provide that “[a]uthorized rest period times
23 shall be counted as hours worked for which there shall be no deduction from wages.” Lab. Code § 226.7(c)
24 provides that “if an employer fails to provide an employee a meal or rest or recovery period in accordance
25 with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the
26 employee one additional hour of pay at the employee's regular rate of compensation for each workday that
27 the meal or rest or recovery period is not provided.”

28 Again, Defendant denied liability and asserted that it maintained legally compliant rest period

1 policies and practices throughout the Class Period, and specifically in accordance with Wage Order 5 as
2 discussed above. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim.
3 Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making
4 it a riskier claim at class certification and liability stages. Certification likely would have required
5 depositions of Class Members who provided declarations, and Defendant surely would have obtained
6 opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g.,*
7 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing
8 testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy
9 is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of*
10 *California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence
11 confirms that the written policy does not generate uniform practices."). Accordingly, the rest break claim
12 was heavily discounted in Plaintiffs' valuation of the case and was estimated at \$1,599,445.33. JCL Dec.,
13 ¶ 31.

14 (4) Estimated Exposure for Unreimbursed Business Expenses

15 Plaintiffs alleged that Defendant required the Settlement Class Members to incur personal
16 expenses for the use of their personal cell phones. California employers who require employees to
17 incur personal business expenses for work purposes must reimburse the employee for the cost incurred.
18 (See Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for
19 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
20 of his or her duties, or of his or her obedience to the directions of the employer..."). Specifically,
21 Plaintiff alleged Defendant required Plaintiff and Class Members to use their personal cell phones in
22 order to perform work-related tasks, but Defendant failed to reimburse Plaintiff and Class Members for
23 the required business expenses in violation of Labor Code Section 2802. JCL Dec., ¶ 32.

24 Again, Defendant vigorously denied any liability for this claim. Defendant argued that on the
25 rare occasions where employees did incur business expenses, these employees had an opportunity to
26 submit expense reimbursement request, and have those expenses fully reimbursed. This claim was also
27 heavily discounted based on Defendant's defenses. Plaintiff estimated Defendant's exposure for this
28 claim at \$585,090. JCL Dec., ¶ 33.

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

2 Plaintiffs alleged that Defendant's alleged violations resulted in derivative violations of Labor
3 Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential
4 recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not
5 prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
6 Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an
7 "injury" because of wage statement violations, as required by Labor Code section 226. These claims
8 represented legally precarious and uncertain claims. Notwithstanding the uncertain nature of the
9 claims, Plaintiffs estimated Defendant's *maximum* exposure for these claims at approximately
10 \$3,073,378 (approximately \$1,558,728 for waiting time and \$1,514,650 for wage statement). JCL
11 Dec., ¶ 34.

12 (6) Defendant's PAGA Exposure

13 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
14 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure was approximately \$5,912,200.
15 JCL Dec., ¶ 35.

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

24 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
25 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
26 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
27 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
28 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation

1 for each pay period the employee worked. Again, Defendant raised several defenses that presented
2 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Defendant asserted that its
3 employment practices complied with all applicable Labor Laws. In all, Plaintiff's PAGA liability
4 exposure is hotly contested. JCL Dec., ¶ 36. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018),
5 illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim
6 upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's
7 good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
8 reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed
9 at trial, and even then, the PAGA penalties were reduced by 90%.

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

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

16 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
17 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
18 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
19 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
20 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
21 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
22 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
23 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
24 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
25 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
26 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
27 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
28 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following

1 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
2 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
3 certification of driver meal and rest period claims based on the predominance of individual issues).
4 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
5 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
6 settlement. JCL Dec., ¶ 37.

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

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

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

17 Finally, continuing to litigate this action would require continued and extensive resources
18 coupled with significant Court time to proceed through trial and post-trial motions; which can often
19 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
20 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
21 at trial, Plaintiff are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
22 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
23 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. “Avoiding such a trial and
24 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
25 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
26 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
27 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

28 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$585,000 that is roughly

14.8% of Defendant’s liability exposure for damages, and 8.3% 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. JCL Dec., ¶ 40.

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

The Parties jointly drafted the 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. 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., ¶ 41.

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

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

(the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Award of \$10,000⁴ for each Plaintiff.

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

1 The service awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of their case and the strategies for prosecuting the claims, responding to Defendant's written
4 discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate
5 relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising
6 out of her employment. JCL Dec., ¶ 43.

7 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
8 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs
9 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
10 Representative Service Award. JCL Dec., ¶ 44.

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

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

22 Class Counsel took this matter on a contingency fee basis and invested significant time and
23 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
24 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
25 Members. Considering the positive outcome for the Class Members, and in light of the supporting
26 authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 45.

27
28 *Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary
2 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
3 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

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

5 For Settlement, Plaintiffs contends, and Defendant does not dispute, that provisional certification
6 of the Class is appropriate. JCL Dec., ¶ 47.

7 1. The Standard for Class Certification

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

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

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

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

26 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
27 question” the element of predominance presents is whether “the issues which may be jointly tried, when
28 compared with those requiring separate adjudication, are so numerous or substantial that the

1 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
2 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

3 Because all Class Members are Defendant’s current and former employees, the class is readily
4 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 48.

5 Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
6 determined by facts common to all members of the class. The wage and hour issues are both numerous
7 and substantial, and a class action is the most advantageous method of dealing with the claims of the
8 Settlement Class. JCL Dec., ¶ 49.

9 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
10 from the same factual basis and are based on the same legal theories applicable to the other Class
11 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
12 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
13 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
14 their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
15 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
16 50.

17 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
18 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
19 certified, and gained state court settlement approval of the same class-wide causes of action that are at
20 issue in this case. Class Counsel’s wage and hour class action experience establishes that they are well
21 qualified to represent the interests of this Class. JCL Dec., ¶¶ 52-59, Declaration of Shani Zakay, ¶¶ 1-
22 3.

23 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
24 each individual claim, the Class Members likely have little incentive to litigate their claims on an
25 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
26 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
27 adjudication. JCL Dec., ¶ 51.
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Dated: September 16, 2022

By: 
Jean-Claude Lapuyade, Esq.