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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LISA MARTINI and ISAIAH MA, as individuals, and on behalf of other members of the general public similarly situated; Plaintiff, vs. SAN FERNANDO VALLEY COMMUNITY MENTAL HEALTH CENTER, INCORPORATED, a California corporation; SAN FERNANDO VALLEY COMMUNITY HEALTH, an unknown business entity; and DOES 1 through 100, inclusive, Defendants.	Case No. 23STCV00900 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: March 20, 2024 Time: 9:00am Judge: Hon. Elihu M. Berle Dept.: 6

TABLE OF CONTENTS

/ / /

TABLE OF AUTHORITIES

CASES

RULES, CODES, AND STATUTES

SECONDARY SOURCES

I. INTRODUCTION

Plaintiffs LISA MARTINI and ISAIAH MA ("Plaintiffs") seek preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 615 Class Members and approximately 389 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California ("Class") during the period from January 13, 2019, to December 31, 2023 ("Class Period"). Agreement at §§ 1.7, 1.12.

a. **"Participating Class Member"** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.36.

b. The "**Class Size**" is comprised of 615 individuals who collectively worked approximately 72,216 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 4.1.

2. The **"Aggrieved Employees"** and **"PAGA Period"** means all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California("Aggrieved Employees") during the period of March 23, 2022, to December 31, 2023 ("PAGA Period"). Agreement at §§ 1.4, 1.32. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. Defendant estimates approximately 389 Aggrieved Employees who worked 13,382 pay periods during the PAGA Period. Agreement at § 4.1.

3. The "**Gross Settlement Amount**" is One Million and Five Hundred Thousand Dollars and Zero Cents ($1,500,000.00). Agreement at § 1.23. The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Class Representative Payment**" of not more than $10,000 to each Plaintiff in recognition of their efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ 3.2.1, 5.1.

b. **"Attorneys' Fees and Litigation Costs"** in the amount not to exceed one-third

[1] The Agreement is attached as Ex "A" to the Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

of the Gross Settlement Amount for attorney's fees, currently estimated to be $500,000.00 ***and*** litigation expenses not to exceed $30,000, to be paid to Class Counsel. Agreement at §§ 1.5, 3.2.2;

c. A "**PAGA Payment**" of Fifty Thousand Dollars ($50,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment ($37,500) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($12,500) will be distributed to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at § 1.25, 1.28, and 1.35; and

d. "**Administration Expenses Payment**" not to exceed $12,000.00 payable to the Settlement Administrator, Apex Class Action, LLC, for, *inter alia,* the administration of the Class Notice and issuance of settlement checks. Agreement at § 3.2.3.

4. The "**Net Settlement Amount**" of approximately $888,000.00 (Gross Settlement Amount less the requested Attorneys' Fees and Litigation Costs, Class Representative Payment, PAGA Payment, and Administration Expenses Payment) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ 1.29, 3.2.4. The entire Net Settlement Amount will be paid to all Participating Class Members resulting in an average Individual Class Payment of ***$1,443.90***. JCL Dec., ¶ 7.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed

Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant offers various mental health services and programs for patients of all ages in their homes and/or at their facility in Los Angeles County where Plaintiffs worked. Plaintiff Martini worked for Defendant in California from August of 2018 to August of 2021 as a non-exempt employee, paid on an hourly basis. Plaintiff Ma worked for Defendant in California during 2022 as a non-exempt employee, paid on an hourly basis. At all times during their employment, Plaintiffs alleges that they were denied legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures contained in, among other documents, the "San Fernando Valley Community Mental Health Center, Inc. Employee Handbook." JCL Dec., ¶ 9.

Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, failed to pay overtime and paid sick time at the correct rate of pay, failed to properly pay reporting time pay, and failed to pay all wages timely during employment and upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and that it timely paid all wages due upon separation of employment. JCL Dec., ¶ 10.

On January 13, 2023, Plaintiff Martini filed a class action complaint in the Los Angeles County Superior Court, Case No. ("Action"). The Action alleged ten causes of action against Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final

Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business & Professions Code §§ 17200, *et seq.* JCL Dec., ¶ 11

On March 24, 2023, Plaintiff Ma served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations and Amended Notice (collectively referred to as "PAGA Notice"). Plaintiff Ma's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 12.

The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members' time and payroll data and certain payroll data points. As discussed *infra,* Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 13.

On November 1, 2023, the Parties participated in a full day mediation with wage and hour and PAGA mediator Hon. Carl J. West (Ret.). Though the mediation did not conclude with a settlement, the Parties continued to work with Judge West until a settlement was reached, pursuant to Judge West's recommendation to the Parties, which was memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

On February 13, 2024, for purposes of effectuating the settlement, Plaintiff Martini filed a First Amended Complaint adding Plaintiff Ma to the Action and adding an eleventh cause of action for violations of PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint.") JCL Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the

Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their employment, including portions of Defendant's handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 16.

To prepare for mediation, Defendant produced hundreds of pages of documents, including but not limited to, copies of Plaintiffs' hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendant failed to, among other things, provide accurate wage statements and to provide compliant meal and rest periods. JCL Dec., ¶ 17.

To further prepare for mediation, Defendant produced a sample of the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of documents and more than 2 million unique cells of time and payroll data. JCL Dec., ¶ 18.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. JCL Dec., ¶ 19.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of allegedly unpaid wages, amount of allegedly unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of allegedly missed, late, or truncated meal and rest periods, the amount of allegedly unpaid wages, the amount of allegedly unpaid overtime, the amount of allegedly unpaid sick time, the amount of allegedly unreimbursed business expenses, and the amount of allegedly missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 20.

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

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

C. The Parties Settled After Mediation

On November 1, 2023, the Parties conducted a full day of mediation with Hon. Carl J. West (Ret.). Judge West helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. Though the mediation did not conclude with a settlement, the Parties continued to work with Judge West until a settlement was reached, pursuant to Judge West's recommendation. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 23-24.

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

1. The Composition of the Participating Class Members

The proposed Settlement Class consists of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California between January 13, 2019 and December 31, 2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 615 individuals that worked approximately 72,619 workweeks during the Class Period. Agreement at § 4.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of One Million Five Hundred Thousand Dollars and Zero Cents ($1,500,000.00). The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) a Class Representative Payment of not more than $10,000 to each Plaintiff for their services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of $50,000; (4) Administration Expenses Payment estimated at $12,000; (5) Attorneys' Fees and Litigation Costs in the amount of $530,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $500,000.00 and an estimated $30,000 for actually incurred litigation expenses. See generally Agreement at § 3.

After deducting the amounts approved by the Court for the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § 1.29. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount in three (3) installments of $500,000.00 each. The first payment is due sixty (60) days after Final Approval of the Settlement, the second payment is due on or before the one hundred and eightieth (180^{th}) day after Final Approval of the Settlement, and the third payment is due on or before the three hundred and sixtieth (360^{th}) day after Final Approval of the Settlement. Agreement at § 4.3.

4. Formula for Calculating Individual Class Payments

Participating Class Members will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. Agreement at § 3.2.4. The Class Data provided by Defendant to the Settlement Administrator will include, among other things, the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § 1.8. Each Class Member's final Individual Class Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Class Members. Agreement at § 3.2.4. For purposes of these calculations, a Workweek shall mean any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed by Defendant during the period from January 13, 2019, to December 31, 2023, in California. Agreement at § 1.46. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Class Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Participating Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2.

Given that there are approximately 615 Participating Class Members, ***the average gross recovery is approximately $1,443.90*** (Net Settlement Amount divided by Participating Class Members). JCL Dec., ¶ 7.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.40; 5.2.

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

Generally, as of the Funding Date, Plaintiffs, acting as the representatives of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.41; 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $1,500,000.00 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 inquire into the fairness of the proposed settlement").)

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

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

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.</u>

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

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

Once the Parties reached a settlement, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

2. <u>Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.</u>

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 25.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of $1,500,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is

[2] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a 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*

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 $1,500,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop 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) was approximately $4,859,353 if successful at trial. Thus, the Gross Settlement Amount of $1,500,000.00 represents approximately 30.86% of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 27.

(1) Exposure for Meal Period Violations

Plaintiffs allege that Defendant failed to provide compliant meal periods. Specifically, Plaintiffs allege that as a result of their rigorous work schedules and Defendant's understaffing, Plaintiffs and Class Members were not able to take timely and duty-free meal periods. Consequently, Plaintiffs allege that they are owed meal period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 28.

Conversely, Defendant argued, among other things, that they provided all of their employees with the opportunity to take compliant meal periods. Defendant also argued that they maintained facially compliant meal period policies. Further, Defendant argued that they had a system in place to pay, and did pay, meal period premiums such that any liability for meal periods was nonexistent. Thus, Defendant argued that there was no potential liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Plaintiffs

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Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

estimated Defendant's exposure for this claim at $1,892,830. JCL Dec., ¶ 29.

(2) Exposure for Rest Period Violations

Plaintiffs also alleged that Defendant failed to provide compliant rest periods. As a result of Defendant's understaffing, Plaintiffs' rest periods were often on-premises, on-duty, and/or on call, and often interrupted. Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Defendant also argued that because Wage Order 15 applied, employees were exempt from rest period requirements, which would completely eliminate liability for Plaintiffs' rest period violations. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Nevertheless, Plaintiffs estimated Defendant's exposure for this claim at $1,892,830. JCL Dec., ¶ 30. [This estimate is based on an assumed 25% violation rate.]

(3) Exposure for Unpaid Wages

Plaintiffs also alleged that Defendant failed to pay its employees for all hours worked. Specifically, throughout Plaintiffs' employment, they allege that their time sheets were unlawfully rounded, they were required to perform pre- and post-shift work, and they were required to undergo pre-shift COVID-19 screenings before clocking in. Based on Plaintiffs' testimony and Class Counsel's investigation, BCG estimated that Class Members performed a total of 5 minutes of unpaid work every shift. As a result, Plaintiffs and Class Members forfeited compensation, including overtime wages, for all the time they spent working under Defendant's control. JCL Dec., ¶ 31.

Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in place a written policy required its employees to accurately record all their time worked daily and argued that such written policies and procedures directed its employees not to work while off the clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because individualized issues predominated. For example, even assuming Plaintiffs performed work while off-the-clock, which Defendant disputes, the time spent would vary drastically from class member to class member that it could not be established by common proof. Notwithstanding the credible defenses, BCG estimated that Defendant's failure to compensate Plaintiffs and the Class Members for off-the-clock work resulted in $678,553 in unpaid wages. JCL Dec., ¶ 32.

(4) <u>Exposure for Unreimbursed Business Expenses</u>

Plaintiffs alleged that Defendant required the Class Members to use their personal cellular phones and personal vehicles as a result of and in furtherance of their job duties but were not reimbursed by Defendant. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). BCG estimated a reasonable $20 monthly reimbursement rate for Class Members for the use of their personal cell phones and vehicles. JCL Dec., ¶ 33.

Again, Defendant denied any liability for this claim. Defendant argued that most of its employees did not use cellphones or personal vehicles as a part of the performance of their duties and on the rare occasion where employees did incur business expenses for the use of their cellphones or personal vehicles, these expenses were fully reimbursed. Plaintiffs estimated Defendant's exposure for this claim at $395,140. JCL Dec., ¶ 34.

(5) <u>Exposure for Wage Statement Violations and Waiting Time Penalties</u>

Plaintiffs alleges that Defendant's alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor

Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Defendant could also argue that that meal and rest period violations do not entitle employees like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Plaintiffs estimated Defendant's exposure for this claim at $2,536,432. JCL Dec., ¶ 35.

(6) <u>Defendant's PAGA Exposure</u>

In all, Class Counsel projected Defendants' liability exposure for PAGA claims at $3,639,900 if successful at trial. JCL Dec., ¶ 36. 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. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $50,000 which is 3.33% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment ($37,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($12,500.00) distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 37.

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

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

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., ¶ 38.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $1,500,000.00 that is approximately 30.86% of Defendant's *class-wide* liability exposure for damages, and approximately 20.28% of Defendant's maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 40.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the

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

procedure, and time period within which to submit requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § 1.11. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 41.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) JCL Dec., ¶ 42.

C. The Court Should Preliminarily Approve the Class Representative Payment

Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of $10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Enhancement payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Payment of $10,000 for each Plaintiff. The service award is fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of their employment. JCL Dec., ¶ 43.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class

Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. JCL Dec., ¶ 44.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs

The purpose of a payment of Attorneys' Fees and Litigation Costs in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); 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 Plaintiffs' claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Litigation Costs are fair and reasonable. JCL Dec., ¶ 45.

Paragraph 3.2.1 of the Class and PAGA Settlement Agreement provides that not more than $500,000.00 shall be allocated as the Attorneys' Fees Payment, to be divided between Class Counsel in accordance with Class Counsel's Joint Prosecution Agreement. Plaintiffs reviewed and signed the Joint Prosecution Agreement, thereby agreeing to the fee split. Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 47.

1. <u>The Standard for Class Certification</u>

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. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

2. <u>The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Participating Class Members.</u>

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

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

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

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 48.

The statutes relating to each of Plaintiffs 'claims apply with equal force and effect to the entire

Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 49.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 50.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 52-60, Declaration of Shani O. Zakay, ¶¶ 1-3, Declaration of Aidin Ghavimi, ¶¶ 10-12, Declaration of Vartan Madoyan, ¶¶ 2-7.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 51.

/ / /

IV. CONCLUSION

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

Dated: February 14, 2024

JCL LAW FIRM, APC

By: ______________________________

Jean-Claude Lapuyade, Esq.