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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

SHASTA COLLINS, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

HILTON MANAGEMENT, LLC, a Delaware
limited liability company; and DOES 1 through
50, Inclusive;

Defendants.

Case No. CGC-21-590959

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

Date: August 30, 2024

Time: 9:00 a.m.

Judge: Hon. Anne-Christine Massullo
Dept.: 302

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1 **I. INTRODUCTION**

2 Plaintiff Shasta Collins (“Plaintiff”) seeks preliminary approval of the Settlement of Class and
3 PAGA Action Claims and Release of Claims (“Settlement”)¹, which if approved, would provide
4 valuable monetary relief for approximately 2,304 Class Members and 1,398 Aggrieved Employees.
5 The basic, proposed terms of the Settlement provide for the following:

6 1. The **“Class”** and **“Class Period”** means all non-exempt employees who are or previously were
7 employed by Defendant Hilton Management, LLC or Hilton Hotel Employer LLC (“Defendants”) and
8 performed work at the Hilton San Francisco Union Square Hotel during the period between February
9 22, 2017 and November 19, 2023. (“Class Period”). Agreement at §§ I(G), I(J); MOU at ¶ 1.

10 a. The **“Settlement Class Members”** means all Class Members who have not submitted a
11 timely and valid request for exclusion from the Settlement. Agreement at § I(KK).

12 b. The **“Class Size”** is comprised of 2,304 individuals who collectively worked
13 approximately 200,000 Workweeks during the Class Period as estimated by Defendants at the time of
14 mediation. Agreement at § III(A)(2); MOU at ¶ 13.

15 2. The **“Aggrieved Employees” or “PAGA Group”** means all non-exempt employees who are
16 or previously were employed by Defendants and performed work at the Hilton San Francisco Union
17 Square Hotel in California during the period between 7, 2019 and November 19, 2023 (“PAGA Period”).
18 Agreement at §§ I(C), I(Y); MOU at ¶ 2. Aggrieved Employees do not have the ability to opt-out of the
19 PAGA portion of the settlement. Agreement at § III(K)(7).

20 a. The **“Gross Settlement Amount”** is Two Million Dollars and Zero Cents
21 (\$2,000,000.00). Agreement at § I(P); MOU at ¶ 6. The Gross Settlement Amount is non-reversionary
22 and includes the following: (a) A “Service Award” mean an award in the amount of \$10,000 or in an
23 amount that the Court authorizes to be paid to the Plaintiff, in addition to her Individual Settlement
24

25 ¹ The basic terms of the Settlement are outlined in the fully executed Memorandum of Understanding, attached as Exhibit
26 2 to the Declaration Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 4. Additional proposed terms of the Settlement are outlined in
27 a long-form settlement agreement. As detailed herein, this long-form agreement has not been executed by Defendant, though
28 Defendant has not raised any issues with any specific provisions in the agreement. As the long-form agreement has now
been finalized for over half a year, but Defendants have not articulated specifically why they have not executed the long-
form agreement or when they plan on doing so. JCL Dec. at ¶ 15. The partially-executed long-form agreement is attached
as Exhibit 1 to the JCL Decl. 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 Payment and her individual Aggrieved Employee Payment, in recognition of her efforts and risks in
2 assisting with the prosecution of the Action. Agreement at §§ I(HH), III(L)(9); MOU at ¶ 9; (b)
3 **“Attorneys’ Fees and Expenses”** in the amount not of not more than \$726,666.67, comprised of one-
4 third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$666,666.66 *and*
5 litigation expenses not to exceed \$60,000.00, to be paid to Class Counsel. Agreement at §§ I(D), I(E),
6 III(L)(10); MOU at ¶¶ 15-16; (c) A **“PAGA Payment”** of One Hundred Thousand Dollars and Zero
7 Cents (\$100,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for
8 civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall
9 pay seventy-five (75%) of the PAGA Payment (\$75,000.00) to the Labor and Workforce Development
10 Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$25,000.00) will be
11 distributed to the Aggrieved Employees (“Aggrieved Employee Payments”). Agreement at §§ I(W),
12 III(L)(2); MOU at ¶ 10; and (d) **“Settlement Administration Costs”** not to exceed \$22,500.00 payable
13 to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class
14 Notice and Settlement Administration Costs. Agreement at § III(L)(12); MOU at ¶ 12; Declaration of
15 Claims Administrator Sean Hartranft (“Apex Decl.”) at ¶ 7.

16 4. The **“Net Settlement Amount”** of approximately \$1,140,833.33 (Gross Settlement Amount
17 less the requested Attorneys’ Fees and Expenses, Service Award, PAGA Payment and Settlement
18 Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis
19 according to the number of Workweeks each Settlement Class Member worked during the Class Period.
20 Agreement at §§ I(R), III(L)(1)-(12); MOU at ¶ 8. The entire Net Settlement Amount will be paid to
21 all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
22 Settlement Payment of **\$495.15**. JCL Dec., ¶ 7.

23 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
24 Class is fair, reasonable, and adequate. The MOU upon which the Settlement is based was negotiated
25 by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class
26 Members. The relief offered by the Settlement is particularly impressive when viewed against the
27 difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now
28

1 rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will
2 they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL
3 Dec., ¶ 7. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
4 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
5 the Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the
6 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
7 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

8 **II. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation:** Defendants own and operate hotels throughout the world, including
10 the Hilton San Francisco Union Square Hotel where Plaintiff worked. JCL Dec., ¶ 9. Plaintiff was
11 employed by Defendants from approximately July of 2019 to January of 2020 as a non-exempt
12 employee paid on an hourly basis, in a security officer position. Declaration of Shasta Collins (“Collins
13 Dec.”) at ¶ 4. Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to
14 provide compliant meal and rest periods, and failed to furnish accurate itemized wage statements.
15 Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures
16 contained in, among other documents, Defendants’ Employee Handbook. Defendants deny liability
17 for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all applicable
18 employment laws and raised several other significant defenses to Plaintiff’s claims, including but not
19 limited to, facially compliant meal and rest period policies, proper calculation of employees’ regular
20 rate of pay, and compliant wage statements. JCL Dec., ¶ 10.

21 On December 7, 2020, Plaintiff served Defendants 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 Defendants’ alleged violations of various provisions of the California
24 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her 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. On February 22, 2021, Plaintiff filed a class action complaint
27 in the San Francisco County Superior Court, Case No. CGC-21-589873 alleging eight causes of action
28

1 against Defendant Hilton Management, LLC for: (1) Unfair Competition in violation of Cal. Bus. &
2 Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§
3 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*
4 (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the
5 Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab.
6 Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse for Required
7 Expenses in violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage
8 Statements in violation of Cal. Lab Code §226; and (8) Failure to Pay Wages When Due in violation
9 of Cal. Lab. Code §§ 201, 202, and 203. On April 12, 2021, Plaintiff filed a separate complaint in the
10 San Francisco Superior Court, alleging a single claim under the Private Attorneys General Act (Labor
11 Code Sections 2698 *et seq.*) (“PAGA Complaint”). On April 12, 2021, Defendants removed the class
12 action to United States District Court for the Northern District of California. JCL Dec., ¶ 12.

13 The Parties agreed to mediate the case, and subsequently stipulated to dismiss the class action in
14 federal court and amend the PAGA Complaint to add the Class Complaint causes of action. Plaintiff
15 filed a First Amended Complaint (“FAC”) to her PAGA action on August 30, 2022, in order to add
16 these class claims. On October 17, 2023, Plaintiff designated Hilton Hotel Employer LLC as Doe 1 in
17 the operative complaint. The FAC is the operative complaint, and hereinafter referred to as the
18 “Action”. JCL Dec., ¶ 13. To prepare for mediation, Defendants agreed to informally produce
19 additional documents and data points subject to the mediation privilege, including but not limited to,
20 the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel
21 retained the forensic consultants at EconONE Research, Inc. (“Econ One”) to analyze this data. JCL
22 Dec., ¶ 14. On July 27, 2022, the Parties participated in mediation presided over by Jeffrey A. Ross,
23 Esq., an experienced wage and hour and PAGA mediator. The mediation did not conclude with a
24 settlement. On September 19, 2023, the Parties participated in their second mediation presided over by
25 Jeffrey A. Ross, Esq. This mediation concluded with a settlement, which was subsequently
26 memorialized in the form of a Memorandum of Understanding (“MOU”). The Parties executed the
27 MOU in November 2023. In December 2023, Plaintiff sent Defendant the long-form Settlement
28

1 Agreement, a partially executed copy of which has been attached as Exhibit 1 to the JCL Declaration.
2 Defendant raised an issue as to the selected settlement administrator, which the Parties further discussed
3 and ultimately resolved. Defendant has not raised any additional issues with any specific provision in
4 the long-form agreement, but has, for over half a year, failed to sign the long-form settlement
5 agreement. Accordingly, Plaintiff now moves for approval of Settlement based on the MOU, and on
6 the proposed settlement terms outlined in the long-form settlement agreement. JCL Dec., ¶ 15.

7 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues:** Months before filing
8 the Action, Class Counsel began its pre-filing investigation into the Plaintiff's complaints, beginning
9 with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced
10 documents related to her employment. Class Counsel also obtained Plaintiff's employee file from
11 Defendants which included Plaintiff's personnel and payroll records. Class Counsel reviewed and
12 analyzed the documents and determined that Plaintiff's complaints justified further inquiry. JCL Dec.,
13 ¶ 16. To prepare for mediation, Defendants produced the time and payroll records for the Class
14 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
15 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
16 handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents
17 and nearly millions of unique cells of time and payroll data. JCL Dec., ¶ 17. Class Counsel then retained
18 the statisticians and economists at Econ One to evaluate the Class Members' payroll and time data.
19 Econ One provides data analysis and damage modeling consulting services, specializing in wage and
20 hour class actions. Econ One's team of financial and data analysts are credentialed and experienced
21 experts in their fields and have provided their expertise on thousands of cases. JCL Dec., ¶ 18. Econ
22 One analyzed Defendants' time and payroll data to assist in the development of various damage models.
23 Among other things, Econ One determined the approximate number of workweeks, pay periods,
24 average length of shifts and average number of hours worked per week. Econ One also estimated the
25 number of missed, late, or truncated meal and rest periods, the amount of unpaid wages, and the amount
26 of meal and rest period premiums paid during the Class Period, and amounts underpaid for overtime,
27 doubletime, meal period premiums and sick pay. JCL Dec., ¶ 19.

1 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
2 Plaintiff's suitability as a putative class representative through interviews, background investigations,
3 and analysis of their employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
4 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
5 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants'
6 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
7 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
8 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
9 mediations. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
10 claims being settled, as well as the impediments to recovery, such as to make an independent
11 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20. Class
12 Counsel only agreed to enter the MOU and proposed Settlement terms following this thorough
13 investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable
14 law, and marketplace for similar settlements, and considering the risk of significant delay and
15 uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel
16 firmly believe this Settlement to be in the best interests of the Class Members. Because the Settlement's
17 terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL
18 Dec., ¶ 21.

19 **C. The Parties Settled at Mediation:** On July 27, 2022 and again on September 19, 2023, the
20 Parties conducted full day mediations with Jeffrey A. Ross, Esq. Mr. Ross helped manage the Parties'
21 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
22 made substantial progress with Mr. Ross' assistance. Namely, the Parties exchanged information
23 regarding their respective claims and defenses, including their respective evaluation of the damages.
24 The Parties' second mediation concluded with a settlement, memorialized by the detailed, fully
25 executed MOU. The complete and final terms of the Parties' negotiations are now set forth in the
26 Settlement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable
27 compromise of the claims at issue. JCL Dec., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims:

1. The Composition of the Settlement Class Members: The proposed Class consists of all non-exempt employees who are or previously were employed by Defendants and performed work at the Hilton San Francisco Union Square Hotel during the Class Period. Agreement at §§ I(G), I(J); MOU at ¶ 1. The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(KK). At the time of mediation, Defendants estimated that the Class was comprised of 2,304 individuals who worked approximately 200,000 workweeks during the Class Period. Agreement at § III(A)(2); MOU at 13.

2. The Settlement Consideration: The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00). The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Service Award of not more than \$10,000.00 to Plaintiff for her services on behalf of the Class; (3) a PAGA Payment in the amount of \$100,000.00; (4) Settlement Administration Costs estimated at \$22,500.00; (5) Attorneys' Fees and Expenses in the amount of \$726,666.67, comprised of one-third of the Gross Settlement Amount for attorney's fees, currently estimated to be \$666,666.67 and litigation expenses not to exceed \$60,000.00 for actually incurred litigation expenses. See generally Agreement at § III(L); MOU at ¶¶ 6; 9-10; 15-16. Subject to the Court approving the Service Award, Attorneys' Fees and Expenses, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § I(R). There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1); MOU at ¶ 6.

3. The Funding Date: Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount within sixty (60) calendar days of the Court's entry of the order granting final approval of this Settlement. Agreement at §§ I(N)-(O); MOU at ¶ 22.

4. Formula for Calculating Individual Settlement Payments: Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendants in California during the Class

Period, which will be based on data provided by Defendant to the Settlement Administrator as to the time period worked by each Class Member. Agreement at § III(L)(1); MOU at ¶ 8. 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 Members 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(L)(1). Given that there are approximately 2,304 Settlement Class Members, the average gross recovery is approximately \$495.15 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 7.

5. Release by Settlement Class Members: Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ I(DD), III(B); MOU at ¶ 17.

6. PAGA Release by the State of California on behalf of the Aggrieved Employees: Generally, as of the Funding Date, the Plaintiff and the LWDA release the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ I(EE), III(C); MOU at ¶ 18.

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement: The proposed Settlement, including a Gross Settlement Amount of \$2,000,000.00 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. 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). Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90. Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-

length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation...” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236. Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination Fee Cases, supra* at 1389. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel: “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482. Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.) The Parties participated in two separate mediations with the mediator Jeffrey A. Ross. Mr. Ross managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) After two full day mediations, the Parties reached an agreement and the second mediation session concluded with a settlement. JCL Dec., ¶ 23. The Parties finalized and executed the terms of the Memorandum of Understanding, the terms of which are fair, adequate and represent a reasonable compromise of the claims at issue. The Parties then engaged in negotiations regarding a long-form settlement agreement. As noted above, although Defendant has not executed the long-form agreement, Defendant has not raised an issue with any specific provision within the agreement. It is unclear to Plaintiff why Defendant has failed to execute the long-form agreement, which was finalized over half a year ago. JCL Dec., ¶ 24.

1 2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the
2 Settlement's Reasonableness: As set forth in greater detail above, Class Counsel conducted a
3 thorough investigation into the factual and legal issues in dispute. In addition to informal
4 discovery, document review, data analysis and legal research, Class Counsel also researched
5 similar wage and hour actions. Although no two cases are identical, this research provided Class
6 Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement
7 against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's
8 claims and intelligently engage defense counsel in settlement discussions that culminated in the
9 proposed settlement now before the Court. JCL Dec., ¶ 25. Class Counsel only agreed to enter
10 settle the Action following their thorough investigation and evaluation of Plaintiff's claims. Based
11 on this investigation of the facts, applicable law, and marketplace for similar settlements, and
12 considering the risk of significant delay, uncertainty associated with litigation, and the various
13 defenses asserted by Defendants, Class Counsel firmly believes this Settlement to be in the best
14 interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate,
15 the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

16 3. The Settlement Falls Within the Recognized Range of Reasonableness: The Gross
17 Settlement Amount of \$2,000,000.00 is within the range of reasonableness. To determine whether
18 a settlement is fair and reasonable, the court should "consider enough information about the nature
19 and magnitude of the claims being settled, as well as the impediments to recovery, to make an
20 independent assessment of the reasonableness of the terms to which the parties have agreed."
21 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this
22 determination, the court is "not to try the case" but rather "satisfy itself that the class action
23 settlement is within the 'ballpark of reasonableness.'" *Id.* For this analysis, courts do "not require
24 any such explicit statement of value; [they] require[] a record which allows an understanding of
25 the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz*
26 *v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409. The reasonableness of a
27 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs
28

might have received if they had succeeded at trial. Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” *Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186.

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness: The Gross Settlement Amount of \$2,000,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Econ One to develop an economic damage model measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The damage model was informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding penalties) was approximately \$10,895,109 if successful at trial. This consists of \$222,503.20 in estimated damages for Defendants’ alleged failure to properly calculate Class Members’ regular rate of pay, \$5,217,323 in estimated damages for Defendants’ alleged failure to provide complaint meal periods; \$5,063,811 in estimated damages for Defendants’ alleged failure to provide compliant rest periods, and \$391,472 in estimated damages for Defendants’ alleged failure to furnish accurate, itemized wage statements. JCL Dec., ¶ 27. Thus, the Gross Settlement Amount of \$2,000,000.00 represents approximately 20% of Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendants’ estimated exposure.

In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) the court approved a settlement of an action claiming unpaid wages where the settlement amount constituted roughly 10% of the estimated actual damages to the class, finding the settlement to be fair, reasonable and adequate. Here, the settlement consideration far exceeds the percentage approved in *Stovall-Gusman*, thus this settlement is entitled to preliminary approval. Lastly, Plaintiff calculated that

Defendants' liability exposure for civil penalties pursuant to the PAGA as \$814,250.² JCL Dec., ¶ 28. Here, the Parties negotiated a good faith payment for PAGA penalties in the amount of \$100,000 which is 5% of the Gross Settlement Amount. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.

b. Inherent Risks of Continued Litigation Support Preliminary Approval: There was also a significant risk that, if the Action was not settled, Plaintiff would be unable to obtain class certification and thereby not recover on behalf of any employee other than themselves. Defendants argued that the individual experience of each employee varied with respect to the alleged claims. While other cases have approved class certification of wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. JCL Dec., ¶ 29. This Settlement is therefore entitled to preliminary approval. Were this case to go to trial, the Plaintiff and other Class Members would need to prove to the satisfaction of the Court, among other things, that wages, premiums, and other damages were owed on a class-wide basis. This was and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and informed counsel, recognized the potential risks and agreed on the settlement. The "risk, expense, complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in

² Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by Defendants, including that Class Members may not be able to recover subsequent penalties until, at a minimum, Plaintiffs provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008) In addition, Plaintiffs recognize that PAGA claims bear some risk. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after the plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

evaluating the reasonableness of [a] settlement.”)

c. **The Proposed Notice Informs the Class about the Case and Settlement:** The Settlement Class Members are 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. Here, 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. Agreement at § III(K). This is a reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 30. 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.

C. **The Court Should Preliminarily Approve the Service Award:** Service Awards “are fairly typical in class action cases” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000) and “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.) The Settlement provides for a Service Award of \$10,000.00 to Plaintiff. The Service Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,

1 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
2 the status of her case and the strategies for prosecuting the claims, and reviewing the proposed
3 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class
4 Members. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service
5 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
6 above showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 31.

7 **D. The Court Should Preliminarily Approve the Attorneys' Fees and Expenses:** The purpose
8 of a payment of Attorneys' Fees and Expenses in class action litigation is to reward counsel who took
9 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
10 California courts routinely award attorneys' fees equaling one-third or more of the potential value of the
11 common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
12 Cal.App.4th 43, 66 n.11. Class Counsel took this matter on a contingency fee basis and invested
13 significant time and expense successfully prosecuting Plaintiff's claims. The estimated average
14 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
15 Members. Considering the positive outcome for the Class Members, and in light of the supporting
16 authority, the proposed Attorneys' Fees and Expenses are fair and reasonable. JCL Dec., ¶ 32. Plaintiff
17 will file a formal motion for the negotiated Attorneys' Fees and Expenses once preliminary approval of
18 the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for
19 preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 33.

20 **E. Provisional Certification for Settlement Purposes Is Appropriate:** For Settlement purposes
21 only, Plaintiff contends that provisional certification of the Class is appropriate. JCL Dec., ¶ 34.

22 1. The Standard for Class Certification: Class actions are statutorily authorized "when the
23 question is one of common or general interest, of many persons, or when the parties are numerous, and
24 it is impracticable to bring them all before the court" (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.*
25 (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an "ascertainable
26 class and a well-defined community of interest among class members." (*Sav-On Drug Stores, Inc.*
27 (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be
28

1 required to make an individual showing as to eligibility for recovery. (*Bufil v. Dollar Financial Group,*
2 *Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

3 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community
4 of Interest Among the Settlement Class Members: Whether a class is “ascertainable” within the meaning
5 of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size
6 of the class, and (3) the means available for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.)
7 Class members are ascertainable where they may be readily identified without unreasonable expense or
8 time by reference to official records. (*Id.*) The community of interest requirement embodies three
9 factors: (1) predominant common questions of law or fact; (2) a class representative with claims or
10 defenses typical of the class; and (3) a class representative and counsel who can adequately represent
11 the class. (*Cal. Civ. Proc. Code* § 382.) In April 2012, the Supreme Court expounded on the element of
12 predominance: The “ultimate question” the element of predominance presents is whether “the issues
13 which may be jointly tried, when compared with those requiring separate adjudication, are so numerous
14 or substantial that the maintenance of a class action would be advantageous to the judicial process and
15 to the litigants.” (*Brinker*, 53 Cal. 4th at 1021-1022). Because all Class Members are Defendants’ current
16 and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e.,
17 payroll records. JCL Dec., ¶ 35. The statutes relating to each of Plaintiff’s claims apply with equal force
18 and effect to the entire Class. Factually, Defendants’ policies and practices apply class-wide and
19 Defendants’ liability can be determined by facts common to all members of the class. The wage and
20 hour issues are both numerous and substantial, and a class action is the most advantageous method of
21 dealing with the claims of the Settlement Class Members. JCL Dec., ¶ 36. Plaintiff’s wage and hour
22 claims are typical of the proposed Class because they arise from the same factual basis and are based on
23 the same legal theories applicable to the other Class Members. Likewise, Plaintiff’s interests are entirely
24 coextensive with the interests of the Class. Plaintiff alleges that she was injured by the same company-
25 wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff
26 has already demonstrated her ability to advocate for the interests of the Class Member by initiating this
27 litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that
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1 it is fair. JCL Dec., ¶ 37.

2 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
3 in litigating wage and hour class action cases, and have successfully briefed, argued, certified, and
4 gained state court settlement approval of the same class-wide causes of action that are at issue in this
5 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
6 represent the interests of this Class. JCL Dec., ¶¶ 38-57, Declaration of Shani Zakay, ¶¶ 1-3. A class
7 action is superior to a multitude of individual lawsuits. Given the size and amount of each individual
8 claim, the Class Members have little incentive to litigate their claims on an individual basis because the
9 out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any
10 potential recovery. Class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 49.

11 **IV. CONCLUSION**

12 The Parties have negotiated a fair and reasonable settlement of claims. Accordingly, Plaintiff
13 requests that the Court preliminarily approve the settlement, the terms of which are outlined in the
14 Parties' MOU, and more fully detailed in the partially-executed Settlement agreement.

15
16 Dated: August 1, 2024

JCL LAW FIRM, APC

17 By: 
18 Jean-Claude Lapuyade, Esq.