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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TERESA GARCIA, an individual, on
 behalf of herself and others similarly
 situated,

Plaintiff(s),

v.

ISLAND HOSPITALITY
 MANAGEMENT III, LLC, a Delaware
 corporation; and, DOES 1 through 50,
 inclusive,

Defendants.

Case No. 8:24-cv-00583-DOC-ADS

[Assigned to Hon. David O. Carter]

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

Date: July 15, 2024
 Time: 8:30 a.m.
 Crtrm: 10A

[Orange County Superior Court Case No.
 30-2023-01347951-CU-OE-CXC]

Complaint Filed: September 6, 2023

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I. INTRODUCTION

Plaintiff Teresa Garcia (“Plaintiff”) and Defendant Island Hospitality Management III, LLC (“Defendant”) (collectively, the “Parties”) seek preliminary approval of their settlement of a class and representative action lawsuit alleging wage and hour violations involving non-exempt employees at hotel locations in California. The Parties have negotiated a \$140,000 settlement of this litigation on behalf of approximately 1,193 non-exempt employees working from September 6, 2019 through the date the Court enters a Preliminary Approval Order. This Settlement warrants preliminary approval for several reasons.¹

The Settlement is the product of arm’s-length informal settlement negotiations prior to and during the April 15, 2024 Scheduling Conference in this Action that included extensive discussion of and exchange of information regarding the theories of liability asserted by Plaintiff as to her own individual experiences and those of the Class, Class Counsel’s investigation and interview of Class Members, as well as the Court’s guidance at the Scheduling Conference during which the Court ordered the Parties to engage in extensive in-person settlement discussions over the course of nearly eight hours and during which the Parties discussed the scope and size of the putative class members and Defendant’s compliant policies, procedures, and practices.

The Settlement is suitable for approval because it accounts for the substantial hurdles faced by Plaintiff on the merits and in obtaining class certification on all her claims, given Defendant’s lawful company policies and the potential for highly individualized inquiries in order to simply determine liability. Further, there are no obvious deficiencies in the Settlement—it is fair, thorough, and advantageous to the Class; the plan of allocation does not give preferential treatment to any particular segment of the Class because it is proportional based on Weeks Worked; and the

^{1/} The terms of the proposed settlement are set forth in the concurrently-filed Joint Stipulation of Class Action Settlement (“Agreement”) attached as Exhibit A to the Declaration of Jose Garay (“Garay Decl.”). Capitalized terms in this Memorandum have the same meaning as in the Agreement.

Settlement requires full distribution of the Settlement Proceeds without any reversion to Defendant.

Accordingly, the Court should grant preliminary approval of the Settlement, approve the Notice of Class Action Settlement, and grant final approval at the Final Approval hearing date scheduled for December 9, 2024.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History

On September 6, 2023, Plaintiff filed her original Complaint against Defendant in the Superior Court of the State of California, County of Orange. (Dkt. No. 1-1, Ex. A [“Compl.”].) Plaintiff asserts eight causes of action: “(1) Failure to Pay All Wages Including Minimum and Overtime Wages §§ 204, 206, 226.2, 226.8, 227.3, 510, 1182.12, 1194, 1194.2, 1197; (2) Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512 and Wage Order 5-2001, § 11; (3) Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and Wage Order 5-2001, § 12; (4) Failure to Reimburse for Necessary Business Expenditures; Labor Code § 2802; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code §§ 226, 226.3, and 1174; (6) Waiting Time Penalties; (7) Violation of California’s Quota Laws, Labor Code §§ 2100, *et seq.*; and (8) Unfair Business Practices in Violation of Cal. Bus. & Prof Code §§ 17200, *et seq.*” Plaintiff seeks unpaid wages, actual damages, statutory damages, monetary damages, interest, statutory penalties, civil penalties, liquidated damages, restitution, declaratory and injunctive relief, equitable relief, pre-judgment interest, and attorneys’ fees and costs.

On March 19, 2024, Defendant removed this Action to federal court based on jurisdiction under the Class Action Fairness Act. (Dkt. No. 1.)

During the litigation of this Action, Class Counsel requested an informal production of attestation demonstrative videos, which depicted the meal and rest break and time record attestation procedures of Defendant. Defendant produced various attestation demonstrative videos showing that employees attest to meal and rest periods

1 and the accuracy of their time punches on a daily basis.

2 **B. Factual Background**

3 Defendant employed approximately 1,193 current and former non-exempt, hourly
4 employees at hotel locations in California during the Class Period. Plaintiff was
5 employed as a Housekeeper at the Residence Inn Anaheim Resort in Anaheim, from May
6 23, 2021 to September 12, 2022.

7 **C. Plaintiff's Claims**

8 **1. The Minimum Wage And Overtime Claim**

9 California Labor Code section 1194 provides as follows:

10 (a) Notwithstanding any agreement to work for a lesser wage, any employee
11 receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil
13 action the unpaid balance of the full amount of this minimum wage or
14 overtime compensation . . .

15 Section 3 of Industrial Wage Commission ("IWC") Wage Order No. 5 provides
16 that "[e]mployment beyond eight (8) hours in any workday or more than six (6) days in
17 any workweek is permissible provided the employee is compensated for such overtime"
18 at a premium rate.

19 Plaintiff contends that the minimum wage and overtime statute and regulations
20 were violated, among other things, when Defendant failed to pay Plaintiff and Class
21 Members all minimum, regular, overtime, and double time wages for work performed for
22 Defendant.

23 Specifically, Plaintiff contends that Defendant rounded, edited, or input incorrect
24 times for Plaintiff's and Class Members' start times instead of the actual start time,
25 including for time spent arriving early to work, performing other preliminary duties and
26 postliminary duties, and otherwise preparing for the workday. (Compl., ¶ 36.) Plaintiff
27 further contends that Plaintiff and Class Members were not paid split shift premiums or
28 reporting pay, the correct regular rate of pay for bonus and vacation pay, and that
Defendant withheld tips or engaged in a tip pooling scheme with managers or individuals
not in the chain of service. (*Id.*)

1 Defendant contends that its policies are clear that Class Members are required to
2 record all working time and attest to the accuracy of their time worked on a daily basis.
3 Defendant further believes it paid all employees for all hours worked at the proper rate of
4 pay and that required overtime and/or double time was properly paid to all non-exempt
5 employees. Defendant denies any allegations of rounding, tip-pooling, and off-the-clock
6 work requirements. Defendant further contends that any pay errors were inadvertent and
7 represented individual circumstances not suitable for class action treatment. (Garay Decl.,
8 ¶ 13.)

9 **2. The Meal Period Claim**

10 California Labor Code section 226.7 provides that employees are entitled to “one
11 additional hour of pay at the employee’s regular rate of compensation for each work day
12 that the meal period or rest period is not provided” in accordance with California law.

13 Section 11 of Wage Order No. 5 provides, in pertinent part, that:

14 (A) No employer shall employ any person for a work period of more than
15 five (5) hours without a meal period of not less than thirty (30) minutes,
16 except that when a work period of not more than six (6) hours will complete
17 the day’s work the meal period may be waived by mutual consent of the
18 employer and employee. In the case of employee covered by a valid
collective bargaining agreement, the parties to the collective bargaining
agreement may agree to a meal period that commences after no more than
six (6) hours of work.

19 (B) An employer may not employ an employee for a work period of more
20 than ten (10) hours per day without providing the employee with a second
21 meal period of not less than thirty (30) minutes, except that if the total hours
worked is no more than twelve (12) hours, the second meal period may be
waived by mutual consent of the employer and the employee only if the first
meal period was not waived.

22 Plaintiff contends that Defendant failed to meet its obligations with respect to these
23 meal period requirements. Specifically, Plaintiff contends that Defendant enacted work
24 quotas that prevented Plaintiff and Class Members from taking lawful meal periods and
25 second meal periods, and failed to pay premium pay for every non-compliant meal
26 period. (Compl., ¶ 37.)

27 Defendant contends that its meal period policy complies with California law.
28 Defendant also contends that its meal period practices are, and always have been, lawful

1 in that non-exempt employees have been provided meal periods as required, and that
2 Class Members receive premium pay whenever they are unable to take a compliant meal
3 period. (Garay Decl., ¶ 17.) Defendant contends that individualized issues would
4 predominate as to meal periods, rather than any common question or common unlawful
5 policy or practice that applies to all employees, and thus certification would not be
6 warranted. (*Id.*)

7 **3. The Rest Period Claim**

8 Section 12 of Wage Order No. 5 provides that “every employer shall authorize and
9 permit all employees to take rest periods, which insofar as practicable shall be in the
10 middle of each work period. The authorized rest period time shall be based on the total
11 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
12 fraction thereof.” Plaintiff contends that Defendant failed to meet its obligations with
13 respect to these rest period requirements. Specifically, Plaintiff contends that Defendant
14 enacted a quota requirement that prevented Plaintiff and Class Members from taking
15 lawful rest periods and that Defendant failed to pay one hour of compensation to those
16 employees when they did not receive compliant rest periods. (Compl., ¶ 38.)

17 Defendant contends that it has always authorized and permitted its non-exempt
18 employees to take a ten (10)-minute rest break per four hours of work or major fraction
19 thereof. (Garay Decl., ¶ 21.) Given that employees do not punch in or out for rest
20 periods, and given that Defendant has lawful rest period policies, Defendant contends that
21 individualized issues would predominate as to rest periods as well, rather than any
22 common question or common unlawful policy or practice that applies to all employees,
23 and thus certification would not be warranted.

24 **4. The Expense Reimbursement Claim**

25 Plaintiff contends that Defendant failed to reimburse Plaintiff and Class Members
26 for necessary business expenditures, including use of their personal cell phone when
27
28

1 making work-related communications with supervisors.²

2 Defendant denies all liability and contends that the Class Members were
3 reimbursed for all reasonable and necessary business expenditures and had the option to
4 request reimbursement if they believed they incurred reasonable and necessary business
5 expenses. (Garay Decl., ¶ 23.) Moreover, with respect to Plaintiff's cell phone theory of
6 liability, as a Housekeeper, Plaintiff had the option of utilizing telephones in guest rooms
7 to communicate with supervisors as necessary during any given work day. (*Id.*) Thus,
8 Defendant contends that it was neither reasonable nor necessary for any hourly employee
9 to use cell phones for work purposes, and thus not reimbursable under California law.

10 **5. The Wage Statement Claim**

11 California Labor Code section 226(a) requires an employer to provide employees
12 with accurate itemized statements.

13 Plaintiff contends that she and Class Members were "were not furnished with []
14 wage statements that show all of the information required [] including, but not limited to,
15 the gross and net wages earned, the total hours worked, all applicable hourly rates in
16 effect during the pay period, and the corresponding number of hours worked at each
17 hourly rate." (Compl., ¶ 40.)

18 Defendant contends that it has complied with all such requirements with respect to
19 payroll records at all times, including that it fully complied with its obligations to pay
20 minimum and overtime wages and meal and rest break premiums. (Garay Decl., ¶¶ 13,
21 17, 21.)

22 To the extent Defendant's alleged violations of California law as to Class
23 Members' wage statements are derivative of Plaintiff's underlying claims, the Parties
24 agree the success or failure of the wage statement claim would depend on the success or
25 failure of the underlying claims. (Garay Decl., ¶ 25.) However, Defendant further
26

27 ^{2/} Additional facts supporting and clarifying this theory of liability will be added in a
28 contemplated First Amended Complaint to the already pending cause of action under
Labor Code § 2802, pursuant to the Parties' Agreement, as discussed below.

1 contends that any such derivative claims would not be viable under recent authority in
2 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336 (2018) and its progeny,
3 which held that derivative wage statement penalties would be an improper “duplicative
4 recovery” of underlying claims/violations.

5 **6. The Waiting Time Claim**

6 California Labor Code section 201 requires immediate payment of earned and
7 unpaid wages to discharged employees at the time of discharge. California Labor Code
8 section 202 requires payment of earned and unpaid wages to an employee who quits after
9 giving a 72-hour prior notice at the time of quitting, and within 72 hours after quitting to
10 an employee who quits without giving a 72-hour prior notice. Under California Labor
11 Code section 203, if an employer willfully failed to pay all wages earned and unpaid in
12 accordance with California Labor Code sections 201 and 202, the wages shall continue
13 until paid for up to 30 days.

14 Plaintiff contends that Defendant failed to pay all wages due at separation by
15 failing to pay all wages and meal and/or rest premiums to Plaintiff and Class Members.
16 (Compl., ¶ 39.)

17 Defendant denies any legal violations, and contend that even if any underlying
18 liability is found, there was no “willful” violation to trigger section 203 liability, and
19 moreover, that the determination of waiting time penalties for wages not timely paid upon
20 separation itself requires individualized inquiries not suitable to class treatment. (Garay
21 Decl., ¶ 25.)

22 **7. The Work Quota Claim**

23 Labor Code section 2102 provides:

24 An employee shall not be required to meet a quota that prevents compliance
25 with meal or rest periods, use of bathroom facilities, including reasonable
26 travel time to and from bathroom facilities, or occupational health and safety
27 laws in the Labor Code or division standards. An employer shall not take
28 adverse employment action against an employee for failure to meet a quota
that does not allow a worker to comply with meal and rest periods, or
occupational health and safety laws in the Labor Code or division standards,
or for failure to meet a quota that has not been disclosed to the employee
pursuant to Section 2101.

1 Plaintiff contends Defendant violated Labor Code section 2102 by
2 “willfully, knowingly and intentionally failed to establish quotas that did not harm
3 Plaintiff and Class Members all in order to increase Defendants’ profits without
4 concern for employee safety.” (Compl., ¶ 35.)

5 Defendant denies these allegations and contends that work-place quotas are
6 not used in any fashion. Further, Defendant has shared information with Plaintiff
7 demonstrating that this particular statute is not applicable to the hospitality industry
8 and thus is not viable. (Garay Decl., ¶ 26.)

9 **8. The Unfair Business Practices Claim**

10 California Business and Professions Code section 17200 *et seq.* prohibits unlawful,
11 unfair or fraudulent business acts or practices, as well as and unfair, deceptive, untrue or
12 misleading advertising. Plaintiff contends that the actions of the Defendant as described
13 above are unlawful predicate acts and practices for purposes of establishing liability
14 under the UCL. (Compl., ¶ 105.) Defendant contends its practices have been in
15 compliance with applicable law as set forth above, and that Plaintiff has no basis for
16 asserting a claim under the UCL. (Garay Decl., ¶ 27.)

17 **9. The Private Attorney General Claim³**

18 California Labor Code section 2699 *et seq.*, the Private Attorney General Act of
19 2004 (“PAGA”), provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency (“LWDA”) for a violation of the Labor Code,
21 which may be recovered through a civil action by an aggrieved employee on behalf of
22 himself or herself, and collectively on behalf of all other current or former employees.
23 Plaintiff asserts that all of the claims in the Operative Complaint against Defendant,
24 individually and on behalf of all aggrieved employees of the Class, in her capacity as

25
26 ^{3/} Plaintiff has already exhausted all administrative prerequisites to bring this cause
27 of action, but did not formally amend the original Complaint as the Parties were engaged
28 in early resolution discussions and the Scheduling Conference with the Court. This cause
of action will be added in a contemplated First Amended Complaint pursuant to the
Parties’ Agreement, as discussed below.

1 private attorney general, and seeks all statutory penalties available under the Labor Code.

2 Defendant contends its practices have been in compliance with applicable law as
3 set forth above, and that Plaintiff has no basis for asserting a claim under PAGA. (Garay
4 Decl., ¶ 28.) The Parties agree the success or failure of Plaintiff's claim for penalties
5 under PAGA will depend on the success or failure of the underlying claims. (*Id.*) Further,
6 Defendant contends that PAGA claims would not be awarded and/or would be
7 significantly reduced, pursuant to the Court's inherent authority to limit PAGA claims for
8 manageability reasons and reduce penalties as authorized by statute. (*Id.*)

9 **D. The Parties' Informal Settlement Negotiations Before And During The**
10 **April 15, 2024 Scheduling Conference**

11 Prior to and during the April 15, 2024 Scheduling Conference in this Action, the
12 Parties engaged in extensive informal settlement negotiations and exchange of
13 information regarding the theories of liability asserted by Plaintiff as to her own
14 individual experiences and those of the Class. (Garay Decl., ¶¶ 4, 9, 36, 37.)

15 Prior to the April 15, 2024 Scheduling Conference, Class Counsel identified
16 various theories of liability that it believed were unlawful under California law, and
17 requested an informal production of information, such as attestation demonstrative videos
18 which depicted the attestation procedures of Defendant. (Garay Decl., ¶ 9.) Defendant
19 agreed to produce, and did produce, various attestation demonstrative videos, which
20 showed that Defendant's attestation process for time worked and meal and rest periods
21 permitted Class Members to accurately state whether they were or were not provided
22 meal and rest periods and to attest to the accuracy of the hours they worked. (Garay
23 Decl., ¶¶ 9, 18.)

24 At the April 15, 2024 Scheduling Conference, the Court ordered to Parties to
25 engage in extensive in-person settlement discussions, which occurred in conference over
26 the course of nearly eight hours. (Garay Decl., ¶ 4.) The Parties discussed the scope and
27 size of the putative class members, and discussed Defendant's compliant policies,
28 procedures, and practices. (*Id.*) Class Counsel also raised a new theory underlying the

1 Class Representative’s pending Labor Code section 2802 expense reimbursement claim
2 and informally demonstrated work-related text messages allegedly exchanged during
3 work hours with supervisors. (*Id.*) Defendant shared information demonstrating that any
4 such expenses were neither necessary nor reasonable, and thus not reimbursable under
5 California law. (*Id.*) Following additional guidance and orders from the Court to continue
6 settlement discussions throughout the day (and potentially leading into the next day, until
7 the Parties could reach a resolution), the Parties engaged in meaningful settlement
8 discussions that yielded an agreement in principal at the April 15, 2024 Scheduling
9 Conference. (*Id.*)

10 The Parties now seek preliminary approval of the Settlement they reached, based
11 on the Court’s orders and guidance.

12 The Settlement represents a compromise and settlement of highly disputed claims.
13 (Garay Decl., ¶ 10.) Nothing in the Settlement is an admission by Defendant that the
14 claims in the Action have merit or that Defendant bears any liability. (*Id.*; Agreement
15 § 6.6.)

16 **E. Class Counsel’s Investigation**

17 Class Counsel investigated the claims against Defendant in the Action and also
18 analyzed all applicable defenses raised by Defendant. (Garay Decl., ¶¶ 4, 9, 30, 35, 39,
19 41, 42.) The investigation included review of attestation demonstrative videos and work-
20 related text messages the Class Representative claims to have exchanged with supervisors
21 during work hours, as well as all of the Class Representative’s time punch records and
22 payroll records. (*Id.*) Class Counsel also reviewed information from Defendant regarding
23 the size of the Class and the number of workweeks potentially at issue. (*Id.*) The
24 investigation also included several conferences between Class Counsel and Defendant’s
25 Counsel, before the Court at the April 15, 2024 Scheduling Conference, and Class
26 Counsel’s further interviews of the Class Representative and other Class Members, as
27 well as a review of documents provided by the Class Representative and other Class
28 Members. (*Id.*; Declaration of Teresa Garcia [“Garcia Decl.”], ¶ 10-11.)

III. OVERVIEW OF THE SETTLEMENT

For purposes of Settlement, the Class is defined as:

[A]ll current and former non-exempt, hourly employees working for Defendant in California at any time between September 6, 2019, through the date the Court enters a Preliminary Approval Order.

(Agreement § 1.3.) The Class Period is the period of September 6, 2019 through the date the Court enters a Preliminary Approval Order. (Agreement § 1.6.)

A. The Gross Settlement Amount

The Gross Settlement Amount is \$140,000. (Agreement § 5.1.) The Gross Settlement Amount includes all Individual Settlement Payments made to Class Members, all Settlement Administration Costs, the employees' share of payroll taxes, the Class Representative Incentive Payment, the LWDA Payment, and attorneys' fees and costs. (*Id.*)

B. The LWDA Payment

The Parties will seek approval for a PAGA payment out of the Gross Settlement Amount of \$4,000, which shall be allocated: as (1) \$3,000 to the LWDA as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to the PAGA; and (2) as \$1,000 to the Net Settlement Amount for distribution to Aggrieved Employees based on number of work weeks worked during the PAGA period, defined as July 3, 2022 through the date the Court enters a Preliminary Approval Order. (Agreement § 5.6.)

C. The Net Settlement Amount

The Net Settlement Amount for distribution to Class Members is at least \$80,000. The Net Settlement Amount assumes that the Gross Settlement Amount will have deductions of up to \$13,000 for Settlement Administration Costs, a Class Representative Incentive Payment of \$5,000 for the Class Representative, \$4,000 for the LWDA Payment, and up to \$35,000 in attorneys' fees plus up to \$3,000 in costs.

On average, every Class Member will be entitled to allocation of approximately \$67.06. The specific amount allocated to each Class Member will vary depending on the number of weeks worked in relation to the total weeks worked by all Class Members.

D. Payment of the Settlement

Each Class Member who does not opt out of the Settlement shall be entitled to an Individual Settlement Payment consisting of their share of the Net Settlement Amount, in accordance with the following formula:

Each Class Member's potential share of the Net Settlement Amount will be calculated by dividing the number of Weeks Worked by the Class Member by all Weeks Worked during the Class Period by all Class Members, multiplied by the Net Settlement Amount [i.e., (individual Weeks Worked ÷ total Weeks Worked by Class Members) x Net Settlement Amount].

(Agreement §§ 5.7, 5.7.1.) The entire Net Settlement Amount will be distributed to all Class Members and there will be no reversion of unclaimed funds to Defendant.

E. First Amended Complaint

As a condition of the Settlement, Plaintiff will file a First Amended Complaint to: (1) add PAGA claims that were raised in Plaintiff's LWDA letter dated June 26, 2023, but which had not yet been formally added to the pending Complaint; and (2) to add additional facts to the existing Labor Code § 2802 cause of action regarding the use of cell phones, in order to meet the required standards under *Twombly/Iqbal*. A draft of the proposed First Amended Complaint is attached to the Agreement as **Exhibit C**.

(Agreement § 2.6.)

F. Scope of the Release

The scope of the release by all Class Members tracks the scope of Plaintiff's allegations in the First Amended Complaint, as well as Plaintiff's June 26, 2023 LWDA letter.

By operation of the entry of the Final Approval Order and judgment and contingent upon full funding of all sums owed under this Agreement, each Class Member, and each of their respective executors, administrators, representatives, agents, heirs, successors,

1 assigns, trustees, spouses, or guardians, will release Defendant and each of the Released
2 Parties of and from any and all claims, rights, demands, charges, complaints, causes of
3 action, obligations, or liability of any and every kind between September 6, 2019 through
4 the date the Court enters a Preliminary Approval Order, for any and all claims that were
5 raised or could have been raised based on the factual allegations made in the operative
6 First Amended Complaint. This includes claims for (1) Failure to Pay All Wages
7 Including Minimum and Overtime Wages; (2) Failure to Provide Meal Periods; (3)
8 Failure to Provide Rest Periods; (4) Failure to Reimburse for Necessary Business
9 Expenditures; (5) Failure to Provide Accurate Itemized Wage Statements; (6) Waiting
10 Time Penalties; (7) Violation of California's Quota Laws; (8) Unfair Business Practices;
11 and (9) Penalties Under Private Attorneys General Act, Labor Code § 2698 et seq. for
12 alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 510, 512,
13 558, 1174, 1194, 1197, 1198, 2802, the California Industrial Welfare Commission Wage
14 Order, and California Code of Regulations, Title 8, section 11010, subdivisions 7, 11, and
15 12; (10) claims arising out of alleged violations of the California Labor Code sections
16 200, 201, 202, 203, 204, 206, 216, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 226.8, 227.3,
17 246, 351, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 1199, 2100-
18 2112, 2698-2699.5, 2802, and California Industrial Welfare Commission Wage Order
19 No. 5-2001; (11) penalties of any nature; (12) interest; (13) attorneys' fees and costs; and
20 (14) any other claims arising out of or related to the First Amended Complaint filed in the
21 Action, as well as Plaintiff's June 26, 2023 LWDA letter, through the date the Court
22 enters a Preliminary Approval Order. (Agreement § 6.1.) The Release does not apply to
23 Class Members who request exclusion, except as explained below. (Agreement § 4.2.2.)

24 Class Members employed by Defendant from July 3, 2022 through the date the
25 Court enters a Preliminary Approval Order are "Aggrieved Employees" under PAGA for
26 purposes of this Settlement. Aggrieved Employees who exclude themselves from the
27 Class portion of this Settlement shall still receive an individual settlement payment under
28 PAGA, pursuant to Sections 4.2.2 and Section 5.6 of the Agreement. All Aggrieved

1 Employees, and each of their respective executors, administrators, representatives,
2 agents, heirs, successors, assigns, trustees, spouses, or guardians, will release Defendant
3 and each of the Released Parties of and from any and all claims, rights, demands,
4 charges, complaints, causes of action, obligations, or liability of any and every kind
5 between July 3, 2022 through the date the Court enters a Preliminary Approval Order, for
6 any and all PAGA claims that were raised or could have been raised based on the factual
7 allegations made in the operative First Amended Complaint, as well as Plaintiff's June
8 26, 2023 LWDA letter. (Agreement § 6.1.)

9 **G. Objections and Opt-Out Process**

10 A Class Member who so wishes may elect not to participate in the Settlement or
11 object to the Settlement. (Agreement §§ 4.2, 4.3.)

12 Class Members who wish to opt-out from the Settlement must mail their opt-out
13 form to the Settlement Administrator within 45 days after the postmark date of the initial
14 mailing of the Notice of Class Action Settlement. (Agreement § 4.2.1.)

15 Class Members who wish to object to the Settlement must use the procedures set
16 forth in the Notice of Class Action Settlement. Specifically, any objection must be sent to
17 the Settlement Administrator and postmarked no later than 45 days after the first
18 postmark date of mailing the Notice of Class Action Settlement. (Agreement § 4.3.1.)

19 Class Members who opt out of the class portion of the Settlement and worked
20 during the PAGA period will receive their respective share of the LWDA Payment, even
21 if they opt out of the class portion, because there are no opt-out rights under PAGA.
22 (Agreement § 4.2.2.)

23 **H. The Class Representative's Incentive Payment And Class Counsel's**
24 **Attorneys' Fees and Costs**

25 By separate motion, Class Counsel and the Class Representative will seek, and
26 Defendant has agreed not to oppose, a Class Representative Incentive Payment of up to
27 \$5,000 as compensation for her additional participation in the Action and a full individual
28 settlement and release (Agreement § 5.4), as well as payment to Class Counsel of

1 attorneys' fees and Costs consisting of: (1) up to 25% of the Gross Settlement Amount
2 for attorneys' fees (up to \$35,000) and (2) up to \$3,000 for reimbursement of Class
3 Counsel's verified actual costs incurred in the litigation (Agreement § 5.3).

4 Because this action asserts only California claims on diversity jurisdiction, it is
5 appropriate for the Court to "appl[y] California law to determine both the right to and
6 method for calculating fees." *Smith v. CRST Van Expedited, Inc.*, 2013 WL 163293, at *4
7 (S.D. Cal. Jan. 14, 2013). "Under California law . . . in cases such as this, where the class
8 benefit can be monetized with a reasonable degree of certainty, a percentage of the
9 benefit approach may be used." *Id.* "Under the percentage method, California has
10 recognized that most fee awards based on either a lodestar or percentage calculation are
11 33 percent and has endorsed the federal benchmark of 25 percent." *Id.*; *Bendon v. DTG*
12 *Operations, Inc.*, 2018 WL 4976511, at *7 (C.D. Cal. Aug. 22, 2018) (same).

13 Plaintiff contends that the present case supports an award of attorneys' fees at
14 25%. Class Counsel had to devote substantial time and resources, which precluded their
15 ability to take on other potential fee-generating cases. (Garay Decl., ¶ 57.) The case was
16 accepted on a contingency fee basis, with class counsel advancing and risking litigation
17 expenses for more than seven months. (*Id.*)

18 When using a lodestar crosscheck, multiplying the number of hours counsel
19 worked by a reasonable hourly rate establishes the lodestar. *In re Wash. Pub. Power*
20 *Supply Sys. Sec. Litig.* 19 F.3d 1291, 1295 (9th Cir. 1994). After the lodestar has been
21 determined, the Court may apply a multiplier to the lodestar when "(1) attorneys take a
22 case with the expectation that they will receive a risk enhancement if they prevail,
23 (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was
24 risky." *Fischel v. Equitable Life Assur. Society of U.S.* 307 F.3d 997, 1008 (9th Cir. 2002)
25 (internal citation omitted). Here, Class Counsel has already incurred more than the
26 requested fees, but has agreed to request only the lower percentage value of the common
27 fund. (Garay Decl., ¶¶ 57-58.)

28 With respect to the timing of Plaintiff's Application for Attorneys' Fees and Costs,

1 due process requires that class members must be given the opportunity to object to fees
2 after the fee motion has been filed. *In Re Mercury Interactive Corp. Securities Litigation*,
3 618 F.3d 988, 994-95 (9th Cir. 2010). Accordingly, under Plaintiff's proposed schedule
4 of events, Plaintiff suggests that the Application for Attorneys' Fees and Costs be filed
5 after the Court grants preliminary approval, and on or before the deadline for the
6 Settlement Administrator to send Notice to all class members.⁴

7 **I. Notice to the Class**

8 The Parties have agreed upon procedures by which the Class will be provided with
9 written notice of the Settlement, similar to the procedures approved in hundreds of other
10 settlements. The Parties have jointly drafted a Notice of Class Action Settlement,
11 attached to the Agreement as **Exhibit A**, and a Request for Exclusion form, attached to
12 the Agreement as **Exhibit B**, which are hereby submitted to the Court for Approval.

13 After consulting and receiving bids from multiple administration candidates, the
14 Parties retained Phoenix Class Action Administrative Solutions to serve as the notice and
15 settlement administrator. Phoenix Class Action Administrative Solutions is a highly
16 experienced class notice and administration company that has provided a "not-to-exceed"
17 cap of \$13,000 for all Settlement Administration Costs in this case. (Garay Decl., ¶ 60.)

18 Within 21 calendar days of this Court's entering an order granting preliminary
19 approval of the Agreement, Defendant will provide to the Settlement Administrator with
20 the following information: (1) name of each Class Member; (2) most current known
21 address of each Class Member; (3) social security number of each Class Member; and (4)
22 the dates of employment for each Class Member and/or weeks worked by each Class
23

24 ^{4/} Should the Court have qualms about the attorneys' fees portion of the Settlement,
25 that should not preclude preliminary approval. *See Cervantes v. IHG Mgmt. Maryland*
26 *LLC*, 2019 WL 2970834, at *5 (C.D. Cal. Apr. 30, 2019) (granting preliminary approval;
27 "Because the terms of the Settlement provide that attorneys' fees are 'not to exceed
28 thirty-three (33%) percent,' the terms are acceptable for purposes of preliminary
approval. ... The ultimate determination of attorneys' fees will be properly addressed at
the final approval stage, subject to a separate motion for attorneys' fees.").

1 Member, in order to determine the total number of Weeks Worked by each Class
2 Member during the Class Period. (Agreement § 3.2)

3 Within 14 calendar days after receiving the Class Data from Defendant, the
4 Settlement Administrator will mail the Notice of Class Action Settlement, as well as the
5 Request for Exclusion, to Class Members via First Class U.S. Mail. (Agreement § 3.4.)
6 Any returned envelopes with forwarding addresses will be utilized by the Settlement
7 Administrator to locate Class Members. (Agreement § 3.4.1.) Any mailing returned to the
8 Settlement Administrator as undeliverable will be sent within three business days via
9 First Class U.S. Mail to the forwarding address affixed thereto; and, if no forwarding
10 address is provided, the Settlement Administrator will attempt to determine the correct
11 address using the National Change of Address Database maintained by the United States
12 Postal Service, and it will then perform a single re-mailing via First Class U.S. Mail with
13 three business days. (Agreement § 3.4.1.)

14 The Notice includes information regarding the nature of the litigation; a summary
15 of the substance of the Settlement; Defendant's denial of liability; the definition of the
16 Class; the procedure and time period for objecting to the Settlement and participating in
17 the Final Fairness Hearing; a statement that the Court has preliminarily approved the
18 Settlement; and the procedures to opt-out. (Agreement, Ex. A and Ex. B.)

19 This notice process was designed to meaningfully reach the largest possible
20 number of potential Class Members. Individual notice through first class mail is the "best
21 notice practicable" where the name and addresses of Class Members are easily
22 ascertainable. *See, e.g., Smith v. Bimbo Bakeries USA, Inc.*, 2015 WL 12724072, at *1
23 (C.D. Cal. Jan. 29, 2015) ("distribution by first-class mail ... constituted the best notice
24 practicable under the circumstances to all persons within the definition of the Settlement
25 Class and fully met the requirements of due process"); *Gottlieb v. Conseco Senior Health*
26 *Ins. Co.*, 2013 WL 12125742, at *2 (C.D. Cal. Mar. 12, 2013) ("the Court finds that the
27 distribution by U.S. first-class mail of the Short-Form Notice to all Class Members ...
28 constitute the best notice practicable under the circumstances").

IV. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Purely for the Settlement presently before the Court, the Parties move the Court to find that the Settlement meets the requirements for certifying a settlement class under Federal Rule of Civil Procedure 23.⁵

A proposed class may be conditionally certified if it “satisfies the requirements of Rule 23(a) of the Federal Rules of Civil Procedure applicable to all class actions, namely: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) .

A court may certify a class if the plaintiff demonstrates that the class meets the requirements of Federal Rules of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b). *See* Fed R. Civ. Proc. 23; *see also* *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (“In order for a class action to be certified, the plaintiffs must establish the four prerequisites of Fed. R. Civ. Proc. 23(a) and at least one of the alternative requirements of Fed. R. Civ. P. 23(b)”).

Rule 23(b) also requires that common questions of law or fact predominate so that a class action is superior to another method of adjudication. Fed. R. Civ. Proc. 23(b)(3). Courts also have added to the federal rules a prerequisite that the class be ascertainable. *See In re Northrop Grumman Corp. ERISA Litig.*, 2011 WL 3505264, at *7 (C.D. Cal. Mar. 29, 2011) (“Although not specifically mentioned in Rule 23(a), there is an additional prerequisite to certification—that members of the class be ascertainable”).

A. For Purposes Of Settlement, The Proposed Class Meets The Requirements Of Rule 23(a)

1. The Numerosity Requirement Is Met For Purposes Of Settlement

Rule 23(a) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. Proc. 23(a). A “proposed class of at least forty members

^{5/} Although Defendant disputes Plaintiff’s ability to satisfy Rule 23’s certification requirements, Defendant does not oppose class certification for settlement purposes only.

presumptively satisfies the numerosity requirement.” *Tait v. BSH Home Appliances Corp.*, 289 F.R.D. 466, 473 (C.D. Cal. 2012). Here, the Settlement Class is composed of over 1,193 Class Members, which is sufficiently numerous. (Garay Decl., ¶ 11.)

Additionally, the proposed class must be ascertainable, and must identify, “a distinct group of plaintiffs whose members can be identified with particularity.” *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Here, the members of the proposed class can easily be identified through Defendant’s own timekeeping and payroll records. Therefore, the Class is both sufficiently numerous and ascertainable.

2. The Commonality Requirement Is Met For Purposes Of Settlement

The commonality requirement is satisfied when the plaintiffs assert claims that “depend upon a common contention . . . capable of classwide resolution—which means that a determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

This requirement is met if common questions of liability are present, even if there may be individual variations.⁶ Here, for purposes of the Settlement only, the Parties agree that common factual and legal issues include, among other things: (1) whether Defendant engaged in a common course of failing to provide and/or compensate employees for all minimum wages and overtime hours worked, for all required meal and rest periods, and reimburse employees for costs necessarily incurred on behalf of Defendant; and (2) whether these alleged violations resulted in ancillary violations of Labor Code sections 203, and 226, as well as whether they justify penalties under PAGA and support the basis for relief under the UCL. Furthermore, all Class Members suffer from, and seek redress

^{6/} *Hanlon*, 150 F.3d at 1019 (“All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient”); *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (commonality is satisfied “where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.”).

1 for, the same alleged injuries. Under these specific circumstances, and for settlement
2 purposes only, the commonality requirement is satisfied. *See Hanlon*, 150 F.3d at 1019–
3 20.

4 **3. The Typicality Requirement Is Met For Purposes Of Settlement**

5 “Under the [typicality prerequisite]’s permissive standards, representative claims
6 are ‘typical’ if they are reasonably coextensive with those of absent class members; they
7 need not be substantially identical.” *Hanlon*, 150 F.3d at 1020. Courts have held that
8 typicality and commonality requirements “tend to merge,” and a finding of commonality
9 ordinarily will support a finding of typicality. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S.
10 147, 158, n.13 (1982); *Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

11 Here, Plaintiff is clearly a member of the proposed Class and alleges identical
12 claims as other class members and seeks the similar damages as other current and former
13 employees. (Garcia Decl., ¶¶ 4-6.) Thus, the claims of both Plaintiff and the Class
14 Members arise from the same course of conduct by Defendant, involve the same issues,
15 and are based on the same legal theories. *See Cervantes*, 2019 WL 2970834, at *3 (C.D.
16 Cal. Apr. 30, 2019) (granting preliminary approval of settlement; “Plaintiff’s wage-and-
17 hour claims are typical of the proposed Settlement Class because they arise from the
18 same factual and legal bases applicable to other Class members. For instance, both
19 Plaintiff and Class members worked for Defendant [during] the Class period as non-
20 exempt employees. Accordingly, Plaintiff’s interests are coextensive with the interests of
21 the Settlement Class, and Plaintiff is typical of the Settlement Class”); *see also Ma v.*
22 *Covidien Holding, Inc.*, 2014 WL 360196, at *2 (C.D. Cal. Jan 31, 2014) (Carter, J.;
23 granting preliminary approval of settlement; “Here, the Court finds that [Plaintiff], like
24 every other Class Member, was employed by [Defendant] as an hourly employee, and his
25 claims arise from the same course of conduct by [Defendant] as every other Class
26 Member. Therefore, the Court finds that the class representative is typical of the claims or
27 defenses of the class.”); *see also Misra v. Decision One Mortg. Co.*, 2009 WL 4581276,
28 at *5 (C.D. Cal. Apr. 13, 2009) (Carter, J.; granting preliminary approval of settlement;

1 “In this case, the representatives claim they were not paid for overtime while working for
2 the Defendants. This claim is typical of the class because all of the class members are
3 alleging Defendants failed to pay them overtime. Under the rule’s permissive standards,
4 the narrow focus of the representatives’ claims and the class members’ claims are
5 sufficient to meet the typicality requirement.”).

6 **4. The Adequacy Requirement Is Met For Settlement Purposes**

7 Legal adequacy is determined by the resolution of two questions: “(1) do the
8 named plaintiffs and their counsel have any conflicts of interest with other class members
9 and (2) will the named plaintiffs and their counsel prosecute the action vigorously on
10 behalf of the class?” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th
11 Cir. 2015) (citing *Hanlon*, 150 F.3d at 1020). These requirements have been met here.

12 Plaintiff and her counsel have fairly and adequately represented the putative Class
13 Members, and have vigorously prosecuted this action on behalf of the proposed Class.
14 (Garcia Decl., ¶¶ 7-12.) Plaintiff and her counsel do not have any claims or interests
15 which conflict or are antagonistic to the class. The adequacy requirement is met where, as
16 here, the class representatives’ claims are sufficiently interrelated to and not antagonistic
17 to the claims of the class. *Hanlon*, 150 F.3d at 1020.

18 Further, Plaintiff and Class Counsel have substantially investigated this Action, as
19 described above, and Class Counsel is experienced and well qualified to vigorously
20 litigate this case. (Garay Decl., ¶¶ 52-56.)

21 **B. For Purposes Of Settlement, The Proposed Class Meets The**
22 **Requirements Of Rule 23(b)**

23 **1. The Predominance Requirement Is Satisfied For Settlement**
24 **Purposes**

25 Rule 23(b)(3) provides that a class may be maintained if “the court finds that the
26 questions of law and fact common to the members of the class predominate over any
27 questions affecting only individual members.” There is no bright line rule to determine
28 whether common issues predominate. The “fundamental question” is whether the
proposed class is seeking a remedy to a “common legal grievance.” *Lockwood Motors v.*

1 *General Motors Corp.*, 162 F.R.D. 569, 580 (D. Minn. 1995) (“the fundamental question
2 is whether the group aspiring to class status is seeking to remedy a common legal
3 grievance”) (citations omitted).

4 Class certification is appropriate where the plaintiff challenges the legality of an
5 employer’s uniform policy or practice. *See, e.g., Zamora v. Ryder Integrated Logistics,*
6 *Inc.*, 2014 WL 9872803, at *7 (S.D. Cal. Dec. 23, 2014) (holding that “the questions of
7 law and fact concerning the legality of Ryder’s [] policies predominate over any
8 questions specific to individual class members”).

9 Here, common issues predominate because liability turns on whether Defendant’s
10 policies and practices provided employees with meal periods and rest periods, whether
11 Defendant’s policies allowed employees to take meal periods and rest periods, and
12 whether Defendant required employees to incur time off-the-clock in connection with
13 their job duties. Plaintiff contends that a work quota prevented employees from taking
14 uninterrupted, duty-free meal periods and rest periods. On the other hand, Defendant
15 contends that it had lawful policies throughout the class period, did not require employees
16 to work off-the-clock, did not implement a quota system, permitted employees to take
17 compliant meal periods and authorized and permitted employees to take complaint rest
18 periods. Moreover, Defendant’s compliant policies and procedures are reinforced with a
19 comprehensive attestation policy and procedure, requiring employees to separately attest
20 to the meal periods, rest periods, and time worked on a daily basis. Thus, Defendant
21 contends that there are individualized issues as to whether Class Members suffered any
22 harm, because any harm would require deviation from Defendant’s lawful policies and
23 procedures.

24 Given that the “common questions” apply class-wide and were consistently applied
25 to all Class Members, the predominance requirement has been met for purposes of
26 settlement. *See Cervantes*, 2019 WL 2970834, at *4 (finding predominance for settlement
27 purposes where “common questions about Defendant’s policies and practices apply class-
28 wide. The California statutes relating to each of Plaintiff’s claims apply with equal force

1 and effect to all members of the Settlement Class. Furthermore, the wage-and-hour issues
2 are both numerous and substantial, and ... [t]here is no indication that Defendant's
3 policies were inconsistently applied to the Class members"); *see also Sumner v. Toys R*
4 *Us, Inc.*, 2011 WL 13225101, at *2 (C.D. Cal. Apr. 8, 2011) (Carter, J.; finding
5 predominance for purposes of settlement purposes, stating "[c]ommon questions of law
6 and fact predominate here. As described above, Plaintiff's claims are based on the
7 allegation that all class members were subjected to the same common practice by
8 [Defendant]... The statutes under which Plaintiff has stated his claims apply to all class
9 members, and Plaintiff argues that any deviations that occurred across the class members
10 are minimal.").

11 2. The Superiority Requirement Is Met For Settlement Purposes

12 To certify a class, the Court must also determine "that a class action is superior to
13 other available methods for the fair and efficient adjudication of the controversy." Fed. R.
14 Civ. Proc. 23(b)(3). This requirement is met when certification will reduce litigation costs
15 and promote greater efficiency. *See Valentino*, 97 F.3d at 1234 ("Where class-wide
16 litigation of common issues will reduce litigation costs and promote greater efficiency, a
17 class action may be superior").

18 Here, a class action is the superior mechanism because it will limit duplicative
19 litigation and limit the burden on the Court for the settlement of the claims of over 1,193
20 employees. *See Lockwood Motors*, 162 F.R.D. at 582 ("Having concluded that common
21 questions predominate, th[e] [superiority] requirement is readily satisfied in this case.
22 Class prosecution of this action will limit duplicative litigation, limit the burden on this
23 and other courts, and provide a uniform result for similarly situated parties.").

24 V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR 25 PRELIMINARY APPROVAL

26 When a proposed class-wide settlement is reached, the settlement must be
27 submitted to the court for approval. Fed. R. Civ. Proc. 23(e). The overarching inquiry on
28 a motion for preliminary approval of a proposed class action settlement is whether the

1 proposed settlement is “within the range of possible approval.” *See Williams v. Costco*
2 *Wholesale Corp.*, 2010 WL 761122, *5 (S.D. Cal. March 4, 2010) (“[A]t the preliminary
3 approval stage, the Court need only review the parties’ proposed settlement to determine
4 whether it is within the permissible ‘range of possible judicial approval.’”).

5 Preliminary approval does not require the trial court to answer the ultimate
6 question of whether a proposed settlement is “fair, reasonable and adequate.” Rubenstein,
7 *4 Newberg on Class Actions* § 13:13 (“[T]he goal of preliminary approval is for a court to
8 determine whether notice of the proposed settlement should be sent to the class, not make
9 a final determination of the settlement’s fairness”). That determination is made only after
10 notice of the settlement has been given to the members of the class and after the class
11 members have been given an opportunity to voice their views of the settlement or to be
12 excluded from the settlement class. *See Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D.
13 Cal. Jun 24, 2008) (“a full fairness analysis is unnecessary at this [preliminary] stage . . .
14 The court, therefore, will simply conduct a cursory review of the terms of the parties’
15 settlement for the purpose of resolving any glaring deficiencies before ordering the
16 parties to send the proposal to class members.”).

17 “At this stage, the court may grant preliminary approval of a settlement and direct
18 notice to the class if the settlement: ‘(1) appears to be the product of serious, informed,
19 non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
20 preferential treatment to class representatives or segments of the class; and (4) falls
21 within the range of possible approval.’” *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319
22 (C.D. Cal. 2016); *Tinoco v. Hajoca Corp.*, 2019 WL 4239130, at *4 (C.D. Cal. June 18,
23 2019) (same).

24 **A. The Settlement Is The Product Of Serious, Informed, And Non-**
25 **Collusive Negotiations**

26 The proposed Settlement in this case was reached after extensive and informed
27 arm’s-length negotiations at the April 15, 2024 Scheduling Conference at which Judge
28 Carter ordered Plaintiff to appear in-person and the Parties to engage in extensive and

1 thorough settlement discussions, including multiples appearances in front of the Court
2 and instructions to continue negotiations until resolution was accomplished. (Garay
3 Decl., ¶ 4.)

4 In making a fairness determination, the Court looks to what discovery has been
5 completed and the procedural posture of the litigation. *Molski v. Gleich*, 318 F.3d 937,
6 953 (9th Cir. 2003). When litigation has proceeded to the point where “the parties have
7 sufficient information to make an informed decision about settlement,” this factor weighs
8 in favor of approval. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1239 (9th
9 Cir. 1998).

10 While this case has not been litigated for years, the Parties agreed to try to resolve
11 this matter. As a result, the Parties engaged in extensive informal settlement negotiations
12 and exchange of information regarding the theories of liability asserted by Plaintiff as to
13 her own individual experiences and those of the Class. (Garay Decl., ¶¶ 4, 36, 37.)

14 Additionally, the proposed Settlement was reached after arm’s-length negotiations
15 after multiple rounds of settlement negotiations between the Parties, including nearly
16 eight hours at the Scheduling Conference. (Garay Decl., ¶¶ 4, 32.) Plaintiff was provided
17 with a wealth of information, including the total class size and the total number of weeks
18 worked during the liability period, demonstrative attestation videos, and information
19 related to Defendant’s policies and procedures relative to the claims at issue, in addition
20 to information Class Counsel gleaned from his own investigation and interview of other
21 Class Members. (Garay Decl., ¶¶ 9, 30, 35, 39, 41, 42.) Plaintiff was also present during
22 the settlement negotiations and in front of the Court, and was directly involved in
23 understanding Defendant’s responses to her claims and those of the putative class.
24 (Garay Decl., ¶ 4; Garcia Decl., ¶ 10.)

25 **B. The Settlement Has No Obvious Deficiencies And Does Not Grant Any**
26 **Improper Preferential Treatment**

27 The relief provided in the Settlement will benefit all Class Members
28 proportionally. Each Class Member will be entitled to a proportional share of the

1 Settlement. The Individual Settlement Payment to each Class Member will be calculated
2 by: (a) dividing a given Class Member's number of Weeks Worked by all Weeks Worked
3 during the Class Period by all Class Members; and (b) multiplying the result by the Net
4 Settlement Amount. (Agreement § 5.7.1.)

5 The relief provided in the Settlement will not result in preferential treatment for the
6 Class Representative. Plaintiff will apply to the Court for a Class Representative
7 Incentive Payment in an amount not to exceed \$5,000. (Agreement § 5.4.) Plaintiff
8 participated in the investigation of the class-wide claims, actively assisted Class Counsel
9 in identifying the alleged issues at the heart of litigation, gathered and produced
10 documents necessary for investigation, and consulted with Class Counsel regarding the
11 factual allegations and defenses in the case. (Garay Decl., ¶¶ 4, 48-51; Garcia Decl., ¶¶
12 10-12.) Additionally, service enhancements are warranted in this matter as the Class
13 Representative has agreed to a much broader release than Class Members. (Agreement §
14 5.4.) This service award is appropriate given the Class Representative's participation in
15 the Action, and is less than awards given in other similar matters.⁷

16 Plaintiff has separately agreed to a general and complete release of all claims,
17 known and unknown, as it relates to her individual experience and employment with
18 Defendant, including a claim for alleged wrongful termination, other claims under the
19 Fair Employment and Housing Act ("FEHA"), and all other claims separate and apart
20 from those alleged in the First Amended Complaint. This separate individual settlement
21 agreement and monetary payment to Plaintiff is in addition to her Class Representative
22 Incentive Payment. Upon request by the Court, Defendant will certainly file under seal a
23 copy of the individual settlement agreement and its terms, or lodge it with the Court for
24 *in camera* review.

25
26
27 ^{7/} See, e.g., *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal.
28 2015) (awarding \$15,000 to class representative); *Miletak v. Allstate Ins. Co.*, 2012 WL
12921306, at *5 (N.D. Cal. July 12, 2012) (awarding \$15,000 to class representative).

C. The Settlement Falls Within The Range For Approval

1. The Settlement Is Reasonable In The Experienced Views Of Counsel

Class Counsel believes that the Settlement is fair, reasonable, adequate, and in the best interest of the Class Members. (Agreement § 2.5; Garay Decl., ¶¶ 29, 34, 45.) Class Counsel has over twenty years of legal experience and have been appointed lead counsel in dozens of class actions, including numerous wage and hour class actions. (Garay Decl., ¶ 56.) Accordingly, the Settlement “should be given a presumption of reasonableness.”⁸

2. The Settlement Is Reasonable In Light Of The Expected Recovery

The Settlement is reasonable in light of Plaintiff’s and the Class Members’ expected recovery if they prevailed at trial. Although the Ninth Circuit does not require it, the Court may consider Plaintiff’s expected recovery balanced against the value of the settlement offer. *Spann*, 314 F.R.D. at 323–24 (“The Ninth Circuit does not follow the approach of other circuits that requires district courts to ‘specifically weigh[] the merits of the class’s case against the settlement amount and quantif[y] the expected value of fully litigating the matter’”) (citing *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

Even if the Court were to quantify the expected value of fully litigating the matter, the Settlement should be found reasonable. Plaintiff’s analysis of potential damages for all claims in this case was \$1,665,200.33. (Garay Decl., ¶ 33.) While Defendant disputes the valuation of Plaintiff’s analysis, the Gross Settlement Amount of \$140,000 is still approximately 8.5 percent of Plaintiff’s estimate of the potential recovery. A settlement for 8.5 percent of the potential recovery is a reasonable proportion in line with existing

^{8/} *Saenz v. Lowe’s Home Centers, LLC*, 2019 WL 3456810, at *4 (C.D. Cal. July 31, 2019) (“The recommendations of plaintiffs’ counsel should be given a presumption of reasonableness. ... Class Counsel has experience serving as plaintiffs’ counsel in wage and hour actions [] and has endorsed the settlement as fair, reasonable, and adequate []. Thus, this factor favors final approval”) (internal citations omitted); *Palmer v. Pier 1 Imports, Inc.*, 2018 WL 6133692, at *9 (C.D. Cal. Jan. 9, 2018) (same).

case law.⁹

3. The Settlement Is Reasonable Given The Substantial Risks Of Continued Litigation

The Settlement is appropriate here due to the substantial risks faced by Plaintiff concerning class certification. *See Bee, Denning, Inc. v. Capital All. Grp.*, 2016 WL 3952153, at *8 (S.D. Cal. July 21, 2016) (granting preliminary approval based in part on likelihood of continued, expensive litigation and plaintiff’s “substantial risk of being unsuccessful at trial”).

At the time of the Settlement, Defendant argued it has always maintained lawful meal and rest period policies, and any issues with alleged quotas impacting Class Members’ meal or rest breaks necessarily would require individualized inquiry.¹⁰

^{9/} See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724, at *2 (D.D.C. Oct. 23, 1998) (“[A]n agreement that secures roughly six to twelve percent of a potential trial recovery . . . seems to be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 2019 WL 3943859, at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *10 (C.D. Cal. Feb. 16, 2017) (“a settlement for fourteen percent recovery of Plaintiffs’ maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum potential recovery asserted by either party”).

^{10/} See, e.g., *Manigo v. Time Warner Cable, Inc.*, 2017 WL 5149225, at *4 (C.D. Cal. Apr. 4, 2017) (class certification denied; “understaffing is not an unlawful practice, nor is requiring employees to answer all incoming calls;” “even assuming Plaintiffs could show that all putative class members worked in a dispatch center that was understaffed, and . . . all subject to a policy requiring them to answer incoming calls ‘no matter the consequences,’ these circumstances do not establish that the class was uniformly denied the opportunity to take timely meal and rest breaks”); *Zayers v. Kiewit Infrastructure West Co.*, 2017 WL 4990460, at *4 (C.D. Cal. Oct. 26, 2017) (“certification . . . is not appropriate if the thrust of the liability argument is that the class members were ‘too busy’ to take breaks, because the argument is not subject to common proof and requires individualized inquiry into each employee’s break decisions, each shift”); *Gonzalez v. Mall*, 281 F.R.D. 455, 462 (S.D. Cal. 2012) (denying class certification because the employer “had a meal and rest period policy conforming to the applicable laws and wage orders. In addition, the Project Managers at each location have discretion in scheduling

1 Defendant further contends it maintains attestation policies for meal and rest periods, and
2 that employees are paid meal and rest period premium payments whenever they attest to
3 taking a non-compliant meal or rest period. *Donohue v. AMN Services, LLC*, 11 Cal. 5th
4 58, 77-78 (2021) (employers can rebut the presumption by presenting evidence (*e.g.*,
5 attestation records) demonstrating that employees were compensated for noncompliant
6 meal periods or that they had in fact been provided compliant meal periods during which
7 they chose to work). As such, class certification on Plaintiff's meal and rest period
8 theories would have been hotly disputed and was by no means a foregone conclusion.
9 (Garay Decl., ¶¶ 16-22.)

10 With respect to unpaid wages, overtime, off-the-clock work, Plaintiff recognized
11 substantial risks of prevailing on these claims, given that Defendant's policies prohibit
12 off-the-clock work, Defendant appears to have paid employees premium, overtime, and
13 premium pay at the correct rates, and because Defendant contends that individualized
14 issues would be necessary to determine which employees, if any, incurred any harm in
15 light of Defendant's policies and procures, including its attestation procedures.¹¹

16 With respect to Plaintiff's expense reimbursement claim, Plaintiff recognized the
17 substantial risk of prevailing on the claim, given in particular that Defendant contends
18 Class Members were reimbursed for all reasonable and necessary business expenditures
19 and had the option to request reimbursement if they believed they incurred reasonable
20 and necessary business expenses. As the California Supreme Court held in *Morgan v.*

21 _____
22 the employees' work schedule and meal and rest periods. Therefore, Plaintiffs have not
23 shown that there was a common policy that pervaded the entire company where Project
24 Managers prevented employees from taking meal breaks and did not authorize and permit
25 employees to take rest breaks.”).

26 ^{11/} See *Ogiamien v. Nordstrom, Inc.*, 2015 WL 773939, at *5 (C.D. Cal. Feb. 24,
27 2015) (denying certification; “individual inquiries are required to establish liability for
28 each putative class member such as: (1) which employees brought bags; (2) which
employees who brought bags were subject to bag checks; (3) whether they left the store
for breaks; and (4) if they left for breaks, if they did so with or without bags. ... some, if
not a large percentage, of proposed class members were never harmed by the policy. This
is not a question of ‘extent’ of liability, but of the existence of liability”).

1 *Wet Seal, Inc.*, 210 Cal. App. 4th 1341, 1357-58 (2012), class certification of an expense
2 reimbursement claim is not appropriate where individualized inquiries are required to
3 determine whether employees sought reimbursement, whether they were reimbursed,
4 whether the expense was necessary, and what they were told about their right to
5 reimbursement. Moreover, specific to Plaintiff's cell phone theory of liability, Defendant
6 contends it was neither reasonable nor necessary for hourly employees to use cell phones
7 for work purposes because Housekeepers, for example, had the option of utilizing guest
8 room phones to communicate with supervisors. Thus, Defendant contends individualized
9 inquiry would be necessary to determine the "who," "what," "where," "when," and
10 "why" for every cell phone call.¹²

11 **VI. CONCLUSION**

12 Based on the reasons stated above, the Parties believe the proposed Settlement is
13 fair, reasonable, and adequate, and warrants this Court's preliminary approval.
14 Accordingly, the Parties respectfully request that the Court preliminarily approve the
15 Settlement, direct Class Notice to be provided to Class Members, and grant final approval
16 at the Final Approval hearing date scheduled for December 9, 2024.

17 **SIGNATURE ATTESTATION**

18 Pursuant to Local Rule 5-4.3.4(a)(2), the electronic filer below hereby attests that
19 all other signatories listed, and on whose behalf the filing is submitted, concur in the
20 filing's content and have authorized the filing.
21
22
23

24 ^{12/} See *Pyara v. Sysco Corp.*, 2017 WL 928715, *2 (E.D. Cal. March 9, 2017)
25 ("common questions do not predominate over individualized questions in light of the
26 nature of the claim and the evidence provided. The 'necessity' of utilizing one's own
27 phone for work purposes will vary by individual . . . This element of Plaintiff's claim will
28 be based on individualized facts and is not well suited to class disposition without
evidence of a policy or set of facts that clearly required or compelled the class members
to use their personal phones.").

1 DATED: May 31, 2024

GARAY LAW, APLC

2 By: /s/ Jose Garay
3 Jose Garay

4 Attorneys for Plaintiff and the Class

5 DATED: May 31, 2024

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