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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

J MICHAEL TURINETTI, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, v. GEMOLOGICAL INSTITUTE OF AMERICA, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 37-2023-00036003-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 3, 2026 Time: 10:30 a.m. Judge: Hon. Loren Freestone Dept.: C-64

TABLE OF CONTENTS

/ / /

/ / /

TABLE OF AUTHORITIES

CASES

STATUTES, RULES AND CODES

SECONDARY SOURCES

I. INTRODUCTION

Plaintiff Michael Turinetti ("Plaintiff") seeks preliminary approval of the Joint Stipulation of Settlement and Release ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 973 Class Members and 701 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** refer to all persons who have been employed by Defendant Gemological Institute of America, Inc. ("Defendant") as a non-exempt or hourly employee in the State of California at any time during the period beginning August 18, 2019, through December 5, 2024 [2]("Class Period"). Agreement at §§ 1.5; 1.11.

a. **"Class Representative"** refers to Plaintiff Michael Turinetti. Agreement at § 1.12.

b. **"Participating Class Member"** refers to a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.34.

c. **"Class Counsel"** refers to Lawyers for Justice, PC, JCL Law Firm, APC, and Zakay Law Group, APLC. Agreement at § 1.7.

2. The **"Aggrieved Employees"** and **"PAGA Period"** refer to all persons who have been employed by Defendant as a non-exempt or hourly employee in California at any time during the period beginning June 14, 2022, through December 5, 2024 ("PAGA Period"). Agreement at §§ 1.3; 1.33.

3. The "**Gross Settlement Amount**" is One Million Nine Hundred Seventy-Five Thousand Dollars and Zero Cents ($1,975,000.00). Agreement at § 1.21. The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Service Award**" of not more than $2,500.00 to Plaintiff in recognition of his services as Class Representative. Agreement at § 1.45;

b. **A "Class Counsel Fees and Costs Award"** in the amount not of not more than $716,250.00, comprised of attorneys' fees of not more than thirty-five percent (35%) of the Gross

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

[2] The Agreement provides for an escalator or, alternatively, an Alternate End Date, if the number of workweeks during the Class Period exceeds a defined threshold. However, the escalator clause was not triggered, so the Class Period will end on December 5, 2024.

Settlement Amount, currently estimated to be $691,250.00 ***and*** litigation expenses not to exceed $25,000.00, to be paid to Class Counsel. Agreement at §§ 1.8;

c. A "**PAGA Payment**" of Two Hundred Sixty-Five Thousand Dollars and Zero Cents ($265,000.00) allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment ($198,750.00) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($66,250.00) will be distributed to the Aggrieved Employees ("PAGA Penalties"). Agreement at § 1.31; and

d. "**Settlement Administration Costs**" not to exceed $12,500.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice of Settlement of Class Action and Final Approval Hearing ("Notice Packet") and costs associated with administration of the Settlement. Agreement at § 1.47.

4. The "**Net Settlement Amount**" of approximately $978,750.00 (Gross Settlement Amount less the Court-approved Class Counsel Fees and Costs Award, Service Award, Settlement Administration Costs, and the PAGA Payment) will be allocated to all Participating Class Members. The amount each Participating Class Member receives will depend on the number of Workweeks they worked within the Class Period. Agreement at §§ 1.27; 5.1.1.

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 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. Declaration of Shani O. Zakay, Esq. ("SOZ Dec."), ¶ 8.

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 Participating Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement. SOZ Dec. ¶ 9.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a nonprofit institute specializing in diamonds, gems and pearls, and operates laboratories, educational campuses, and research centers throughout California, including San Diego County, where Plaintiff worked. Plaintiff was employed by Defendant from May 2014 to approximately October 2021. Plaintiff alleges that the Class was denied legally compliant meal and rest periods, overtime compensation, and was not reimbursed for necessary business expenses. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "GIA Employee Handbook." Declaration of Helene Mayer, Esq. ("LFJ Dec."), ¶ 2.

Generally, this Action alleges that Defendant failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, as detailed below. SOZ Dec., ¶ 10.

On June 14, 2023, Guadalupe Reyes served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Guadalupe'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"). LFJ Dec., ¶ 3.

On August 18, 2023, Mr. Reyes filed a class action complaint in the San Diego County Superior Court, Case No. 37-2023-00036003-CU-IE-CTL (the "Action"). The Action alleged eleven 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); (10) Violation of California Business & Professions Code §§ 17200, et seq.; and (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys General Act of 2004). LFJ Dec., ¶ 4.

The Parties agreed to attend early private mediation. On August 5, 2024, the Parties attended mediation with Daniel Turner, Esq., a respected mediator of wage and hour class and representative actions. The mediation concluded without a settlement. However, with Mediator Turner's assistance, the Parties agreed to a mediator's proposal on September 6, 2024. LFJ Dec., ¶ 6.

The mediator's proposal was memorialized in the form of a Memorandum of Understanding, which was signed by Defendant, Mr. Reyes, and their respective counsel, on October 18, 2024. LFJ Dec., ¶ 7.

On November 10, 2024, Guadalupe Reyes unexpectedly passed away. Class Counsel was informed of the death on or around November 19, 2024. On or around November 18, 2024, Plaintiff Michael Turinetti contacted Class Counsel Lawyers for Justice, PC. LFJ Dec., ¶ 8.

On January 23, 2025, Class Counsel served Defendant and the LWDA with an Amended Notice of Violations to include Plaintiff Michael Turinetti as Plaintiff and PAGA representative. On August 14, 2025, Class Counsel filed a First Amended Complaint, naming Michael Turinetti as Plaintiff and Class Representative in the Action. LFJ Dec., ¶ 10.

The Parties then agreed to amend the Memorandum of Understanding to replace Guadalupe Reyes with Michael Turinetti as the Class Representative. The amended Memorandum of Understanding was signed by Defendant, Plaintiff, and their respective counsel on January 7, 2025. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. LFJ Dec., ¶ 9.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the complaints. Class Counsel's investigation started with several lengthy interviews with Guadalupe Reyes. As part of the interview process, Guadalupe produced documents related to his employment, including various written policies. At the conclusion of the interviews, Class Counsel determined that Guadalupe's complaints justified further inquiry. LFJ Dec., ¶ 11.

Class Counsel subsequently requested Guadalupe's employee files from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited to, copies of Defendant's written policies and Guadalupe's signed onboarding documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Guadalupe's claims. LFJ Dec., ¶ 12.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. In anticipation of mediation, Defendant produced time and payroll records, along with copies of applicable handbooks, policies, and agreements. LFJ Dec., ¶ 13.

Class Counsel worked with a third-party data expert, CPAnalytics Inc., to evaluate and analyze Class Members' time and payroll records to assist in the development of various damage models. Among other things, Class Counsel's data expert estimated the number of meal and rest period violations, the amount of unpaid wages, and the amount of PAGA penalties. LFJ Dec., ¶ 14.

In advance of mediation, Class Counsel created several damage models predicated on the analysis of the data provided by Defendant. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. LFJ Dec., ¶ 15.

Following the unexpected death of Mr. Reyes, Class Counsel then conducted subsequent investigations into Plaintiff. Through these investigations, Class Counsel determined that Plaintiff suffered the same violations as those alleged by Mr. Reyes on behalf of the Class. Plaintiff was not added to the Action until his claims and damages were adequately analyzed and investigated, to ensure his suitability to represent the other Class Members. LFJ Dec., ¶ 16.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member'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 Plaintiff's claims and estimating Defendant's 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. LFJ Dec., ¶ 17.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of the 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. SOZ Dec., ¶ 11. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

C. The Parties Settled Post Mediation

On August 5, 2024, the Parties conducted a full day of mediation with Daniel Turner, Esq.. Mediator Turner 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 Mediator Turner's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. Though the mediation concluded without a settlement, the Parties continued settlement discussions via the mediator. Mediator Turner ultimately provided the Parties with a Mediator's proposal, which was accepted by the Parties on September 6, 2024. 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. LFJ Dec., ¶ 18.

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D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Participating Class Members</u>

The proposed Class consists of all persons who have been employed by Defendant as a non-exempt or hourly employee in the State of California at any time during the Class Period. Agreement at § 1.5. The Participating Class Members exclude any person who submits a timely and valid request for exclusion. Agreement at § 1.34. At the time of mediation, it was estimated that the Class was comprised of 973 Class Members who worked 136,965 workweeks, and 701 Aggrieved Employees who worked 31,963 pay periods. Agreement at § 19.

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $1,975,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments; (2) a Service Award of not more than $2,500.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of $265,000.00; (4) Settlement Administration Costs estimated at $12,500.00; (5) Class Counsel Fees and Costs Award in the amount of $716,250.00, comprised of thirty-five percent (35%) of the Gross Settlement Amount for attorney's fees, currently estimated to be $691,250.00, and up to $25,000.00 for actually incurred litigation expenses. Agreement at §§ 1.21, 1.27, 5.2, 6, 7, 8.

Subject to the Court approving the Service Award, PAGA Payment, Settlement Administration Costs, and the Class Counsel Fees and Costs Award, the Net Settlement Amount will be distributed to each Participating Class Member. Agreement at §§ 1.27, 1.34. There is no reversion to Defendant, and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 1.21, 4.2.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount to the Settlement Administrator within fifteen (15) calendar days of the Effective Date. Agreement at §§ 1.18, 9.1.

4. Formula for Calculating Individual Class Payment

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 during the Class Period. Agreement at § 5.1.1. The Class Data provided by Defendant to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § 1.9. Using the Class Data, the Settlement Administrator will add up the total number of workweeks for all Class Members. The respective workweeks for each Class Member will then be divided by the Net Settlement Amount, to estimate the value per workweek for each Participating Class Member. The value per workweek will then be multiplied by the number of workweeks worked by each Participating Class Member during the Class Period, to calculate each estimated Individual Class Payment. Agreement at § 5.1.1. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § 9.3.

5. Release by Participating Class Members

Generally, as of the Funding Date, the Class Members will release the Released Parties from the Released Class Claims during the Class Period. Agreement at §§ 11.1 and 11.2.

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

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, and the State of California will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement § 11.2.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $1,975,000.00 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 with mediator Daniel Turner. Mediator Turner 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.").) The Parties reached an agreement only after accepting the mediator's proposal. LFJ Dec., ¶ 19.

Once the Parties accepted the mediator's proposal, 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. LFJ Dec., ¶ 20.

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 Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. LFJ Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's 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 interest of the Class Members. SOZ Dec., ¶ 12. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

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

The Gross Settlement Amount of $1,975,000.00 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.[3] Indeed, "[t]he determination whether a settlement is

[3] 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 $1,975,000.00 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 worked with a third party 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 $5,698,556.50 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 35% of Defendant's realistic class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure. LFJ Dec., ¶ 22.

(1) Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendant failed to provide compliant meal periods to Class Members throughout the Class Period. Specifically, Plaintiff argues that Defendant's understaffing and rigorous work requirements did not allow Class Members to regularly take the meal periods to which they were entitled. By way of example, Plaintiff alleged that the records produced by Defendant showed that over 83.86% of eligible shifts reflected a missed second meal period. Defendant maintained that it offered compliant meal periods, and that it had in place valid meal period waivers, including waivers under which Class Members waived their second meal period if certain conditions were met. The Parties disagree as to the validity of the meal period waivers. Defendant also claimed that establishing liability would require individualized inquiries not suitable for class wide adjudication. Taking Defendant's defenses into account, Plaintiff estimates Defendant's exposure for this claim to be approximately $251,744.22. This number was calculated by taking the total number of shifts for which

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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").

a non-compliant break was recorded and multiplying this by the Class Members' average regular rate of pay. This number was then discounted by 10% to account for Defendant's defenses. LFJ Dec., ¶ 23.

(2) <u>Defendant's Estimated Exposure of Rest Period Violations</u>

For the same reasons detailed above, Plaintiff also alleged that Defendant failed to provide compliant rest periods. Plaintiff alleges that rest breaks were often missed or were not duty-free due to Defendant's rigorous workload requirements and understaffing. Defendant failed to pay rest premiums to Class Members for their non-compliant rest periods during the Class Period. Defendant denies liability and asserts that it maintained legally compliant rest period policies and practices throughout the Class Period, and that employees were provided an opportunity to take legally compliant rest breaks. Moreover, Defendant contends that establishing Plaintiff's 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."). Taking into account Defendant's defenses, Plaintiff estimates Defendant's exposure for this claim to be approximately $999,355.00. This number was calculated by assuming that 25% of all shifts over 3.5 hours included at least one non-compliant rest period. LFJ Dec., ¶ 24.

(3) <u>Defendant's Exposure for Unpaid Wages, Including Overtime Wages</u>

Plaintiff alleges that Defendant failed to pay Plaintiff and the Class Members for all time worked. Specifically, Plaintiff alleged that Defendant instructed him and the Class to record their scheduled hours rather than their actual time worked. Plaintiff alleges Defendant prohibited Class Members from clocking in before their scheduled shift times and likewise prohibited Class Members from clocking out after their scheduled shift times. Class Members were not always able to complete all required tasks during their scheduled shift and as a result, Class Members often worked several minutes more than their recorded shifts. Defendant denied liability and asserts that its timekeeping policies were compliant with California law. Defendant states that it required Plaintiff and the Class Members to accurately record all time worked. Moreover, Defendant argues that Plaintiff's claim for pre- and post-shift work was predominated by individual inquiries, thus making the claim not suitable for class treatment. Taking Defendant's defenses into account, Plaintiff estimates Defendant's exposure for this claim to be approximately $767,004.00. This number was calculated by assuming that each Class Member worked 15 minutes off-the-clock per workweek each workweek of the Class Period. That total was then discounted by 20% to account for Defendant's defenses. LFJ Dec., ¶ 25.

(4) Defendant's Exposure for Wage Statement Violations

Plaintiff also alleges that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal periods and failure to compensate employees for all time worked as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal.5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Defendant argues that even if it failed to furnish accurate wage statements, Plaintiff cannot establish that its failure was knowing and intentional or that such failure resulted in actual harm to the Class Members. Indeed, Defendant insists that, to the extent any of its wage statements do not comply with the law, such wage statements were issued with good faith and full belief that they were compliant. Taking this into account, Plaintiff estimates Defendant's exposure for this claim to be approximately $1,923,600.00. This number was calculated by assuming each of the wage statements issued during the statutory period was non-compliant, and applying a 30% discount to account for Defendant's defenses. LFJ Dec., ¶ 26.

(5) Defendant's Exposure for Waiting Time Penalties

Plaintiff also alleges that Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. Defendant argues that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo*, *supra*, 15 Cal.5th 1056, creates difficulty in Plaintiff succeeding in a purely derivative waiting time penalty claim. Moreover, even if liability is established, it is unclear at best whether Plaintiff could establish the actual harm component necessary for class-certification on the facial claim under Labor Code section 226(a). Taking this into account, Plaintiff estimated Defendant's exposure for this claim to be approximately $1,756,853.28. This number was calculated by assuming that each of the 369 separated employees were owed waiting time penalties for the full 30 days, and applying a 30% discount to account for Defendant's defenses. LFJ Dec., ¶ 27.

(6) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's liability exposure for PAGA claims ranged between $159,815.00 and $6,392,600.00. LFJ Dec., ¶ 28. 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 penalties 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 penalties 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 $265,000.00 which is 13.4% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($198,750.00) will be paid to the LWDA with the remaining twenty-five percent (25%) of the PAGA Payment ($66,250.000) will be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. SOZ Dec., ¶ 13.

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. SOZ Dec., ¶ 14.

"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. Even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects 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. SOZ Dec., ¶ 15. "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 $1,975,000.00 that is approximately 35% of Defendant's realistic *class-wide* liability exposure for damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

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

The Class Members are 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.)[4]

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice will include information regarding

[4] 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.

the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at §§ 12.3.4, 13.3. 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. SOZ Dec., ¶ 16.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet 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.").)

C. The Court Should Preliminarily Approve the Service Award

Service awards "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).) Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Service Award of not more than $2,500.00 to Plaintiff. The Service Award is fair and reasonable compensation for Plaintiff's efforts regularly conferring with Class Counsel on the status of the case, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendant a general release of all claims arising out of his employment. SOZ Dec., ¶ 17.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. SOZ Dec., ¶ 18.

D. The Court Should Preliminarily Approve the Class Counsel Fees and Costs Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Fees and Costs Award is fair and reasonable. SOZ Dec., ¶ 19.

Plaintiff will file a formal motion for the negotiated Class Counsel Fees and Costs Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SOZ Dec., ¶ 20.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. SOZ Dec., ¶ 21.

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 Participating Class is Ascertainable and there is a Well-Defined Community of Interest Among the 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. Factually, Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. SOZ Dec., ¶ 22.

Additionally, Plaintiff is 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. SOZ Dec., ¶ 7, Declaration of Jean-Claude Lapuyade, ¶¶ 1-8, LFJ Dec., ¶¶ 39-43.

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. SOZ Dec., ¶ 23.

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: March 11, 2026

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