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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)

ALFREDO GARCIA; individually and on
behalf of others similarly situated,
APOLONIO PICENO PEREZ; individually
and on behalf of others similarly situated,
ROSALIA ARCE; individually and on behalf
of others similarly situated,

Plaintiffs,

vs.

UNIVERSAL BUILDING SERVICES AND
SUPPLY CO., a California corporation,
GRACE BRUSSEAU, an individual,
LEONARD BRUSSEAU, an individual, and
DOES 1 to 20, Inclusive,

Defendants.

CASE NO. RG17887036

CLASS ACTION

RESERVATION NO. 219822981001

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

Date: April 4, 2023
Time: 10:00 a.m.
Dept: 21
Judge: Honorable Evelio Grillo
Filed: December 22, 2017

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I. INTRODUCTION

Plaintiffs Alfredo Garcia, Apolonio Piceno Perez (by and through his successor-in-interest, Maria Guadalupe Piceno), and Rosalia Arce (“Plaintiffs”) and Defendants Universal Building Services and Supply Co. (“UBS”), Grace Brusseau, and Leonard Brusseau (collectively referred to as “Defendants”) have agreed to a non-reversionary, settlement of \$3,550,000 for distribution to class members who worked for Defendants any time during the period beginning four years prior to the filing of this lawsuit. This is an excellent result for a class of approximately 2000 current or former hourly, non-exempt employees who have worked in California for UBS.

The action was originally filed on December 22, 2017, by Plaintiffs as a class action in the Superior Court of the State of California, County of Alameda. As a condition subsequent of this agreement and following the entry of a Stipulation and Order Granting Leave to File a First Amended Class Action Complaint by the Court on February 6, 2023, Plaintiffs filed their First Amended Complaint that encompasses and includes a Private Attorneys General Act (PAGA) cause of action seeking penalties for all the underlying claims alleged in the Complaint and as set forth in the letter to the LWDA submitted prior to this lawsuit and the subsequent letter to the LWDA.¹ The amended complaint was filed for the purpose of facilitating this Settlement on a global basis that includes release of PAGA penalties from August 2021 through the date of preliminary approval. Defendants filed an Answer to the amended complaint on February 16, 2023.

The parties attended mediation on September 14, 2019, with the Honorable Rebecca Westerfield (ret.) and again on June 28, 2022, with Warren Jackson, Esq., but did not settle. Prior to attending the first mediation, the parties engaged in informal discovery. Prior to the second mediation, the parties had engaged in extensive formal discovery, including the production of extensive class member data and the depositions of numerous witnesses, including Plaintiffs and their supervisors.

¹ Plaintiffs filed an LWDA letter on October 18, 2017 and filed a subsequent LWDA letter on October 24, 2022.

After the second mediation the parties' counsel continued arm's-length negotiations and on August 19, 2022, agreed to a class action and PAGA settlement in principle. The parties signed a Memorandum of Understanding ("MOU") on September 21, 2022, and on December 7, 2022, fully executed the long form settlement agreement encompassed in a Joint Stipulation of Settlement Agreement of Class Action and PAGA Claims. However, after a review of this Court's recent December 21, 2022 minute order in another matter regarding preliminary approval of a class action and PAGA settlement, the parties amended the settlement agreement to revise the PAGA release to ensure compliance with this Court's recent order, and the parties executed the Amended Joint Stipulation of Settlement Agreement of Class Action and PAGA Claims ("Agreement" or "Settlement") on February 5, 2023,² which they hereby present to the Court for approval, the basic terms of which are as follows:

- (1) The Gross Settlement Amount is \$3,550,000.00.
- (2) No portion of the Gross Settlement Amount will revert to Defendants;
- (3) A Net Settlement Amount of \$2,187,225.00 will be available for distribution to Settlement Class Members;
- (4) Plaintiffs request, and Defendants do not oppose, an Incentive Award of \$15,000 to each Class Representative, in consideration for their time and effort in bringing and prosecuting this matter on behalf of the Class, and as consideration for their Complete Release of All Claims as against Defendants;
- (5) Simpluris³ will administer the Settlement at a cost not to exceed \$23,125 to be paid from the Gross Settlement Amount;
- (6) Plaintiffs request, and Defendants do not oppose, a sum of \$37,500.00 to the LWDA for PAGA penalties;

² Amended Joint Stipulation of Settlement Agreement of Class Action and PAGA Claims ("Settlement"), a true and correct copy of which is attached as **Exhibit 1** to the Declaration of Virginia Villegas in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class-Action Settlement ("Villegas Decl.") submitted herewith at ¶ 29.

³ Simpluris was selected as the administrator as it provided the lowest quote, of three obtained.

(7) Plaintiffs request, and Defendants do not oppose, an award of attorneys' fees to Plaintiffs' Counsel in the amount of 33.3% of the Gross Settlement Amount, or \$1,182,150.00;

(8) Plaintiffs request, and Defendants do not oppose, the reimbursement of costs to Plaintiffs' Counsel from the Gross Settlement Amount, not to exceed \$75,000;

(9) UBS's portion of FICA, FUTA, SDI, and other employment taxes attributable to the portion of the funds allocated as wages, will be paid separately by Defendants and will not be deducted from the Gross Settlement Fund;

(10) Any Settlement Class Members who do not opt out of the proposed Settlement shall be deemed to have released and discharged Defendants from any and all Released Claims; and

(11) The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash or deposit their PAGA Employee Payment or opt out of being a Settlement Class Member.

The proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of reasonableness.

By this motion, Plaintiffs requests that the Court take the first step in the approval process – preliminary approval of the settlement. The process for approving a settlement, as set forth in Cal. Rules of Court, Rule 3.769, is as follows:

Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

In determining whether preliminary approval is warranted, the issue before the Court is whether the settlement is within the range of what might be found to be fair, reasonable, and adequate, so that notice of the settlement should be given to class members, and a hearing scheduled to consider final settlement approval. The Court is not required at this point to make a final determination as to the fairness of the settlement.

I. STATEMENT OF RELEVANT FACTS

B. Procedural History & Summary of Claims.

On November 1, 2017, prior to filing their civil complaint, Plaintiffs served Defendants with a demand letter alleging that Defendants willfully and knowingly engaged in conduct that violated the California Labor Code and wage and hour regulations and asserted such claims on behalf of themselves and other similarly situated employees, who worked for Defendants throughout California. The demand letter also included a request for Plaintiffs' personnel files, Plaintiffs' wage statements, and documents relating to Plaintiffs' obtaining and retaining employment. Defendants responded to the document request included in the demand letter on December 1 and December 4, 2017 and produced Plaintiffs' personnel and employment records.⁴

On October 18, 2017, Plaintiffs also provided notice to the Labor & Workforce Development Agency ("LWDA") to comply with the statutory exhaustion requirements of Labor Code Section 2699.3, in the event they decided to pursue penalties pursuant to PAGA. On December 22, 2017, Plaintiffs filed their original Complaint that included nine causes of action against Defendants: (1) Failure to Provide, Authorize, Permit and/or Make Available Meal and Rest Periods; (2) Failure to Compensate for All Hours Worked; (3) Failure to Pay Overtime & Double-Time Wages; (4) Failure to Reimburse for Necessary Business Expenditures⁵; (5) Unpaid Wages and Waiting Time Penalties; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Maintain Accurate Time and Payroll Records; (8) Individual Liability for Labor Code Violations under §558.1; (9) Violation of California Business and Professions Code § 17200, *et. seq.*⁶

On October 19, 2018, Defendants filed their Answer to Plaintiffs' Complaint making a general denial and asserting 27 affirmative defenses.⁷

On January 19, 2023, the parties filed a stipulation for leave for Plaintiffs to file a First

⁴ Villegas Decl. at ¶ 7.

⁵ For purposes of mediation and the damage analysis this claim was not included because based on Class member interviews the prevalence of the alleged violation was limited to a small number of workers.

⁶ Villegas Decl. at ¶ 8.

⁷ Villegas Decl. at ¶9.

Amended Complaint (“FAC”), that encompasses and includes a PAGA cause of action seeking penalties for all the underlying claims alleged in the Complaint and as set forth in the letter to the LWDA prior to this lawsuit and the subsequent letter filed with the LWDA on October 24, 2022. The amended complaint was filed for the purpose of facilitating this Settlement on a global basis that includes release of PAGA penalties from August 19, 2021 (one year back from when the parties reached an agreement in principle) through the date of preliminary approval. Defendants filed an Answer to the FAC on February 16, 2023.⁸

C. Discovery.

The parties engaged in extensive, hard fought, and protracted written discovery and depositions that were ongoing up to the point of settlement. On October 10, 2018, Plaintiffs served all Defendants with written discovery, including form and special interrogatories and requests for production of documents. After several meet and confer discussions and exchange of email correspondence with Defendants’ counsel, the parties agreed to attend mediation, and Plaintiffs agreed to stay formal discovery on the condition that Defendants would agree to provide a sampling of time and payroll records of 20 percent of the Class that would be sufficient to allow Plaintiffs to prepare a damage analysis. Defendants provided Plaintiffs’ counsel with a limited sampling of time and payroll records and generally provided only one pay period for hundreds of Class members that covered 8 pay periods (July 16-31, 2014; November 1-16, 2014; March 1-15, 2015; October 16-31, 2015; Jan. 16-31, 2016; May 16-31, 2016; May 1-15, 2017; September 16-30, 2017) during the Class Period. Ultimately, Plaintiffs were unable to use the records provided to effectively prepare an accurate damage analysis. Defendants claimed that Plaintiffs’ counsel simply did not understand the records. Consequently, the first mediation that took place on September 24, 2019, was unsuccessful.⁹

While the first mediation was unsuccessful, Plaintiffs agreed that they would continue to stay the formal written discovery requests propounded on Defendants, and Defendants agreed that by the end of November 2019, they would produce a more comprehensive sampling and that the parties

⁸ Villegas Decl. at ¶ 10.

⁹ Villegas Decl. at ¶ 11.

1 would then consider returning for a second day of mediation.¹⁰

2 On November 14, 2019, Plaintiffs' counsel informed Defendants counsel that they would like
3 to set the depositions of Dario DeVincenzi, Jesus Millan, Richard Salles, and Leonard Brusseau in
4 late January 2020. However, Plaintiffs got no response from Defendants.¹¹

5 On February 6, 2020, Defendants produced additional documents. The parties also then
6 began to meet and confer about attending a second day of mediation. However, after the July 30,
7 2020, CMC the parties agreed that returning to a second day of mediation would not make sense
8 because of the diametrically opposed views of the merits of this action.¹²

9 On November 6, 2020, Plaintiffs resumed formal discovery and the parties also began
10 discussing the preparation of a mutually agreeable *Bel Aire* Notice and/or seeking the Court's
11 intervention if the parties were unable to agree to the language.¹³

12 In December 2020, Plaintiffs granted Defendants' request for an extension to January 18,
13 2021, to respond to Plaintiffs' discovery requests and Defendants asked for another extension to
14 January 29, 2021, to respond to Plaintiffs' discovery requests, which Plaintiffs granted.¹⁴

15 On January 29, 2021, Defendants served discovery responses to Plaintiffs' Special
16 Interrogatories, Request for Production of Documents, Form Interrogatories – General and
17 Employment but did not serve any documents. Additionally, the discovery responses indicated that
18 Defendants would be producing some documents, and that additional information and documents
19 would be produced *after* the *Bel Aire* Notice process.¹⁵

20 On January 31, 2021, another CMC was scheduled, and the parties informed the Court in the
21 Joint CMC statement that the parties were working on a mutually agreeable *Bel Aire* Notice and
22 meeting and conferring about Defendants' discovery responses.¹⁶

23
24 ¹⁰ Villegas Decl. at ¶ 12.

25 ¹¹ Villegas Decl. at ¶ 13.

26 ¹² Villegas Decl. at ¶ 14.

27 ¹³ Villegas Decl. at ¶ 15.

¹⁴ Villegas Decl. at ¶ 16.

¹⁵ Villegas Decl. at ¶ 17.

¹⁶ Villegas Decl. at ¶ 18.

1 On February 26, 2021, Defendants served Plaintiffs with *only* Plaintiffs' employment
2 records, but nothing related to other Class Members.¹⁷

3 On March 4, 2021, Plaintiffs asked Defendants for an extension to file a motion to compel
4 further discovery responses, if necessary, until 30 days after the supplemental information and
5 document production they indicated would be produced after the *Bel Aire* Notice process, and
6 Defendants agreed.¹⁸

7 After multiple exchanges of correspondence and several versions of the *Bel Aire* Notice, the
8 Notice was finalized on April 10, 2021, and Plaintiffs forwarded it to the claim administrator.
9 Defendants provided the class member contact information to the claim administrator on May 7,
10 2021, and the *Bel Aire* Notice went out on May 18, 2021. Class members were given to June 21,
11 2021, to opt out. After the deadline, Plaintiffs received the class list on July 9, 2021.¹⁹

12 Following receipt of the class list on July 9, 2021, Plaintiffs' counsel began contacting the
13 over 1700 class members on the list, through telephone and via U.S. mail and ultimately reached
14 hundreds of class members and obtained over 40 signed declarations.²⁰

15 On July 19, 2021, Plaintiffs' counsel followed up with Defendants' counsel about the
16 supplemental documents and information they stated would be produced after the *Bel Aire* Notice
17 process and requested the supplemental information and documents by August 21, 2021.
18 Defendants' counsel requested an extension to August 27, 2021, which Plaintiffs granted.²¹

19 On August 10, 2021, the parties filed a Joint CMC statement informing the Court of the
20 status of discovery, the *Bel Aire* Notice, and anticipated supplemental production from Defendants
21 following completion of the *Bel Aire* Notice.²²

22 On August 17, 2021, Plaintiffs' counsel received notice of substitution of counsel from
23 Defendants' new counsel. On August 25, 2021, counsel for Plaintiffs and Defendants' new counsel

24 ¹⁷ Villegas Decl. at ¶ 19.

25 ¹⁸ Villegas Decl. at ¶ 20.

26 ¹⁹ Villegas Decl. at ¶ 21.

27 ²⁰ Villegas Decl. at ¶ 22.

²¹ Villegas Decl. at ¶ 23.

²² Villegas Decl. at ¶ 24.

had a meet and confer call to discuss the status of the case and Defendants’ outstanding supplemental production. Following the call, Defendants’ counsel asked for another extension to September 24, 2021, to provide the supplemental responses, and Plaintiffs agreed. After multiple requests for extensions, on January 20, 2022, Defendants provided the supplemental responses and produced over 17,000 documents of time and pay data for approximately 130 employees.²³

In August 2021, the parties began to meet and confer about depositions and ultimately, after multiple exchanges of correspondence, Plaintiffs’ depositions began in January 2022 and continued through March 2022 with all three Plaintiffs sitting for two days of depositions each. Plaintiffs deposed 7 of Defendants’ management employees, plus the PMK that was deposed prior to the first mediation in this matter for a total of 11 days of depositions.²⁴

D. Mediations, Direct Negotiations And Settlement.

Counsel for Plaintiffs and Defendants had significant discussions about settlement, exchanged extensive information regarding the facts of the case and the parties’ respective positions on the applicable law, conducted extensive and hard-fought discovery to inform the parties’ understanding of the claims and risks involved, attended two mediations and continued direct negotiations following the failed second mediation. As result of those continued negotiations over several months via telephone and email, the parties were able to reach an agreement to resolve their disputes which is embodied in the Stipulation of Settlement that was ultimately executed by the parties on December 7, 2022, and later amended and executed on February 5, 2023.²⁵

The investigation, discovery, and analysis Plaintiffs’ counsel conducted allowed them to make a realistic assessment of the merits and defenses of the Class claims and risks. The terms of the Settlement are premised on objective evidence that has been weighed in light of the risks and expense of continued litigation.²⁶

²³ Villegas Decl. at ¶ 25.

²⁴ Villegas Decl. at ¶ 26; Declaration of Ike Kaludi In Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action (hereafter “Kaludi Decl.”) at ¶ 11.

²⁵ Villegas Decl. at ¶ 27; Kaludi Decl. at ¶ 12.

²⁶ Villegas Decl. at ¶ 28; Kaludi Decl. at ¶ 13.

E. Damage Analysis & Reasonableness of Settlement.

As detailed in Section B, Plaintiffs' counsel devoted a significant amount of time and resources towards investigation and discovery and performed an analysis of the time and payroll data, and other records pertaining to the claims asserted by Plaintiffs as they pertain to them and approximately 2000 other putative class members. The parties engaged in significant written discovery, including form and special interrogatories, and request for production of documents and obtained significant deposition testimony.²⁷ The parties also engaged in thorough research and analysis of the applicable law and potential defenses, and carefully assessed the risks of costs of further litigation.²⁸

Plaintiffs base their damages analysis on the review and audit of time and payroll records produced by Defendants in response to Plaintiffs' Request for Production of Documents, deposition testimony, documents obtained through the *Bel Aire* Notice process, and information obtained during their investigation, including interviews of over 100 class members and Plaintiffs. Defendants also provided a class list that included the names of the potential class members and contact information. Plaintiffs' damages analysis specifically included calculations for: (1) backpay for previously earned, but unpaid regular and overtime wages; (2) missed meal premiums; (3) premiums for missed rest periods; (4) penalties for non-compliant itemized wage statements; (5) waiting time penalties; (6) interest on unpaid wages and rest and meal premiums; PAGA penalties.²⁹

Plaintiffs calculated the damages based on a combination of pay periods, wage, and payroll data produced by Defendants, deposition testimony, and information obtained from Plaintiffs and over 100 class members interviewed for the class period that dates back four years from the filing of the original complaint.³⁰

Plaintiffs' Counsel used the data provided by Defendants and information obtained from Plaintiffs and class members interviewed, to calculate the average amount of unpaid hours per pay

²⁷ Villegas Decl. at ¶ 29. Kaludi Decl. at ¶14.

²⁸ Villegas Decl. at ¶ 30; Kaludi Decl. at ¶15.

²⁹ Villegas Decl. at ¶ 31.

³⁰ Villegas Decl. at ¶ 32.

period. Based on the average number of unpaid hours, the unpaid wages owed (including resulting overtime) to Plaintiffs and the other class members were then projected using the number of pay periods each person worked during the class period and multiplied by each class members' hourly rate as provided by Defendants in the class list.³¹

Based on the information obtained from class members and analysis of the documents and the payroll data provided by Defendants, Plaintiffs' counsel found the following: Workers were paid twice per month with a total of 24 pay periods per year. There are approximately 2000 class members. Of those 2000, approximately 1252 were former employees. Class members worked different number of pay periods during the class period and the number of pay periods they worked was calculated based on their dates of employment within the class period. For certain positions, Defendants did not maintain contemporaneous time records and generated pre-populated documents that repeatedly showed the identical start and end time, day after day, month after month, and sometimes year after year, which Class Members were required to review and verify at the end of the pay period.³² Class Members, including Plaintiffs allege that they routinely worked between .5 hours to 2 to 3 hours of uncompensated time each workday which sometimes resulted in working OT hours.³³

Nevertheless, a very conservative approach was taken in calculating unpaid wages for the Class. Plaintiffs calculated an average of 3.5 hours of unpaid hours per paid period. That calculation was based on a class member working 1.75 hours of unpaid time 2 days of each pay period they worked. This is conservative because some pay periods have up to 12 days. As such, it takes into consideration the possibility that class members did not work 5 days per week nor worked unpaid hours. However, according to Defendants' deposition testimony 75-80% of the Class Members work 5 days per week. Further, for those class members that were scheduled for 8 hours of regular time but worked additional uncompensated time, that would have triggered overtime wages.³⁴ Based on

³¹ Villegas Decl. at ¶ 33.

³² Villegas Decl. at ¶ 34.

³³ Villegas Decl. at ¶ 35.

³⁴ Villegas Decl. at ¶ 36.

1 this average of unpaid time, Plaintiffs' counsel calculated the unpaid regular and overtime wages
2 owed to each class member.³⁵

3 None of the interviewees entitled to meal periods reported taking compliant meal periods.
4 Plaintiffs alleged that Defendants failed to authorize or permit Plaintiffs and the Class to take full 30-
5 minute meal periods, on days they worked over five hours because they scheduled and paid Class
6 Members for less hours than it actually took them to perform their duties. As such, Plaintiffs allege
7 that Class Members were forced to skip meal periods in order to complete their work. Further,
8 Defendants' time records show that Class Members were not even provided a second meal period
9 when they were scheduled to work more than 10 hours in a day. Nevertheless, Plaintiffs
10 conservatively calculated 5 missed meal periods per pay period (and some pay periods include up to
11 12 days) at the reported regular rate.³⁶

12 None of the interviewees entitled to rest periods reported taking compliant rest periods.
13 Plaintiffs alleged that Defendants failed to authorize or permit Plaintiffs and the Class to take
14 required rest periods on days they worked 3.5 hours or more because they scheduled and paid Class
15 Members for less hours than it actually took them to perform their duties. As such, Class Members
16 were forced to skip rest periods in order to complete their work. Nevertheless, Plaintiffs
17 conservatively calculated 3 missed rest periods per pay period (and some pay periods include up to
18 12 days) at the reported hourly rate.³⁷

19 Plaintiffs alleged that Defendants regularly failed to compensate Plaintiffs and the Class for
20 all hours worked, failed to pay premiums for missed or non-compliant meal and rest premiums, and
21 accordingly failed to include all hours worked and wages paid on Plaintiffs' and the Class's itemized
22 wage statements, resulting in Labor Code § 226 violations. These penalties were calculated for each
23 pay period for those workers employed as of December 2016 (one year back from the filing of the
24 complaint). Based on the Class list, 845 Class Members are not eligible for 226 penalties because
25 they were no longer employed as of December 2016. Plaintiffs' counsel then calculated \$50 for the

26 ³⁵ Villegas Decl. at ¶ 37.

27 ³⁶ Villegas Decl. at ¶ 38.

³⁷ Villegas Decl. at ¶ 39.

1 initial violation and \$100 for each subsequent violation. Where the total exceeded \$4000, the
2 penalties were limited to the maximum allowed.³⁸

3 Plaintiffs alleged that Defendants regularly failed to compensate Plaintiffs and the Class for
4 all hours worked and failed to pay premiums for missed or non-compliant meal and rest premiums.
5 Accordingly, all former employees are entitled to Labor Code § 203 penalties for failure to pay all
6 wages due at the time of separation from employment. These penalties were conservatively
7 calculated for 1252 (assuming they were owed any wages) former employees at 8 hours per day and
8 did not include overtime, for 30 days at Class Members' hourly final rate of pay as provided by
9 Defendants.³⁹

10 Under Labor Code § 218.6, statutory interest at the rate specified in Civil Code § 3289 must
11 be awarded "from the date that the wages were due and payable." The rate specified in § 3289 is 10
12 percent. Thus, interest on all unpaid wages at 10 percent per annum began accruing at the
13 conclusion of each pay period during the Class Period (December 2013 to the present) in which
14 Plaintiffs and the Class were denied regular and overtime wages. *See Bell v. Farmers Ins. Exchange*
15 (2006) 135 Cal.App.4th 1138 (upholding § 3289's ten percent interest rate on claims for overtime
16 pay). For meal and rest break premiums the applicable interest rate is 7 percent. *See Naranjo v.*
17 *Spectrum Security Services* (2022) 13 Cal. 5th 93.

18 Although a PAGA cause of action was not included in the original complaint, Plaintiffs had
19 exhausted their administrative remedies by filing a letter with the LWDA in October 2017. During
20 negotiations the parties agreed to resolve the matter on a global basis including any possible PAGA
21 claims that could have been brought. As such, as part of the settlement, the parties agreed that
22 Plaintiffs would amend the complaint to add a PAGA cause of action.⁴⁰ In evaluating the potential
23 PAGA penalties, Plaintiffs relied on the information obtained during discovery regarding the number
24 of employees that Defendants employ at one time, which is approximately 600. However, based on
25 records produced and on interviews with class members, some class members worked as little as two

26 ³⁸ Villegas Decl. at ¶ 40.

27 ³⁹ Villegas Decl. at ¶ 41.

⁴⁰ Villegas Decl. at ¶ 42.

hours per day and therefore did not accrue overtime, nor were entitled to meal or rest periods. As such, they potentially were not subjected to Labor Code violations that would also give rise to PAGA penalties.⁴¹ Conservatively assuming that a ¼ of the employees were not subjected to PAGA penalties, Plaintiffs calculated the number of pay periods the other 450 employees could potentially have worked during the one-year PAGA period which was calculated from August 19, 2021, to August 19, 2022, when the parties reached an agreement in principle, which is 10,800 pay periods. This total assumes that the 450 employees worked every pay period in the covered year and that each violation occurred each pay period. Accordingly, Plaintiffs calculated PAGA penalties as follows:⁴²

- Labor Code § 226.3 penalties (failure to provide accurate wage statements pursuant to Labor Code § 226) – at the initial violation rate of \$250 per pay period per aggrieved employee pursuant to Labor Code § 226.3, totaling approximately \$2,700,000.
- Labor Code § 1174 penalties (failure to maintain accurate time and payroll records) – at the initial violation rate of \$100 per pay period pursuant to Labor Code § 2699(f), totaling approximately \$1,080,000.
- Labor Code § 558 penalties (failure to pay off-the-clock wages, OT, meal and rest premiums, and untimely payment of all wages in violation of Labor Code §§ 1194, 510, 1198, and 201-203) – at the initial violation rate of \$50 per pay period pursuant to Labor Code § 558, totaling approximately \$540,000.
- Labor Code §§ 512 and 226.7(a) (failure to provide compliant meal and rest periods) – at the initial violation rate of \$100 per pay period, pursuant to Labor Code § 2699(f), totaling approximately \$1,080,000.

Based on this analysis, Plaintiffs used the following “soaking wet” numbers for negotiations:⁴³

1. <u>Unpaid regular and overtime wages:</u>	\$3,035,034.52
2. <u>Unpaid meal premiums:</u>	\$4,335,763.60
3. <u>Unpaid rest premiums:</u>	\$2,601,458.16

⁴¹ Villegas Decl. at ¶ 43.

⁴² Villegas Decl. at ¶ 44.

⁴³ Villegas Decl. at ¶ 45.

4.	<u>Itemized Wage Statement Penalties:</u>	\$2,006,150.00
5.	<u>Waiting Time Penalties:</u>	\$2,982,002.40
6.	<u>Interest on Unpaid Wages:</u>	\$303,503.45
7.	<u>Interest on unpaid premiums:</u>	\$485,605.52
TOTAL:		\$16,320,514.19
8.	<u>PAGA Penalties:</u>	\$5,400,000.00
COMBINED TOTAL:		\$21,720,514.19

These figures assumed complete success on every claim and penalty claim, and that every claim would be certified. It also assumed that the Court would award the maximum penalties allowed.⁴⁴ Plaintiffs' damages analysis provided a starting point for negotiations. The final settlement amount takes into account the information provided and arguments made by Defendants and the experienced mediators, substantial risks inherent in any wage-and-hour case, the likelihood that certain claims would not be certified, the adequacy of the named Plaintiffs, the likelihood that the Court would reduce the amount of any PAGA penalties awarded, as well as the specific defenses asserted by Defendants.⁴⁵

As negotiations progressed, counsel began factoring in the risk associated with a case of this type involving unpaid regular and overtime wages based on off-the-clock hours, allegations of non-compliant meal and rest break claims that would rise or fall if a fact finder finds that the records maintained and produced by Defendants are to be relied upon even though Plaintiffs and class members allege they are inaccurate and unreliable.⁴⁶ Defendants also argued that there was no uniform policy or practice of failing to pay all wages owed or failing to provide meal and rest periods susceptible to resolution on a classwide basis given the written policies provided to the Class members. Defendants further assert that there is no duty to record rest periods, so class members' failure to clock in or out for all rest periods does not prove any violations. Moreover, Defendants also assert that each Plaintiff testified that no one at UBS prohibited them from taking their meal

⁴⁴ Villegas Decl. at ¶ 46.

⁴⁵ Villegas Decl. at ¶ 47.

⁴⁶ Villegas Decl. at ¶ 48.

1 breaks, that Plaintiffs confirmed that they were unsupervised while performing their job duties, so
2 there was no supervisor there telling them they could not take their break and that each testified it
3 was their own decision not to take the break during each shift. Also, Defendants assert that Class
4 Members were required to review and sign attestations stating they were afforded the opportunity to
5 take their breaks and if they did not take their breaks they were expected to report it at the time.
6 Defendants have also represented that they have numerous declarations from Class Members who
7 attest that not only were they paid for all time worked and received overpayments from UBS, but
8 also that they were provided with compliant meal and rest periods. If the off-the-clock and meal
9 and rest violations failed, the resulting penalties and interest would also fail.⁴⁷

10 Broadly, Defendants deny all of the claims, contentions, and each and every allegation made
11 by Plaintiffs and deny that any alleged conduct was willful on their part. Defendants further contend
12 that Plaintiffs are not proper class representatives and will not be able to certify or prevail on their
13 claims. Defendants argue that this case is not suitable for class treatment and that they fully
14 complied with their legal obligations with respect to the payment of wages, maintenance of accurate
15 time and payroll records, provision of meal and rest breaks and that they provided compliant
16 itemized wage statements.⁴⁸

17 As a result of this, counsel throughout the negotiations factored in the various risks to
18 Plaintiffs and the putative class members and the numbers exchanged reflected these
19 considerations.⁴⁹

20 While Plaintiffs' counsel is confident that Plaintiffs would succeed on liability, continued
21 litigation would be even more costly and more time-consuming than it already has been, with no
22 guarantee of a successful outcome.⁵⁰

23 If litigation were to proceed, Plaintiffs would be required to conduct further discovery, move
24 for class certification, establish class-wide liability, and then prove up various issues regarding

25 _____
26 ⁴⁷ Villegas Decl. at ¶ 49.

27 ⁴⁸ Villegas Decl. at ¶ 50.

⁴⁹ Villegas Decl. at ¶ 51; Kaludi Decl. at ¶ 16.

⁵⁰ Villegas Decl. at ¶ 52; Kaludi Decl. at ¶ 17.

damages. Such efforts would also require expending even more resources, would necessitate expert witness testimony and significant additional litigation. As to the PAGA claims, the Court could exercise its discretion to reduce or eliminate PAGA penalties. By contrast, the Settlement herein ensures timely relief and substantial recovery of the wages, premiums, and penalties Plaintiffs contend are owed to the Settlement Class.⁵¹

Based on Plaintiffs’ counsel’s experience as class action attorneys, the risks associated with these issues make class certification uncertain. Accordingly, throughout the negotiations, Plaintiffs and their counsel factored in the various risks to their claims and those of the putative class; and the numbers exchanged throughout the mediations and negotiations reflected these considerations. The final settlement amount takes into account the substantial risks inherent in any wage-and-hour class action, as well as the specific defenses asserted by Defendants.⁵²

In summary, weighing all of these factors, Plaintiffs came to the following conclusions as to each claim in deciding whether to accept the settlement:⁵³

1. Unpaid overtime premiums

Given the broader risks to class certification and success on the merits, delays, and potential collection issues that could result from further litigation,— as well as Defendants’ specific arguments that Plaintiffs and the class were properly paid and that the time records produced showing no unpaid wages were accurate, that Class Members were afforded an opportunity to review and confirm the hours worked for each pay period, some attested that they received overpayments from UBS for when they left a shift early, and that the fact that Class Members worked different schedules and days and that therefore their claims are not susceptible to class wide resolution – Plaintiffs still believe this is their strongest claim, but nonetheless has substantial risks, and the potential offsets for overpayments to Class Members, so decided it was fair and reasonable to only discount this claim to approximately 50% of its “soaking wet” value, or about \$1,517,517.26.

⁵¹ Villegas Decl. at ¶ 53; Kaludi Decl. at ¶ 18.

⁵² Villegas Decl. at ¶ 54; Kaludi Decl. at ¶ 19.

⁵³ Villegas Decl. at ¶ 56; Kaludi Decl. at ¶ 20.

1 2. Unpaid meal premiums

2 Given that some class members interviewed indicated they worked less than 8 hours and that
3 Defendants assert that each Plaintiff testified in their deposition that no one at UBS prohibited them
4 from taking their meal breaks, that they were unsupervised while performing their work and that
5 Class Members were required to review and sign attestations stating they were afforded the
6 opportunity to take their breaks or otherwise report they were not, and there are broader risks to class
7 certification and success on the merits (particularly on meal and rest period claims), delays, and
8 collection issues that could result from further litigation, and that this claim falls or rises on whether
9 or not Plaintiffs are successful in proving that the time records produced are inaccurate and
10 unreliable – Plaintiffs decided it was reasonable to discount the meal period claim to approximately
11 25% of its “soaking wet” value, or about \$1,083,940.90.

12 3. Unpaid rest premiums

13 Given that rest periods are not required to be recorded and that some time records produced
14 by Defendants showed some class members working as little as two hours per day, there are broader
15 risks to class certification and success on the merits (particularly on meal and rest period claims
16 considering that Defendants assert that each Plaintiff testified that they were not prohibited by
17 anyone at UBS from taking their breaks and that it was their own decision not to take breaks every
18 shift, and that Class Members were required to review and sign attestations stating they were
19 afforded the opportunity to take their breaks or otherwise report that they were not), delays, and
20 collection issues that could result from further litigation, and that this claim falls or rises on whether
21 or not Plaintiffs are successful in proving that the time records produced are inaccurate and
22 unreliable as well as specific arguments from Defendants that there is no duty to record rest periods,
23 so class members’ failure to clock in or out for all rest periods does not prove any violations –
24 Plaintiffs decided it was reasonable to discount the rest period claim to approximately 15% of its
25 “soaking wet” value, or about \$390,218.72.
26
27

1 4. Labor Code Section 226 Wage Statement Penalties

2 Given the broader risks to class certification and success on the merits, delays, and collection
3 issues that could result from further litigation, and that success on this claim is dependent on success
4 of the underlying claims, Plaintiffs decided that this claim had a value of 25% or approximately
5 \$501,537.50.

6 5. Waiting Time Penalties

7 Given the broader risks to class certification and success on the merits, delays, and collection
8 issues that could result from further litigation, and that success on this claim is dependent on success
9 of the underlying claims, Plaintiffs decided that this claim had a value of 25% or approximately
10 \$745,500.60.

11 6. Interest

12 Given the reassessed value of the unpaid overtime and meal and rest premiums claims,
13 Plaintiff decided it was reasonable to base the prejudgment interest on this value, resulting in about
14 \$254,942.90 in prejudgment interest.

15 7. PAGA Penalties

16 As to PAGA penalties, Defendants argue that the penalties would depend on the success of
17 Plaintiffs' substantive claims, and that even if Plaintiffs succeeded on those claims, the Court has
18 discretion under Labor Code section 2699(e)(2) to reduce or eliminate PAGA penalties based on the
19 facts and circumstances of the particular case. In particular, the Court could determine that the
20 penalties were duplicative of the underlying claims or were excessive or confiscatory. Thus,
21 Plaintiffs decided that given the risk that the Court might not award any PAGA penalties even if
22 Plaintiffs successfully proved their underlying claims, Plaintiffs believed \$50,000 was a fair value
23 for the PAGA claims. Thus, the total reassessed value of all the claims is \$4,543,657.88.
24
25
26
27

As such, Plaintiffs decided that the reasonable value of the claims at \$3,550,000 which is 16% of the soaking wet number and 78% of the reassessed value is an excellent result.⁵⁴

II. SUMMARY OF SETTLEMENT

Recognizing the critical opportunity to resolve the matter for the benefit of both the putative class and Defendants, the settlement negotiations were non-collusive, adversarial, and at arm's length, as required for appropriate class action settlements. Plaintiffs, the class and its counsel, on the one hand, and Defendants and their counsel, on the other hand, agree that the settlement is fair and equitable to both sides.⁵⁵

The proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law and falls well within the range of reasonableness. The Net Settlement Amount of \$2,187,225.00 derived from a Gross Settlement Amount of \$3,550,000.00 is fair and just relief to all Settlement Class Members. According to Defendants records, the Settlement covers approximately 2000 Settlement Class Members, including Plaintiffs.⁵⁶ Because the approximately 2000 Settlement Class Members did not earn the same wage rate nor work the same number of workweeks during the covered period, the Net Settlement Amount will be divided based on their weeks worked. If the Net Settlement Amount were to be divided equally each would receive approximately \$1093.61, less required payroll taxes.⁵⁷

As noted above, the terms of the settlement are set forth in the Agreement, which is filed herewith and incorporated herein by reference.

III. THE TWO STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the presiding court. Cal. Rules of Court, Rule 3.769 (a). Approval occurs in two steps: (1) An early (preliminary) review by the trial court; and (2) a subsequent (final) review after notice has been distributed to Class Members for their comments and/or objections. Cal. Rules of Court, Rule 3.769 (c)-(f). The

⁵⁴ Villegas Decl. at ¶ 57; Kaludi Decl. at ¶ 21.

⁵⁵ Villegas Decl. at ¶ 59; Kaludi Decl. at ¶ 22.

⁵⁶ Villegas Decl. at ¶ 60; Kaludi Decl. at ¶ 23.

⁵⁷ Villegas Decl. at ¶ 61.

1 preliminary and final approval hearings coincide with these two required steps. The present motion
2 seeks preliminary approval and the scheduling of a final approval hearing. The first step,
3 preliminary approval, proceeds as follows:

4 When the parties to an action reach a monetary settlement, they will usually prepare and
5 execute a joint stipulation of settlement, which is submitted to the court for preliminary approval.
6 The stipulation should set forth the central terms of the agreement, including but not limited to, the
7 amount of the settlement, form of payment, manner of determining the effective date of settlement
8 and any recapture clause. Conte & Newberg, *Newberg on Class Actions*, (4th ed. 2002) §§ 11.24-
9 11.26.

10 The parties have executed and hereby submit the Agreement, which sets forth all material
11 terms. “Where the settlement terms are fair and reasonable, the settlement is presumptively valid,
12 subject only to objections that may be raised at a final hearing.” Conte & Newberg, *Newberg on*
13 *Class Actions*, *supra*, § 11.26.

14 **A. The Settlement Should Be Given Preliminary Approval Because It Is Fair,**
15 **Adequate, and Reasonable.**

16 Courts review class action settlements to ensure that their terms are fair, adequate, and
17 reasonable. See, e.g., *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. In analyzing
18 whether a settlement is fair and reasonable, the court considers, among other factors: (1) “the risk,
19 expense, complexity and likely duration of further litigation,” (2) “the risk of maintaining class
20 action status through trial,” (3) “the amount offered in settlement,” (4) “the extent of discovery
21 completed and the stage of the proceedings,” (5) “the experience and views of counsel,” and (6) “the
22 reaction of the class members to the proposed settlement.” *Id.* The court must be provided with
23 information about the nature and magnitude of the claims in question and the basis for concluding
24 that the consideration being paid represents a reasonable compromise. *Kullar v. Foot Locker Retail,*
25 *Inc.* (2008) 168 Cal.App.4th 116, 129. Fairness is presumed when investigation and discovery are
26 sufficient to allow counsel and the court to act intelligently; the settlement is reached through arm’s-
27 length bargaining; counsel is experienced in similar litigation; and the percentage of objectors is

small. *Dunk, supra*, 48 Cal.App.4th at 1802.

Moreover, California courts favor settlement. *Skulnick v. Roberts Express, Inc.* (1992) 2 Cal.App.4th 884, 891. Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Mallick v. Super. Ct. (County of Marin)* (1979) 89 Cal.App.3d 434, 438. In reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389 (citation omitted.).

1. Significant Investigation and Discovery Was Conducted.

Plaintiff’s counsel devoted a significant amount of time and resources towards investigation and discovery into the facts and allegations of this Action. Plaintiffs’ counsel served extensive written discovery, including form and special interrogatories and requests for production of documents, reviewed and analyzed pay records, including thousands of pages of time and payroll data reports, and check stubs for class members and Plaintiffs, as well as information regarding Defendants’ policies and procedures regarding timekeeping, and meal and rest periods, conducted eleven days of depositions of Defendants’ management employees and interviewed over 100 class members with the class list obtained through a *Bel Aire* Notice, in order to calculate damages, and Plaintiffs sat for two depositions each.⁵⁸ Plaintiffs’ counsel also spent a significant amount of time researching the law and facts. In light of the analysis of the information learned during this process, Plaintiffs’ counsel is of the opinion that this Settlement is fair, reasonable, and adequate, and in the best interest of the Class.⁵⁹

2. The Settlement Was Reached Through Arm’s-Length Bargaining in Which Both Parties Were Represented by Experienced Counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a

⁵⁸ Villegas Decl. at ¶¶ 11-26; Kaludi Decl. at ¶ 24.

⁵⁹ Villegas Decl. at ¶ 58; Kaludi Decl. at ¶ 25.

proposed settlement’s fairness.” *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482. Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Newberg on Class Actions, supra*, § 11.51.

As discussed in detail above, the parties had significant discussions about settlement, participated in two mediations with experienced class action mediators, and Plaintiffs’ and Defendants’ counsel engaged in extensive discussions and negotiations following the mediations, including the exchange of sufficient information for the parties to assess the strengths and weaknesses of the case and conduct damage assessments. Over the course of several months following the second mediation, the parties engaged in verbal and electronic negotiations. After substantial negotiations, exchange of information, and damage assessments, the parties through counsel agreed to the primary terms of settlement on September 22, 2022. The parties drafted and revised the Stipulation of Settlement and the necessary exhibits which was completed and signed by the parties and counsel on or about December 7, 2022, which has subsequently been amended to comply with this Court’s recent rulings related to PAGA releases on February 5, 2023.⁶⁰

3. The Proposed Settlement Is Reasonable Given the Strengths and Weaknesses of Plaintiffs’ Claims, Defendants’ Defenses and the Risks and Expense of Continued Litigation.

A trial court should satisfy itself that the consideration being received for the release of Class Members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation. *Kullar, supra*, 168 Cal.App.4th 116, 129. The proposed Settlement in this case satisfies that standard. *See Clark v. American Residential Services LLC*, (2009) 175 Cal.App.4th 785, 799, 803 (“the trial court is obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that legal point significantly affects the valuation of the case for settlement purposes.”).

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and

⁶⁰ Villegas Decl. at ¶ 27; Kaludi Decl. at ¶ 26.

reasonable. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250. Indeed, “[c]ompromise is inherent and necessary in the settlement process. . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* Settlement agreements are to be realistically assessed; “[t]he fact that the plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.” *Priddy v. Edelman* (1989) 883 F.2d 438, 447. Rather, the court is to evaluate the settlement to determine if the settlement is “within the ‘ballpark’ of reasonableness.” *Kullar, supra*, 168 Cal.App.4th at 133.

Plaintiffs’ class action complaint alleges multiple wage-and-hour claims for the Class. In particular, Plaintiffs allege that through common policies and practices, UBS deprived Plaintiffs and the class of regular and overtime wages, failed to reimburse expenses, failed to provide meal and rest periods, failed to maintain accurate time and payroll records, failed to provide accurate itemized wage statements, and failed to pay all wages due to class members upon termination or resignation as required by the Labor Code by failing to pay all wages for actual hours worked rather than paying for a pre-set number of hours and not accurately or contemporaneously recording the hours worked by Plaintiffs and the class. Plaintiffs further contend that to fulfill their duties under the contracts, workers were also unable to take compliant rest breaks and meal periods because they were pressured to complete their duties within a preset number of hours and/or encouraged to skip meal and rest periods to fulfill their duties within the hours allocated. Defendants, in turn, deny all of these claims and that they are appropriate for class certification.

As further discussed above, the reasonableness of the Settlement is further underscored by the legitimate legal and factual arguments Defendants have made against Plaintiffs’ claims, which could either substantially reduce or eliminate recovery to the Class. For instance, Defendants argue that UBS’s policies were compliant and that Class Members were afforded multiple opportunities to report missing/inaccurate time records and pay, as well as missed meal and rest periods. Moreover, Defendants assert that each Plaintiff testified that no one at UBS told them not to take a break during

any shift and that it was their decision not to take a break. Defendants have also represented that they have numerous declarations from Class Members who attest that they were paid for all the time worked, received overpayments from UBS, and that they were provided with compliant meal and rest periods. While Class Counsel is confident that Plaintiffs would succeed on liability, continued litigation would be costly, time-consuming, and with no guarantee of the outcome.

If litigation were to proceed, Plaintiffs would be required to conduct further discovery, move for class certification, establish class-wide liability, and then prove up various issues regarding damages. Such efforts would also require expending even more resources, would necessitate expert witness testimony and significant additional litigation. As to the PAGA claims, the Court could exercise its discretion to reduce or eliminate PAGA penalties. By contrast, the Settlement herein ensures timely relief and substantial recovery of the wages, premiums, and penalties Plaintiffs contend are owed to the Settlement Class.

(a) The Risk, Expense and Complexity of Class Certification Also Favors Settlement

In order to prevail on a motion for class certification, Plaintiffs must “demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021. To meet this burden, Plaintiffs must demonstrate all of the following: “(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* With regard to the predominance of common questions:

[The Court] must determine whether the elements necessary to establish liability are susceptible of common proof or, if not, whether there are ways to manage effectively proof of any elements that may require individualized evidence. *Id.* at 1024 (emphasis added).

In addressing this question, the Court focuses their discussion on not only the existence of common issues, but on how to handle individual ones.

A court must examine the allegations of the complaint and supporting declarations ... and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. [Footnote] As one commentator has put it, ‘what really matters to class certification’ is ‘not similarity at some unspecified level of generality but, rather, dissimilarity that has the capacity to undercut the prospects for joint resolution of class members’ claims through a unified proceeding.’ *Id.* at 1022 & fn. 5.

Stated differently, “[w]hat matters to class certification . . . is not the raising of common ‘questions’ – even in droves – but, rather the capacity of the class-wide proceeding to generate common answers apt to drive the resolution of the litigation.” *Wal-Mart v. Dukes* (2011) 564 U.S. 338, 350. Moreover, “[c]lass certification is appropriate only if these individual questions can be managed with an appropriate trial plan.” *Duran v. U.S. Bank Nat’l Assn* (2014) 59 Cal.4th 1, 27.

Here, Plaintiffs recognize the risk of prevailing on class certification or establishing a trial plan to show common liability. Considering Defendants’ arguments, Plaintiffs recognize there is a risk that class certification may not be granted outside the settlement context. For example, much consideration was given to the sampling of employee payroll and time records. The variability of violations across the sample size revealed a potential issue in prevailing on class certification. Similarly, the sampling of employee records and high turnover of employees posed a serious risk that employees would be difficult to locate as the matter approached trial. Also, Defendants claim that they were prepared to submit numerous declarations from Class Members refuting Plaintiffs’ claims and supporting Defendants’ position that the claims were not certifiable and lacked merit. Further, Plaintiffs off-the-clock claims are dependent on a trier of fact accepting Plaintiffs’ position that Defendants’ records are unreliable and should not be considered.⁶¹

In light of the facts uncovered in discovery, the risks posed by Defendants’ defenses, and the risks as to class certification, the parties have concluded that this action should be settled to avoid the expense and risk of further legal proceedings. Given all of these risks, and assessing the reasonable settlement value of the claims, the Settlement of \$3,550,000 is fair, reasonable, adequate, and in the

⁶¹ Villegas Decl. at ¶ 55; Kaludi Decl. at ¶ 27.

best interest of the Class Members.⁶²

IV. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE

As part of their negotiations, the parties have stipulated to class certification only for the purposes of settlement. Should the Settlement not become final and effective as provided in the Agreement, class certification shall immediately be set aside. Agreement ¶¶ 68, 75.

California has a very strong public policy favoring the use of class actions to resolve claims asserting wage violations under its labor laws. As the California Supreme Court has explained:

[C]lass actions play an important function in enforcing overtime laws by permitting employees who are subject to the same unlawful payment practices a relatively inexpensive way to resolve their disputes. . . . By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation.

Gentry v. Super. Ct. (2007) 42 Cal.4th 443, 459 (internal quotation marks omitted), overruled on other grounds by *AT&T Mobility LLC v Concepcion* (2011) 563 U.S. 333.

A. Standard for Pre-Certification Settlements.

“[P]re-certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable.”) The standard for class certification in the settlement context is a significantly lower threshold than in a contested proceeding or a trial context:

“The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the nonrepresentative members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the nonrepresentative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement.”

Dunk, supra, 48 Cal.App.4th at p. 1807 fn. 19. In other words, because no trial is anticipated in the

⁶² Villegas Decl. at ¶ 58; Kaludi Decl. at ¶ 29.

1 settlement context, any case management issues inherent in determining if the class should be certified
2 need not be confronted. *Amchem Prods., Inc. v. Windsor* (1987) 521 U.S. 591, 620.

3 The very liberal standard expressed in *Dunk* is satisfied here. The requirements for class
4 certification in the settlement context - ascertainability, numerosity, predominance of common
5 questions of law and fact, typicality, and adequacy - are all met. It certainly cannot be said that the
6 class members would do “much better by litigating on their own”. *Dunk, supra*, 48 Cal.App.4th at p.
7 1807, fn. 19. The Settlement Class should therefore be conditionally certified as requested.

8 **B. The Requirements for Class Certification in Settlement Context Are Satisfied**

9 1. Ascertainability and Numerosity

10 The proposed Settlement Class is ascertainable and sufficiently numerous. A “class is
11 ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common
12 characteristics sufficient to allow a member of that group to identify himself or herself as having a
13 right to recover based on the description.” *Bartold v. Glendale Fed. Bank* (2000) 81 Cal.App.4th 816,
14 828. The class definition, the size of the class and the means for identifying the members of the class
15 determine whether the class is ascertainable. *Reyes v. Bd. Of Supervisors* (1987) 196 Cal.App.3d 1263,
16 1274.

17 In this case, the members of the proposed Settlement Class are identifiable from Defendants’
18 own records and in fact, Defendants have already provided a class list. The Settlement Class members
19 are also sufficiently numerous to justify class certification. Defendants have preliminarily identified
20 2000 employees comprising the Settlement Class.

21 2. Predominance of Common Questions of Law and Fact.

22 The interrelated commonality and predominance requirements are satisfied if common issues
23 predominate. At its heart, this is a procedural inquiry asking “whether... the issues which may be
24 jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial
25 that the maintenance of a class action would be advantageous to the judicial process and to the
26 litigants.” *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (citing *Collins v.*
27

Rocha (1972) 7 Cal.3d 232, 238). Further, in the lower threshold of the settlement context, “commonality of issues only makes a difference if the nonrepresentative class members would do much better by litigating on their own.” *Dunk, supra*, 48 Cal.App.4th at p. 1807 fn. 19.

The Settlement Class Members’ claims here all stem from a common set of circumstances and occurrences. Thus, there are numerous common questions of law and fact relevant to the adjudication of the Class Members’ claims, including, among others, whether Defendants had a policy or practice of: (1) denying Plaintiffs and the Class bona fide off-duty meal and rest periods to which they are entitled, or paying premiums in lieu thereof at the regular rate, in violation of Labor Code §§ 226.7 and 512; (2) failing to pay Plaintiffs and the Class minimum wages, full compensation for regular and overtime hours they worked in violation of Labor Code §§ 200; 218.5, 218.6, 510 and 1194; (3) failing to maintain accurate and complete records in violation of Labor Code § 1174; (4) failing to provide compliant itemized wage statements in violation of Labor Code § 226; (5) failing to reimburse business expenses in violation of Labor Code §§ 221, 2800 and 2802, and (6) failing to pay all wages during employment and due at the time of separation in violation of Labor Code §§ 201-203, 218.5 and 218.6.

The absence of any known competing claims by the Settlement Class members (on an individual or class basis), and the complex common questions of facts and law in this case, strongly suggest that Settlement Class Members could not do substantially better than this Settlement by litigating individually. The commonality and predominance requirements for certification, particularly in the less intensive context of a Settlement Class, are therefore satisfied.

3. Typicality.

Typicality means merely that the class representative is similarly situated to the members of the class, not that his claims are identical. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 44-46. It suffices if the class representative's claims arise from the same event or course of conduct that gives rise to the class claims and are premised upon the same legal theories. *Id.*

In this case, Plaintiffs claims are typical of the members of the Plaintiff Class. Plaintiffs, like other members of the Class working for Defendants, were subjected to Defendants’ policies and/or

practices. Plaintiffs' job duties were typical of those of other Class members.

4. Adequacy.

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Plaintiffs' counsel are experienced class action litigators, with particular experience in litigating similar wage and hour class cases.⁶³ The proposed class representatives, Alfredo Garcia, Apolonio Piceno Perez, and Rosalia Arce have at all times been willing and able to aggressively and competently assert the interests of the Settlement Class members.⁶⁴ Adequacy of representation exists here.

V. SERVICE AWARD AND ATTORNEYS' FEES AND COSTS

As part of the Settlement, Plaintiffs will seek a class representative service award of \$15,000.00 each in addition to their share of the Net Settlement Fund. Class Counsel will seek fees in an amount up to \$1,182,150.00 (33.3%) of the Gross Settlement Amount and reimbursement of litigation costs not to exceed \$75,000. Class Counsel will file a motion for approval of the service award to plaintiffs, attorneys' fees, and expenses with supporting documentation and briefing prior to the hearing on the motion for final approval pursuant to the CCP.

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94; see also *Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for efforts in bringing the case); Ann. Manual Complex Lit. (4th ed. 2019) § 21.62, fn. 971. The service award sought here is well within the range of awards approved in wage-and-hour class actions.⁶⁵

⁶³ Villegas Decl. at ¶¶ 3-6; Kaludi Decl. at ¶¶ 4-10.

⁶⁴ Villegas Decl. at ¶ 62; Kaludi Decl. at ¶ 30.

⁶⁵ *See, e.g., Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068) 2007 WL 221862, at *16-17, *aff'd* (2008) 331 F. App'x 452 (approving \$25,000 to each named plaintiff); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299-300 (awarding \$50,000 to lead plaintiff).

The “criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” *In re Cellphone Fee Termination Cases*, *supra*, 186 Cal.App.4th at pp. 1394-95; see also *Staton v. Boeing Co.* (2003) 327 F.3d 938, 977 (courts generally consider “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonable fears of workplace retaliation”). All of these factors support the service award requested here.

Plaintiffs were formerly employed by Defendants. Plaintiffs have taken an extraordinary step to challenge their former employer's actions by bringing this action. They did so in the belief that they, and the members of the Class, were, in fact, entitled to the relief sought in this case. Plaintiffs’ actions have resulted in a substantial recovery for the members of the Class,⁶⁶ and the service award they seek is reasonable. Moreover, the additional compensation for providing a complete release of all claims, including a 1542 waiver, is well justified as Plaintiffs took on the burden of litigating this case and exerted a significant amount of time in attending meetings with their lawyers, attending two mediations, sitting for two days of depositions each, helping to locate class members, and carrying all the burdens of litigating it while others were reluctant or unwilling to come forward to assist them in pursuing their claims.⁶⁷

Plaintiffs fully participated in the analysis and planning of this action throughout the pendency of the litigation.⁶⁸ They responded to written discovery, helped with counsel’s investigation of other potential class members, sat for two days of depositions each, and were closely engaged in the nature and extent of settlement discussions, and thoughtfully approved multiple

⁶⁶ If the Net Settlement Amount were to be divided equally each would receive approximately \$1093.61, less required payroll taxes. Villegas Decl. at ¶ 61.

⁶⁷ Villegas Decl. at ¶ 66; Kaludi Decl. at ¶ 31.

⁶⁸ Villegas Decl. at ¶ 65. Kaludi Decl. at ¶ 32.

rounds of negotiations and the ultimate settlement with Defendants.⁶⁹ Throughout this litigation, Plaintiffs worked with their counsel regarding the claims against Defendants, produced substantial information and documents relevant to the action, provided lengthy responses to inquiries and questions, and attended several lengthy meetings with counsel.⁷⁰ They were committed to staying involved by requesting periodic updates and status reports.⁷¹

Moreover, courts widely recognize that service awards are particularly appropriate in wage-and-hour actions because plaintiffs undertake a significant “reputational risk” by bringing suit against their employers and serving as the face of a class action on behalf of anonymous absent class members. See, e.g., *Rodriguez v. W. Publ’g Corp.* (2009) 563 F.3d 948, 958-59; *Staton, supra*, 327 F.3d at p. 977. Employees who sue their employers are particularly vulnerable to retaliation. Given the ease with which prospective employers can run a background check, including a simple internet search for court records, filing a lawsuit against an employer can negatively impact future employment opportunities. Plaintiffs in employment actions can be blacklisted by prospective future employers who perceive them as “trouble makers.” For these reasons, many employees are understandably unwilling to risk jeopardizing their future employment by complaining about their employer’s unlawful practices, much less by filing a class or representative lawsuit against their employer on behalf of their fellow employees.⁷²

Plaintiffs’ willingness to sacrifice and set aside their own personal interests for the benefit of all aggrieved employees should be rewarded, both as just compensation for their efforts and achievements in this case, and to encourage others to stand up and object to employment practices they believe to be unlawful. See, e.g., *In re High-Tech Emp. Antitrust Litig.* (N.D. Cal. Sept. 2, 2015, No. 11-CV-02509) 2015 WL 5158730, at *17 (granting service awards based in part on the named plaintiffs’ risk of future workplace retaliation and diminished future employment prospects for being labeled “troublemakers” in their industry); *Connolly v. Weight Watchers N. Am. Inc.* (N.D.

⁶⁹ Villegas Decl. at ¶ 66. Kaludi Decl. at ¶ 34.

⁷⁰ Villegas Decl. at ¶ 67; Kaludi Decl. at ¶ 34.

⁷¹ Villegas Decl. at ¶ 68; Kaludi Decl. at ¶ 35.

⁷² Villegas Decl. at ¶ 69.

Cal. July 21, 2014, No. 14-CV-01983) 2014 WL 3611143, at *4 (named plaintiffs assume “the risk of being stigmatized or disfavored by their current or potential future employers by suing their employer”); *Ross v. U.S. Bank Nat’l Ass’n* (N.D. Cal. Sept. 29, 2010, No. C07-02951) 2010 WL 3833922, at *2 (service awards based on “willingness to serve as representatives despite the potential stigma that might attach to them in the . . . industry from taking on those roles”).

In determining the reasonableness of a requested service award, courts often consider “the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment.” *Staton*, 327 F.3d at p. 977; see also *Alberto v. GMRI, Inc.* (2008) 252 F.R.D. 652, 669. Here, the \$15,000 requested service award for each named plaintiff is reasonable compared to the total value of the settlement. Indeed, the total amount of the requested service awards is less than 2% of the total monetary settlement. Many courts have approved comparable service payments in wage-and-hour class actions, in recognition of the costs and risks that named plaintiffs incur. See *supra* fn. 7. A reasonable award is particularly justified where, as here, Plaintiffs’ efforts achieved outstanding results for the class.

In addition, the Settlement requires Plaintiffs to provide a general release of all claims against Defendants, which includes a waiver of unknown claims and their rights under Civil Code § 1542. Plaintiffs have thus sacrificed significantly more than the other Class Members.⁷³

Furthermore, this suit is precisely the type of litigation that supports and promotes the public policies that prohibit employers from denying employees their basic rights to overtime and breaks provided by the Labor Code. Payment of the service award advances the public policies underlying the statutory schemes upon which Plaintiffs’ claims are based by promoting the enforcement of such workers’ rights legislation. See *Does I thru XXIII v. Advanced Textile Corp.* (2000) 214 F.3d 1058, 1073 (“fear of employer reprisals will frequently chill employees’ willingness to challenge employers’ violations of their rights”); *Mitchell v. Robert DeMario Jewelry, Inc.* (1960) 361 U.S. 288, 292 (“[I]t needs no argument to show that fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions.”).

⁷³ Villegas Decl. at ¶ 70; Kaludi Decl. at ¶ 36.

1 In sum, not only the time spent and the service rendered to counsel and the Class, but also the
2 risks of stigma and future retaliation, delay in payout, agreement to a general release of claims, and
3 decision to forego potentially larger recovery through their individual claims provide ample
4 justification for the service awards sought. As such, the requested amount is both reasonable and
5 appropriate.

6 VI. CONCLUSION

7 Based upon the foregoing, the parties respectfully request this Court to issue an Order that
8 includes the provisions in the contemporaneously filed [Proposed] Order:

- 9 1. Granting preliminary approval of the parties' non-reversionary \$3,550,000.00 class
10 action Agreement which is attached as **Exhibit 1** to the Villegas Declaration;
- 11 2. Approving the allocation of the Gross Settlement Fund to the Settlement Class
12 Members, the Class Representatives, Class Counsel, the LWDA and the Settlement
13 Administrator;
- 14 3. Approving the forms of the Notice Materials (attached as **Exhibit A** to the
15 Agreement) and ordering that the Class be given notice of the Settlement and
16 provided with the Notice Materials;
- 17 4. Appointing Simpluris as the Settlement Administrator;
- 18 5. Conditionally certifying the proposed Class for settlement purposes only;
- 19 6. Appointing Plaintiffs as Class Representatives;
- 20 7. Appointing Virginia Villegas, The Villegas Law Firm, APC; and Ike M. Kaludi,
21 California Trial Law Group, PC as Class Counsel;
- 22 8. Ordering the parties to perform their obligations under the Agreement;

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- 1 9. Scheduling a final approval hearing for a date 120 days after Preliminary Approval is
2 granted, or such later date as is available for the Court; and
3 10. Granting any such other and further relief as the Court deems just and proper.
4

5 DATED: March 9, 2023

THE VILLEGAS LAW FIRM, APC

CALIFORNIA TRIAL LAW GROUP, PC

7
8 By: Virginia Villegas
9 Virginia Villegas
10 Attorneys for Plaintiff
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