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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

EDYTHE GUZMAN, individually, and on behalf of other members of the general public similarly situated on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, Plaintiffs, v. AMERICAN ALL CARE SERVICES HOSPICE, INC., a California Corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 24STCV00055 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: August 1, 2025 Time: 10:30 a.m. Judge of the Superior Court Dept.: 1

TABLE OF CONTENTS

/ / /

TABLE OF AUTHORITIES

CASES

/ / /

RULES, CODES, AND STATUTES

/ / /

SECONDARY SOURCES

I. INTRODUCTION

Plaintiff EDYTHE GUZMAN ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 418 Class Members and 188 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former non-exempt hourly employees of Defendant American All Care Services Hospice, Inc. ("Defendant") that worked in California ("Class") at any time during the period commencing on January 2, 2020, and ending on March 17, 2025 ("Class Period"). Agreement at §§ 1.8, 1.11, 1.15. As of the date of the Agreement, there were approximately 418 Class Members who worked approximately 14,000 Workweeks during the Class Period. Agreement at § 4.1.

a. **"Class Representative"** means Edythe Guzman, the named Plaintiff in the Action. Agreement at § 1.36.

b. **"Participating Class Members"** refers to all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.35.

c. **"Class Counsel"** means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC; Shani O. Zakay, Esq. of Zakay Law Group, APLC; and Lawyers *for* Justice, PC. Agreement at § 1.6.

2. The **"Aggrieved Employees"** and **"PAGA Period"** refers to all current and former non-exempt hourly employees of Defendant who worked in California ("Aggrieved Employee") during the period between October 19, 2022, and ending on March 17, 2025 ("PAGA Period"). Agreement at §§ 1.4, 1.31. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 5.3, 7.5. As of the date of the Agreement, there were approximately 188 Aggrieved Employees who worked approximately 3,682 pay periods during the PAGA Period. Agreement at § 4.1.

3. **"Class Data"** means Class Member identifying information in Defendant's possession that Defendant will provide to the Administrator. To the extent available, the Class Data shall include

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

the Class Member's full name, last known mailing address, Social Security number, telephone number, and number of Class Period Workweeks and PAGA Pay Periods. Agreement at § 1.7.

4. The **"Gross Settlement Amount"** is Two Hundred Eighty Thousand Dollars and Zero Cents ($280,000.00). Agreement at §§ 1.22, 3.1. The Gross Settlement Amount is non-reversionary and includes the following:

a. A **"Class Representative Payment"** in the amount of $7,500.00 to the Class Representative for initiating the Action and providing services in support of the Action. Agreement at §§ 1.13, 3.2.1;

b. **"Attorneys' Fees and Litigation Costs"** to be paid to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action, in the amount not to exceed 35% of the Gross Settlement Amount for attorney's fees, currently estimated to be $98,000.00 ***and*** litigation costs and expenses not to exceed $30,000.00. Agreement at §§ 1.5, 3.2.2. The Attorneys' Fees shall be divided between Class Counsel as follows: 32.5% to JCL Law Firm, APC; 32.5% to Zakay Law Group, APLC; and 35% to Lawyers *for* Justice, PC. Plaintiff has reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Edythe Guzman ("Guzman Dec."), ¶ 10;

c. A **"PAGA Payment"** in the amount of Twenty Thousand Dollars and Zero Cents ($20,000.00) which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount in settlement of the PAGA claims. Agreement at § 1.34. The Administrator, Apex Class Action LLC ("Administrator") shall pay $15,000.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency under Labor Code section 2699, subd. (i) ("LWDA Payment"). Agreement at §§ 1.2, 1.26-27, 1.34, 3.2.5. The Administrator shall distribute $5,000.00 representing 25% of the PAGA Payment to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at §§ 1.24, 1.34, 3.2.5;

d. **"Administration Expenses Payment"** not to exceed $7,590.00 payable to the Administrator to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement. Agreement at §§ 1.3, 3.2.3.

3. The **"Net Settlement Amount"** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the PAGA Payment, Class Representative Payment, Attorneys' Fees and Litigation Costs, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. Agreement at § 1.28. The Net Settlement Amount is approximately $116,910.00 which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at § 1.28, 3.2.4. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of approximately ***$279.69***. SOZ 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, Participating Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. SOZ 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 Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant primarily provides "personal attendants" for end-of-life care at designated hospice homes and at patient's personal residences throughout the state of California, including in the county of Los Angeles, where Plaintiff worked. Defendant's employees are subject to Industrial Welfare Commissions Wage Orders 5 and 15. 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 worked for Defendant as a non-exempt employee in California from June of 2023 to July of 2023. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's policies and procedures. SOZ Dec., ¶ 9; Guzman Dec., ¶ 4.

Generally, Plaintiff claims that Defendant failed to pay for all hours worked, failed to provide legally compliant meal and rest periods, failed to pay all wages when due at the time of separation, and failed to furnish complete and accurate wage statements. Defendant denies liability for Plaintiff's claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that it has made substantial good faith efforts to comply with the California Labor Code and Industrial Welfare Commission Wage Orders, paid employees for all hours worked, and maintained facially compliant meal and rest period policies at all times during the Class Period. SOZ Dec., ¶ 10.

On October 19, 2023, Plaintiff 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"). SOZ Dec., ¶ 11.

On January 2, 2024, Plaintiff filed a class action and PAGA complaint in the Los Angeles Superior Court, Case No. 24STCV00055 ("Action"). Agreement at § 1.1. The Action alleged eleven causes of action against Defendant for: (1) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510 and 1198; (2) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512(a) and the Applicable IWC Wage Order; (3) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code § 226.7 and the Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (5) Failure to Provide Final Wages When Due in Violation Of Cal. Labor Code §§ 201 and 202; (6) Failure to Provide Wages During Employment When Due in Violation Of Cal. Labor Code § 204; (7) Failure to Provide Accurate Itemized

Statements in Violation Of Cal. Lab. Code § 226(a); (8) Failure to Maintain Requisite Payroll Records in Violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (10) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*.; and (11) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq*.]. SOZ Dec., ¶ 12.

The Parties agreed relatively early to mediate the Action. On January 16, 2025, the Parties participated in a full day mediation with mediator Lynn Frank, Esq. of Frank & Feder Mediators. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. 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., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her wage statements. At the conclusion of the interviews and review of documents, Class Counsel determined that each Plaintiff's complaints justified further inquiry. SOZ Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff's payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked and issue accurate itemized wage statements. SOZ Dec., ¶ 15.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. In anticipation of mediation Defendant produced time and payroll records for 20% of the Class, along with copies of applicable handbooks, policies, and agreements. SOZ Dec., ¶ 16.

Class Counsel then 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. Stated differently, the BCG is well-qualified to analyze Defendant's time and payroll data. SOZ Dec., ¶ 17.

BCG analyzed more than 1,750 files and documents, including more than 250,000 unique data cells containing Class Members' time and payroll to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift, and average number of hours worked per workweek and pay periods during the Class Period. BCG also estimated the number of meal and rest period violations, the amount of unpaid wages, and the amount of off-the-clock work performed by the Class Members during the Class Period. SOZ Dec., ¶ 18.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. SOZ Dec., ¶ 19.

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

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 21.

C. The Parties Settled at Mediation

On January 16, 2025, the Parties conducted a full day of mediation with Lynn Frank, Esq., a respected mediator of wage and hour class and representative actions. Ms. Frank 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 Ms. Frank's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The Participating Class Members consist of all non-exempt employees who are or previously were employed by Defendant and performed work in California at any time during the period commencing January 2, 2020, through March 17, 2025, who do not file a timely and valid Request for Exclusion from the Settlement. Agreement at §§ 1.8, 1.11, 1.35. At the time the Agreement was executed, there were approximate 418 Class Members that worked approximately 14,000 Workweeks. Agreement at § 4.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $280,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Class Representative Payment of $7,500.00 to Plaintiff for her services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of $20,000.00; (4) Administration Expenses Payment estimated at $7,590.00; (5) Attorneys' Fees and Litigation Costs in the amount of up to $128,000.00, comprised of attorneys' fees equal to thirty-five percent (35%) of the Gross Settlement Amount estimated to be $98,000.00 and up to $30,000.00 for actually incurred litigation expenses. *See generally* Agreement at § 3.2.

Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each Participating Class Member as Individual Class Payments. Agreement at § 1.23. There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement at § 3.1.

3. <u>The Funding Date and Installment Plan</u>

Assuming there are no objectors, and no appeal is filed, Defendant will fund the $280,000.00 Gross Settlement Amount in two (2) installments. Defendant will make the first payment in the amount of $140,000.00 into a Qualified Settlement Fund by 7 days after the Effective Date or Exhaustion of any appeal, whichever is later. Defendant will make the second payment in the amount of $140,000.00 within six months following the Effective Date or within fifteen (15) calendar days following the exhaustion of any appeal, whichever is later. All employer-side payroll taxes owed by Defendant shall also be paid on this date. Agreement at § 4.3.

4. <u>Formula for Calculating Individual Class Payments</u>

Each Participating Class Member will receive an Individual Class Payment. The Class Data provided by Defendant to the Administrator will include the number of eligible Workweeks for each Participating Class Member. The Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.). Agreement at § 3.2.4.1.

Given that there are approximately 418 Class Members, ***<u>the average gross recovery is approximately $279.69.</u>*** (Net Settlement Amount divided by Participating Class Members). SOZ Dec., ¶ 7.

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5. Release by Participating Class Members

Generally, as of the date on which Defendant fully funds the Gross Settlement Amount, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.22, 1.39, 1.41, 5.2.

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

Generally, as of the date on which Defendant fully funds the Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.22, 1.40-41, 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $280,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases* (2010) 180 Cal.App.4th 1110, 1118 (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions,* §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation. . . . ." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements.

(*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation").)

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

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.</u>

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

The Parties participated in mediation with the highly respected mediator Lynn Frank, Esq. of Frank & Feder Mediators. Ms. Frank 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. After a full day of mediated negotiations, the mediation concluded with a settlement. SOZ Dec., ¶ 23.

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., ¶ 24.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

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., ¶ 25.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on an investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 26.

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

The Gross Settlement Amount of $280,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not 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 $280,000.00 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 BCG 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 $712,385.81 ("Conservative Model") and $2,755,197.74 ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of $280,000.00 represents approximately between 10.16% ("Aggressive Model") and 39.3% ("Conservative Model") of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. SOZ Dec., ¶ 27.

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[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").

(1) Estimated Exposure for Unpaid Wages

Plaintiff alleges that Defendant failed to pay Plaintiff and the Class Members for all time worked. Specifically, Plaintiff alleges that she and other Class Members regularly performed work off-the-clock as a result of Defendant's timekeeping system and workplace policies. According to Plaintiff, employees were disallowed from working unscheduled time, even when the duties and obligations related to their assignment required them to work more than their scheduled time. As a result, Plaintiff asserts that employees were required to perform work before and after clocking out, including communicating with the substituting caretaker regarding the needs and care provided to the given patient in order to ensure a successful transition between shifts. Additionally, Plaintiff asserts that to prevent being disciplined for incurring unscheduled overtime, employees would record their time exactly on the hour or half hour. For instances in which time was not recorded exactly on the hour or half hour, Defendant would round Class Members' hours. As a result, Plaintiff alleges Defendant failed to pay Class Members minimum wage and overtime compensation. SOZ Dec., ¶ 28.

Defendant denies liability and asserts that its timekeeping policies were compliant with California law. Defendant denies artificially rounding Plaintiff's and the Class Members' time, and states that it required Plaintiff and the Class Members to accurately record all time worked. Defendant further argues that any missed or unrecorded time due to rounding, to the extent rounding existed, would have also resulted in Plaintiff and the Class Members being overpaid, balancing out if not exceeding any underpayment. Moreover, Defendant argues that Plaintiff's claim for pre- and post-shift work was predominated by individual inquiries, thus making the claim suitable for class treatment. As a result, Plaintiff discounted this claim by 50% and estimates that Defendant's exposure on this claim ranges between $47,172.15 and $94,345.50. Approximately $19,724.25 to $39,448.50 of this estimate is allocated to unpaid pre- and post-shift work, and approximately $27,448.50 to $54,897.00 of this estimate is allocated to unpaid wages due to rounding. SOZ Dec., ¶ 29.

(2) Estimated Exposure for Meal Period Violations

Plaintiff further alleges that Defendant failed to provide compliant meal periods and failed to provide meal period premiums. Specifically, Plaintiff alleges that she and other Class Members were regularly unable to take compliant meal periods as required by California law. An analysis of the time and payroll data identified approximately 30,347 shifts, representing 89.5% of qualifying shifts**,** as having noncompliant meal breaks. Of those 30,347 shifts, 30,040 shifts (99%) were flagged solely because there was no recorded meal breaks.

Defendant asserts that it complied with Wage Orders 5 and 15. Wage Order 5 governs the care provided at hospice homes and expressly permits on-duty meal periods where the nature of the work prevents relief from duty and there is a valid written agreement. Defendant maintains that such agreements were in place and that the Class Members were provided the opportunity to take compliant breaks. Defendant also argues that alleged violations for missed meal breaks occurring in shifts of less than 6 hours had been validly waived altogether pursuant to a meal break waiver. SOZ Dec., ¶ 30.

Similarly, Wage Order 15 applies to in-home caregivers, like Plaintiff, and exempts "personal attendants" from meal and rest periods entirely when they provide services at patient's homes. IWC Wage Order No. 15-2001, §§ 1, subd. (B), 11, subd. (C). Thus, Defendant argued that the majority of Plaintiff's flagged meal periods violations were exempted from meal period requirements entirely. SOZ Dec., ¶ 31.

Finally, Defendant maintains that establishing liability would require individualized inquiries not suitable for class wide adjudication. SOZ Dec., ¶ 32.

Conversely, Plaintiff argues that, during many shifts, Plaintiff and the Class Members did not even have an opportunity to take an on-duty meal break. Moreover, Plaintiff asserts that, even where the law permits an on-duty meal period and the meal period is provided, it must nonetheless be recorded to comply with the employer's obligations to maintain accurate wage and time records. Plaintiff argues that the absence of any time entry for meal breaks, at least during shifts at hospice homes, creates a rebuttable presumption of a violation under California law, as it is a violation of the employer's duty to maintain accurate records. SOZ Dec., ¶ 33.

In light of the significant factual and legal disputes surrounding whether and how on-duty meal periods must be documented under Wage Orders 5 and 15, and considering Defendant's argument that many of the flagged shifts involved either occurred were exempted from meal period requirements under Wage Order 15 or were properly waived breaks or compliant on-duty meal periods, Plaintiff applied a 75% discount to its conservative estimate of the value of this claim. Therefore, Plaintiff estimates

Defendant's exposure for meal period violations under a conservative model to be approximately $104,673.91 and, under an aggressive model, to be $418,695.62. SOZ Dec., ¶ 34.

(3) Estimated Exposure for Rest Period Violations

Plaintiff also alleges that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleges that because of rigorous work schedules and Defendant's understaffing, Plaintiff and Class Members were unable to take timely and duty-free rest breaks. SOZ Dec., ¶ 35. Again, Defendant denies liability and asserts that it maintained legally compliant rest period policies and practices throughout the Class Period, and that employees were provided an opportunity to take a legally compliant rest break. Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). SOZ Dec., ¶ 36.

As a result, Plaintiff discounted this claim by 75% and estimates that Defendant's exposure on this claim ranges between $104,673.91 and $418,695.62. SOZ Dec., ¶ 37.

(4) Estimated Exposure for Wage Statement Violations

Plaintiff also alleges that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal periods and failure to compensate employees for all time worked as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal.5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Defendant argues that even if it failed to furnish accurate wage statements, Plaintiff cannot establish that its failure was knowing and intentional or that such failure resulted in actual harm to the Class Members. Indeed, Defendant insists that, to the extent any of its wage statements do not comply with the law, such wage statements were issued with the good faith and full belief that they were compliant. As a result, Plaintiff discounted this claim by 75% and estimates that Defendant's exposure on this claim ranges between $81,337.50 and $325,350.00. SOZ Dec., ¶ 38.

(5) Estimated Exposure for Waiting Time Penalties

Plaintiff also alleges that Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argues that Plaintiff cannot prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo*, *supra*, 15 Cal.5th 1056, creates difficulty in Plaintiff succeeding in a purely derivative waiting time penalty claim. Moreover, even if liability is established, it is unclear at best whether Plaintiff could establish the actual harm component necessary for class-certification on the facial claim under Labor Code section 226(a). As a result, Plaintiff discounted this claim by 75% and estimates that Defendant's exposure for this claim ranges between $374,527.75 and $1,498,111.00. SOZ Dec., ¶ 39.

(6) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between $18,410.00 and $924,050.00. SOZ Dec., ¶ 40. 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 $20,000.00 which is approximately 7.14% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment ($15,000.00) will be paid to the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%) of the PAGA Payment ($5,000.00) 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., ¶ 41.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed, *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. SOZ Dec., ¶ 42.

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

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

b. Inherent Risks of Continued Litigation and Defendant's Financial Condition Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. SOZ Dec., ¶ 43.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia*, *supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SOZ Dec., ¶ 44. "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 $280,000.00 that is roughly between 10.16% ("Aggressive Model") and 39.3% ("Conservative Model") of Defendant's maximum class-wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SOZ Dec., ¶ 45.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Administrator will first verify addresses, then mail the proposed Class Notice in English and Spanish 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 Released Class Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SOZ Dec., ¶ 46.

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

[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.

options open to dissenting class members.").)

C. The Court Should Preliminarily Approve the Class Representative Payment

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

The Settlement provides for a Class Representative Payment of $7,500.00 for Plaintiff. The Class Representative Payment is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members. SOZ Dec., ¶ 47.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. SOZ Dec., ¶ 48.

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

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Litigation Costs payment is fair and reasonable. SOZ Dec., ¶ 49.

Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SOZ Dec., ¶ 50.

E. Provisional Certification for Settlement Purposes is Appropriate

For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. SOZ Dec., ¶ 51.

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.)

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

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

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

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

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. SOZ Dec., ¶ 52. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. SOZ Dec., ¶ 53.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class Members. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 54.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SOZ Dec., ¶¶ 3-6; Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 1-6.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. SOZ Dec., ¶ 55. 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., ¶ 58; JCL Dec., ¶ 7.

IV. CONCLUSION

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

Dated: July 8, 2025

ZAKAY LAW GROUP, APLC

By: ___________________________
Eden Zakay, Esq.