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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JIE XU, individually and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

HT MULTINATIONAL, INC., a California
Corporation; CHTC (USA), INC., a
California Corporation; HT INDUSTRIES,
INC., a Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. CIVDS 2015679

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

Date: July 15, 2022

Time: 9:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

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I. INTRODUCTION

Plaintiff JIE XU (“Plaintiff”) seeks 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 30 members of the Class and 22 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**,” “**Class**,” and “**Class Period**” shall mean all of Defendant HT MULTINATIONAL, INC. dba HT INDUSTRIES, INC., and Defendant CHTC (USA), INC. (“Defendants”) current and former employees, classified at some point within the Class Period as exempt but who were not paid a monthly salary of at least two times the applicable minimum wage, employed in California (“Class Members” or “Class”) during the period from April 6, 2016, through April 23, 2022 (“Class Period”). Agreement at §§ I(G), (H).

2. The “**Settlement Class Members**” and “**Settlement Class**” refers to all Class Members who have not submitted a timely and valid Request for Exclusion by the Response Deadline. Agreement at § I(HH).

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all of Defendants’ current and former employees, classified at some point within the PAGA Period as exempt but who were not paid a monthly salary of at least two times the applicable minimum wage, employed in California (“Aggrieved Employees”) during the period from April 6, 2019, through April 23, 2022 (“PAGA Period”). Agreement at §§ I(B), (V). Aggrieved Employees may not object to the PAGA Settlement. Agreement at § (N)(8).

4. The “**Gross Settlement Amount**” is One Hundred Fifty Thousand Dollars (\$150,000.00). 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 Plaintiff in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release including all claims arising from Plaintiff’s relationship with Defendants. Agreement at §§ I(I);

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 b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross
2 Settlement Amount for attorney’s fees, currently estimated to be \$50,000 *plus* litigation costs and
3 expenses not to exceed Fifteen Thousand Dollars (\$15,000), to be paid to Class Counsel. Agreement
4 at § III(M)(10);

5 c. A “**PAGA Settlement**” of Five Thousand Dollars (\$5,000) shall be set aside from
6 the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys
7 General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay \$3,750.00
8 representing 75% of the PAGA Settlement to the Labor and Workforce Development Agency (“LWDA
9 Payment”). The Settlement Administrator shall distribute \$1,250 representing 25% of the PAGA
10 Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § III(M)(11);
11 and

12 d. “**Settlement Administration Costs**” not to exceed \$5,000 payable to the
13 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and
14 Individual Settlement Payments. Agreement at §§ I(GG), III(M)(12).

15 3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount less
16 Class Counsel Award, Class Representative Service Award, the PAGA Settlement, Settlement
17 Administration Costs. Agreement at § I(Q). The Net Settlement Amount is approximately \$65,000
18 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of
19 Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement
20 Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in
21 an average Individual Settlement Payment of approximately **\$2,166.66**. Declaration of Jean-Claude
22 Lapuyade (“JCL Dec.”), ¶ 6.

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

denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants are California Corporations and are wholly owned subsidiaries of Chinese corporations. Defendants are in the business of importing and selling buses and bus parts throughout the United States, including California. Plaintiff worked for Defendants as an exempt employee in California from approximately March of 2019 to March of 2020. Throughout her employment, Defendants failed to pay Plaintiff a monthly salary of at least two times the applicable minimum wage in violation of Cal. Labor Code section 515. As a result, Plaintiff alleges that she was misclassified and denied legally mandated meal and rest periods, minimum wages, and overtime compensation. Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 8; Declaration of Jie Xu ("Xu Dec.") at ¶¶ 1-5.

Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, compensation policies and plans, complaint meal and rest practices, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On May 18, 2020, Plaintiff served Defendants 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 Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections

2698 *et seq.* (“PAGA”). JCL Dec., ¶ 10.

On July 27, 2020, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIV-DS2015679 (“Action”). The Action alleged eight causes of action against Defendants for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (3) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (5) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (6) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (7) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203; and (8) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] (“Class Claims”). JCL Dec., ¶ 11.

The Parties commenced written and deposition discovery in November 2020. After each Party responded to formal discovery requests, the Parties collectively agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

On June 22, 2021, the Parties participated in a full day mediation with Phyllis Cheng, Esq., a respected mediator of wage and hour class and representative actions. Although the mediation was unsuccessful, the parties continued to negotiate and engage in discovery including the taking of Plaintiff’s deposition. After several months of arms-length negotiations the Parties reached an agreement to settle the Action. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her

1 wage statements, separation documents, and portions of Defendants' handbooks. At the conclusion of
2 the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. JCL
3 Dec., ¶ 14.

4 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
5 Plaintiff's claims and Defendants' liability exposure to the Class Members. In response to Class
6 Counsel's request, Defendants produced, among other things, time and payroll records for some of the
7 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
8 policies, and agreements. In total, Defendants produced approximately 593 pages of time and payroll
9 data for Class Counsel to analyze. JCL Dec., ¶ 15.

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

15 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
16 models. Among other things, BCG determined the approximate amount of unpaid wages, number of
17 workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG
18 also estimated the number of missed, late, or truncated meal and rest periods, and the amount of missed
19 meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 17.

20 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
21 Plaintiff's suitability as a putative class representative through interviews, background investigations,
22 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
23 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
24 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
25 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
26 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
27 liability for purposes of settlement; (8) holding phone interviews with several putative class members;
28 (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed

1 Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the
2 impediments to recovery, such as to make an independent assessment of the reasonableness of the terms
3 to which the Parties have agreed. JCL Dec., ¶ 18.

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

10 **C. The Parties Settled Following Mediation**

11 On June 22, 2021, the Parties conducted a full day of mediation with Phyllis Cheng, Esq., a
12 respected mediator of wage and hour class and representative actions. Mediator Cheng helped manage
13 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
14 The Parties made substantial progress with Mediator Cheng's assistance. Namely, the Parties
15 exchanged information regarding their respective claims and defense, including their respective
16 evaluation of the damages. Although the mediation concluded without a settlement, the parties
17 continued to negotiate following the mediation and eventually reached an agreement to settle. Class
18 Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the
19 claims at issue. JCL Dec., ¶¶ 20-21.

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

21 1. The Composition of the Settlement Class Members

22 The proposed Settlement Class consists of all Defendants' current and former employees,
23 classified at some point within the Class Period as exempt but who were not paid a monthly salary of
24 at least two times the applicable minimum wage, employed in California during the period from April
25 6, 2016, through April 23, 2022, who do not file a timely and valid Request for Exclusion. In the data
26 exchanged at the time the Agreement was executed, there were approximately 30 Class Members that
27 worked approximately 2,963workweeks. 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 \$150,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
4 the Settlement Class; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services
5 on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
6 Settlement in the amount of \$5,000; (4) Settlement Administration Costs estimated at \$5,000; (5) Class
7 Counsel Award in the amount of \$50,000, comprised of attorneys' fees equal to one-third of the Gross
8 Settlement Amount estimated to be \$150,000 and an estimated \$15,000 for actually incurred litigation
9 expenses. *See generally* Agreement at § III(M).

10 Subject to the Court approving the Class Representative Service Award, 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 Member. Agreement at § III(M)(1).
13 There is no reversion to Defendants and Defendants must separately pay for its share of the employer
14 payroll taxes. Agreement at § III(A)(1).

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
17 Settlement Amount of \$150,000 within twenty (20) calendar days of the Effective Date. Agreement at
18 § I(N).

19 4. Formula for Calculating Individual Settlement Payments

20 Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data
21 provided by Defendants to the Settlement Administrator will include the number of eligible Workweeks
22 for each Settlement Class Member. Agreement at § III(L)(2)(a). The Individual Settlement Payment
23 will be proportional to the number of Workweeks each Settlement Class Member worked for
24 Defendants in California during the Class Period. Each Settlement Class Member's final Individual
25 Settlement Payment for purposes of payment will be calculated by dividing the total number of
26 Workweeks attributed to all Class Members by all Workweeks attributed to members of the Settlement
27 Class, multiplied by the Net Settlement Amount. Agreement at § III(M)(1). Each Individual Settlement
28 Payment will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll

1 taxes, etc.).

2 Given that there are approximately 30 Settlement Class Members, the average gross recovery is
3 approximately \$2,166.66 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
4 ¶ 6.

5 5. Release by Participating Settlement Class Members

6 Generally, as of the Funding Date, which is twenty (20) days after the Effective Date, Plaintiff
7 and the Settlement Class Members will agree to release the Released Parties from the Released Class
8 Claims, including claims for unpaid wages, minimum wages, overtimes, wages for off-the-clock work,
9 meal periods, rest periods, wage statement violations, waiting time penalties, failure to maintain
10 records, interest, penalties, and attorneys' fees, unfair competition and the related provisions of the
11 Business and Professions Code including sections 17200 and 17203, Labor Code sections 201, 202,
12 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 515, 558, 1118.12, 1174(d), 1174.5, 1194,
13 1197, 1197.1, 1198, 1198.5, 1199 and all claims under the governing Wage Order(s), which occurred
14 during the Class Period. Agreement at § I(BB).

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

16 Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the
17 Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of
18 the Aggrieved Employees, will release the Released Parties from all PAGA claims *for civil penalties*
19 and any other available relief pursuant to PAGA alleged in the operative complaint or in Plaintiff's
20 PAGA Notice to the LWDA which occurred during the PAGA Period. Agreement at § I(CC).

21 **III. ARGUMENT**

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

23 The proposed Settlement, including a Gross Settlement Amount of \$150,000, meets the
24 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
25 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary
26 conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement
27 approval requires an early "preliminary" review by the trial court and a subsequent "final" review after
28 notice of the settlement has been distributed to class members for their comments and objections.

1 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court
2 first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into
3 the fairness of the proposed settlement”).)

4 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
5 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
6 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
7 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
8 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
9 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
10 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
11 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
12 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
13 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
14 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
15 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
16 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
17 action litigation”).)

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

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

26 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
27 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
28 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is

1 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
2 § 11.51.)

3 The Parties participated in mediation with the highly respected mediator Phyllis Cheng, Esq.,
4 Mediator Cheng managed the Parties' expectations and provided a useful, neutral analysis of the issues
5 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
6 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
7 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
8 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure.")) At all times, the Parties' negotiations were
10 at an arm's length, adversarial, and non-collusive. Although the mediation was unsuccessful, the
11 Parties continued to negotiate following the mediation. After several months of arms-length
12 negotiations, the Parties reached an agreement which was subsequently memorialized in the
13 Agreement. The Agreement is the final product of these mediated negotiations. Objectively, the
14 Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL
15 Dec., ¶ 20-21.

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

18 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
19 the factual and legal issues in dispute. Overall, Class Counsel thoroughly investigated the claims at
20 issue, including: (1) determining Plaintiff's suitability as a putative class representative through
21 interviews, background investigations, and analysis of her employment files; (2) evaluating all of
22 Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought,
23 the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and
24 payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in
25 similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating
26 Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) holding phone
27 interviews with several putative class members; (9) drafting the mediation brief; and (10) participating
28 in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of

1 the claims being settled, as well as the impediments to recovery, such as to make an independent
2 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 18.

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

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

10 The Gross Settlement Amount of \$150,000 is within the range of reasonableness. To determine
11 whether a settlement is fair and reasonable, the court should "consider enough information about the
12 nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an
13 independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar*
14 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court
15 is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of
16 reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit
17 statement of value; [they] require[] a record which allows an understanding of the amount that is in
18 controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling*
19 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement
20 is not dependent upon its actual value approaching the potential recovery plaintiffs might have received
21 if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is reasonable does
22 not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman*

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").

Kodak Co. (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$150,000 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 BCG to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were 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 PAGA Penalties) ranged between \$599,411.25 dollars ("Conservative Model") and \$1,246,801.70 million dollars ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of \$150,000 represents approximately between 12.03% ("Aggressive Model") and 25.02% ("Conservative Model") of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 22.

(1) Estimated Exposure for Unpaid Wages

Plaintiff's primary claim in this Action is that for parts of the Class Period, Defendants misclassified the Class Members because they failed to compensate the Class Members a monthly salary of at least two times the applicable minimum wage in violation of Labor Code Section 515. As a result, Defendants failed to accurately compensate Plaintiff and other Class Members for their overtime hours worked. JCL Dec., ¶ 23.

Specifically, in 2019, California's minimum wage was \$12.00 per hour for employers with at least twenty-six (26) employees, thus, Defendant's employees should have received a monthly salary of at least \$4,160. However, during 2019, Plaintiff received bi-weekly payments of \$1,750 for a total monthly salary of approximately \$3,500, far below the monthly minimum salary of \$4,160. JCL Dec., ¶ 24.

1 Defendants argued that the violation was only episodic and many of the Class Members received
2 raises during the Class Period that met or exceeded the minimum salary threshold. To account for the
3 risks of continued litigation in the face of Defendants' defenses, Plaintiff applied a 25% discount to the
4 Conservative Model. Notwithstanding, there is no defense to Defendants' episodic failure to
5 compensate its exempt employees a monthly salary of at least two times the applicable minimum wage.
6 Plaintiff's Conservative Plaintiff estimated Defendants' exposure for underpayment of wages to its
7 exempt employees ranged from approximately \$371,243.25 dollars to approximately \$494,991.00
8 dollars. JCL Dec., ¶ 25.

9 (2) Estimated Damages for Meal and Rest Period Violations.

10 Plaintiff further alleged that Defendants failed to provide Class Members with compliant meal
11 and rest periods. Specifically, Plaintiff alleges that Defendants failed to provide compliant meal and
12 rest periods to the Class Members during those pay periods where they earned a monthly salary of less
13 than two times the applicable minimum wage. JCL Dec., ¶ 26.

14 Conversely, Defendants argued, among other things, that they provided all their employees,
15 including exempt employees, i.e., Class Members, with the opportunity to take compliant meal and rest
16 periods. Defendants also argued that they maintained facially compliant meal and rest period policies.
17 Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal and rest period
18 violations and any claimed violations required a highly individualized inquiry not suitable to class
19 treatment. JCL Dec., ¶ 27. Consequently, Plaintiff applied a 75% discount to the meal and rest period
20 claims in the Conservative Model. Plaintiff estimated the damages for this claim ranged from
21 approximately \$196,268.00 dollars to approximately \$719,910.70 dollars. JCL Dec., ¶ 28.

22 (3) Exposure for Wage Statement Violations and Waiting Time Penalties

23 Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor
24 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
25 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
26 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor
27 Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class
28 Members suffered an "injury" because of wage statement violations, as required by Labor Code section

226. Defendants could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal.App.5th 444 (review granted)³; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Plaintiff would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Plaintiff estimated Defendants' exposure for this claim to be approximately \$31,900.00 dollars. JCL Dec., ¶ 29.

(5) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately \$71,800.00 dollars. JCL Dec., ¶ 30.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on

³ At the time the Parties agreed to the terms of the Agreement, penalties under Cal. Lab. Code § 226 and waiting time penalties under Cal. Lab. Code § 203 were not available for failure to provide premium pay for meal and rest period violations. The California Supreme Court has since held that premium pay constitutes "wages" for purposes of Cal. Lab. Codes §§ 226 and 203.

1 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
2 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
3 each pay period the employee worked. Again, Defendants raised several defenses that presented serious
4 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
5 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
6 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
7 rest period claims. JCL Dec., ¶ 31.

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

14 The proposed Settlement allocates \$5,000 to satisfy the PAGA claims. This amount represents
15 approximately 6.96% of the Gross Settlement Amount. This is well within the range *See, e.g., Nordstrom*
16 *Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban*
17 *Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in \$5M
18 settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving \$3,000
19 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL
20 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc*
21 (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)
22 JCL Dec., ¶ 32.

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

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
3 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
4 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
5 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
6 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
7 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
8 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
9 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
10 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
11 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
12 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
13 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
14 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
15 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
16 certification of driver meal and rest period claims based on the predominance of individual issues).
17 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
18 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
19 settlement. JCL Dec., ¶¶ 33.

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

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

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

2 Finally, continuing to litigate this action would require continued and extensive resources
3 coupled with significant Court time to proceed through trial and post-trial motions; which can often
4 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
5 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
6 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
7 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
8 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 43. “Avoiding such a trial and the
9 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
10 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
11 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
12 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

13 Given the amount of the settlement here, as compared to potential value of the claims, offset by
14 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 35.

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

16 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
17 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
18 information to decide whether they should accept the benefits offered, opt out and pursue their own
19 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48
20 Cal.App.3d 143, 151-52.) The notice must advise class members “that they may be excluded from the
21 class if they so request and that they will be bound by the judgment, whether favorable or not, if they
22 do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the
23 class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart*
24 *v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁴

25 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class

26
27 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 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.

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 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 Class Claims. Agreement at § III(L)(2)(a). 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., ¶¶ 36-37.

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

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to 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 \$10,000⁵ for Plaintiff. The

⁵ 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

1 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement
4 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to
5 provide Defendants a general release of all claims arising out of her employment. JCL Dec., ¶ 38.

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
8 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
9 Class Representative Service Award. JCL Dec., ¶ 39.

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

11 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
12 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
13 California courts routinely award attorneys' fees equaling one-third or more of the potential value of
14 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
15 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the
16 lodestar method is used, fee awards in class actions average around one-third of the recovery.");
17 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*

18 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
19 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
20 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
21 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528
22 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
23 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
24 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
25 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No.
26 BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
27 BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC*
28 *Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v.*
Catholic Moray Services, Inc., No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
\$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
\$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
(C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Contreras v. Serco Inc.*, No. 10-
cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No.
RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.
CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings,*
Inc., No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security*
Services, LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 *Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
2 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
3 with market rates).)

4 Class Counsel took this matter on a contingency fee basis and invested significant time and
5 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
6 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
7 Members. Considering the positive outcome for the Class Members, and in light of the supporting
8 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 40.

9 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
10 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
11 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 41.

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

13 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
14 of the Class is appropriate. JCL Dec., ¶ 42.

15 1. The Standard for Class Certification

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

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

26 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
27 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
28 for identifying class members." (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable

1 where they may be readily identified without unreasonable expense or time by reference to official
2 records. (*Id.*)

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

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

11 Because all Class Members are Defendants’ current and former employees, the class is readily
12 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 43.

13 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
14 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
15 liability can be determined by facts common to all members of the class. The wage and hour issues are
16 both numerous and substantial, and a class action is the most advantageous method of dealing with the
17 claims of the Settlement Class. JCL Dec., ¶ 44.

18 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
19 from the same factual basis and are based on the same legal theories applicable to the other Class
20 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
21 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
22 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
23 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
24 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 45.

25 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
26 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
27 gained state court settlement approval of the same class-wide causes of action that are at issue in this
28 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to

1 represent the interests of this Class. JCL Dec., ¶¶47-54, Declaration of Shani Zakay, ¶¶ 1-3.

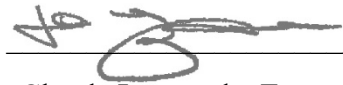
2 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
3 each individual claim, the Class Members likely have little incentive to litigate their claims on an
4 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
5 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
6 adjudication. JCL Dec., ¶ 46.

7 IV. CONCLUSION

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

11 Dated: June 22, 2022

JCL LAW FIRM, APC

12 By:  _____

13 Jean-Claude Lapuyade, Esq.
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