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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

CRUZ M. JUAREZ and JOSEPH GONZALES, individuals, on behalf of Plaintiffs, and on behalf of all persons similarly situated, Plaintiffs, v. CENTURY COMMERCIAL SERVICE dba CENTURY LIGHTING & ELECTRIC, a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 25CV461988 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: July 30, 2026 Time: 2:30 p.m. Judge: Hon. Beth McGowen Dept.: 22

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I. INTRODUCTION

Plaintiffs CRUZ M. JUAREZ and JOSEPH GONZALES ("Plaintiffs") seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which, if approved, would provide valuable monetary relief for approximately 575 Class Members and 358 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** are defined as all current and former non-exempt employees of Defendant Century Commercial Service dba Century Lighting & Electric ("Defendant") within the state of California, at any time during the period from March 25, 2021, through April 12, 2026. ("Class Period"). Agreement at §§ I(E), I(I). As of the date of the Agreement, there were approximately 575 Class Members who worked approximately 37,694 Workweeks through February 11, 2026 of the Class Period. Agreement at § III(A)(2).

   a. **The "Class Representatives"** are Cruz M. Juarez and Joseph Gonzales, the named Plaintiffs in the Action. Agreement at § I(J).

   b. **The "Settlement Class Members"** are all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § I(LL).

   c. **"Class Counsel"** means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC; and Shani O. Zakay, Esq. of Zakay Law Group, APLC. Agreement at § I(F).

2. The **"Aggrieved Employees"** and **"PAGA Period"** refer to all current and former non-exempt employees of Defendant within the State of California who worked for Defendant at any time during the period between March 25, 2024 and April 12, 2026 ("PAGA Period"). Agreement at §§ I(C), I(X). 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 § III(M)(2).

3. **"Class Data"** means Class Member identifying information that Defendant will in good

[1] The Agreement is attached as Ex "1" to the Declaration of Shani O. Zakay ("SOZ Dec."), ¶ 4. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 4. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

faith compile from its records, including the Class Members' full name, last known address, Social Security Number, the number of Workweeks each Class Member worked during the Class Period, and the number of Pay Periods each Aggrieved Employee worked during the PAGA Period. Agreement at § I(H).

4. The **"Gross Settlement Amount"** is One Million, One Hundred Thirty-Six Thousand, Ninety-Seven Dollars and Sixteen Cents ($1,136,097.16). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. **"Settlement Administration Costs"** not to exceed $10,000.00 payable to the Settlement Administrator to reimburse its reasonable fees and expenses in accordance with the Settlement Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement. Agreement at §§ I(JJ), III(N)(12).

b. **"Attorneys' Fees" and "Attorneys' Expenses"** 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 one-third of the Gross Settlement Amount for attorney's fees, currently estimated to be $378,699.05, ***and*** litigation costs and expenses not to exceed $30,000.00. Agreement at §§ I(G), III(N)(10). The Attorneys' Fees shall be divided between Class Counsel as follows: 50% to JCL Law Firm, APC; 50% to Zakay Law Group.

c. **"Service Awards"** in the amount of $10,000.00 to each of the Class Representatives, Cruz M. Juarez and Joseph Gonzales, in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § I (HH);

d. **A "PAGA Payment"** in the amount of Seventy-Five Thousand Dollars and Zero Cents ($75,000.00), which is allocated toward PAGA civil penalties to be paid from the Gross Settlement Amount. Agreement at § III(N)(11). The Settlement Administrator, Xpand Legal Consulting LLC ("Settlement Administrator") shall pay $48,750.00 representing 65% of the PAGA Payment to the Labor and Workforce Development Agency under Labor Code section 2699, subd. (i) ("LWDA Payment"). Agreement at § III(N)(11). The Settlement Administrator shall distribute $26,250.00 representing 35% of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at

§ III(N)(11).

5. The **"Net Settlement Amount"** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the PAGA Payment, the Service Awards, Attorneys' Fees, Attorneys' Expenses, and the Settlement Administration Costs. The remainder is to be paid to Settlement Class Members as Individual Settlement Payments. Agreement at § III(N)(1). The Net Settlement Amount is approximately $622,398.11, which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(N)(1).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class 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, Settlement 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 Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately ***$1,082.43***. 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 Settlement 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, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates a lighting and electrical service company in California, which provides lighting as well as plumbing and electrical services to commercial properties. This action asserts claims on behalf of all of Defendant's current and former non-exempt employees employed in California at any time during the Class Period. Plaintiff Juarez worked for Defendant from December of 2021 to September of 2024 as a non-exempt Lighting Technician, paid on an hourly basis. Plaintiff Gonzales was employed by Defendant from October of 2022 to May of 2025 as a non-exempt Lighting Technician, also paid on an hourly basis. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's policies and procedures. Declaration of Cruz Juarez at ¶ 4; Declaration of Joseph Gonzales at ¶ 4.

Generally, Plaintiffs claim that Defendant failed to pay for all hours worked, failed to provide legally compliant meal and rest periods, failed to reimburse necessary business expenses, failed to properly calculate the regular rate of pay, failed to pay all wages when due at the time of separation, and failed to furnish complete and accurate wage statements.

On March 25, 2025, Plaintiff Juarez initiated this action by serving Defendant and the California Labor and Workforce Development Agency ("LWDA") with a Notice of Alleged Labor Code Violations ("Juarez PAGA Notice"). The Juarez 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. Agreement at § II(B).

Also on March 25, 2025, Plaintiff Juarez filed a class action complaint in the Santa Clara County Superior Court, Case No. 25CV461988 ("Class Action"). The Class Action alleged nine 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 Statements In Violation Of Cal.

Lab. Code § 226; (7) Failure To Provide Wages When Due In Violation Of Cal. Lab. Code §§ 201, 202 And 203; (8) Failure To Reimburse Employees For Required Expenses In Violation Of Cal. Lab. Code § 2802; and (9) Failure to Permit Inspection of Employee Records in Violation of Cal. Lab. Code § 1198.5. Agreement at § II(A).

On May 30, 2025, Plaintiff Juarez filed a separate representative action complaint in Santa Clara County Superior Court, Case No. 25CV467149, alleging a single cause of action for Violations of the Private Attorneys General Act under Labor Code §§ 2698 et seq. ("PAGA Action"). Agreement at § II(C).

On July 9, 2025, Plaintiff Juarez filed a First Amended Class Action Complaint in the Class Action for the purpose of adding Plaintiff Joseph Gonzales to the Class Action. On July 16, 2025, Plaintiff Joseph Gonzales filed a Notice of Violations with the LWDA and served the same on Defendant. Agreement at §§ II(D)-(E). On September 22, 2025, Plaintiff Juarez filed a First Amended Representative Action Complaint in the PAGA Action for the purpose of adding Plaintiff Joseph Gonzales. Agreement at § II(F).

The Parties agreed to mediate both the PAGA Action and Class Action. On February 11, 2026, the Parties participated in a full day mediation presided over by the Hon. Brian C. Walsh (Ret.). The Parties reached a settlement after accepting a mediator's proposal, and signed a Memorandum of Understanding on April 10, 2026. 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., ¶ 9.

To facilitate the settlement, on June 24, 2026, Plaintiffs filed a Second Amended Complaint in the Class Action which adds all of the facts, theories, and alleged California Labor Code violations for Civil Penalties pursuant to PAGA as alleged in the PAGA Notices submitted on March 25, 2025, and July 16, 2025, as well as all of the facts, theories, and alleged California Labor Code violations, as alleged in the operative complaint in the PAGA Action. SOZ Dec., ¶ 10.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff Juarez's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff

Juarez. At the conclusion of the interviews and review of documents, Class Counsel determined that Plaintiff Juarez's complaints justified further inquiry. SOZ Dec., ¶ 11.

Class Counsel requested Plaintiff Juarez's employee file from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff Juarez'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 Juarez's claim that Defendant failed to, among other things, pay for all time worked and issue accurate itemized wage statements. SOZ Dec., ¶ 12.

When Plaintiff Gonzales retained Class Counsel in May 2025, Class Counsel then repeated this process once again, and conducted lengthy interviews with Plaintiff Gonzales, requested various documents from Plaintiff Gonzales, and requested and received Plaintiff Gonzales' employee file from Defendant, which included his payroll and time records, and relevant policy documents. SOZ Dec., ¶ 13.

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 a sample of time and payroll records for 49% of the Class, along with copies of applicable handbooks, policies, and agreements. SOZ Dec., ¶ 14.

Class Counsel retained the statisticians and economists at Berger Consulting Group ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. SOZ Dec., ¶ 15. BCG analyzed Defendant's time and payroll data from 281 employees (approximately 49% of the Class) to assist in the development of various damage models. Among other things, BCG estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid and off-the-clock wages, and the potential liability for derivative claims including waiting time penalties and wage statement violations. These damage models informed and guided Class Counsel during the mediated settlement discussions. SOZ Dec., ¶ 16.

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

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' 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. SOZ Dec., ¶ 18. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

C. The Parties Settled at Mediation

On February 11, 2026, the Parties attended a full day of mediation presided over by the Hon. Brian C. Walsh (Ret.), a respected mediator of wage and hour class and representative actions. Judge Walsh 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 Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The Parties reached a settlement after accepting a mediator's proposal. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 19.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Settlement Class Members

The Settlement Class Members consist of all current and former non-exempt employees of Defendant within the State of California that worked for Defendant at any time during the period of March 25, 2021 to April 12, 2026, who do not file a timely and valid Request for Exclusion from the Settlement. Agreement at §§ I(E), I(I), I(LL). At the time the Agreement was executed, there were approximately 575 Class Members. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $1,136,097.16. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) Service Awards of $10,000.00 to each Plaintiff (for a total of $20,000.00) for their services on behalf of the Settlement Class Members; (3) A PAGA Payment in the amount of $75,000.00; (4) Settlement Administration Costs estimated not to exceed $10,000.00; (5) Class Counsel Attorneys' Fees and Attorneys' Expenses in a combined amount of up to $408,699.05, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $378,699.05 and up to $30,000.00 for actually incurred litigation expenses. *See* Agreement at § I(G), III(N)(10).

Subject to the Court approving the Service Awards, Attorneys' Fees, Attorneys' Expenses, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member as Individual Settlement Payments. Agreement at § III(N)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § I(O), III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount plus the employer payroll taxes owed by Defendant no later than sixty (60) calendar days after the Effective Date. Agreement at § I(N).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Class and

Data provided by Defendant to the Settlement 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 § III(N)(1). The Individual Settlement Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and (b) multiplying the result by each Settlement Class Member's Workweeks worked during the Class Period. Agreement at § III((N)(1). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.). Agreement at § III(N)(1).

Given that there are approximately 575 Class Members, ***the average gross recovery is approximately $1,082.43.*** (Net Settlement Amount divided by Settlement Class Members). SOZ Dec., ¶ 8.

5. Release by Settlement Class Members

Generally, as of the date on which Defendant fully funds the Gross Settlement Amount, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § III(B).

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, Plaintiffs, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $1,136,097.16, 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, the Hon. Brian C. Walsh (Ret.) Judge Walsh 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. The Parties reached a settlement after accepting a mediator's proposal. SOZ Dec., ¶ 20.

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., ¶ 21.

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., ¶ 22.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs' 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., ¶ 23.

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

The Gross Settlement Amount of $1,136,097.16 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 involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

The Gross Settlement Amount of $1,136,097.16 is fair and reasonable considering the nature

[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").

and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel 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 49% sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA penalties) to be approximately $5,669,135.33 if successful at trial. Thus, the Gross Settlement Amount of $1,136,097.16 represents approximately 20% 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., ¶ 24.

(1) <u>Defendant's Estimated Exposure for Failure to Pay for All Hours Worked</u>

Plaintiffs allege that Defendant failed to pay employees for all hours worked. Specifically, Plaintiffs allege that they were only permitted to clock in once they were en route to a job but were required to perform significant work prior to that time, including loading whatever fixtures and tools were needed for the day into their truck. Likewise, Plaintiffs allege that they were required to clock out once they had arrived back at the loading site at the end of a job but again, had significant work to perform at this time, including unloading all light fixtures into the storage unit, organizing the storage unit, recycling various parts of broken light fixtures, disposing of parts that could not be put into a trash bin without creating a fire hazard, and cleaning their work vehicle to prepare for the following day. Defendant contends that it began adding an additional 15 minutes to all affected employees to account for any pre or post shift work, beginning in September 2024. Defendant further argues that any determination of uncompensated time would require highly individualized inquiries not suitable for class treatment. Taking Defendant's defenses into account, Plaintiffs estimated Defendant's damages stemming from this claim to be $1,364,439.30. This number was calculated by assuming each Class Member was underpaid 15 minutes of work until September 2024, when Defendant changed its policy. Plaintiffs then applied a 30% discount to account for Class Members that occupied roles that did not require loading and unloading a work vehicle. SOZ Dec., ¶ 25.

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

Plaintiffs allege that Defendant failed to offer timely, compliant meal periods during the Class Period. Specifically, Plaintiffs allege that 70% of first meal breaks were recorded after the end of the fifth hour, and moreover, that Defendant's written meal period policy fails to inform employees that they are entitled to take a meal period before the end of their fifth hour of work. Defendant denies liability for these alleged violations and argues that it ensured employees had the opportunity to take compliant meal periods, and that any claimed violations would require individualized inquiries not suitable for class treatment. Taking Defendant's defenses into account, Plaintiffs estimated Defendant's damages stemming from this claim to be $1,534,588.89. This number was calculated by assuming that each of the meal periods recorded as "late" was non-compliant. Plaintiffs then applied a 30% discount to account for Defendant's defenses. SOZ Dec., ¶ 26.

(3) Estimated Exposure for Rest Period Violations

Plaintiffs also allege that Defendant failed to provide compliant rest periods. Specifically, Plaintiffs allege that Defendant's written rest period policy informs employees that they are entitled to take a rest period for each 4-hour shift, rather than each 3.5 hour shift. The policy also fails to inform employees that they are entitled to a rest period premium for each day on which they are not offered a compliant rest period. A review of the data produced by Defendant showed that Defendant did not pay any rest period premiums during the Class Period. Plaintiffs allege that the same understaffing and workload conditions that prevented Class Members from taking compliant meal periods also prevented them from taking compliant rest periods. Defendant denied liability for these alleged violations and contends that it maintained legally compliant practices concerning rest periods throughout the Class Period. Defendant further argues that this claim is highly individualized and not suitable for class certification. 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"). Taking Defendant's defenses into account, Plaintiffs estimated Defendant's damages stemming from this claim to be $1,534,588.89. This number was calculated by assuming the rest period non-compliance rate mirrored the meal period non-compliance rate, above. Plaintiffs then applied a 30% discount to account for the defenses raised by Defendant. SOZ Dec., ¶ 27.

4. Defendant's Estimated Exposure for Unreimbursed Business Expenses

Plaintiffs 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, Plaintiffs and Class Members were required to use their personal cell phones in order to access various apps needed to complete their job, including Paylocity, Hubconnect, and FieldDesk. 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…"). Plaintiffs estimated Defendant's damages stemming from this claim to be $74,944.35. This number was calculated by assuming that each Class Member was owed $25 per month for each month employed, as reimbursement for the use of their personal cell phones. SOZ Dec., ¶ 28.

5. Defendant's Estimated Exposure for Failure to Properly Calculate the Regular Rate of Pay

Plaintiffs also allege that when they and other Class Members earned non-discretionary bonuses and commissions, Defendant failed to calculate that compensation into the regular rate of pay when calculating Class Members' overtime wages, meal period premiums, and redeemed sick pay. Plaintiffs calculated that Class Members were underpaid in these categories of earnings during the Class Period by approximately $97,423.00. This number was calculated by analyzing each pay period in which a Class Member received compensation labeled as "BONUS" or "COMMISSION WITH PO" in the same pay period in which they worked overtime, received a meal period premium, or redeemed sick time, and totaling the underpayment of wages. SOZ Dec., ¶ 29.

6. Defendant's Estimated Exposure for Wage Statement Violations and Waiting Time

Penalties

Plaintiffs also allege that Defendant's aforementioned violations resulted in derivative violations of California Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses, including potential obstacles in proving the "willful" prong needed to obtain waiting time penalties under Labor Code section 203, showing that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226, or that meal and rest period violations may not entitle employees like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (See *Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th 444 (review granted); *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Class arguably could have seen a significant payout for these penalties if Plaintiffs prevailed on every penalty claim, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiffs would have to overcome damaging precedent to prove the Class deserved the penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which according to Defendant, were not supported by the facts. In light of the above, Plaintiffs estimated the exposure for waiting time penalties to be approximately $795,960.90 and the estimated exposure for wage statement penalties to be $267,190.00. These numbers were calculated by assuming each separated Class Member and each wage statement were non-compliant. Taking into account the obstacles in establishing these claims as outlined above, Plaintiffs then applied a 65% discount to both. SOZ Dec., ¶ 30.

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 to be approximately $973,145.00. SOZ Dec., ¶ 31. 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 $75,000.00 which is approximately 6.6% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Sixty-five percent (65%) of the PAGA Payment ($48,750.00) will be paid to the LWDA ("LWDA Payment"), and the remaining thirty-five percent (35%) of the PAGA Payment ($26,250.00) 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., ¶ 32.

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, Plaintiffs 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, Plaintiffs 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 Plaintiffs and the Aggrieved Employees. SOZ Dec., ¶ 33.

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 the 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 judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgment 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.

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

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

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

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

In this matter, Class Counsel negotiated a Gross Settlement Amount of $1,136,097.16 that is approximately 20% 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., ¶ 34.

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 Settlement 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 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

[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.

Released Class Claims. Agreement at § III(M). 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., ¶ 35.

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.").)

C. The Court Should Preliminarily Approve the Service Awards

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

The Settlement provides for a Service Award of $10,000.00 for each Plaintiff. The Service Awards are fair and reasonable compensation for Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members. SOZ Dec., ¶ 36.

Class Counsel on behalf of Plaintiffs will file a formal motion for the Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. SOZ Dec., ¶ 37.

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

The purpose of a payment to Class Counsel for attorneys' fees and litigation costs in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys' Expenses are fair and reasonable. SOZ Dec., ¶ 38.

Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Attorneys' Fees and Attorneys' Expenses. SOZ Dec., ¶ 39.

E. Provisional Certification for Settlement Purposes is Appropriate

For Settlement purposes only, Plaintiffs contend, and Defendant does not dispute that provisional certification of the Class is appropriate. SOZ Dec., ¶ 40.

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

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

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

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

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

In April 2012, the Supreme Court expounded on the element of predominance: The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Brinker*, 53 Cal. 4th at 1021-22 (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., ¶ 41.

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 Class Members. SOZ Dec., ¶ 42.

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 Members. 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 Members by initiating this litigation and evaluating the proposed Settlement to assure that it is fair. SOZ Dec., ¶ 43.

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. SOZ Dec., ¶¶ 44; Declaration of Jean-Claude Lapuyade, Esq., ¶¶ 3-8.

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., ¶ 45.

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: July 7, 2026

ZAKAY LAW GROUP, APLC

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