

JCL LAW FIRM, APC

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

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jaclyn Joyce (State Bar #285124)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
jaclyn@zakaylaw.com

LAWYERS *for* JUSTICE, P.C.

Elizabeth Parker-Fawley, Esq.
Ryan Slinger, Esq.
410 West Arden Avenue, Suite 203
Glendale, CA 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021
elizabeth@calljustice.com
r.slinger@calljustice.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ALEXIS TOPETE-HERNANDEZ, individually,
and on behalf of other members of the general
public similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

v.

THE PEGGS COMPANY, INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2400968

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

Date: May 12, 2025
Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 1
Reservation #: 83834452041

TABLE OF CONTENTS

I. INTRODUCTION	1
II. FACTS AND PROCEDURE	3
A. Overview of the Litigation	3
B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
C. The Proposed Settlement Fully Resolves Plaintiff's Claims	6
1. The Composition of the Settlement Class Members	6
2. The Settlement Consideration	6
3. The Funding Date	7
4. Formula for Calculating Individual Class Payments	7
5. Formula for Calculating Individual Payments to the Aggrieved Employees	8
6. Mailing of Individual Class Payments and Individual PAGA Payments	8
7. Release by Settlement Class Members	8
8. PAGA Release by Plaintiff and the State of California	9
III. ARGUMENT	9
A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9

1	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel.	10
2	.....	
3	2. The Settlement Falls Within the Recognized Range of Reasonableness.	11
4	.....	
5	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.	12
6	.....	
7	b. Inherent Risks of Continued Litigation Support Preliminary Approval.	16
8	.....	
9	B. The Proposed Notice Informs the Class about the Case and Settlement	18
10	.....	
11	C. The Court Should Preliminarily Approve the Class Representative Service Award	19
12	.....	
13	D. The Court Should Preliminarily Approve the Class Counsel Award	20
14	.....	
15	E. Provisional Certification for Settlement Purposes Is Appropriate	21
16	.....	
17	1. The Standard for Class Certification	21
18	.....	
19	2. The Proposed Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members.	21
20	.....	
21	IV. CONCLUSION	23
22	.....	
23		
24		
25		
26		
27		
28	///	

TABLE OF AUTHORITIES CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	10
5	<i>a.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	16
7	<i>Brinker v. Superior Court</i>	
8	53 Cal. 4th 1004, 1021-22 (2012).....	16, 21
9	<i>Brown v. Fed Express Corp.</i>	
10	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	17
11	<i>Bufile v. Dollar Financial Group, Inc.</i>	
12	(2008) 162 Cal.App.4th 1193, 1207.....	21
13	<i>Campbell v. Best Buy Stores, L.P.</i>	
14	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
15	<i>Carrington v. Starbucks Corp.,</i>	
16	30 Cal. App. 5th 504, 517, 539 (2018).....	16
17	<i>Cart v. Super. Ct.</i>	
18	(1975) 50 Cal.App.3d 960, 972.....	18
19	<i>Cellphone Termination Fee Cases</i>	
20	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	9-10, 19
21	<i>Chance v. Super. Ct.</i>	
22	(1962) 58 Cal.2d 275, 290.....	18
23	<i>Chavez v. Netflix, Inc.</i>	
24	(2008) 162 Cal.App.4th 43, 66 n.11.....	20
25	<i>Clark v. American Residential Services LLC</i>	
26	(2009) 175 Cal.App.4th 785.....	19
27	<i>D'Amato v. Deutsche Bank</i>	
28	(2d. Cir. 2001) 236 F.3d 78, 85.....	11
	<i>Dunk v. Ford Motor Co.</i>	
	48 Cal. App. 4th 1794, 1802 (1996).....	10
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	16
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	15
	<i>Fontana v. Elrod</i>	
	(7th Cir. 1987) 826 F.2d 729, 732.....	18
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Hopson v. Hanesbrands, Inc</i>	
	(N.D. Cal. 2009) 2009 WL 928133 * 1, 9.....	15
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10-11
	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
	///	

1	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
2	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	15
3	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	17
4	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	15
5	<i>In re Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
6	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
7	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106.....	18
8	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
9	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	21
10	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9th Cir. 2021) 999 F.3d 668.....	16-17
11	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
12	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
13	<i>Moniz v. Adecco</i>	
	(2021) 72 Cal.App.5th 56, 77.....	15
14	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11
15	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	11, 17
16	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
17	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	10
18	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9th Cir. 2018) 904 F.3d 1087.....	16
19	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
20	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	17
21	<i>Rodriguez v. West Publishing Corp.</i>	
	(9th Cir. 2009) 563 F.3d 948, 958-59.....	19
22	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal. 4th 319, 326, 333.....	21
23	<i>Stambaugh v. Super. Ct</i>	
	(1976) 62 Cal.App.3d 231, 236.....	10
24	<i>State v. Levi Strauss & Co.</i>	
	(1986) 41 Cal.3d 460, 482, 485.....	10, 19

1	<i>Tien v. Tenet Healthcare Corp.</i>	
2	(2012) 209 Cal.App.4th 1077, 1088.....	16
3	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
4	(1975) 48 Cal.App.3d 143, 151-52.....	18

RULES, CODES, AND STATUTES

5	<i>Bus. & Prof. Code</i> § 17200 <i>et seq.</i>	4, 9
6	<i>Cal. Civ. Proc. Code</i> § 382.....	21
7	<i>Cal. Lab. Code</i> § 201.....	4, 9
8	<i>Cal. Lab. Code</i> § 202.....	4, 9
9	<i>Cal. Lab. Code</i> § 203.....	4
10	<i>Cal. Lab. Code</i> § 204.....	4, 9
11	<i>Cal. Lab. Code</i> § 226 <i>et seq.</i>	4, 9
12	<i>Cal. Lab. Code</i> § 226.7 <i>et seq.</i>	4, 9
13	<i>Cal. Lab. Code</i> § 510.....	4, 9
14	<i>Cal. Lab. Code</i> § 512 <i>et seq.</i>	4
15	<i>Cal. Lab. Code</i> § 1174(d).....	4, 9
16	<i>Cal. Lab. Code</i> § 1194.....	4, 9
17	<i>Cal. Lab. Code</i> § 1197.....	4, 9
18	<i>Cal. Lab. Code</i> § 1197.1.....	4, 9
19	<i>Cal. Lab. Code</i> § 1198.....	4, 9
20	<i>Cal. Lab. Code</i> § 2698 <i>et seq.</i>	4, 9
21	<i>Cal. Lab. Code</i> § 2800.....	4, 9
22	<i>Cal. Lab. Code</i> § 2802.....	4, 9
23	<i>C.R.C.</i> 3.769(c)-(g).....	9
24	<i>C.R.C.</i> 3.776(e)-(f).....	19

SECONDARY SOURCES

25	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 1 1:38, 11.26, 11.51 (4th ed. 2002)	
26	.....	10, 19
27	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. Rev. 1303 (2006)	
28	.....	19
29	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
30	.....	20
31	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
32	.....	18

1 I. INTRODUCTION

2 Plaintiff Alexis Topete-Hernandez (“Plaintiff”) seeks preliminary approval of the Class Action
3 and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable
4 monetary relief for approximately 279 Class Members who collectively worked approximately 26,000
5 Workweeks. The basic terms of the Agreement provide for the following:

6 1. The “**Class Members**,” “**Settlement Class**” and “**Class Period**” shall mean all current
7 and former hourly-paid or non-exempt employees employed by Defendant The Peggs Company, Inc.
8 (“Defendant”) in California at any time during the period between February 22, 2020 and November 1,
9 2024 (“Class Period”). Agreement at §§ 1(H)-(I); III(A)(2). The “Settlement Class” excludes any Class
10 Member who submitted a valid and timely request for exclusion. Agreement at § 1(KK).

11 a. The “**Class Size**” is comprised of 279 individuals who collectively worked
12 approximately 26,000 Workweeks during the Class Period as estimated by Defendant at the time of
13 mediation. Agreement at § III(A)(2).

14 2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all current and former
15 hourly-paid or non-exempt employees employed by Defendant in California at any time during the
16 period between December 18, 2022 and November 1, 2024 (“PAGA Period”). Agreement at §§ 1(B);
17 1(I); III(A)(2). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the
18 settlement. At the time of mediation, there were approximately 181 Aggrieved Employees who worked
19 approximately 5,276 pay periods during the PAGA Period.

20 3. The “**Gross Settlement Amount**” is Seven Hundred Ninety-Five Thousand Dollars and
21 Zero Cents (\$795,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and
22 includes the following:

23 a. A “**Class Representative Service Award**” of not more than \$7,500 to Plaintiff
24 in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at §
25 III(M)(9).

26 b. A “**Class Counsel Award**” in the amount not to exceed thirty-five percent (35%)

27
28 ¹ The Agreement is attached as Ex “1” to the Declaration of Ryan Slinger, Esq. (“LFJ.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the LFJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$278,250.00 (“Class Counsel Fees Payment”) **and** litigation expenses not to exceed \$30,000 (Class Counsel Litigation Expenses Payment”) to be paid to Class Counsel. Agreement at §§ III(M)(10).

c. A “**PAGA Payment**” of One Hundred Fifteen Thousand Dollars and Zero Cents (\$115,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Penalties (\$86,250.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Penalties (\$28,750.00) will be distributed to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at § III(M)(11). The average Individual PAGA Payment is approximately \$158.84. The estimated range of Individual PAGA Payments will be provided in Plaintiff’s motion for final approval; and

d. “**Settlement Administration Expenses**” not to exceed \$6,900.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Expenses. Agreement at §§ III(M)(12). Class Counsel requested bids from three (3) settlement administration companies and received the lowest bid from Apex Class Action LLC. Zakay Dec., ¶ 4.

4. The “**Net Settlement Amount**” of approximately \$357,350.00 (Gross Settlement Amount less the requested Class Counsel Fees and Litigation Expenses Payment, Class Representative Service Award, PAGA Payment, and Administration Expenses Payment) 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(M)(1). 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 Class Payment of **\$1,280.82**. The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. LFJ Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage

1 and hour cases (see *infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
2 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
3 denied or of Defendant prevailing at trial. LFJ Dec., ¶ 6.

4 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
5 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
6 the Class meets awards in similar wage and hour class actions. Moreover, the proposed Class is
7 appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant
8 preliminary approval of the Settlement. LFJ Dec., ¶ 7.

9 II. FACTS AND PROCEDURE

10 A. Overview of the Litigation

11 Defendant designs and manufactures shopping carts, merchandising displays, and retail
12 equipment in Riverside County, where Plaintiff worked. Plaintiff worked for Defendant in California
13 from approximately January 2021, to approximately December 2021. During his employment,
14 Plaintiff claims that he was denied legally compliant meal and rest periods, as well as wages, including
15 overtime compensation. Throughout his employment, Plaintiff was subject to Defendant's written
16 policies and procedures. Throughout his employment, Plaintiff was subject to Defendant's written
17 policies and procedures. Declaration of Alexis Topete-Hernandez ("Topete-Hernandez Dec.") at ¶¶
18 1-5; LFJ Dec., ¶ 8.

19 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
20 failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish
21 accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further,
22 Defendant asserts that it fully complied with all applicable employment laws and raised several other
23 significant defenses to Plaintiff's claims, including but not limited to, asserting that it maintained
24 facially compliant meal and rest period policies, paid its employees for all hours worked, and properly
25 reimbursed all necessary business expenses. LFJ Dec., ¶ 9.

26 On December 18, 2023, Plaintiff provided written notice to Defendant and the Labor and
27 Workforce Development Agency ("LWDA") of the specific provisions of the California Labor Code
28 that Defendant violated ("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 his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). LFJ Dec., ¶ 10.

On February 22, 2024, Plaintiff filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Riverside County Superior Court, Case No. CVRI2400968 (“Action”). The Action alleged eleven causes of action against Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, et seq; and (11) Violation of the Private Attorneys General Action (Cal. Lab. Code § 2698, et seq.). LFJ Dec., ¶ 11.

The Parties agreed early to mediate this Action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. LFJ Dec., ¶ 12.

On September 30, 2024, the Parties participated in a full day mediation with Michael D. Young, Esq., a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. LFJ Dec., ¶ 13.

///

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Before filing the Action, Lawyers for Justice, PC began its pre-filing investigation into Plaintiff's complaints. Lawyers for Justice, PC's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment. Lawyers for Justice, PC subsequently determined that Plaintiff's complaints justified further inquiry. LFJ Dec., ¶ 14.

Lawyers for Justice, PC then requested Plaintiff's employee files from Defendant. In response, Defendant produced several documents, including but not limited to, copies of Plaintiff's payroll records and various company policies. Lawyers for Justice, PC reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims that Defendant failed to, among other things, provide compliant meal and rest periods, and failed to pay for all hours worked, and failed to furnish accurate itemized wage statements. LFJ Dec., ¶ 15.

To prepare for mediation, Defendant produced time and payroll records for nearly 100% of the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, number of current Class Members, number of former Class Members who were employed during the Class Period, and copies of applicable handbooks, policies, and agreements. In total, Lawyers for Justice, PC reviewed dozens of files and pages of documents of time and payroll data. LFJ Dec., ¶ 16.

Lawyers for Justice, PC analyzed Defendant's time and payroll data and developed a damage model. Among other things, Lawyers for Justice, PC estimated the amount in unpaid wages, including unpaid overtime wages, and estimated number of meal and rest break violations and resulting damages therefrom during the Class Period. LFJ Dec., ¶ 17.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which

could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Lawyers for Justice, PC to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. LFJ Dec., ¶ 18.

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 and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. LFJ Dec., ¶ 19.

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 279 individuals that worked approximately 26,000 Workweeks during the Class Period.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$795,000. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) a Class Representative Service Award of not more than \$7,500 to Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$115,000; (4) Settlement Administration Expenses estimated at \$6,900; (5) Class Counsel Award in the amount of \$308,250, comprised of attorneys' fees equal to thirty-five (35%) percent of the Gross Settlement Amount estimated to be \$278,250 and an estimated \$30,000 for actually incurred litigation expenses.

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, the Net Settlement Amount will be

distributed to each participating member of the Settlement Class Member. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within thirty (30) calendar days after the Effective Date. Agreement at § I(O).

4. Formula for Calculating Individual Class Payments

Each Settlement Class Member will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. The Class Data provided by Defendant to the Settlement Administrator will include the information required to calculate the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the PAGA Period. Each Settlement Class Member's final Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member. Individual Class Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(M)(1).

Given that there are approximately 279 Class Members, **the average gross recovery is approximately \$1,280.82** (Net Settlement Amount divided by Class Members). The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. LFJ Dec., ¶ 6.

For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as wages ("Wage Portion"); 80% as penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at § III(M)(3). In calculating Defendant's total damages exposure, Class Counsel determined that the vast majority of damages are for meal and rest premiums, as well as interest, which can be classified as penalties and

not wages. Therefore, with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that an allocation of 20% as wages and 80% as penalties and interest is fair and reasonable. LFJ Dec., ¶ 20.

5. Formula for Calculating Individual Payments to the Aggrieved Employees

Each Aggrieved Employee will receive an Individual PAGA Payment. Using the Class Data, each Aggrieved Employee's final Individual PAGA Payment will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Agreement at § III(M)(2). For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099. *Id.*

6. Mailing of Individual Class Payments and Individual PAGA Payments

The Settlement Administrator will mail the Individual Class Payments and Individual PAGA Payments by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement at § III(M)(7). Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. Agreement at § III(M)(8). In the event an Individual Class Payment and/or Individual PAGA Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks will be transmitted to shall be distributed as set forth in California Code of Civil Procedure Section 384, as amended, to the Community Law Project, a Cy Pres. Agreement at § III(M)(8).

7. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all claims alleged or which could have reasonably been alleged based on the facts alleged in the Operative Complaint, which arose during the Class Period, including the following

claims: (1) unpaid overtime under Labor Code sections 510 and 1198; (2) unpaid meal period premiums under Labor Code sections 226.7 and 512(a) and the applicable IWC wage order; (3) unpaid rest period premiums under Labor Code section 226.7 and the applicable IWC wage order; (4) unpaid minimum wages under Labor Code sections 1194, 1197, and 1197.1; (5) untimely final wages under Labor Code sections 201 and 202; (6) untimely wages during employment under Labor Code section 204; (7) non-compliant wage statements under Labor Code section 226(a); (8) failure to keep requisite payroll records under Labor Code section 1174(d); (9) unreimbursed business expenses under Labor Code sections 2800 and 2802; and (10) violation of California Business & Professions code section 17200 et seq. arising from violations of the California Labor Code released herein. Agreement at § I(DD).

8. PAGA Release by Plaintiff and the State of California

Generally, as of the Funding Date, Plaintiff, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(M)(C). The Released PAGA Claims are all claims under the Private Attorneys General Act (the "PAGA"), Labor Code section 2698, et seq., alleged in the Operative Complaint in the Action and Plaintiff's letter to the LWDA dated December 18, 2023, that arose during the PAGA Period. Agreement at § I(EE).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$795,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although California Rules 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

1 “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27
2 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
3 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
4 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
5 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
6 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
7 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
8 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
9 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
10 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
11 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
12 action litigation”).)

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

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

21 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
22 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
23 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
24 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
25 § 11.51.)

26 The Parties participated in mediation with mediator Michael Young, Esq. Mediator Young
27 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
28 sides. (In re Apple Computer, Inc. Derivative Litig, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS

1 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
2 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
3 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
4 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties accepted the
5 Mediator’s proposal and the mediation session concluded with a settlement. LFJ Dec., ¶ 21.

6 Once the Parties reached a settlement, they engaged in protracted negotiations regarding the
7 written terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
8 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
9 product of these settlement negotiations. Objectively, the Settlement terms are fair, adequate and
10 represent a reasonable compromise of the claims at issue. LFJ Dec., ¶ 22.

11 2. The Settlement Falls Within the Recognized Range of Reasonableness.

12 The Gross Settlement Amount of \$795,000.00 is within the range of reasonableness. To
13 determine whether a settlement is fair and reasonable, the court should “consider enough information
14 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
15 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
16 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
17 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
18 ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
19 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
20 is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*
21 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
22 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
23 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is

24 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
25 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
26 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
27 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
28 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,

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 \$795,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Lawyers for Justice, PC worked with a third party to review the data produced by Defendant and develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. Based on data provided by Defendant at mediation and extrapolated by Plaintiff, the total number of putative class members during the period from February 22, 2020, to November 1, 2024, was estimated to be approximately 279 individuals who worked an estimated total of 26,000 workweeks with an average hourly rate of pay of \$20.31. LFJ Dec., ¶ 25. Lawyers for Justice, PC calculated the potential and realistic values of each claim as follows.

Failure to Pay Overtime Wages: The potential value of this claim was estimated to be \$1,584,440.00 (26,000 workweeks x 2 hours of unpaid overtime wages x overtime hourly rate of \$30.47, which is based on the average hourly rate of \$20.31). At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$712,998.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$249,549.30), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$74,864.79). LFJ Dec., ¶ 25(a)

Failure to Pay Minimum Wages: The potential value of this claim was estimated to be \$528,060.00 (26,000 workweeks x 1 hour of unpaid minimum wages x average hourly rate of \$20.31). At this juncture, a discount of 55% was applied to account for the risks associated with obtaining and

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 maintaining class certification (bringing the value of this claim closer to \$237,627.00, a discount of
2 65% was applied to account for the risks associated with succeeding on the merits and establishing
3 liability (bringing the value of this claim closer to \$83,169.45), and a discount of 70% was applied to
4 account for the risks associated with proving the extent of damages and obtaining an award thereof
5 (bringing the value of this claim closer to \$24,950.84). LFJ Dec., ¶ 25(b).

6 Failure to Provide Compliant Meal Periods and Associated Premiums: The potential value of
7 this claim was estimated to be \$1,584,180.00 (26,000 workweeks x 3 meal period premium x average
8 hourly rate of \$20.31). At this juncture, a discount of 55% was applied to account for the risks
9 associated with obtaining and maintaining class certification (bringing the value of this claim closer to
10 \$712,881.00), a discount of 65% was applied to account for the risks associated with succeeding on the
11 merits and establishing liability (bringing the value of this claim closer to \$249,508.35), and a discount
12 of 70% was applied to account for the risks associated with proving the extent of damages and obtaining
13 an award thereof (bringing the value of this claim closer to \$74,852.51). LFJ Dec., ¶ 25(c).

14 Failure to Provide Compliant Rest Periods and Associated Premiums: The potential value of this
15 claim was estimated to be \$2,112,240.00 (26,000 workweeks x 4 rest period premiums x average hourly
16 rate of \$20.31). At this juncture, a discount of 50% was applied to account for the risks associated with
17 obtaining and maintaining class certification (bringing the value of this claim closer to \$1,056,120.00),
18 a discount of 65% was applied to account for the risks associated with succeeding on the merits and
19 establishing liability (bringing the value of this claim closer to \$369,642.00), and a discount of 70%
20 was applied to account for the risks associated with proving the extent of damages and obtaining an
21 award thereof (bringing the value of this claim closer to \$110,892.60). LFJ Dec., ¶ 25(d).

22 Failure to Timely Pay Wages During Employment: The value of this claim is considered as a
23 part of the valuation of the PAGA claim contained *infra*. LFJ Dec., ¶ 25(e).

24 Failure to Timely Pay Wages After Termination (and Waiting-Time Penalties): Based on
25 information and data provided by Defendant, it was estimated that approximately 121 putative class
26 members had been terminated during the three-year statute of limitations (i.e., from February 22, 2021).
27 Assuming that these individuals were not timely paid all wages due to them upon termination, the
28 potential value of waiting-time penalties was estimated to be \$589,802.40 collectively (121 individuals

x [30 days x hourly rate of \$20.31 x 8 hours]), or approximately \$4,874.40 per individual. At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$294,901.20), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$103,215.42), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$36,125.40). LFJ Dec., ¶ 25(f).

Failure to Provide Compliant Wage Statements: The potential value of this claim was calculated to be \$458,250.00 ([181 initial violations x \$50 statutory penalty] + [4,492 subsequent violations x \$100 statutory penalty]). At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$229,125.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$80,193.75), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$24,058.13). LFJ Dec., ¶ 25(g).

Failure to Maintain Payroll Records: Arguably, civil penalties would only be recoverable by the Labor Commissioner, therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*. LFJ Dec., ¶ 25(h).

Failure to Reimburse Necessary Business Expenses: The potential value of this claim was estimated to be \$218,400.00 (26,000 workweeks x \$8.40 unreimbursed business expenses). At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to \$109,200.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$38,220.00), and a discount of 70% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to \$11,466.00). LFJ Dec., ¶ 25(i).

PAGA Penalties: The amount of civil penalties at issue, which the Court could determine whether or not to assess and whether or not to reduce based on the facts and circumstances of the case

(to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor Code section 2699(e)(2)), were estimated to be approximately \$320,250.00 (183 aggrieved employees estimated to have worked during one-year statutory period x \$1,750 civil penalties). At this juncture, a discount of 20% was applied to account for the risks associated with possible bifurcation of discovery and/or trial (bringing the value of this claim closer to \$256,200.00), a discount of 25% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to \$192,150.00), and a discount of 40% was applied to account for the risks associated with the Court's discretion to reduce civil penalties and obtaining an award of civil penalties (bringing the value of this claim closer to \$115,290.00. LFJ Dec., ¶ 25(j)).

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).

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).

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

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

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

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
17 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
18 million judgement against an employer for, inter alia, inaccurately paying overtime, and directed the
19 trial court to enter judgement in favor of the employer. See also *O’Conner v. Uber Technologies, Inc.*
20 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also
21 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
22 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
23 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
24 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
25 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
26 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
27 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
28 Brinker and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. LFJ Dec., ¶ 26.

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

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

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

16 Finally, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
20 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
21 Defendant would appeal any favorable judgment. As demonstrated by *Magadia*, supra, 999 F.3d 668,
22 the risk of an appeal and subsequent reversal is real. LFJ Dec., ¶ 27. “Avoiding such a trial and the
23 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
24 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
25 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
26 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

27
28 ///

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

The Settlement Class is 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 Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims and Released PAGA Claims. Agreement at § III(L)(2). 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. LFJ Dec., ¶ 39.

The Class Notice includes an exclusion form that Class Members can fill out in order to exclude themselves from the Settlement, and an Objection Form that Class Members can fill out in order to object to the terms of the Settlement. The Class Notice informs Class Members of where they can find the full text of the settlement agreement, the court address, and court website address. *See* Ex. A to the Agreement.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice

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.

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.”) LFJ Dec., ¶ 29.

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

Enhancement 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).) 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 Class Representative Service Award of \$7,500 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class, and for providing a general release of claims to Defendant in exchange for the Class Representative Service Award. LFJ Dec., ¶ 30.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration from Plaintiff that describes the services he performed to prosecute this action, includes an estimate of time incurred by Plaintiff in performing these services, the risks he assumed or benefits he received in prosecuting this action, and identify any adverse consequences he suffered in prosecuting this action. Plaintiff has not negotiated any settlement of

individual claims with Defendant separate from the settlement at bar. Topete-Hernandez Dec., ¶ 10; LFJ Dec. ¶ 31.

Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. LFJ Dec., ¶ 43.

D. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a Class Counsel Award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third *or more* of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("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 Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. LFJ Dec., ¶ 33.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration that provides evidence of the total amount of time spent by Class Counsel, a description of the work performed, and the reasonableness of the fees charged. Such declaration will also include a detailed description of the costs actually incurred. This declaration will include details related to fee between Class Counsel, and Plaintiff's written notice of such. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. LFJ Dec., ¶ 34.

///

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

2 For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional
3 certification of the Class is appropriate. LFJ Dec., ¶ 35.

4 1. The Standard for Class Certification

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

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

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

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

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

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

ascertainable from Defendant's regular business records, i.e., payroll records. LFJ Dec., ¶ 36.

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. LFJ Dec., ¶ 37.

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. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. LFJ Dec., ¶ 38.

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. LFJ Dec., ¶¶ 40-45; Declaration of Jean-Claude Lapuyade, ¶ 3-8; Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. LFJ Dec., ¶ 39.

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

Dated: April 1, 2025

By: Jaclyn Joyce
Jaclyn Joyce, Esq.
Attorney for Plaintiff