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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALEXIS BARTRAM and LOURDES
CONTRERAS, individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

v.

LAKESHORE LEARNING MATERIALS, LLC, a
California limited liability company; and DOES 1-
50, Inclusive,

Defendant.

Case No: 23STCV21174

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

Date: March 5, 2025
Time: 9:00 a.m.

Judge: Hon. Lauren A. Seigle
Dept.: 17

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1 I. INTRODUCTION

2 Plaintiffs Alexis Bartram and Lourdes Contreras (“Plaintiffs”) seek preliminary approval of the
3 Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for approximately 3,510 Class Members and 2,586 Aggrieved Employees.
5 The basic terms of the Agreement provide for the following:

6 1. The “**Class Member**” and “**Class Period**” shall mean all current and former hourly-paid
7 or non-exempt employees who worked for Defendant within the State of California during the Class
8 Period of September 1, 2019 to January 19, 2025. (“Class Period”). Agreement at §§ 1.9, 1.12.

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

11 b. The “**Class Size**” is comprised of 3,510 individuals who collectively worked
12 approximately 245,000 Workweeks during the Class Period as estimated by Defendant at the time of
13 mediation. Agreement at § 8.

14 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all current and former hourly-
15 paid or non-exempt employees who worked for Defendant within the State of California during the
16 PAGA Period of October 22, 2022 to January 19, 2025. (“PAGA Period”). Agreement at §§ 1.4, 1.32.
17 Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.
18 Agreement at § 7.5.4. At the time of mediation, there were approximately 2,586 Aggrieved Employees
19 who worked a total of 125,204 PAGA Pay Periods during the PAGA Period. Agreement at § 4.1.

20 3. The “**Gross Settlement Amount**” is Two Million, Six Hundred Thousand Dollars and
21 Zero Cents (\$2,600,000.00). Agreement at § 1.23. The Gross Settlement Amount includes the
22 following:

23 a. A “**Class Representative Payments**” of not more than \$10,000.00 to each Class
24 Representative in recognition of their efforts and risks in assisting with the prosecution of the Action.
25 Agreement at § 3.2.1.

26 b. “**Class Counsel Award**” in the amount not of not more than thirty-five (35%)
27

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

percent of the Gross Settlement Amount, which is currently estimated to be Nine Hundred, Ten Thousand Dollars and Zero Cents (\$910,000.00) *and* reimbursement of litigation costs of up to Fifty Thousand Dollars and Zero Cents (\$50,000.00). Agreement at § 3.2.2;

c. A “**PAGA Payment**” means One Hundred Thousand Dollars and Zero Cents (\$100,000.00) which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$25,000.00) and the 75% to LWDA (\$75,000.00) in settlement of PAGA claims (“LWDA Payment”). Agreement at §§ 1.25, 1.28, 1.35, 1.3.5; and

d. “**Administration Expenses Payment**” not to exceed \$27,500.00 payable to the Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) and costs associated with administration of the settlement. Agreement at §§ 1.3, 3.2.3.

4. The “**Net Settlement Amount**” of approximately \$1,492,500.00 (Gross Settlement Amount less the PAGA Payment, Class Representative Payments, Class Counsel Award, and the Administration Expenses Payment) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § 1.29. 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 **\$425.21**. JCL Dec., ¶ 7.

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

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a developer and retailer of educational materials in the state of California, including Los Angeles County, where Plaintiffs worked. Plaintiff Alexis Bartram was employed by Defendant from May 2022 to June 2023, as a non-exempt employee. Declaration of Alexis Bartram (“Bartram Dec.”) at ¶ 4. Plaintiff Lourdes Contreras has been employed by Defendant as a non-exempt employee since approximately September 6, 2022. Declaration of Lourdes Contreras (“Contreras Dec.”) at ¶ 4. Plaintiffs alleged that they were denied legally compliant meal and rest periods, minimum wages, and overtime compensation. Throughout their employment, Plaintiffs were subject to Defendant’s written policies and procedures. JCL Dec., ¶ 9.

Generally, Plaintiffs claim that Defendant failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to pay for all time worked, failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to timely pay wages due, failed to accurately record and pay for the actual time worked, and unlawfully deducted wages. Defendant denies liability for each of Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies, and compliant wage statements. JCL Dec., ¶ 10.

On June 28, 2023, Plaintiff Alexis Bartram served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’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 her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 11.

On September 1, 2023, Plaintiff Alexis Bartram filed a Class Action Complaint against Defendant in the Los Angeles County Superior Court, Case No. 23STCV21174 (“Bartram Action”).

The Action alleged seven causes of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; and (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203. JCL Dec., ¶ 12.

On September 11, 2023, Plaintiff Lourdes Contreras served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’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 her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 13.

On October 16, 2023, Plaintiff Lourdes Contreras filed a Class Action Complaint against Defendant in the Los Angeles County Superior Court, Case No. 23STCV25226 (“Contreras Action”). The Action alleged eight causes of action against Defendant for: (1) Minimum Wage Violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) Overtime Wage Violations (Labor Code §§ 204, 510, 1194, 1198); (3) Meal Period Violations (Labor Code §§ 226.7, 512, 558); (4) Rest Period Violations (Labor Code §§ 226.7, 516, 558); (5) Wage Statement Penalties (Labor Code § 226); (6) Waiting Time Penalties (Labor Code §§ 201-203); (7) Failure to Reimburse Necessary Business Expenses (Labor Code § 2802); and (8) Unfair Competition (Bus & Prof Code §§ 17200, *et seq.*). JCL Dec., ¶ 14.

On November 15, 2023, Plaintiff Lourdes Contreras filed a First Amended Complaint alleging an additional cause of action for violations of the Private Attorney General Act (“PAGA”). JCL Dec., ¶ 15.

On December 27, 2023, Plaintiff Alexis Bartram filed a First Amended Complaint alleging an additional cause of action for violations of the Private Attorney General Act (“PAGA”). JCL Dec., ¶ 16.

1 On October 10, 2024, the Parties participated in a full day mediation with mediator Monique
2 Ngo-Bonnici, Esq. Mediation concluded without a settlement. However, Mediator Ngo-Bonnici made
3 a mediator's proposal, which was accepted by both parties. Mediator Ngo-Bonnici's settlement
4 proposal was memorialized in the form of a Memorandum of Understanding. After reaching an
5 agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is
6 the subject of the instant motion. JCL Dec., ¶ 17.

7 On January 10, 2025, Plaintiff Alexis Bartram and Plaintiff Lourdes Contreras filed a Stipulation
8 for Leave to File Second Amended Complaint to add Plaintiff Lourdes Contreras as an additional
9 named Plaintiff in the Bartram Action. Upon receipt of the conformed Second Amended Complaint,
10 Plaintiff Lourdes Contreras will dismiss the Contreras Action. JCL Dec., ¶ 18.

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

12 Months before filing the Action, Class Counsel began its pre-filing investigation into the
13 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
14 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their
15 employment, including portions of their hiring documents, payroll records, and Defendant's employee
16 handbook. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints
17 justified further inquiry. JCL Dec., ¶ 19.

18 Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response,
19 Defendant produced dozens of documents, including but not limited to, copies of Defendant's written
20 policies and Plaintiffs' hiring documents and Defendant's Employee Handbook. Class Counsel
21 reviewed and analyzed the documents and determined the documents appeared to substantiate
22 Plaintiffs' claim that Defendant's failed to, among other things, provide compliant meal and rest
23 periods, to provide accurate wage statements, and to compensate overtime wages at the correct regular
24 rate of pay. JCL Dec., ¶ 20.

25 To prepare for mediation, Defendant produced a 18% sample time and payroll records for the
26 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal
27 premiums paid to the Class Members, average hourly rate for the Class Members, and copies of
28 applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages

1 of documents and over 8 million cells of unique time and payroll data. JCL Dec., ¶ 21.

2 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
3 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
4 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
5 credentialed and experienced experts in their fields and have provided their expertise on thousands of
6 cases. JCL Dec., ¶ 22.

7 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
8 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
9 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
10 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
11 and rest periods, the amount of unpaid overtime, and the amount of missed meal and rest period
12 premiums paid during the Class Period. JCL Dec., ¶ 23.

13 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
14 Plaintiffs' suitability as a putative class representative through interviews, background investigations,
15 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
16 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
17 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's
18 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
19 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's
20 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
21 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
22 claims being settled, as well as the impediments to recovery, such as to make an independent
23 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 24.

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

and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 25.

C. The Parties Settled after Mediation

On October 10, 2024, the Parties conducted a full day of mediation with Monique Ngo-Bonnici, Esq. Mediator Ngo-Bonnici 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 Ngo-Bonnici's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. Ultimately, Mediator Ngo-Bonnici made a mediator's proposal, which was accepted by both parties. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Participating Class Members

The proposed Class consists of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California during the Class Period of September 1, 2019 to January 19, 2025. Agreement at § 1.7, 1.12. The Participating Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § 1.30. At the time of mediation, Defendant estimated that the Class was comprised of 3,510 individuals that worked approximately 245,000 Workweeks during the Class Period. Agreement at § 8.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$2,600,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Class Representative Payment of not more than \$10,000.00 to each Class Representative for their services on behalf of the Class and for a general release of claims; (3) a PAGA Payment in the amount of \$100,000.00; (4) Administration Expenses Payment estimated at \$27,500.00; (5) Class Counsel Award in the amount of \$960,000.00, comprised of Attorneys' fees of no more than thirty-five (35%) percent of the Gross Settlement Amount estimated to be \$910,000.00 and litigation costs in an amount not to exceed \$50,000.00 for actually incurred litigation expenses. See generally Agreement at § 3.

1 Subject to the Court approving the Class Representative Payments, Class Counsel Award, PAGA
2 Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to
3 each Settlement Class Member. Agreement at § 1.29. There is no reversion to Defendant and
4 Defendant must separately pay for their share of the employer payroll taxes. Agreement at § 3.1.

5 3. The Funding Date

6 Assuming there are no objectors, and no appeal is filed, Defendant shall fully fund the Gross
7 Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
8 taxes by transmitting the funds to the Administrator within sixty-five (65) days after the Effective Date.
9 Agreement at § 4.3.

10 4. Formula for Calculating Individual Class Payments

11 Participating Class Members will receive an Individual Class Payment. The Individual Class
12 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
13 in California during the Class Period. Agreement at § 1.2.4. The Class Data provided by Defendant to
14 the Administrator will include the number of Workweeks for each Class Member and the number of
15 PAGA Pay Periods worked during the relevant periods. Agreement at § 1.8. The Administrator will
16 calculate each Class Member's final Individual Class Payment by dividing the Net Settlement Amount
17 by the total number of Workweeks worked by all Participating Class Members during the Class Period
18 and multiply the result by each Settlement Class Member's Workweeks worked during the Class
19 Period. Agreement at § 3.2.4. Each Individual Class Payment will be reduced by any legally mandated
20 employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § 3.2.4.1. Individual
21 Class Payments for members of the Participating Class Members who submit valid and timely requests
22 for exclusion will be redistributed to Participating Class Members who do not submit valid and timely
23 requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2. Given that there are approximately
24 3,510 Class Members, **the average gross recovery is approximately \$425.21** (Net Settlement Amount
25 divided by Participating Class Members). JCL Dec., ¶ 7.

26 5. Release by Participating Class Members

27 Generally, as of the Funding Date, Plaintiffs and the Participating Class Members will agree to
28 release the Released Parties from the Released Class Claims that accrued during the Class Period.

1 Agreement at § 5.2.

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

3 Generally, as of the Funding Date, Plaintiffs, the Aggrieved Employees, and the State of
4 California will release the Released Parties from the Released PAGA Claims that accrued during the
5 PAGA Period. Agreement at § 5.3.

6 **III. ARGUMENT**

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

8 The proposed Settlement, including a Gross Settlement Amount of \$2,600,000.00 meets the
9 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
10 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
11 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
12 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
13 notice of the settlement has been distributed to class members for their comments and objections.
14 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
15 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
16 inquire into the fairness of the proposed settlement”).)

17 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
18 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
19 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
20 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
21 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
22 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
23 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
24 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
25 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
26 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
27 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
28 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and

1 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
2 action litigation”).)

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

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

11 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
12 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
13 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
14 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
15 § 11.51.)

16 The Parties reached a settlement after accepting Mediator Ngo-Bonnici mediator’s proposal. (*In*
17 *re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195
18 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a
19 collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
20 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
21 of collusion and undue pressure.”).) Once the Parties agreed to the Mediator’s proposal, the Parties
22 engaged in negotiations regarding the written terms of the class action settlement. The Agreement is
23 the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and
24 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 27.

25 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
26 Settlement’s Reasonableness.

27 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
28 the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis

1 and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases
2 are identical, this research provided Class Counsel with a marker to inform settlement discussions and,
3 ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically
4 assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions
5 that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 28.

6 Class Counsel only agreed to enter the Settlement following their thorough investigation and
7 evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace
8 for similar settlements, and considering the risk of significant delay, uncertainty associated with
9 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
10 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
11 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 29.

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

13 The Gross Settlement Amount of \$2,600,000.00 is within the range of reasonableness. To
14 determine whether a settlement is fair and reasonable, the court should "consider enough information
15 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
16 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
17 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
18 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
19 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
20 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
21 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
22 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
23 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
24 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

25 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
26 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
27 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
28 *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

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 \$2,600,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$4,535,866.63 and \$17,326,556.02, if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 15.01% and 57.32% of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 30.

(1) Defendant’s Estimated Exposure for Regular Rate Violations

Plaintiffs alleged that Defendant failed to include certain non-discretionary compensation when calculating the regular rate of pay when paying overtime wages, rest period premiums, meal period premiums, and sick pay. Specifically, Defendant paid Class Members non-discretionary incentive compensation in the form of “12 Extra 2,” “16 Extrabonus,” “33 Incentive,” “CCD Ccp Dollars,” “CCE Ccp Extra,” “HBE Hq Beba,” “INC Emp Incentive,” “RBE Retail Beba,” “10 Commission (Quarterly),” “25 Retail Bonus (Quarterly),” “26 Retention Bns (Quarterly),” “BNS Prfrmance Bns (Annual),” and “BON Bonus (Annual).” payments, which were not properly calculated into the regular rate of pay for purposes of overtime, double time, and meal period premiums. JCL Dec., ¶ 31. The

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”).

1 regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight
2 time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and
3 the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart*
4 *Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California law requires meal period
5 premiums and rest period premiums to be paid at an employee’s regular rate of pay. *See Ferra v. Lowes*
6 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) For overtime work, “an employee must receive a 50
7 percent premium on top of his or her regular rate of pay[.]” *Alvarado v. Dart Container Corp. of*
8 *California* (2018) 4 Cal.5th 542, 552-554. California Labor Code section 246(1)(1) expressly mandates
9 that sick pay for non-exempt employees be based on either “the regular rate of pay for the workweek
10 in which the employee uses paid sick time” or the regular rate of pay in the 90 days preceding the use
11 of the sick leave. Cal. Labor Code § 246(1)(1)-(2).

12
13 a. Meal Period Premium Miscalculation

14 At the time of mediation, Plaintiffs’ expert determined 26.6% of employees received both a meal
15 period premium and additional compensation in the same pay period. However, Defendant failed to
16 include the additional compensation into the regular rate calculation for purposes of meal period
17 premiums and instead paid the premiums at the employee’s base hourly rate. Assuming each item of
18 incentive compensation was non-discretionary, Plaintiffs’ expert identified 7,377 instances of
19 miscalculated meal period premiums during the Class Period. Plaintiff contends this miscalculation of
20 the regular rate of pay resulted in an underpayment to Plaintiff and Class Members. JCL Dec., ¶ 32.

21
22 Conversely, Defendant vigorously denied liability. Defendant asserted that each item of
23 additional compensation paid to Class Members during the claim period was in fact discretionary.
24 Accordingly, Defendant claimed that any additional compensation need not be included in the regular
25 rate of pay for purposes of meal period premiums. Stated differently, Defendant argues that it properly
26 calculated the regular rate of pay for purposes of paying meal period premiums. Defendant further argues
27 that the alleged underpayments only affected a modest number of Class Members. In support, Defendant
28

1 cites to Plaintiffs' own analysis that shows nearly 75% of Class Members were not affected by a
2 purported miscalculation of meal period premiums. Thus, Defendant argues that the claim is a highly
3 individualized inquiry unsuitable for class treatment. JCL Dec., ¶ 33.

4 b. Overtime Miscalculation

5 At the time of mediation, Plaintiffs' expert determined that 49.3% of employees received both
6 overtime pay and additional compensation in the same pay period. However, overtime compensation
7 was paid at the employee's base rate of pay. Plaintiffs contend that Defendant failed to include the
8 additional compensation in the calculation, resulting in an underpayment of overtime compensation to
9 Plaintiffs and the Class Members. JCL Dec., ¶ 34.

11 For the same reasons as stated above, Defendant denied liability. Defendant asserted that
12 additional compensation paid to employees was discretionary, and consequently, that it accurately paid
13 all overtime hours worked. Further, Defendant argued that that claim is unsuitable for class treatment
14 because the claim affected less than half of the Class Members. JCL Dec., ¶ 35.

15 c. Sick Pay Miscalculation

16 Similarly, Plaintiffs allege that Defendant failed to accurately pay redeemed sick pay by failing
17 to include additional compensation into the regular rate of pay. At the time of mediation, Plaintiffs'
18 expert determined that 38% of employees received sick pay and additional compensation in the same
19 pay period. JCL Dec., ¶ 36.

21 Defendant asserted once again that for the same reasons above, any additional compensation
22 need not be included in the regular rate of pay for purposes of sick pay compensation. Additionally,
23 Defendant argued that only 38% of employees were affected, making the claim unsuitable for class
24 treatment. JCL Dec., ¶ 37.

26 In total, prior to applying any discounts, Plaintiffs estimated Defendant's maximum liability for
27 regular rate of pay violations is \$17,326,556.02. However, considering Defendant's defenses and the
28 uncertainty associated with claim, Class Counsel believes a maximum recovery is highly unlikely. As

1 outlined above, the risks associated with Plaintiffs' regular rate of pay claim were great. For instance,
2 of the 12 identified incentive compensation items, only 1 is arguably certain to be non-discretionary.
3 That item, "10 Commission Quarterly", was only paid on 206 occasions during the class period. This
4 represented slightly more than 1% of all additional compensation paid during the Class Period.
5 Meaning that approximately 99% of Defendant's maximum regular rate of pay exposure was subject
6 to a complete defense because, as Defendant argues, the additional compensation was discretionary.
7 Thus, even if Plaintiffs obtained certification, liability was far from certain. Even then, the potential
8 recovery for Defendant's alleged regular rate of pay violations were potentially limited. Thus,
9 considering Defendant's defenses, an optimistic 60% discount was applied to account for the risks
10 associated with obtaining certification and succeeding on the merits for this claim. Therefore, Plaintiffs
11 estimated the range of outcomes for this claim was between \$562,262.40 and \$1,405,656.00. JCL Dec.,
12 ¶ 38.

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

15 Plaintiffs allege that Defendant failed to provide compliant meal periods. Specifically, Plaintiffs
16 allege that Defendant manipulated time records to reflect compliant meal periods. Additionally,
17 Plaintiffs allege that a number of Defendant's managers or supervisors compelled Class Members to
18 sign meal period waivers to conceal missed, late and short meal periods and avoid paying meal period
19 premiums. In analyzing this claim, Plaintiffs' expert found that Defendant had a low violation rate
20 with respect to short and late meal periods. In approximately 0.1% of shifts, meal breaks were less than
21 30 minutes. Additionally, in 0.3% of shifts, meal breaks were taken after the 5th hour of work.
22 Throughout the Class Period, there was a modest 13.5% unique meal period violation rate on all shifts
23 that qualified for a meal period. Consequently, although a modest violation rate, Plaintiffs allege they
24 are owed meal period premiums for meal period violations that occurred during the Class Period. JCL
25 Dec., ¶ 39.

28 Conversely, Defendant argued, among other things, that it provided all Class Members and

1 Aggrieved Employees, with the opportunity to take compliant meal periods. Defendant argued that its
2 policies were compliant, and that only one supervisor was identified by Plaintiffs as manipulating time
3 records in violation of strict company policy and procedure. Consequently, Defendant claimed that
4 Plaintiffs' time manipulation theory presented highly individualized issues not suitable for class
5 treatment. Defendant also argued that it had attestations from its employees that they took compliant
6 meal periods and obtained legally valid meal period waivers. Finally, Defendant alleges that on those
7 limited instances where a Class Member was not able to take a compliant meal periods, and did not
8 otherwise waive a complaint meal period, it paid meal period premiums. Thus, Defendant argued that
9 there was no potential liability for Plaintiffs' alleged meal period violations and any claimed violations
10 required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 40.

12 Consequently, Plaintiffs applied a 75% discount to this claim to account for the modest violation
13 rate, individuality of the claim, and Defendant's facially compliant policies. Plaintiffs estimated that
14 the damages for this claim ranged from approximately \$505,551.24 and \$2,022,204.96. JCL Dec., ¶
15 41.

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

18 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
19 Plaintiffs alleged that despite Defendant's complaint policies, Plaintiff's theory rests on directives from
20 one or more managers to remain on premises during rest periods. The California Supreme Court's
21 decision in *Augustus v. ABM Security Services, Inc.*, held that "employers . . . must relinquish control
22 over how employees spend their time" during rest periods. 2 Cal. 5th 257, 259 (2016). Moreover, Lab.
23 Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery
24 period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission,
25 the employer shall pay the employee one additional hour of pay at the employee's regular rate of
26 compensation for each workday that the meal or rest or recovery period is not provided." JCL Dec., ¶
27 42.
28

1 Defendants argued that they maintained legally compliant written policies and practices
2 concerning rest periods throughout the Class Period. These policies and practices, Defendant argued,
3 specifically permitted Class Members to leave the premises. Defendant further alleged that this claim
4 is highly individualized because it rested on Plaintiffs' allegation that one or more managers
5 contravened company policy and directed Class Members to remain on Defendant's premises during
6 rest periods. Thus, Defendant argued the claim was poorly suited for class treatment. Moreover,
7 Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing liability likely would
8 have entailed competing testimony stating either rest breaks were taken, or rest breaks were voluntarily
9 waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
10 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have
11 an illegal, written rest break policy is insufficient for this Court to find that common issues
12 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL
13 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate
14 uniform practices"). In light of Defendant's defenses, Plaintiff discounted these claims by 75% and
15 estimated that Defendant's exposure for this claim ranged from approximately \$505,551.24 and
16 \$2,022,204.96. JCL Dec., ¶ 43.

17
18
19 (4) Defendant's Estimated Exposure for Failure to Pay for All Hours Worked

20 Plaintiffs' also alleged that Defendant failed to pay its employees for all hours worked.
21 Specifically, Plaintiffs asserted that Defendant's strict production requirements often compelled
22 Plaintiff to work hours off-the-clock. At this stage of the litigation, this claim was predicated almost
23 entirely on Plaintiff's testimonial evidence. Based on Plaintiffs' testimony, BCG assumed that Class
24 Members performed approximately 15 minutes of unpaid work each workweek. JCL Dec., ¶ 44.

25
26 Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in
27 place a compliant written policy requiring its employees to accurately record all of their time worked
28 daily and argued that such written policies and procedures directed its employees not to work while

1 off the clock. Further, Defendant argued that the off-the-clock claim was not suitable for class
2 treatment because individualized issues predominated. For example, even assuming Plaintiffs
3 performed work while off-the-clock, which Defendant dispute, the time spent would vary drastically
4 from class member to class member that it could not be established by common proof. JCL Dec., ¶
5 45.

6 Plaintiffs recognized the risks and uncertainties of certifying this claim. Consequently,
7 Plaintiffs' Realistic Damage model applied a 75% discount to this claim. Plaintiffs estimated
8 Defendant's exposure for this claim ranged between \$372,087.90 and \$1,488,351.60. JCL Dec., ¶ 46.

10 (5) Defendant's Estimated Exposure for Wage Statement Violations

11 Plaintiffs also alleged that Defendant failed to furnish its employees with accurate itemized wage
12 statements. Specifically, Plaintiffs alleges that because of Defendant's failure to provide meal and rest
13 periods and calculate the regular rate of pay properly as required by the California Labor Code,
14 Plaintiffs and other Class Members are entitled to *derivative* wage statement penalties. JCL Dec., ¶ 47.

15 As explained above, the violation rate for Plaintiffs' regular rate claims is modest. Additionally,
16 Defendant had facially compliant meal and rest break policies, further weakening Plaintiff's claim for
17 derivative wage statement violations arising from meal and rest period violations. Further, when there
18 is an objectively reasonable, good faith defense presented by Defendant, Defendant is not liable for
19 civil derivative wage or waiting time penalties. (*See Naranjo v. Spectrum Security Services* (2024) 15
20 Cal. 5th 1056). Thus, given Defendant's strong arguments listed above, it highlights the difficulty
21 Plaintiff faces in succeeding on the merits of a wage statement violation claim. Considering
22 Defendant's defenses and the fact that all of Defendant's wage statement violations were all derivative,
23 Plaintiffs discounted this claim 60% to account for this risk. Plaintiffs estimated that Defendant's
24 exposure on this claim ranged between \$2,068,800.00 and \$5,172,000.00. JCL Dec., ¶ 48.

27
28 ///

1 (6) Defendant's Estimated Exposure for Waiting Time Penalties

2 Plaintiffs also alleged that the Defendant's labor code violations resulted in derivative liability
3 for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
4 exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendant argued that Plaintiffs could
5 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
6 Additionally, for the reasons stated above, *Naranjo, supra*, 15 Cal.App.1056, creates difficulty in
7 Plaintiffs succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain
8 nature of the claims, Class Counsel's Realistic Model discounted the waiting time penalty claim by
9 90% and estimated Defendant's exposure for these claims ranged between \$521,613.85 and
10 \$5,216,138.50. JCL Dec., ¶ 49.

12 (7) Defendant's PAGA Exposure

13 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
14 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure ranged between \$626,020.00
15 and \$24,163,350.00. JCL Dec., ¶ 50. The proposed PAGA allocation of the Gross Settlement Amount
16 is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
17 "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was
18 the result of self-interest at the expense of class members," such amounts are generally considered
19 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
20 Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two
21 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
22 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
23 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
24 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
25 in the range of zero to two percent of the total settlement).

26 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$100,000.00 which is
27 3.85% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
28 Payment. Seventy-Five percent (75%) of the PAGA Payment (\$75,000.00) will be paid to the LWDA

1 (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000.00)
2 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the
3 range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 51.

4 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
5 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
6 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
7 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
8 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
9 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
10 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
11 6, 2016) (PAGA penalties denied after trial).

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

18 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,
19 just, and reasonable.

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

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

26 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
27 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
28 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110

million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 52.

“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

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
3 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
4 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
5 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 53. “Avoiding such a trial and
6 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$2,600,000.00 that is
11 roughly between approximately 9.29% and 34.09% of Defendant’s *class-wide* liability exposure for
12 damages, and approximately 4.99% and 31.50% of Defendant’s maximum class wide liability exposure
13 for damages and statutory penalties. Given the amount of the settlement here, as compared to potential
14 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
15 reasonable. JCL Dec., ¶ 54.

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

17 The Participating Class Members are entitled to the best practical notice under the circumstances.
18 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
19 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
20 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
21 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
22 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
23 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
24 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
25 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
2 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
3 proposed Class Notice to all Class Members. The Notice will include information regarding the nature
4 of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure,
5 and time period within which to requests for exclusions or objections to the Settlement, the date for the
6 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
7 the Released Claims. Agreement at § 7. The Parties negotiated this method to ensure delivering the
8 most reasonable method of notice to the Class Members while ensuring cost effective administration
9 of the Settlement. JCL Dec., ¶ 55

10 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
11 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
12 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and
13 of the options open to dissenting class members.")) JCL Dec., ¶ 56.

14 **C. The Court Should Preliminarily Approve the Class Representative Payment**

15 Service awards "are fairly typical in class action cases." (*Cellphone Termination Fee Cases*
16 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
17 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
19 UCLA L. Rev. 1303 (2006).) Service awards "are intended to compensate class representatives for
20 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Class Representative Payment of \$10,000.00 to each Plaintiff.
27 The Class Representative Payment is fair and reasonable compensation for the Plaintiffs' efforts
28 bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with

1 Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the
2 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating
3 Class Members, and agreeing to provide Defendant a general release of all claims arising out of their
4 employment. JCL Dec., ¶ 57.

5 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
6 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully
7 submit that the above showing is sufficient for preliminary approval of the negotiated Class
8 Representative Payment. JCL Dec., ¶ 58.

9 **D. The Court Should Preliminarily Approve the Requested Class Counsel Award**

10 The purpose of payment of attorneys' fees in class action litigation is to reward counsel who
11 took the risk of non-payment and invested in a case that achieved a substantial positive result for the
12 class. California courts routinely award attorneys' fees equaling one-third or more of the potential value
13 of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008)
14 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method
15 or the lodestar method is used, fee awards in class actions average around one-third of the recovery.");
16 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
17 *Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
18 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
19 with market rates).)

20 Class Counsel took this matter on a contingency fee basis and invested significant time and
21 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
22 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
23 Members. Considering the positive outcome for the Class Members, and in light of the supporting
24 authority, the requested Class Counsel Award is fair and reasonable. JCL Dec., ¶ 59.

25 Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary
26 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
27 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 60.

28 ///

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

2 For Settlement purposes, Plaintiffs contend, and Defendant does not dispute, that provisional
3 certification of the Class is appropriate. JCL Dec., ¶ 61.

4 1. The Standard for Class Certification

5 Class actions are statutorily authorized “when the question is one of common or general interest,
6 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
7 court” (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
8 certification is appropriate when there is an “ascertainable class and a well-defined community of
9 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
10 is appropriate even if class members at some point may be required to make an individual showing as
11 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
12 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

28 Because all Class Members are Defendant’s current and former employees, the class is readily

ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 62.

The statutes relating to each of Plaintiffs' 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 Participating Class Members. JCL Dec., ¶ 63.

Plaintiffs' 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, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 64.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶ 65; Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 66.

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Dated: January 22, 2025

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