

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

Attorneys for Plaintiff YVETTE MOLINA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

YVETTE MOLINA, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

HAWAIIAN AIRLINES, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV28079

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

Date: November 17, 2021

Time: 9:30 a.m.

Judge: Hon. Maren Nelson

Dept.: 17

TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTS AND PROCEDURE3

 A. Overview of the Litigation3

 B. Class Counsel Thoroughly Investigated the Factual and Legal Issues4

 C. The Parties Settled at Mediation6

 D. The Proposed Settlement Fully Resolves Plaintiff’s Claims7

 1. The Composition of the Settlement Class Members7

 2. The Settlement Consideration7

 3. Formula for Calculating Individual Settlement Payments8

 4. Release by Participating Settlement Class Members8

 5. Release by the LWDA and the Aggrieved Employees9

III. ARGUMENT9

 A. The Court Should Preliminarily Approve the Proposed Class Action Settlement9

 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel10

 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness11

3. The Settlement Falls Within the Recognized Range of Reasonableness11

 a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness12

 (1) Estimated Damages Miscalculating the Regular Rate of Pay13

 (2) Estimated Damages for Meal Period Violations13

 (3) Estimated Damages for Rest Period Violations14

 (4) Estimated Damages for Off-the-Clock Work15

 (5) Defendants’ Estimated Exposure for Unreimbursed Business Expenses15

 (6) Exposure for Wage Statement Violations and Waiting Time Penalties16

 (7) Defendant’s PAGA Exposure17

 b. Inherent Risks of Continued Litigation Support Preliminary Approval18

B. The Proposed Notice Informs the Class about the Case and Settlement20

C. The Court Should Preliminarily Approve the Class Representative Service Award21

D. The Court Should Preliminarily Approve the Negotiated Class Counsel Award22

E. California Law Authorizes Provisional Certification for Settlement Purposes23

 1. The California Standard for Class Certification23

 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members23

1 IV. CONCLUSION

225

TABLE OF AUTHORITIES
CASES

1		
2	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
3	(2000) 85 Cal.App.4th 1135, 1151.....	10
4	<i>Acheson v. Express, LLC</i>	
5	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	22
6	<i>Aguiar v. Cingular Wireless, LLC</i>	
7	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	22
8	<i>Ali v. U.S.A. Cab Ltd.</i>	
9	(2009) 176 Cal.App.4th 1333, 1341.....	19
10	<i>Almanza v. The Express Group Inc.,</i>	
11	San Bernardino Superior Court Case No. CIVDS1722542.....	8
12	<i>Alonzo v. Maximus, Inc.</i>	
13	832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011).....	17
14	<i>Apple Computer, Inc. Derivative Litig,</i>	
15	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
16	<i>Baker v. LA. Fitness Int'l, LLC</i>	
17	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	21
18	<i>Barrett v. Doyon Security Services, LLC,</i>	
19	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	22
20	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
21	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	22
22	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
23	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	21
24	<i>Brinker</i>	
25	53 Cal. 4th at 1021-1022.....	19,24
26	<i>Brown v. Fed Express Corp.</i>	
27	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	19
28	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	22
	<i>Bufile v. Dollar Financial Group, Inc.</i>	
	(2008) 162 Cal.App.4th 1193, 1207.....	23
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	22
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	17
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	19
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	20
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389 (2010).....	9-10, 21
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	20
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	22
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	21

1	<i>Cochran v. Schwan's Home Serv.</i>	
2	228 Cal. App. 4 th 1137, 1144 (2014).....	16
3	<i>Coleman v. Estes Express Lines, Inc.</i>	
4	No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013).....	22
5	<i>Contreras v. United Food Group, LLC</i>	
6	Case No. BC389253 (L.A. County Super. Ct.).....	22
7	<i>Crawford et al. v. Outlook Amusements, Inc.,</i>	
8	Los Angeles Superior Court Case No. BC617160.....	8
9	<i>D'Amato v. Deutsche Bank</i>	
10	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
11	<i>Dunk v. Ford Motor Co.</i>	
12	(1996) 48 Cal.App.4th 1794, 1802.....	9
13	<i>Duran v. U.S. Bank National Association</i>	
14	(2014) 59 Cal.4th 1, 31.....	19
15	<i>Ethridge v. Universal Health Services, Inc.</i>	
16	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	22
17	<i>Fleming v. Covidien</i>	
18	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	17
19	<i>Fontana v. Elrod</i>	
20	(7 th Cir. 1987) 826 F.2d 729, 732.....	20
21	<i>Frank v. Eastman Kodak Co.</i>	
22	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
23	<i>Frlekin v. Apple, Inc.</i>	
24	8 Cal.5th 1038, 1058 (2020)	15
25	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
26	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	22
27	<i>Global Crossing Sec. and ERISA Litig.</i>	
28	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12
	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i>	
	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	22
	<i>Hill v. Sunglass Hut Int'l, Inc,</i>	
	No. BC422934 (L.A. County Super. Ct. July 2, 2012).....	22
	<i>Howard v. CVS Caremark Corp.,</i>	
	2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014).....	17
	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
	<i>Kabamba v. Victoria's Secret Stores. LLC</i>	
	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	22
	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106).....	20
	<i>Kisliuk v. ADT Security Services, Inc.,</i>	
	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	22
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
	<i>Lampe v. Queen of the Valley Medical Center</i>	
	19 Cal.App.5th 832, 851 (2018).....	14
	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332.....	23-24

1	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
2	(N.D. Cal. 2017) 2017 WL 2797811, at *7.....	18
3	<i>Macaspac v. San Antonio Regional Hospital</i>	
4	San Bernardino Superior Court Case No. CIVDS1512625.....	8
5	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
6	(9 th Cir. 2021) 999 F.3d 668.....	18
7	<i>Magee v. American Residential Services, LLC</i>	
8	No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	22
9	<i>Maldonado v. Epsilon Plastics, Inc.</i>	
10	(2018) 22 Cal.App.5th 1308.....	17
11	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
12	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	22
13	<i>Michael Milken and Assoc. Sec. Litig.</i>	
14	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	12
15	<i>Misra v. Decision One Mortg. Co.</i>	
16	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	18
17	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.,</i>	
18	No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....	22
19	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
20	(2010) 186 Cal.App.4th 399, 409.....	12
21	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
22	40 Cal.App.5 th 444 (2019).....	17
23	<i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i>	
24	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	12, 20
25	<i>Nevarez v. Trader Joe’s Co.,</i>	
26	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	22
27	<i>Newman v. Stein</i>	
28	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	17
	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	19
	<i>O’Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	19
	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625.....	9, 12
	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	15
	<i>Ordaz v. Rose Hills Mortuary, LP.,</i>	
	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	22
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, opinion modified (June 18, 1990).....	19
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-29.....	21

1	<i>Sav-On Drug Stores, Inc.</i>	
2	(2014) 34 Cal.4th 319, 326.....	23
3	<i>Shachno et al. v. KT Hotels, LLC</i>	
4	San Diego Superior Court Case No. 37-2018-00043601.....	8, 11
5	<i>Sheldon v. AHMC Monterey Park Hospital LP</i>	
6	No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	22
7	<i>Silva v. Catholic Moray Services, Inc.,</i>	
8	No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	22
9	<i>Stambaugh v. Super. Ct</i>	
10	(1976) 62 Cal.App.3d 231, 236.....	9
11	<i>State v. Levi Strauss & Co.</i>	
12	(1986) 41 Cal.3d 460, 482.....	10, 21
13	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
14	(N.D. Cal. 2015) 2015 WL 3776765 at * 4.....	18
15	<i>Taco Bell Wage & Hour Actions</i>	
16	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
17	<i>Tien v. Tenet Healthcare Corp.</i>	
18	(2012) 209 Cal.App.4th 1077, 1088.....	19
19	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
20	(1975) 48 Cal. App. 3d 143, 151-52.....	20
21	<i>Viceral v. Mistras Grp., Inc.</i>	
22	(N.D. Cal. 2016) 2016 WL 5907869, at *3, 7.....	17
23	<i>Villa v. United Site Servs. of California, Inc.</i>	
24	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	15
25	<i>Weisbarth v. Banc West Investment Services, Inc.,</i>	
26	No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	22
27	<i>Zamora v. Balboa Life & Casualty LLC</i>	
28	No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	22

STATUTES

18	<i>Cal.Civ.Proc. Code § 382</i>	23-24
----	---------------------------------------	-------

SECONDARY SOURCES

20	Conte & Newberg, <i>Newberg on Class Actions</i> , §§11.26, 11.51 (4th ed. 2002)	
21		9-10, 21
22	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
23	53 UCLA L. Rev. 1303 (2006)	
24		21, 23
25	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
26		20

I. INTRODUCTION

Plaintiff YVETTE MOLINA (“Plaintiff”) seeks preliminary approval of the Stipulation of Class Action Settlement and Release of Claims (“Agreement” or “Settlement”)¹, which if approved, would provide valuable monetary relief for approximately 335 members of the Settlement Class and 265 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. “**Class Members**” or “**Class**” and “**Class Period**” means “all non-exempt Clerical, Office, Stores, Fleet and Passenger Service Employees under the collective bargaining agreement between HAWAIIAN AIRLINES, INC. (“Defendant”) and the International Association of Machinists and Aerospace Workers (AFL-CIO) (“IAMC”), who are or previously were employed by Defendant in California during the period of April 6, 2016 through and including August 31, 2021 (“Class Period”).” Agreement at §§ I(G) and (H).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means “all non-exempt Clerical, Office, Stores, Fleet and Passenger Service Employees under the collective bargaining agreement between Defendant and the IAMC, who are or previously were employed by Defendant in California during the period between April 6, 2019 through and including August 31, 2021.” Agreement at §§I(B) and (U).

3. The “**Gross Settlement Amount**” is Seven Hundred and Fifty Thousand Dollars (\$750,000). Agreement at §III(A)(1). 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 for her services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §III(M)(9).

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$250,000 **and** actual litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at §III(M)(10).

c. A “**PAGA Settlement**” of \$40,000 shall be allocated from the Gross Settlement

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.

Amount for settlement of claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Settlement (“LWDA Payment”) the California Labor and Workforce Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Amount (“Aggrieved Employee Payment”) to the Aggrieved Employees. Agreement at §III(M)(11).

d. And “**Settlement Administration Costs**” not to exceed \$10,000 payable to the proposed Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §III(M)(12).

3. The “**Net Settlement Fund**” of approximately \$415,000 (Gross Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class member performed work in California during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Payment of **\$1,238.80**. Agreement at §III(M)(1); JCL Dec., ¶ 5.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a publicly traded, Delaware corporation, headquartered in Honolulu, Hawai'i. Defendant has grown from a fleet of three-aircraft servicing exclusively the Hawaiian Islands, to a fleet of more than 60 commercial airplanes connecting the Hawaiian Islands with 16 North American and 10 International destinations, including 8 gateway cities in California. JCL Dec., ¶ 7.

Plaintiff has worked for Defendant since April 2016 as a customer service agent at the Los Angeles International Airport. Throughout her employment, Defendant classified Plaintiff as a non-exempt employee compensated on an hourly basis, eligible to earn certain non-discretionary compensation, and entitled to legally mandated meal and rest periods and minimum wage and overtime compensation. During her employment, Plaintiff's base hourly rate ranged between \$10.50 and \$20.59 per hour. Plaintiff is a member of the IAMC and during her employment was subject to the collective bargaining agreement between Defendant and the IAMC, the "Ka 'Ike Pono - Hawaiian Airlines Employee Handbook" and the "Hawaiian Airlines California Employee Handbook Supplement". JCL Dec., ¶ 8; Declaration of Yvette Molina ("Molina Dec."), ¶¶ 1-7.

Generally, Plaintiff claims that Defendant (1) miscalculated the regular rate of pay for purposes of overtime compensation and redeemed sick leave, (2) maintained unlawful meal and rest period policies and practices that failed to provide duty free meal and rest periods; (3) failed to pay for time spent waiting for and undergoing mandatory security checks, (4) issued inaccurate itemized wage statements that failed to show, *inter alia*, the total hours worked, (5) failed to pay all wages when due. JCL Dec., ¶ 9.

On May 12, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 10.

On July 23, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court for: 1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. JCL Dec. ¶ 11.

Subsequently, on November 3, 2020, Plaintiff filed the operative First Amended Complaint alleging a ninth cause of action for violations of the California Labor Code Private Attorney General Act (“PAGA”). Thereafter, Defendant answered the First Amended Complaint. JCL Dec., ¶ 12.

Prior to conducting any formal discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties agreed to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce certain documents and data points subject to the mediation privilege. Pursuant to that agreement, Defendant produced roughly 100% of the Class Members’ time and payroll data along with relevant policies applicable to Class Members. As discussed *infra*, Plaintiff’s counsel retained Eric Lietzow Desmond, Marcello & Amster (“DMA”), to analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

On June 3, 2021, the Parties participated in a full day mediation with esteemed wage and hour class action and PAGA mediator, Mark Rudy, Esq. After arms-length negotiations and bargaining, the parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

In February 2020, 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

1 interview process, Plaintiff produced nearly 100 pages of documents related to her employment for
2 Defendant, including portions of Defendant's handbook, the applicable collective bargaining
3 agreement, compensation policies and time and payroll records. At the conclusion of the interviews,
4 Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 15.

5 Next, in March 2020 Class Counsel requested Plaintiff's employee file from Defendant. In
6 response, Defendant produced hundreds of pages of documents, including but not limited, copies of
7 Plaintiff's hiring documents, payroll and time records and performance reviews. Class Counsel
8 reviewed and analyzed the documents and determined the documents substantiated Plaintiff's claim
9 that Defendant miscalculated the regular rate of pay for purposes of overtime compensation and
10 redeemed sick pay, furnished inaccurate wage statements, maintained unlawful meal and rest period
11 policies and practices that failed to provide duty free meal and rest periods, and failed to pay all wages
12 when due. Shortly thereafter, Class Counsel summarized the known factual and legal issues in the
13 PAGA Notice addressed to the LWDA. Several weeks later, Class Counsel filed this action. JCL Dec.,
14 ¶ 16.

15 Following the Initial Status Conference, Class Counsel prepared extensive written discovery.
16 However, prior to issuing the written discovery, the Parties agreed to mediate the action. To prepare
17 for mediation, Class Counsel requested a number of documents and data points to further evaluate
18 Plaintiff's claims and Defendant's potential liability exposure to the Class Members. In response to
19 Class Counsel's request, Defendant produced the time and payroll records for the entire Class,
20 aggregate workweek and pay period data for 100% of the Class, full and complete copies of applicable
21 handbooks containing, *inter alia*, compensation, timekeeping, meal and rest period policies, and the
22 pertinent collective bargaining agreements ("CBA" or "CBAs") covering the Class Members. In total,
23 Defendant produced approximately 4.5 million cells of unique time and payroll data in addition to
24 approximately 1,000 pages of pertinent wage and hour policies, CBAs, handbooks and other
25 employment related material for Class Counsel to analyze. JCL Dec., ¶ 17.

26 Class Counsel then retained the business valuation, asset appraisal and litigation consultants at
27 DMA to analyze Defendant's time and payroll data. DMA provides data analysis and damage modeling
28 consulting services specializing in wage and hour class actions. DMA's team of financial and data

analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the DMA is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 18.

DMA analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, DMA determined the approximate number of work shift, workweeks, pay periods, average rate of pay, average regular rate of pay, average length of shift and average number of hours worked per week and pay period during the Class Period. Among other things, DMA estimated the number of unpaid wages, missed, late or truncated meal and rest periods, the amount meal period premiums paid during the Class Period, and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 19.

In advance of mediation, Class Counsel created several damage models predicated on DMA analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 20.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) estimating Defendant's liability for purposes of settlement; (8) holding phone interviews with several putative class members; (9) drafting the mediation brief and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the parties have agreed. JCL Dec., ¶ 21.

C. The Parties Settled at Mediation

On June 3, 2021, the Parties agreed to conduct a full day of mediation with renowned wage and

hour class action and PAGA mediator Mark Rudy, Esq. Mr. Rudy is renowned for managing the expectations of the parties and providing a useful, neutral analysis of the issues and risks to both sides. Prior to mediation, the parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. While the Parties attended the mediation voluntarily, it was always at arm's length and adversarial. Without revealing any confidential information about the mediation itself, the Parties believe that a settlement could not have been reached without the specific action of Mediator Rudy at the end of the mediation after approximately eight hours of negotiations. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable 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 Settlement Class consists all of Defendant's Clerical, Office, Stores, Fleet and Passenger Service Employees under the collective bargaining agreement between Defendant and the IAMC who are or previously were employed by Defendant in California during the Class Period. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(G) and (GG). There are approximately 335 members of the Settlement Class who collectively worked an estimated 28,500 Workweeks during the Class Period. Agreement at §III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$750,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Class Members; (2) a Class Representative Service Award of \$10,000 to Plaintiff for her services on behalf of the Class Members and, equally important, for a general release of claims; (3) a PAGA Settlement in the amount of \$40,000; (4) Settlement Administration costs estimated at \$10,000, (5) Class Counsel Award in the amount of \$275,000, comprised of attorneys' fees not to exceed one-third of the Gross Settlement Amount, estimated to be \$250,000, and actual litigation expenses not to exceed \$25,000. Agreement at §III(M).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award,

PAGA Settlement, and Settlement Administration Costs, the Net Settlement Amount will be distributed to the Settlement Class Members. Agreement at §III(M)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §III(A)(1).

3. Formula for Calculating Individual Settlement Payments

Each Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each member of the Settlement Class Member worked for Defendant in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for the entire Settlement Class. Each Settlement Class Member's final Individual Settlement Payment for purposes of payment will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class Members. Agreement at §III(M)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for any Class Member who submits valid and timely requests for exclusion will be redistributed to Settlement Class on a pro rata basis. Agreement at §III(M)(1).

Given that there are approximately 335 Settlement Class Members, the average gross recovery is approximately \$1,238.80 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC, et al.*, San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery \$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98)).

4. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Claims (those that were asserted in the Action, or could

have been asserted in the Action, based on the facts, claims and theories plead in the operative complaint) that accrued during the Class Period. Agreement at §§I(AA) and III(B).

5. Release by the LWDA and the Aggrieved Employees

Generally, upon the Funding Date, the LWDA and the Aggrieved Employees will release the Released Parties from any all claims or causes of action **for civil penalties** arising under PAGA based on the facts and allegations contained in either the PAGA Notice and the operative complaint in the Action that accrued during the PAGA Period. Agreement at §§I(BB) and III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$750,000, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) In California, class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although California Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).) 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 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118

1 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners*
2 *for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation
3 and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
4 action litigation”).)

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

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

13 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
14 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
15 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
16 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
17 § 11.51.)

18 On June 3, 2021, the Parties agreed to conduct a full day of mediation with renowned wage and
19 hour class action and PAGA mediator Mark Rudy, Esq. Mr. Rudy is renowned for managing the
20 expectations of the parties and providing a useful, neutral analysis of the issues and risks to both
21 sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
22 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
23 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
24 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
25 of collusion and undue pressure.”).) Prior to mediation, the Parties exchanged information regarding
26 their respective claims and defenses, including their respective evaluation of the damages. While the
27 Parties attended the mediation voluntarily, the Parties’ negotiations were always at arm’s length,
28 adversarial and non-collusive. Without revealing any confidential information about the mediation

1 itself, the Parties believe that a settlement could not have been reached without the specific action of
2 Mediator Rudy at the end of the mediation after approximately eight hours of negotiations. The
3 complete and final terms of the Parties' settlement are now set forth in the Agreement. Objectively, the
4 Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL
5 Dec., ¶ 22.

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

8 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
9 the factual and legal issues in dispute. In addition to the extensive exchange of documents and data for
10 mediation, witness interviews, document review, data analysis and legal research, Class Counsel also
11 researched similar wage and hour actions. Although no two cases are identical, this research provided
12 Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this
13 settlement against. The investigation allowed to Class Counsel to realistically assess the value of
14 Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in
15 the proposed settlement now before the Court. JCL Dec., ¶¶ 15-21.

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

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

23 The Gross Settlement Amount of \$750,000 is well within the range of reasonable for preliminary
24 approval. To determine whether a settlement is fair and reasonable, the court should "consider enough
25 information about the nature and magnitude of the claims being settled, as well as the impediments to
26 recovery, to make an independent assessment of the reasonableness of the terms to which the parties
27 have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this
28 determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement

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

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

12 The Gross Settlement Amount of \$750,000 is fair and reasonable considering the nature and
13 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
14 mediation, Class Counsel retained DMA to develop an economic damage model measuring
15 Defendant’s potential liability exposure for both the class claims and the PAGA claims. The damage
16 model was informed by Class Counsel’s investigation, including the analysis of a significant sample of
17 time and payroll data. Class Counsel projected Defendant’s maxim **class** liability exposure was
18 \$2,427,079.61 – comprised of \$1,390,840.61 for **damages** and \$1,036,239.00 for penalties, i.e., waiting
19 time and wage statement, and interest. Additionally, DMA separately estimated Defendant’s PAGA
20 exposure at \$2,533,700. Combined, DMA projected Defendant’s maxim liability exposure at the time
21 of mediation at \$4,960,779.61 – before any discounts for, *inter alia*, CBA preemption and exemption.
22 Thus, the Gross Settlement Amount of \$750,000 represents approximately 15% of Defendant’s maxim

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”).

liability exposure but an impressive 54% of the projected class **damages**. JCL Dec., ¶ 23.

(1) Estimated Damages Miscalculating the Regular Rate of Pay

Plaintiff contended that Defendant miscalculated the regular rate of pay for purposes of overtime compensation and redeemed sick pay. Plaintiff alleged that Defendant failed to include certain nondiscretionary incentive compensation in the regular rate. Plaintiff estimated the value of this claim at \$111,562.64 based on Defendant's records. Defendant, however, forcefully argued, that all incentive compensation was discretionary and, thus, properly exuded from the regular rate of pay for purposes of overtime compensation. Defendant also contended that governing law provided a complete exemption based on the collective bargaining agreement between Defendant and the IAMC and the Railway Labor Act, 45 U.S.C. Sections 151 *et seq.*, from Plaintiff's "regular rate" miscalculation claim. If successful, Defendant advanced a complete bar to Plaintiff's recovery for this claim. Notwithstanding, Plaintiff believed that the "regular rate" represented one of, if not the, strongest claim in the litigation. JCL Dec., ¶ 24.

(2) Estimated Damages for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that because of her rigorous work schedule, Plaintiff and the Class Members were not able to take timely and duty-free meal periods and/or were not permitted to leave Defendant's premises for meal periods. JCL Dec., ¶ 25. Labor Code 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more than twelve (12) hours. California Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

1 Defendant contended that it fully complied with California meal period laws and maintained
2 compliant policies and practices. Courts have found that where an employer's meal period policies are
3 compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See*
4 *e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that
5 although only 11.1% of the employees' time punches for meal periods were within the first 5 hours,
6 the claim was not certifiable because individualized issues existed as to the reasons for the late meal
7 periods). If successful, Defendant possessed a complete defense of Plaintiff's meal period claim.
8 Plaintiff estimated the range of outcomes for this claim ranged between \$0 and approximately
9 \$334,993. JCL Dec., ¶ 26.

10 (3) Estimated Damages for Rest Period Violations

11 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
12 Plaintiff alleged that because of their rigorous work schedule they were not able to take timely and
13 duty-free rest periods and/or were not permitted to leave Defendant's premises during rest periods. JCL
14 Dec., ¶ 27. IWC Wage Orders 5-2001 and 7-20017 provide that "[a]uthorized rest period times shall
15 be counted as hours worked for which there shall be no deduction from wages." Lab. Code § 226.7(c)
16 provides that "if an employer fails to provide an employee a meal or rest or recovery period in
17 accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the
18 employer shall pay the employee one additional hour of pay at the employee's regular rate of
19 compensation for each workday that the meal or rest or recovery period is not provided."

20 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
21 policies and practices throughout the Class Period. Plaintiff contended that this claim was potentially
22 worth about \$334,993.77, but it would have mainly relied on Class Member testimony, making it a
23 riskier claim at class certification and liability stages. Specifically, this claim assumed an unlikely 100%
24 violation rate given. Defendant's contentions that it maintained compliant rest period policies and
25 practices and scheduled Class Members to account for rest periods. Based on these contentions,
26 Defendant likely would have argued that only a small number of Class Members missed their rest
27 breaks on a few occasions, if any. Therefore, certification likely would have required depositions of
28 Class Members, and Defendant surely would have obtained opposing declarations stating either rest

breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, the rest break claim was heavily discounted in Plaintiff’s valuation of the case. JCL Dec., ¶ 28.

(4) Estimated Damages for Off-the-Clock Work

Plaintiff also alleged that Defendant failed to pay for all hours worked. Specifically, Plaintiff asserted that Defendant failed to pay for all time spent waiting for and undergoing mandatory airport security checks, and for a brief period, COVID-19 screening. Recently, the California Supreme Court in *Frlekin v. Apple, Inc.* 8 Cal.5th 1038 (2020) concluded that “[the] plaintiffs’ time spent on [the defendant’s] premises waiting for, and undergoing, mandatory exit searches ... is compensable as ‘hours worked.’ ” (*Id.* at 1058.) Plaintiff contends that Defendant maintained a similar policy at its airport operations in California during the Class Period. JCL Dec., ¶ 29.

Defendant vigorously denied liability for claim. Defendant argued that employees were not subjected to any pre-shift survey and health screenings on a regular basis, and that any pre-shift survey and health screenings that did occur were completed while on-the-clock and/or took de minimis time. Defendant also argued this claim, even if successful, was limited to only a small portion of the class period during the time Covid-19 began affecting Defendant’s airport operations. Regarding the security checks, Defendant argued that employees were not subjected to any security checks by Defendant and that employees were not subject to any level of control by Defendant during any security checks mandated by federal law and administered by the TSA. Consequently, any security checks performed while off-the-clock failed to give rise to a claim for unpaid wages. Notwithstanding Defendant’s arguments, Plaintiff perceived the off-the-clock as the strongest claim in the Actions. DMA estimated Defendant’s exposure for this claim at \$442,215.39. JCL Dec., ¶ 30.

(5) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required the Settlement Class Members to use their personal

1 cell phone to obtain and view work schedules. JCL Dec., ¶ 31. California employers who require
2 employees to use a personal cellular device for work purposes must reimburse the employee for the
3 cost incurred in furnishing the device, including voice and data service. (See Cal. Labor Code §
4 2802(a), providing that “An employer shall indemnify his or her employee for all necessary expenditures
5 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
6 or her obedience to the directions of the employer...”)

7 Under Section 2802, when use of a personal electronic device is “mandatory,” reimbursement is
8 “always required.” (*Cochran v. Schwan’s Home Serv.*, 228 Cal. App. 4th 1137, 1144 (2014)). Absent
9 adequate reimbursement, “the employer would receive a windfall because it would be passing its
10 operating expenses onto the employee.” (*Id.*). To comply with the statute, “the employer must pay
11 some reasonable percentage of the employee’s cell phone bill.” (*Id.*). “Because of the difference in
12 cell phone plans and work-related scenarios, the calculation for reimbursement must be left to the trial
13 court and parties in each particular case.” (*Id.*)

14 Again, Defendant vigorously denies any liability for this claim. Defendant argues that any cell
15 phone use was voluntary, never mandatory, and contrary to written policies. Defendant also offered
16 evidence that work schedules were regularly posted in the employee office where copies were made
17 available to employees to take home. This claim was also heavily discounted based on Defendant’s
18 defenses. Plaintiff estimated Defendant’s exposure for this claim ranged between \$0 and \$167,075.
19 JCL Dec., ¶ 31.

20 (6) Exposure for Wage Statement Violations and Waiting Time Penalties

21 Generally, Plaintiff alleges that Defendant’s aforementioned violations resulted in derivative
22 violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of
23 various penalties and weighed the potential recoveries against probable defenses. Specifically,
24 Defendant argued that Plaintiff could not prove the “willful” prong necessary to obtain waiting time
25 penalties under Cal. Lab. Code § 203. Additionally, Defendant argued that Plaintiff could not show that
26 Class Members suffered an “injury” because of wage statement violations, as required by Cal. Lab.
27 Code § 226. Defendant also argued that that meal and rest period violations do not entitle employees
28 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; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308.) Although the Settlement Class arguably could have seen a payout of \$1,036,239.00 for these penalties if Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff would have to overcome damaging 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. JCL Dec., ¶ 32.

(7) Defendant's PAGA Exposure

At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at approximately \$2,533,700. JCL Dec., ¶ 33. However, 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 also 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 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that its

1 employment policies and practices complied with all applicable labor laws in the arguments discussed
2 above. In all, Plaintiff's PAGA liability exposure is hotly contested. JCL Dec., ¶ 33.

3 Accordingly, the Gross Settlement Fund of \$750,000 represents approximately 15% of
4 Defendant's maxim liability exposure but approximately 54% of the projected class **damages**. JCL
5 Dec., ¶ 23. This is well within the bounds of reasonableness. (*See Vicerol v. Mistras Grp., Inc.* (N.D.
6 Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the
7 class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal.
8 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class
9 received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D. Cal. 2015)
10 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where the
11 class received approximately 7.3% of the estimated trial award was within the "range of
12 reasonableness.")).

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

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

19 As a threshold issue, Defendant argued that Plaintiff's claims for overtime, meal and rest period
20 violations – all based on violations of the California Labor Code – were preempted and/or exempted
21 by the CBA between IAMC and Defendant and the Labor Management Relations Act ("LMRA") at 29
22 U.S.C. §§ 141 *et seq.* and the Railway Labor Act, 45 U.S.C. Sections 151 *et seq.* Consequently, Plaintiff
23 confronted the risk that most Plaintiff's claims for damages and penalties were preempted and/or
24 exempted by the CBA. JCL Dec., ¶ 34.

25 Assuming Plaintiff successfully argued against preemption and exemption, Plaintiff then faced
26 the challenge of a contested class certification. The risks attendant to the certification of similar wage
27 and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d
28 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an

1 employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement
2 in favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087
3 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National*
4 *Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class
5 action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any,
6 that employees might not take their breaks were predominantly individualized questions of fact not
7 susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming
8 denial of certification because employees’ declarations attesting to having taken meal and rest breaks
9 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores,*
10 *L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of
11 proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
12 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
13 period claims based on the predominance of individual issues.) Collectively, the examples cited above
14 illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification
15 through a contested motion is a significant risk factor favoring settlement. JCL Dec., 35.

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

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

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

26 Finally, continuing to litigate this action would require continued and extensive resources
27 coupled with significant Court time to proceed through trial and post-trial motions; which can often
28 take years. Furthermore, wage and hour litigation are complex and expensive, as it often necessitates

extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation and expects that Defendant would appeal any unfavorable judgment. JCL Dec., ¶ 36. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000 that is roughly between 15% of Defendant’s maxim liability exposure but approximately 54% of the projected class **damages**. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 24.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Settlement Class of their rights and remedies in this action. The Settlement Administrator will first verify

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

addresses, then mail the proposed Class Notice to entire Settlement Class. 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(L). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Settlement Class while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 37-38.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. (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

Service or 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.)

Approximately 335 Class Members will share in the estimated \$415,000 Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Class Representative Service Award of \$10,000⁴ for Plaintiff. The service

⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: See *Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement

award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of their employment. JCL Dec., ¶ 39.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 40.

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

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

payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *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 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
2 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
3 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
4 with market rates).)

5 Class Counsel took this matter on a contingency fee basis and invested significant time and
6 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
7 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
8 The Agreement provides for a Class Counsel Award in the amount of up to one-third of the Gross
9 Settlement Amount and litigation costs and expenses not to exceed \$25,000. Agreement at §III(M)(3).
10 In light of the positive outcome for the Settlement Class, and in light of the supporting authority, the
11 proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 41.

12 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
13 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
14 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 42.

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

16 For the purpose of Settlement, Plaintiff contends, and Defendant does not dispute, that
17 provisional certification of the Settlement Class is appropriate. JCL Dec., ¶ 43.

18 1. The California Standard for Class Certification

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

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

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

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

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

Generally, the proposed Class consists of all of Defendant’s current and former non-exempt Clerical, Office, Stores, Fleet and Passenger Service Employees under the collective bargaining agreement between Defendant and the IAMC who worked in California during the Class Period. Defendant’s records show that the Class consists of approximately 335 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Settlement Class Members are Defendant’s current and former employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 44.

The California statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Plaintiff contends that Defendant’s liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. JCL Dec., ¶ 45; Molina Dec., ¶¶ 1-7.

Plaintiff contends that her wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class

Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class was subject and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Settlement Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 46.

Additionally, Plaintiff is represented by competent Class Counsel who has extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that he is well qualified to represent the interests of this Class. JCL Dec., ¶¶ 47-55, Declaration of Shani Zakay, ¶¶ 1-5.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Settlement Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 47.

IV. CONCLUSION

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

Dated: October 25, 2021

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.