ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Nicole Noursamadi (State Bar #357246)
nicole@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

LAWYERS FOR JUSTICE, PC
Arby Aiwazian (State Bar #269827)
aa@calljustice.com
Joanna Ghosh (State Bar #272479)
joanna@calljustice.com
Brian St. John (State Bar #304112)
sina@calljustice.com
Maria Halwadjian (State Bar #358015)
maria@calljustice.com
450 North Brand Blvd., Suite 900
Glendale, California 91203
Telephone: (818) 265-1020

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ELIJAH WOLDEMARIAM, individually, and on behalf of other members of the n general public similarly situated; Plaintiff, v. ALL NIPPON AIRWAYS CO., LTD., a Japanese corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 23STCV29685 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 23, 2026 Time: 10:30 a.m. Judge: Theresa M. Traber Dept.: 1

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I. INTRODUCTION

Plaintiff ELIJAH WOLDEMARIAM ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which, if approved, would provide valuable monetary relief for approximately 244 Class Members and 175 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former non-exempt employees of All Nippon Airways Co., Ltd. ("Defendant") within the state of California from December 5, 2019, through December 31, 2024. ("Class Period"). Agreement at §§ 1.6, 1.13. As of the date of the Agreement, there were approximately 244 Class Members who worked approximately 32,300 Workweeks during the Class Period. Agreement at § 4.1.

a. **"Class Representative"** means Elijah Woldemariam, the named Plaintiff in the Action. Agreement at § 1.14.

b. **"Participating Class Members"** refers to all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.43.

c. **"Class Counsel"** means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC; Shani O. Zakay, Esq. of Zakay Law Group, APLC; and Lawyers *for* Justice, PC. Agreement at § 1.7.

2. The **"Aggrieved Employees"** and **"PAGA Period"** refers to all current and former non-exempt employees of All Nippon Airways Co., Ltd. within the State of California ("Aggrieved Employee") during the period between September 28, 2022, through December 31, 2024 ("PAGA Period"). Agreement at §§ 1.5, 1.38. Aggrieved Employees may not exclude themselves from the PAGA Settlement and shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement. Agreement at § 7.5.1. As of the date of the Agreement, there were approximately 175 Aggrieved Employees who worked approximately 6,576 pay periods during the PAGA Period. Agreement at § 4.1.

3. **"Class and Aggrieved Employee Data"** means Class Member and Aggrieved Employee identifying information in Defendant's possession including the name, last known address, and social

[1] The Agreement is attached as Ex "A" to the Declaration of Shani O. Zakay ("SOZ Dec."), ¶ 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.

security number of each Class Member and Aggrieved Employee, the number of workweeks in which each Class Member worked during the Class Period, and the number of pay periods each Aggrieved Employee worked during the PAGA period. Agreement at § 1.9.

4. The **"Gross Settlement Amount"** is Six Hundred Fifty Thousand Dollars and Zero Cents ($650,000.00). Agreement at § 1.24. The Gross Settlement Amount is non-reversionary and includes the following:

a. **"Administration Expenses"** not to exceed $6,000.00 payable to the Administrator to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement. Agreement at §§ 1.3, 3.2.3.

b. **"Class Counsel Fees Payment" and Class Counsel Litigation Expenses Payment"** to be paid to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action, in the amount not to exceed 35% of the Gross Settlement Amount for attorney's fees, currently estimated to be $227,500.00, ***and*** litigation costs and expenses not to exceed $30,000.00. Agreement at §§ 1.8, 3.2.2. The Attorneys' Fees shall be divided between Class Counsel as follows: 7.5% to JCL Law Firm, APC; 7.5% to Zakay Law Group, APLC; and 85% to Lawyers *for* Justice, PC. Plaintiff has reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Elijah Woldemariam ("Woldemariam Dec."), ¶ 10;

c. A **"Class Representative Enhancement Award"** in the amount of $7,500.00 to the Class Representative for initiating the Action, and for providing services in support of the Action. Agreement at § 1.15;

d. **"PAGA Penalties"** in the amount of Seventy Thousand Dollars and Zero Cents ($70,000.00), which is allocated toward PAGA civil penalties to be paid from the Gross Settlement Amount. Agreement at § 1.41. The Administrator, Apex Class Action LLC ("Administrator") shall pay $52,500.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency under Labor Code section 2699, subd. (i) ("LWDA PAGA Payment"). Agreement at §§ 1.31,1.4.1. The Administrator shall distribute $17,500.00 representing 25% of the PAGA Payment to the Aggrieved

Employees ("Individual PAGA Payment"). Agreement at §§ 1.26, 1.4.1;

3. The **"Net Settlement Amount"** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the PAGA Payment, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses. The remainder is to be paid to Participating Class Members as Individual Class Payments. Agreement at § 1.32. The Net Settlement Amount is approximately $309,000.00, which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at § 1.25, 3.2.4.

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 Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs in pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Participating 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. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of approximately ***$1,266.39***. Declaration of Shani O. Zakay ("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 Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 9.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is an airline company which offers daily passenger flights to/from the county of Los Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendant's current and former hourly-paid or non-exempt employees employed in California at any time during the Class Period. Plaintiff worked for Defendant as an hourly-paid, non-exempt employee in California from approximately October 2022 to December 2022. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's policies and procedures. Woldemariam Dec., ¶ 7; SOZ Dec., ¶ 10.

Generally, Plaintiff claims that Defendant failed to pay for all hours worked, failed to provide legally compliant meal and rest periods, failed to pay all wages when due at the time of separation, and failed to furnish complete and accurate wage statements. Defendant denies liability for 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, including but not limited to, asserting that it has made substantial good faith efforts to comply with the California Labor Code and Industrial Welfare Commission Wage Orders, paid employees for all hours worked, and maintained facially compliant meal and rest period policies at all times during the Class Period. SOZ Dec., ¶ 11.

On September 28, 2023, Plaintiff initiated this action by serving Defendant and the California Labor and Workforce Development Agency ("LWDA") with a Notice of Alleged Labor Code Violations ("PAGA Notice"). Plaintiff's PAGA Notice alleged that Defendant violated a number of California Labor Code provisions by, inter alia, failing to pay Plaintiff and those similarly situated for all hours worked, failing to provide legally compliant meal and rest periods, and failing to provide accurate itemized wage statements, among other alleged violations. SOZ Dec., ¶ 12.

On December 5, 2023, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case No. 23STCV29685 ("Class Action"). Agreement at § 1.1. The Action alleged ten causes of action against Defendant for: (1) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510 and 1198; (2) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512(a) and the Applicable IWC Wage Order; (3) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code § 226.7 and the Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (5) Failure to Provide Final Wages When Due in Violation Of Cal. Labor Code §§ 201 and 202; (6) Failure to Provide Wages During Employment When Due in

Violation Of Cal. Labor Code § 204; (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226(a); (8) Failure to Maintain Requisite Payroll Records in Violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §§ 2800 and 2802; and (10) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*. SOZ Dec., ¶ 13.

On December 5, 2023, Plaintiff filed a separate representative PAGA complaint in the Los Angeles Superior Court, Case No. 23TRCV04045, alleging a single cause of action for violations of the California Labor Code § 2698, *et seq*. ("PAGA Action"). SOZ Dec., ¶ 14.

The Parties agreed to mediate the Action on a Class and PAGA basis. On September 24, 2024, the Parties participated in a full day mediation presided over by Steven Rottman, Esq. The Parties did not settle at mediation. After continued arms-length negotiations and bargaining, the Parties reached an agreement to settle the matter and signed a Memorandum of Understanding on March 31, 2025. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SOZ Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. At the conclusion of the interviews and review of documents, Class Counsel determined that each Plaintiff's complaints justified further inquiry. SOZ Dec., ¶ 16.

Class Counsel requested Plaintiff's employee file from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff's payroll records and applicable company policies during the Class Period. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked and issue accurate itemized wage statements. SOZ Dec., ¶ 17.

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. SOZ Dec., ¶ 18.

Class Counsel Lawyers *for* Justice, PC., evaluated and analyzed Class Members' time and payroll to assist in the development of various damage models. Among other things, Lawyers *for* Justice, PC., estimated the number of meal and rest period violations, the amount of unpaid wages, and the amount of off-the-clock work performed by the Class Members during the Class Period. SOZ Dec., ¶ 19.

In advance of mediation, Lawyers *for* Justice, PC., 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. SOZ Dec., ¶ 20.

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 file; (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 Members' 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. SOZ Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their 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 believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 22.

C. The Parties Settled Through Continued Negotiations Post Mediation

On September 24, 2024, the Parties attended a full day of mediation with Steven Rottman, Esq., a respected mediator of wage and hour class and representative actions. Mediator Rottman assisted in managing the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mr. Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. While the mediation did not conclude with a settlement, it led to continued negotiations between the Parties. On or around March 19, 2025, the Parties ultimately reached a settlement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The Participating Class Members consist of all current and former non-exempt employees of Defendant within the State of California at any time during the period of December 5, 2019, through December 31, 2024, who do not file a timely and valid Request for Exclusion from the Settlement. Agreement at §§ 1.6, 1.13, 1.43. At the time the Agreement was executed, there were approximately 244 Class Members that worked approximately 32,300 Workweeks. Agreement at § 4.1.

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

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $650,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Class Representative Enhancement Award of $7,500.00 to Plaintiff for his services on behalf of the Participating Class Members; (3 PAGA Penalties in the amount of $70,000.00; (4) Administration Expenses estimated not to exceed $6,000.00; (5) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment in the amount of up to $257,500.00, comprised of attorneys' fees equal to thirty-five percent (35%) of the Gross Settlement Amount estimated to be $227,500.00 and up to $30,000.00 for actually incurred litigation expenses. *See generally* Agreement at § 3.2.

Subject to the Court approving the Class Representative Enhancement Award, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, PAGA Penalties, and the Administration Expenses, the Net Settlement Amount will be distributed to each Participating Class Member as

Individual Class Payments. Agreement at § 1.25. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date and Installment Plan

Assuming there are no objectors, and no appeal is filed, Defendant will fund the $650,000.00 Gross Settlement Amount plus the employer payroll taxes owed by Defendant no later than thirty (30) calendar days after the Effective Date. Agreement at § 4.3.

4. Formula for Calculating Individual Class Payments

Each Participating Class Member will receive an Individual Class Payment. The Class and Aggrieved Employees Data provided by Defendant to the Administrator will include the number of workweeks in which each Class Member worked during the Class Period, and the number of pay periods each Aggrieved Employee worked during the PAGA Period. Agreement at § 1.9. The Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.). Agreement at § 3.2.4.3.

Given that there are approximately 244 Class Members, ***the average gross recovery is approximately $1,266.39.*** (Net Settlement Amount divided by Participating Class Members). SOZ Dec., ¶ 8.

5. Release by Participating Class Members

Generally, as of the date on which Defendant fully funds the Gross Settlement Amount, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.48, 1.50. See generally Agreement at § 5.

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

Generally, as of the date on which Defendant fully funds the Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.49, 1.50. See generally Agreement at § 5.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $650,000.00, 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* (2010) 180 Cal.App.4th 1110, 1118 (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 the highly respected mediator Steven Rottman, Esq. Mediator Rottman 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."). At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. While mediation did not conclude with a settlement, continued negotiations thereafter between the Parties led to a settlement. SOZ Dec., ¶ 24.

Once the Parties reached a settlement, the Parties engaged in negotiations regarding the written terms of the class action and PAGA 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. SOZ Dec., ¶ 25.

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 the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SOZ Dec., ¶ 26.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on an 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 believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 27.

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

The Gross Settlement Amount of $650,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not

[2] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for 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").

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 $650,000.00 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 Lawyers *for* Justice, PC., developed economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA penalties) ranged between $2,989,012.06 ("Conservative Model") and $6,260,214.07 ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of $650,000.00 represents approximately between 10.38% ("Aggressive Model") and 21.75% ("Conservative Model") of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. SOZ Dec., ¶ 28.

(1) <u>Estimated Exposure for Meal Period Violations</u>

Plaintiff alleges that Defendant failed to provide compliant meal periods and failed to provide meal period premiums. Plaintiff argues that, during many shifts, Plaintiff and other Class Members did not have an opportunity to take an off-duty meal break. Moreover, Plaintiff's analysis of Defendant's time and payroll records demonstrated that over 90% of eligible shifts reflected a missed *second* meal period. SOZ Dec., ¶ 29.

Defendant maintains that lawful policies were in place and that Class Members were provided the opportunity to take compliant meal breaks. Defendant also argues that alleged violations for missed meal breaks occurring in shifts of less than 6 hours had been validly waived pursuant to a meal period waiver. Finally, Defendant maintains that establishing liability would require individualized inquiries not suitable for class wide adjudication. SOZ Dec., ¶ 30.

Plaintiff estimates Defendant's exposure for meal period violations to be approximately $231,862.54. SOZ Dec., ¶ 31.

(2) Estimated Exposure for Rest Period Violations

Plaintiff also alleges that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleges that because of rigorous work schedules and Defendant's understaffing, Plaintiff and Class Members were rarely able to take timely and duty-free rest periods. Additionally, Defendant's Employee Handbook requires employees to remain on-site during rest periods. Defendant failed to pay any rest premium to any Class Member during the Class Period. SOZ Dec., ¶ 32.

Again, 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. Plaintiff recognizes the evidentiary burdens in establishing this claim. 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."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). SOZ Dec., ¶ 33.

As a result, Plaintiff discounted this claim by 70% and estimates that Defendant's exposure on this claim ranges between $1,644,725.53 and $4,111,813.83. SOZ Dec., ¶ 34.

(3) Estimated Exposure for Unpaid Wages, Including Overtime Wages

Plaintiff alleges that Defendant failed to pay Plaintiff and the Class Members for all time worked. Specifically, Plaintiff alleges that he and other Class Members regularly performed work off-the-clock as a result of Defendant's timekeeping system and workplace policies. According to Plaintiff, employees were required to perform job duties prior to clocking in for their scheduled shifts, such as donning safety gear, completing pre-arrival documentation, answering questions from supervisors, and verifying the previous day's flight documentation. Plaintiff also alleges that employees were regularly required to complete assigned job duties after clocking out, such as completing all documentation, and notifying stakeholders of the status of work tasks. Despite this off-the-clock work, Defendant's policies specifically state that employees are required to record only scheduled hours worked, and that employees are required to receive prior authorization before working overtime hours. As a result, Plaintiff alleges Defendant failed to pay Class Members proper overtime compensation. Plaintiff estimated that he and other Class Members performed *up to* thirty (30) minutes of off the clock work per week throughout the Class Period. SOZ Dec., ¶ 35.

Defendant denies 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 suitable for class treatment. Plaintiff estimates that Defendant's exposure for this claim is approximately $616,822.75. SOZ Dec., ¶ 36.

(4) Estimated 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). SOZ Dec., ¶ 37.

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. SOZ Dec., ¶ 38.

As a result, Plaintiff discounted this claim by 60% and estimates that Defendant's exposure for this claim ranges between $234,340.00 and $585,850.00. SOZ Dec., ¶ 39.

(5) Estimated Exposure for Waiting Time Penalties

Plaintiff also alleges that Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. This is Plaintiff's most uncertain claim. Specifically, 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). As a result, Plaintiff discounted this claim by 75% and estimates that Defendant's exposure for this claim ranges between $137,068.74 and $548,274.95. SOZ Dec., ¶ 40.

(6) Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Class Members to use their personal cellular phones as a result of and in furtherance of their job duties but did not reimburse them. Specifically, Plaintiff and Class Members were required to use their personal cell phones in order to access a phone application to clock in and out, and to communicate with management. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). SOZ Dec., ¶ 41.

Again, Defendant denied any liability for this claim. Defendant argued that its written policies provide for reimbursement to employees for necessary business expenses incurred in the discharge of the employees' duties or at Defendant's direction. Plaintiff estimated that he and other Class Members incurred *at least* $20 per month in business related expenses which went unreimbursed by Defendant throughout the Class Period. Plaintiff applied a 25% discount and estimated that Defendants' exposure for this claim ranged between approximately $124,192.50 and approximately $165,590.00. SOZ Dec., ¶ 42.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between $32,880.00 and $1,995,600.00. SOZ Dec., ¶ 43. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $70,000.00 which is approximately 10.77% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment ($52,500.00) will be paid to the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%) of the PAGA Payment ($17,500.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payments approved by courts and should be approved. SOZ Dec., ¶ 44.

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).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. SOZ Dec., ¶ 42.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 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."); *Ali v. U.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., ¶ 45.

"The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation." (*In re Nvidia Derivs. Litig*. (N.D. Cal. 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous regardless of the strengths of merits of the claims:

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if 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., ¶ 46. "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 $650,000.00 that is roughly between 10.38% ("Aggressive Model") and 21.759% ("Conservative Model") of Defendant's maximum class-wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SOZ Dec., ¶ 47.

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.)[3]

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

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

period within which to request for exclusions or object 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 Class Claims. Agreement at § 7.4. 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., ¶ 48.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) SOZ Dec., ¶ 49.

C. The Court Should Preliminarily Approve the Class Representative Enhancement Award

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

The Settlement provides for a Class Representative Enhancement Award of $7,500.00 for Plaintiff. The Class Representative Enhancement Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members. SOZ Dec., ¶ 50.

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

Representative Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Enhancement Award. SOZ Dec., ¶ 51.

D. The Court Should Preliminarily Approve the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment

The purpose of a payment to Class Counsel for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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. 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 Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment is fair and reasonable. SOZ Dec., ¶ 52.

Plaintiff will file a formal motion for the negotiated Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment 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., ¶ 53.

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., ¶ 54.

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

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 1021-22 (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. SOZ Dec., ¶ 55.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. SOZ Dec., ¶ 56.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class Members. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 57.

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., ¶¶ 58; Declaration of Lawyers *for* Justice, PC ("LFJ Dec."), ¶¶ 1-6.; Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 1-6.

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. Finally, Class Counsel is not aware of any other pending matters or actions asserting claims that will be extinguished or adversely affected by the Settlement. SOZ Dec., ¶ 59; JCL Dec., ¶ 7; LFJ Dec., ¶ 7.

IV. CONCLUSION

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

Dated: January 15, 2026

ZAKAY LAW GROUP, APLC

By: */s/ Nicole Noursamadi*
Nicole Noursamadi, Esq.