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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

STANLEY RENE, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

KOCH FILTER CORPORATION, a Kentucky  
Corporation; and DOES 1-50, Inclusive;

Defendants.

Case No. CVRI2300700

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

Date: October 3, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

Reservation #: 972551561962

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1 I. INTRODUCTION

2 Plaintiff STANLEY RENE (“Plaintiff”) seeks preliminary approval of the Stipulation of  
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for approximately 50 Class Members who  
5 collectively worked approximately 7,319 Workweeks. The basic terms of the Agreement provide for  
6 the following:

7 1. The “**Class Members**,” “**Settlement Class**” and “**Class Period**” all current and former  
8 hourly-paid or non-exempt employees who worked for Koch Filter Corporation (“Defendant”) within  
9 the state of California as a non-exempt or hourly-paid employee in California (“Class Member”) during  
10 the period between February 9, 2019, through July 16, 2024 (“Class Period”). Agreement at §§ I(H) and  
11 (I).

12 a. The “**Settlement Class Members**” means all Class Members who have not  
13 submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at §  
14 I(KK).

15 b. The “**Class Size**” is comprised of 50 individuals who collectively worked  
16 approximately 7,319 Workweeks during the Class Period as estimated by Defendant at the time of  
17 mediation. If the actual number of Workweeks worked by Class Members during the Class Period  
18 increases by more than 10%, then Defendant shall increase its contribution to the Gross Settlement  
19 Amount of \$298,000 proportionally. Agreement at § III(A)(2).

20 2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all current and former  
21 hourly-paid or non-exempt employees who worked for Defendant within California (“Aggrieved  
22 Employees”) during the period between December 5, 2021, through July 16, 2024 (“PAGA Period”).  
23 Agreement at § I(B); I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion  
24 of the settlement. Agreement at § III(K)(7).

25 3. The “**Gross Settlement Amount**” is Two Hundred Ninety-Eight Thousand Dollars and  
26 Zero Cents (\$298,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and  
27

28 <sup>1</sup> 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.

includes the following:

a. A **“Class Representative Service Award”** of not more than \$5,000.00 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at §§ III(L)(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 \$99,333.33 **and** litigation expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at § III(L)(10);

c. A **“PAGA Payment”** of Ten Thousand Dollars and Zero Cents (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment (\$7,500) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$2,500) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(C); I(R); I(V); III(L)(11). The estimated range of Aggrieved Employee Payments will be provided in Plaintiff’s motion for final approval; and

d. **“Settlement Administration Expenses”** not to exceed \$5,000 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Expenses. Agreement at §§ I(JJ), III(L)(12). Class Counsel requested bids from three (3) settlement administration companies and received the lowest bid from Apex Class Action LLC. JCL Dec., ¶ 5.

4. The **“Net Settlement Amount”** of approximately \$158,666.67 (Gross Settlement Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Expenses) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(L)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of **\$3,173.33**. The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. JCL Dec., ¶ 7.

1 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the  
2 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.  
3 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement  
4 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage  
5 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will  
6 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being  
7 denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

8 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement  
9 approval and falls within the range of reasonableness. The average Individual Settlement Payment to  
10 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed  
11 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests  
12 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

## 13 II. FACTS AND PROCEDURE

### 14 A. Overview of the Litigation

15 Defendant manufacturers indoor air filtration solutions in Riverside County, where Plaintiff  
16 worked. Plaintiff has been employed by Defendant in California since November 2015. Throughout  
17 his employment, Plaintiff claims that he was denied legally compliant meal and rest periods, and  
18 minimum wages and overtime compensation. Throughout his employment, Plaintiff was subject to  
19 Defendant's written policies and procedures contained in, among other things, the "Koch Filter  
20 Employee Handbook." Declaration of Stanley Rene ("Rene Dec.") at ¶¶ 1-5; JCL Dec., ¶ 9.

21 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,  
22 failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish  
23 accurate, itemized wage statements, and failed to pay all wages when due and at the correct rate of pay.  
24 Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied  
25 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,  
26 including but not limited to, asserting that they maintained facially compliant meal and rest period  
27 policies, paid their employees for all hours worked, properly reimbursed all necessary business  
28 expenses, and issued legally complaint wage statements. JCL Dec., ¶ 10.

1 On December 5, 2022, Plaintiff served Defendant and the Labor and Workforce Development  
2 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth  
3 the facts and theories supporting Defendant’s alleged violations of various provisions of the California  
4 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to  
5 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections  
6 2698 *et seq* (“PAGA”). JCL Dec., ¶ 11.

7 On February 9, 2023, Plaintiff filed a representative action alleging a single cause of action for  
8 violations of PAGA. (“PAGA Action”). JCL Dec., ¶ 12. The same day, Plaintiff filed a separate class  
9 action complaint in the Riverside County Superior Court, Case No. CVRI2300700 (“Action”). The  
10 operative complaint is the First Amended Complaint that alleges wage-and-hour claims for: unpaid  
11 wages (minimum, regular, overtime, and doubletime); rounding violations; regular rate of pay  
12 violations for overtime, meal period premiums, and sick pay; meal period violations; rest period  
13 violations; untimely wages during employment and at termination; non-compliant wage statements;  
14 failure to keep requisite payroll records; failure to reimburse business expenses; and unfair business  
15 practices (Business and Professions code section 17200). JCL Dec., ¶ 12.

16 In June 2023, Plaintiff commenced written discovery requesting, among other things, the names  
17 and contact information for the putative Class Members. After responding to discovery, the Parties  
18 agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange  
19 additional documents and data points subject to the mediation privilege, including but not limited to,  
20 the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel  
21 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and  
22 payroll data. JCL Dec., ¶ 13.

23 On April 16, 2024, the Parties participated in a full day mediation with Hon. Brian C. Walsh  
24 (Ret.), a retired jurist and mediator of wage and hour class and PAGA actions. The mediation concluded  
25 with a settlement after both sides agreed to a Mediator’s proposal, which was subsequently  
26 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and  
27 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶  
28 14.

1 On June 11, 2024, Plaintiff filed a First Amended Complaint in the Action (“Operative  
2 Complaint”) consolidating the Action and PAGA Action. JCL Dec., ¶ 15.

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

4 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s  
5 complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As  
6 part of the interview process, the Plaintiff produced documents related to his employment. At the  
7 conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further  
8 inquiry. JCL Dec., ¶ 16.

9 Class Counsel subsequently requested Plaintiff’s employee files from Defendant. In response,  
10 Defendant produced several documents, including but not limited to, copies of Plaintiff’s hiring  
11 documents and payroll and time records, schedules, and various company policies. Class Counsel  
12 reviewed and analyzed the documents and determined the documents appeared to substantiate  
13 Plaintiff’s claims that Defendant failed to, among other things, provide compliant meal and rest periods,  
14 and failed to pay for all hours worked, failed to reimburse necessary business expenses, and failure to  
15 furnish accurate itemized wage statements. JCL Dec., ¶ 17.

16 To prepare for mediation, Defendant produced time and payroll records for the Class Members,  
17 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the  
18 Class Members, average hourly rate for the Class Members, average shift length for Class Members,  
19 number of current Class Members, number of former Class Members who were employed during the  
20 Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel  
21 reviewed hundreds of pages of documents and several hundred thousand data cells of unique of time  
22 and payroll data. JCL Dec., ¶ 18.

23 Class Counsel analyzed Defendant’s time and payroll data to assist in the development of various  
24 damage models. Among other things, Class Counsel estimated the approximate amount of unpaid  
25 wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts  
26 and average number of hours worked per week. Class Counsel also estimated the number of missed,  
27 late, or truncated meal and rest periods, the amount of off-the-clock work, and the amount of missed  
28 meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 19.

1 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining  
2 Plaintiff's suitability as a putative class representative through interviews, background investigations,  
3 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching  
4 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type  
5 of employer; (4) engaging in formal class-wide discovery prior to mediation; (5) analyzing the  
6 Settlement Class's time and payroll records; (6) analyzing Defendant's labor policies and practices; (7)  
7 researching settlements in similar cases as well as outstanding issues which could affect settlement  
8 approval; (8) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of  
9 settlement; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation  
10 allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as  
11 the impediments to recovery, such as to make an independent assessment of the reasonableness of the  
12 terms to which the Parties have agreed. JCL Dec., ¶ 20.

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

19 **C. The Proposed Settlement Fully Resolves Plaintiff's Claims**

20 1. The Composition of the Settlement Class Members

21 The proposed Class consists of all persons who are or previously were employed by Defendant  
22 as a non-exempt employee in California at any time during the period between February 9, 2019, and  
23 July 16, 2024. Agreement at I(I). The Settlement Class excludes any person who submits a timely and  
24 valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class  
25 was comprised of 50 individuals that worked approximately 7,319 workweeks during the Class Period.  
26 Agreement at § III(A)(2).

27 2. The Settlement Consideration

28 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement

1 Amount of \$298,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments  
2 to the Settlement Class; (2) a Class Representative Service Award of not more than \$5,000 to Plaintiff  
3 for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$10,000.00;  
4 (4) Settlement Administration Expenses estimated at \$5,000.00; (5) Class Counsel Award in the amount  
5 of \$119,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount  
6 estimated to be \$99,333.33 and an estimated \$20,000.00 for actually incurred litigation expenses. See  
7 generally Agreement at § III(L).

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

13 3. The Funding Date

14 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement  
15 Amount within thirty (30) calendar days of the Court's entry of the order and judgment granting final  
16 approval of this Settlement. Agreement at § I(O).

17 4. Formula for Calculating Individual Settlement Payments

18 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual  
19 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member  
20 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to  
21 the Settlement Administrator will include the information required to calculate the number of  
22 Workweeks for each Class Member and the number of PAGA Pay Periods worked during the PAGA  
23 Period. Agreement at § I(G). Using the Class Data, the Settlement Administrator shall add up the total  
24 number of Workweeks for all Class Members. The respective Workweeks for each Class Member will  
25 be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class  
26 Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount  
27 to calculate each Class Member's estimated Individual Settlement Payments. Each Individual  
28 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,

employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(L)(1).

Given that there are approximately 50 Settlement Class Members, *the average gross recovery is approximately \$3,173.33* (Net Settlement Amount divided by Settlement Class Members). The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. JCL Dec., ¶ 7.

For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 20% as wages (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at §III(L)(3). In calculating Defendant’s total damages exposure, Class Counsel determined that the vast majority of damages are for meal and rest premiums, which can be classified as penalties and not wages. Therefore, with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that an allocation of 20% as wages and 80% as penalties and interest is far and reasonable. JCL Dec., ¶ 22.

5. Formula for Calculating Individual Payments to the Aggrieved Employees

Each Aggrieved Employee will receive an Aggrieved Employee Payment. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA pay periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employee will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the PAGA Payment. Agreement at §III(L)(4).

6. Mailing of Individual Settlement Payments and Aggrieved Employee Payments

The Settlement Administrator will mail the Individual Settlement Payments and Aggrieved Employee Payments by regular First-Class U.S. Mail to Settlement Class Members’ and/or Aggrieved Employees’ last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement at § III(L)(7). Any checks issued to Settlement Class Members and Aggrieved Employees

shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employee to request reissuance in the event the check was destroyed, lost or misplaced. Agreement at § III(L)(8). In the event an Individual Settlement Payment and/or Aggrieved Employee's individual share of the PAGA Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks will be reallocated and redistributed by the Settlement Administrator to those Settlement Class Members and/or Aggrieved Employees who cashed their Individual Settlement Payment checks through a second distribution using the same allocation as the first distribution. Agreement at § III(L)(8).

7. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims for the Class Period. Agreement at § III(B).

8. PAGA Release by Plaintiff and the State of California

Generally, as of the Funding Date, Plaintiff and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § III(C).

### III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$298,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to

1 inquire into the fairness of the proposed settlement”).)

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

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

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

24 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed  
25 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the  
26 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is  
27 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,  
28 § 11.51.)

1 The Parties participated in mediation retired jurist and highly respected mediator Hon. Brian C.  
2 Walsh (Ret.). Judge Walsh managed the Parties' expectations and provided a useful, neutral analysis  
3 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF  
4 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs  
5 considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir.  
6 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to  
7 ensure that the proceedings were free of collusion and undue pressure.")) After a full day of mediated  
8 negotiations, the Parties reached an agreement and the mediation session concluded with a settlement.  
9 JCL Dec., ¶ 23.

10 Once the Parties reached a settlement, they engaged in protracted negotiations regarding the  
11 written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and  
12 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final  
13 product of these settlement negotiations. Objectively, the Settlement terms are fair, adequate and  
14 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

15 2. The Settlement Falls Within the Recognized Range of Reasonableness.

16 The Gross Settlement Amount of \$298,000.00 is within the range of reasonableness. To  
17 determine whether a settlement is fair and reasonable, the court should "consider enough information  
18 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to  
19 make an independent assessment of the reasonableness of the terms to which the parties have agreed."  
20 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,  
21 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the  
22 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such  
23 explicit statement of value; [they] require[] a record which allows an understanding of the amount that  
24 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*  
25 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a  
26 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might  
27 have received if they had succeeded at trial.<sup>2</sup> Indeed, "[t]he determination whether a settlement is  
28

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<sup>2</sup> Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a

reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$298,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to settlement, Class Counsel developed economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA penalties) ranged between \$817,512.85 (“Realistic Damages”) and \$1,591,687.16 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of between 36.45% (“Realistic Damages”) and 18.72% (“Maximum Damages”)<sup>3</sup> of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure: JCL Dec., ¶ 25.

**(1) Defendant’s Estimated Exposure for Unpaid Wages**

Plaintiff primary claim in this Action alleges that Defendant failed to pay for all hours worked. For a portion of the Class Period, Defendant engaged in unlawful time rounding that resulted in an underpayment of wages to Plaintiff and Class Members. Specifically, Defendant’s records showed that approximately 44.1% of shifts resulted in an underpayment of wages, whereas only 0.7% of shifts were

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settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to 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.* (9<sup>th</sup> 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”).

<sup>3</sup> The large difference in percentages is a result of the Maximum Damages model accounting for 203 penalties at a 100% violation rate.

1 overpaid. Defendant denied liability for this claim and argued that the Class Members were paid for all  
2 hours worked. Additionally, Defendant argued that any rounding practices ended at the beginning of  
3 2021. Further, Defendant argued that this claim resulted in minimal actual damage to the Class  
4 Members and that its rounding policies complied with *See's Candy Shops, Inc. v. Superior Court* (2012)  
5 210 Cal.App.4th 889. JCL Dec., ¶ 26.

6 Additionally, Plaintiff's alleged that Defendant failed to pay employees for time spent  
7 undergoing COVID-19 temperature checks before they were able to clock in for the start of their shifts.  
8 Defendant vigorously denied liability for this claim. Defendant argued that all Class Members were  
9 properly paid minimum and overtime compensation for all hours worked and that Class Members were  
10 instructed not to work off-the-clock. As a result of the significant underpayment versus underpayment  
11 and the off-the-clock COVID-19 temperature checks, Plaintiff applied a 50% discount for this claim.  
12 As a result, Plaintiff estimated Defendant's exposure for unpaid wages ranged from approximately  
13 \$67,010.00 to approximately \$233,574.00. JCL Dec., ¶ 27.

14 (2) Defendant's Estimated Exposure for Meal Period Violations

15 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,  
16 Plaintiff alleges that as a result of Defendant's rounding practice, Defendant failed to provide compliant  
17 meal periods. As a result, approximately 57% of meal periods were rounded to exactly thirty (30)  
18 minutes. Moreover, Plaintiff alleges that his meal periods were often late and short. Specifically,  
19 Defendant's records showed that approximately 80% of meal periods were late and approximately 42%  
20 of meal periods were less than thirty minutes. JCL Dec., ¶ 28.

21 Defendant argued, among other things, that it did not engage in meal rounding and provided all  
22 its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant  
23 meal periods. Defendant also argued that it maintained facially complaint meal period policies,  
24 including enforceable meal period waivers. Plaintiff's expert confirmed this to be true and found that  
25 99.9% of meal period violations for shifts between 5 and 6 hours were subject to meal period waivers.  
26 Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period  
27 violations and any claimed violations required a highly individualized inquiry not suitable to class  
28 treatment. Consequently, Plaintiff applied a 25% discount to this claim and estimated Thus, Plaintiff

1 estimated the damages for this claim ranged from approximately \$419,549.31 to approximately  
2 \$559,399.08. JCL Dec. ¶ 29.

3 (3) Defendant's Estimated Exposure for Rest Period Violations

4 Plaintiff alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff  
5 alleged that Defendant's supervisors instructed Plaintiff and other Class Members that they were not  
6 allowed to leave the premises during their rest periods, resulting in on-premises rest periods. JCL Dec.,  
7 ¶ 30. The California Supreme Court's decision in *Augustus v. ABM Security Services, Inc.*, held that  
8 "employers . . . must relinquish control over how employees spend their time" during rest periods. 2  
9 Cal. 5th 257, 259 (2016). Moreover, Lab. Code § 226.7(c) provides that "if an employer fails to provide  
10 an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order  
11 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay  
12 at the employee's regular rate of compensation for each workday that the meal or rest or recovery period  
13 is not provided."

14 Defendant denied liability and asserted that the workload is not such that it prevented employees  
15 from taking a compliant break. Defendant maintained legally compliant written policies and actual  
16 practices concerning rest periods throughout the Class Period. Moreover, Plaintiff recognizes the  
17 evidentiary burdens establishing this claim. Establishing liability likely would have entailed competing  
18 testimony stating either rest breaks were taken, or rest breaks were voluntarily waived. See, e.g.,  
19 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 ("Because of the  
20 competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written  
21 rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United*  
22 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 ("Indeed, Plaintiff's  
23 own evidence confirms that the written policy does not generate uniform practices"). JCL Dec., ¶ 31.

24 Accordingly, Plaintiff's damage model mirrored the same discount as applied to Class Members'  
25 meal periods. Plaintiff estimated Defendant's exposure for this claim ranged from approximately  
26 \$279,699.54 to approximately \$559,399.08. JCL Dec., ¶ 32.

27 (4) Defendant's Estimated Exposure for Unreimbursed Business Expenses

28 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business

1 expenses. Specifically, Plaintiff alleges that he and other Class Members were required to use their  
2 own personal cellular phones as a result of and in furtherance of their job duties reimbursed for the cost  
3 associated with the use of their personal cellular phones. JCL Dec., ¶ 33. Cal. Labor Code § 2802,  
4 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or  
5 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or  
6 her obedience to the directions of the employer...”

7 Plaintiff alleges he and other Class Members were required to use their personal cell phones to,  
8 among other things, communicate with Defendant’s supervisors during and after their shifts. Defendant  
9 denies these claims, and also notes that the Class is comprised of all non-exempt employees, and even  
10 if these claims were true, they would affect only a small subset of that Class. Considering these  
11 defenses, Plaintiff applied an 85% discount to this claim. Plaintiff estimated Defendant’s exposure for  
12 this claim ranged from approximately \$7,012.50 to approximately \$28,050.00. JCL Dec., ¶ 34.

13 (5) Defendant’s Estimated Exposure for Wage Statement Violations

14 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage  
15 statements. Specifically, Plaintiff alleges that as a result of Defendant’s failure to provide meal and  
16 rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled  
17 to derivative wage statement penalties. (See *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th  
18 93 (concluding that meal premiums are “wages” entitling employees to derivative wage statement  
19 penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements,  
20 Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff  
21 discounted this claim 50% to account for this risk. Plaintiff’s expert estimated that Defendant could  
22 be liable for \$38,525.00 to approximately \$154,165.00 in *derivative* penalties as a result of these  
23 violations. JCL Dec., ¶ 35.

24 (6) Defendant’s Estimated Exposure for Waiting Time Penalties

25 Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor  
26 Code section 203. Although these *penalties* represented Defendant’s largest dollar amount of exposure,  
27 this is Plaintiff’s most uncertain claim. Specifically, Defendant contends that Plaintiff could not prove  
28 the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. As this claim

is legally precarious, Plaintiff applied a 90% discount. Plaintiff estimated Defendant's exposure for these claims to be approximately \$5,716.50 to approximately \$57,165.00. JCL Dec., ¶ 36.

(7) Defendant's PAGA Exposure

"Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between December 5, 2021, to July 16, 2024, and there are approximately 40 Aggrieved Employees who worked a total of 1,690 pay periods. JCL Dec., ¶ 37.

Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

| Labor Code Section                          | Number of employees | Statutory penalty | Number of pay periods / violations | Violation rate            | Total Penalties     |
|---------------------------------------------|---------------------|-------------------|------------------------------------|---------------------------|---------------------|
| 351, 510, 558, 1194 and 1197 (unpaid wages) | 40                  | \$100             | 1,690                              | 100% of total pay periods | \$169,000.00        |
| 512 and 226.7 (meal period violations)      | 40                  | \$50              | 1,688                              | 50% of total pay periods  | \$84,400.00         |
| 512 and 226.7 (rest period violations)      | 40                  | \$50              | 1,688                              | 50% of total pay periods  | \$84,400.00         |
| 2802 (unreimbursed business expenses)       | 40                  | \$100             | 1,690                              | 100% of total pay periods | \$4,000.00          |
| 226 (wage statements)                       | 40                  | \$100             | 1,561                              | 100% of total pay periods | \$169,000.00        |
| <b>TOTAL</b>                                |                     |                   |                                    |                           | <b>\$510,800.00</b> |

JCL Dec., ¶ 37.

The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v.*

1 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*9 (N.D. Cal. Apr. 3, 2009). Courts  
2 routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement.  
3 *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683  
4 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of  
5 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at \*5  
6 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of  
7 zero to two percent of the total settlement).

8 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000 which is 3.3%  
9 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.  
10 Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA ("LWDA  
11 PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will  
12 be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by  
13 courts and should be approved. JCL Dec., ¶ 38.

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

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

28 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,

just, and reasonable.

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

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 39.

“The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008

1 WL 5382544, at \*3.) Indeed, potential appeals aside, litigating a complex case through trial is  
2 inherently perilous regardless of the strengths of merits of the claims:

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

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

9 Finally, continuing to litigate this action would require continued and extensive resources  
10 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
11 take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates  
12 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
13 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
14 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,  
15 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and the  
16 subsequent appeals in this complex case strongly militates in favor of settlement rather than further  
17 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221  
18 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are  
19 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

20 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$298,000.00 that is  
21 roughly between approximately 18.72% and 36.45% of Defendant’s *class-wide* liability exposure for  
22 damages and statutory penalties, and between 14.15% and 36.08% of Defendant’s maximum class wide  
23 liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the  
24 settlement here, as compared to potential value of the claims, offset by the various inherent risks to  
25 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

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

27 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*  
28 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient

1 information to decide whether they should accept the benefits offered, opt out and pursue their own  
2 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.  
3 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class  
4 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not  
5 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class  
6 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*  
7 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)<sup>4</sup>

8 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class  
9 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then  
10 mail the proposed Class Notice to all Class Members in Spanish and English. The Notice will include  
11 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,  
12 the class definition, the procedure, and time period within which to requests for exclusions or objections  
13 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement  
14 payments, and the terms and scope of the Released Class Claims. Agreement at § I(T). The Parties  
15 negotiated this method to ensure delivering the most reasonable method of notice to the Class Members  
16 while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 42.

17 The Class Notice includes an exclusion form that Class Members can fill out in order to exclude  
18 themselves from the Settlement and an Objection Form that Class Members can fill out in order to  
19 object to the terms of the Settlement. The Class Notice informs Class Members of where they can find  
20 the full text of the settlement agreement, the court address, and court website address. See Ex. A to the  
21 Agreement.

22 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice  
23 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485  
24 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and  
25 of the options open to dissenting class members.”).) JCL Dec., ¶ 43.

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26  
27 <sup>4</sup> Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to  
28 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* (7<sup>th</sup> Cir. 1987) 826 F.2d 729, 732.

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9<sup>th</sup> 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).) Service Awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Award of \$5,000.00<sup>5</sup> for Plaintiff.

<sup>5</sup> The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *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.*

1 The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,  
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on  
3 the status of his case and the strategies for prosecuting the claims, and reviewing the proposed  
4 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL  
5 Dec., ¶ 44.

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class  
7 Representative Service Award once preliminary approval of the Settlement is granted. Such motion  
8 will be accompanied by a declaration from Plaintiff that describes the services he performed to  
9 prosecute this action, includes an estimate of time incurred by Plaintiff in performing these services,  
10 the risks he assumed or benefits he received in prosecuting this action, and identify any adverse  
11 consequences he suffered in prosecuting this action. JCL Dec., ¶ 45.

12 The Parties also reached an agreement with respect to Plaintiff's Individual Claims. Plaintiff's  
13 individual settlement was negotiated the same day as the class and PAGA mediation. However, the  
14 settlement of Plaintiff's Individual Claims was negotiated separately and only **after** the class and  
15 PAGA settlement was reached. At all times during the mediation and settlement negotiations, Plaintiff  
16 prioritized the claims of the class, and did not engage in settlement negotiations of Plaintiff's Individual  
17 Claims until the class action was tentatively settled. Plaintiff has negotiated a \$10,000.00 settlement  
18 for individual claims with Defendant. Rene Dec., ¶ 10; JCL Dec. ¶ 46.

19 Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the  
20 negotiated Class Representative Service Award. JCL Dec., ¶ 47.

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

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

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27 *BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013) (awarding \$10,000  
28 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).

lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Settlement Class Members, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 48.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration that provides evidence of the total amount of time spent by Class Counsel, a description of the work performed, and the reasonableness of the fees charged. Such declaration will also include a detailed description of the costs actually incurred. This declaration will include details related to fee splitting between Class Counsel, and Plaintiff’s written notice of such. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 49.

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

For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 50.

##### **1. The Standard for Class Certification**

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

1 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

17 Because all Class Members are Defendant’s current and former employees, the class is readily  
18 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 51.

19 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire  
20 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s  
21 liability can be determined by facts common to all members of the class. The wage and hour issues are  
22 both numerous and substantial, and a class action is the most advantageous method of dealing with the  
23 claims of the Settlement Class. JCL Dec., ¶ 52.

24 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise  
25 from the same factual basis and are based on the same legal theories applicable to the other Class  
26 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement  
27 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed  
28 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability

1 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive  
2 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 53.

3 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience  
4 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and  
5 gained state court settlement approval of the same class-wide causes of action that are at issue in this  
6 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to  
7 represent the interests of this Class. JCL Dec., ¶¶ 55-60, Declaration of Shani Zakay, ¶¶ 1-3;  
8 Declaration of Joanna Ghosh, ¶¶ 2-11.

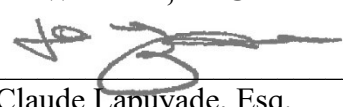
9 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
10 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
11 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each  
12 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case  
13 adjudication. JCL Dec., ¶ 54.

#### 14 IV. CONCLUSION

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

18  
19 Dated: September 10, 2024

**JCL LAW FIRM, APC**

20 By:   
21 Jean-Claude Lapuyade, Esq.  
22 Attorney for Plaintiff  
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