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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MICHAEL GONZALES and NICOLE
BURTON, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MECHANICS BANK, a California
Corporation; RABOBANK, a Corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No. C22-02261

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

Judge: Hon. Judge Edward G. Weil
Dept.: 39

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I. INTRODUCTION

Plaintiffs MICHAEL GONZALES and NICOLE BURTON (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 2,280² Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class**” shall mean all non-exempt employees who are or previously were employed by Defendant Mechanics Bank and/or Rabobank, N.A. as direct employees and performed work in California during the Class Period. The Class excludes any non-exempt employees who previously entered into settlement or severance agreement with Defendant and/or Rabobank, N.A. that covers the entirety of the Class Period. Agreement at ¶ I(E). The Settlement Class Members means all Class Members who have not submitted a timely and valid request for exclusion as provided in this Agreement. Agreement at ¶¶ I(OO)(7); III(N)(7).

2. The “**Class Period**” shall mean the period from October 20, 2018, to November 12, 2024. Agreement at ¶ I(J).

3. The “**Aggrieved Employees**” means all non-exempt employees who are or previously were employed by Defendant and/or Rabobank, N.A. as direct employees and performed work in California during the PAGA Period. Agreement at ¶ I(C); I(BB). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the Settlement. *See* Agreement at ¶ III(O)(7).

4. The “**PAGA Period**” shall mean the period from March 7, 2023, to November 12, 2024. Agreement at ¶ I(BB).

5. The “**Gross Settlement Amount**” is Three Million Fifty Thousand Dollars and Zero Cents (\$3,050,000.00). Agreement at ¶ I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. **Class Representative “Service Awards”** of not more than \$10,000.00 to each Plaintiff (not more than \$20,000.00 total) in recognition of their efforts and risks in assisting with the

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

² This is estimated number of Class Members at the time of mediation.

prosecution of the Action and in exchange for a general release. Agreement at ¶ I(KK);

b. **“Attorneys’ Fees and Attorneys’ Expenses”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be One Million Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,016,666.67), **and** litigation costs and expenses not to exceed Forty-Five Thousand Dollars and Zero Cents (\$45,000.00), to be paid to Class Counsel. Agreement at ¶ III(P)(11);

c. A **“PAGA Payment”** of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) to 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 Payment (\$112,500.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$37,500.00) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at ¶ I(D); I(T); I(Z); III(P)(12);

d. **“Settlement Administration Costs”** not to exceed \$17,100.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Settlement. Agreement at ¶¶ I(MM)-I(NN).

e. All **“Individual Settlement Payments”** which are the amounts payable from the Net Settlement Amount to each Settlement Class Member.

6. The **“Net Settlement Amount”** of approximately \$1,801,233.33 (Gross Settlement Amount less the requested Service Awards, Attorneys’ Fees, Attorneys’ Expenses, PAGA Payment and Settlement Administration Costs) 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. The Net Settlement Amount will be paid to Settlement Class Members resulting in an estimated average Individual Settlement Payment of **\$790.01** Agreement at ¶ I(U); JCL 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 Settlement 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. JCL 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 Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the
7 proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request
8 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

9 II. FACTS AND PROCEDURE

10 A. Overview of the Litigation

11 Defendant operates full-service community banking financial institutions in California,
12 including in Contra Costa County, where Plaintiffs were employed. Plaintiffs worked for Defendant as
13 non-exempt employees and were paid on an hourly basis. In addition to their base hourly rates,
14 Plaintiffs were also entitled to, among other things, overtime pay and meal and rest periods. Throughout
15 their employment, Plaintiffs were subject to Defendant's written policies and general employment
16 practices. JCL Dec., ¶ 8.

17 Generally, Plaintiffs claim that Defendant, among other things, failed to provide compliant meal
18 and rest periods, and failed to reimburse employees for all necessary business expenses, failed to pay
19 for all hours worked, and improperly calculated the regular rate of pay for purposes of overtime, sick
20 pay and meal period premiums. Defendant denies liability for each of Plaintiffs' claims. Further,
21 Defendant asserts that they fully complied with all applicable employment laws and raised several other
22 significant defenses to Plaintiffs' claims. JCL Dec., ¶ 9.

23 On October 20, 2022, Plaintiff Gonzales filed the class action at bar in the Contra Costa County
24 Superior Court, Case No. C22-02261 (the "Gonzales Class Action"). The Gonzales Class Action
25 alleged eight causes of action against Defendant for: (1) Unfair Competition in violation of Business
26 and Professions Code sections 17200 *et seq.*; (2) failure to pay minimum wages in violation of
27 California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation
28 of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation

1 of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) failure to
2 provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the
3 applicable IWC wage order; (6) failure to reimburse employees for necessary business expenses in
4 violation of California Labor Code section 2802; (7) failure to provide wages when due in violation of
5 California Labor Code sections 201, 202 and 203; and (8) failure to provide accurate itemized
6 statements in violation of California Labor Code section 226. JCL Dec., ¶ 10.

7 Plaintiff Gonzales and Defendant agreed to mediation, and the Parties further agreed to
8 informally produce additional documents and data points subject to the mediation privilege, including
9 but not limited to a statistically reliable 22% sampling of the Class Members' time data and certain
10 payroll data points. As discussed *infra*, Plaintiff Gonzales counsel retained the forensic consultants at
11 Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 11.

12 On July 11, 2023, Plaintiff Gonzales and Defendant participated in mediation presided over by
13 Steven Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties
14 did not come to a settlement agreement at that time. JCL Dec., ¶ 12.

15 On March 7, 2024, Plaintiff Burton filed a separate Class Action complaint in the Contra Costa
16 Superior Court, Case No. C24-00609 ("Burton Class Action"), alleging claims for: (1) failure to pay
17 wages for all hours worked at minimum wage in violation of Labor Code Sections 1194 and 1197; (2)
18 failure to pay overtime wages for daily overtime worked in violation of Labor Code sections 510 and
19 1194; (3) failure to authorize or permit meal periods in violation of Labor Code sections 512 and 226.7;
20 (4) failure to indemnify employees for employment-related losses/expenditures in violation of Labor
21 Code section 2802; (5) failure to provide complete and accurate wage statements in violation of Labor
22 Code section 226; and (6) unfair business practices, in violation of Business and Professions Code
23 sections 17200, *et seq.* JCL Dec., ¶ 13.

24 Also on March 7, 2024, Plaintiff Burton filed a Notice of Violations with the Labor and
25 Workforce Development Agency (LWDA) and served the same on Defendant. JCL Dec., ¶ 14.

26 On May 13, 2024, Plaintiff Burton filed a separate representative action in Contra Costa Superior
27 Court, Case No. C24-01268, for a single cause of action for violations of PAGA pursuant to Labor
28 Code Sections 2698, *et seq.* (the "Burton PAGA Action"). JCL Dec., ¶ 15.

1 On September 10, 2024, Plaintiff Gonzales, Plaintiff Burton, and Defendant participated in a
2 second global mediation presided over by Brandon McKelvey, an experienced mediator of wage and
3 hour class and PAGA actions. The Parties accepted a Mediator’s global settlement proposal, which
4 was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the
5 Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant
6 motion. JCL Dec., ¶ 16.

7 On August 25, 2025, the parties stipulated to allow Plaintiffs leave to file a First Amended
8 Complaint to add Plaintiff Nicole Burton to the Complaint and to add a claim for violations of the
9 Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 17.

10 For purposes of effectuating the settlement, Plaintiff filed a First Amended Complaint on
11 September 2, 2025, to add Plaintiff Nicole Burton to the Complaint and to add a claim for violations of
12 the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 18.

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

14 Months before filing the Gonzales Class Action and Burton Actions, Class Counsel began their
15 pre-filing investigation into Plaintiffs’ complaints. Class Counsel for Plaintiff Gonzales started their
16 investigation with several lengthy interviews with Plaintiff Gonzales. At the conclusion of the
17 interviews, Class Counsel determined that Plaintiff Gonzales’ complaints justified further inquiry. JCL
18 Dec., ¶ 19.

19 Defendant also produced Plaintiff Gonzales’ employee file, which included copies of Plaintiff
20 Gonzales’ hiring documents, payroll and time records, and written policies and agreements. Class
21 Counsel for Plaintiff Gonzales reviewed and analyzed the documents and determined the documents
22 appeared to substantiate Plaintiff Gonzales’ claims. JCL Dec., ¶ 20.

23 Prior to the 2023 mediation, Defendant produced time and payroll records for the Class
24 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
25 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
26 handbooks, policies, and agreements. Prior to the 2024 mediation, Defendant produced updated
27 records. In total, Class Counsel reviewed hundreds of pages of documents and more than *11 million*
28 unique cells of time and payroll data. JCL Dec., ¶ 21.

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

6 Ahead of both the 2023 mediation and 2024 mediation, BCG analyzed Defendant's time and
7 payroll data to assist in the development of various damage models. Among other things, BCG
8 determined the approximate number of work shifts, workweeks, pay periods, average length of shift
9 and average number of hours worked per week and pay periods during the Class Period. BCG also
10 estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed
11 meal period premiums paid during the Class Period, and the amount of unpaid overtime due to the
12 miscalculation of the regular rate of pay during the Class Period. JCL Dec., ¶ 23.

13 Prior to both mediations, Class Counsel created several damage models predicated on BCG's
14 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting
15 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
16 during the mediated settlement discussions. JCL Dec., ¶ 24.

17 **C. The Parties Settled with the Assistance of the Mediator**

18 On July 11, 2023, Plaintiff Gonzales and Defendant participated in mediation presided over by
19 Steven Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties
20 did not come to a settlement agreement at that time. JCL Dec., ¶ 25.

21 On September 10, 2024, all Parties conducted a global, full day of mediation with respected
22 PAGA and class action wage and hour mediator Brandon McKelvey. After arm's-length and
23 adversarial negotiations, both sides agreed to a Mediator's proposal. The complete and final terms of
24 the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
25 constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

26 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

27 1. The Composition of the Settlement Class Members

28 The proposed Class consists of all non-exempt employees who are or previously were employed

1 by Defendant Mechanics Bank and/or Rabobank, N.A. as direct employees and performed work in
2 California during the Class Period. Agreement at ¶ I(E);I(J). The Class excludes any non-exempt
3 employees who previously entered into settlement or severance agreements with Defendant and/or
4 Rabobank, N.A., that cover the entirety of the Class Period. Agreement at ¶¶ I(E); I(OO); III(O)(7). At
5 the time of mediation, it was estimated that the Class was composed of 2,280 individuals who worked
6 approximately 251,000 workweeks during the Class Period. Agreement at ¶ III(A)(2).

7 2. The Settlement Consideration

8 The Parties agreed to settle the underlying claims in exchange for the Gross Settlement Amount
9 of \$3,050,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the
10 Settlement Class; (2) a Service Award of up to \$10,000.00 to each Plaintiff for their services on behalf
11 of the Class (up to \$20,000.00 total); (3) a PAGA Payment in the amount of \$150,000.00; (4) Settlement
12 Administration Costs estimated at \$17,100.00; (5) Attorneys' Fees and Attorneys' Expenses in the
13 amount of \$1,061,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement
14 Amount estimated to be \$1,016,666.67 and an estimated \$45,000.00 for actually incurred litigation
15 expenses. See generally Agreement at ¶ III(P).

16 Subject to the Court approving the Service Awards, Attorneys' Fees and Attorneys' Expenses,
17 PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be
18 distributed to each Settlement Class Member. Agreement at ¶ III(P)(1). There is no reversion to
19 Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement
20 at ¶ III(A)(1).

21 3. The Funding Date

22 Defendant will fund the Gross Settlement Amount in one lump sum payment within thirty
23 (30) calendar days after the Effective Date (the "Funding Date"). Agreement at ¶¶ I(N); I(O). Within
24 fifteen (15) calendar days after the Funding Date, the Settlement Administrator will pay: all Individual
25 Settlement Payments, the PAGA Payment, the Settlement Administration Costs, Attorneys' Fees,
26 Attorneys' Expenses, and the Class Representative Service Awards, all as determined by the Court at
27 the Final Approval Hearing. Agreement at ¶ III(P)(8)-(12).

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1 4. Formula for Calculating Settlement Class Payments

2 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
3 Settlement Payments will be proportional to the number of Workweeks each Class Member worked for
4 Defendant in California during the Class Period. The Class Data provided by Defendant to the
5 Settlement Administrator will include the number of Workweeks for each Class Member and the
6 number of PAGA Pay Periods worked during the PAGA Period. Each Class Member's final Individual
7 Settlement Payment will be calculated by using a fraction, the numerator of which is the Class
8 Member's total number of Workweeks, and the denominator of which is the total number of
9 Workweeks of all Class Members. Each Individual Settlement Payment will be reduced by any legally
10 mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
11 Payments for members of the Class who submit valid and timely requests for exclusion will be
12 redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion
13 on a pro rata basis. Agreement at ¶ III(P)(1).

14 Given that there are an estimated 2,280 Settlement Class Members, *the average gross recovery*
15 *is approximately \$790.01* (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
16 ¶ 6.

17 5. Release by Settlement Class Members

18 As of the Effective Date, and upon Defendant fully funding the Gross Settlement Amount and
19 employer's share of payroll taxes, Plaintiffs and the Settlement Class Members, on behalf of themselves
20 and their respective past, present, and future representatives, agents, attorneys, heirs, administrators,
21 successors, and assigns, and each and all of them, will be deemed to have fully, finally, and forever
22 released, settled, compromised, relinquished, and discharged the Released Parties from the Released
23 Class Claims. The Released Class Claims are defined as all claims, debts, liabilities, demands, actions,
24 or causes of action under state, federal or local law, whether statutory, common law or administrative,
25 that were asserted or that could have reasonably been asserted in the Actions and/or LWDA Notices,
26 and all claims, debts, liabilities, demands, actions, or causes of action arising from or reasonably related
27 to the facts and/or claims alleged in the Actions and/or LWDA Notices, including but not limited to all
28 state and/or federal wage and hour claims, failure to pay all wages due, including minimum wages,

1 straight time compensation, overtime compensation, double-time compensation, reporting time
2 compensation, and interest; the calculation of the regular rate of pay; failure to provide meal periods
3 and/or rest periods; failure to pay proper meal and/or rest period penalties; failure to permit employees
4 to leave the premises during meal and/or rest periods; on-duty meal period agreements; failure to pay
5 overtime compensation, double-time compensation, meal and rest period premiums, sick pay, and
6 reporting time pay at the regular rate of pay; failure to provide proper sick leave; failure to provide
7 written notice of paid sick leave; payment for all hours worked, including off-the-clock work; rounding
8 and/or time-shaving; failure to provide accurate itemized wage statements; failure to reimburse
9 business expenses; failure to timely pay all wages during employment; failure to timely pay all wages
10 due at separation of employment; unlawful deductions; failure to provide one day's rest in a seven day
11 workweek; failure to maintain accurate records, including payroll records and records of hours worked;
12 unfair business practices arising from the labor code violations released herein; penalties, including but
13 not limited to recordkeeping penalties, wage statement penalties, minimum wage penalties, and
14 waiting-time penalties; interest; attorneys' fees and costs; and including and not limited to, all claims
15 arising under the California Labor Code (including but not limited to Sections 200-204, 206, 210, 218,
16 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 551, 552, 558, 1174, 1174.5,
17 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802); the Wage Orders of the California Industrial Welfare
18 Commission; California Business and Professions Code Section 17200, *et seq* with respect to claims
19 arising from the labor code violations released herein; 8 CCR Section 11040, 11070; California Code
20 of Civil Procedure, including but not limited to 1021.5; and the Fair Labor Standards Act, 29 U.S.C.
21 Section 201, *et seq*. This release excludes the release of claims not permitted by law. Agreement at ¶¶
22 I(GG); III(G).

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

24 As of the Effective Date and Defendant fully funding the Gross Settlement Amount and
25 employer's share of payroll taxes, Plaintiffs, the Aggrieved Employees, the LWDA, and the State of
26 California with respect to all Aggrieved Employees, on behalf of themselves and their respective past,
27 present, and future representatives, agents, attorneys, heirs, administrators, successors, and assigns, and
28 each and all of them, will be deemed to have fully, finally, and forever released, settled, compromised,

1 relinquished, and discharged the Released Parties from the Released PAGA Claims. The Released
2 PAGA Claims are defined as all claims, actions, and causes of action for civil penalties under the Private
3 Attorneys General Act (PAGA), attorneys' fees, costs or interest arising under the Private Attorneys
4 General Act, California Labor Code Section 2698, et seq. that were alleged or that reasonably could
5 have been alleged in the Actions and/or LWDA Notices based on the factual allegations and legal
6 theories contained in the Actions and/or LWDA Notices, including but not limited to all claims for
7 penalties recoverable under PAGA concerning failure to pay all wages due, including minimum wages,
8 straight time compensation, overtime compensation, double-time compensation, reporting time
9 compensation; and interest; the calculation of the regular rate of pay; failure to provide meal periods
10 and/or rest periods; failure to pay proper meal and/or rest period penalties; failure to permit employees
11 to leave the premises during meal and/or rest periods; on-duty meal period agreements; failure to pay
12 overtime compensation, double-time compensation, meal and rest period premiums, sick pay, and
13 reporting time pay at the regular rate of pay; failure to provide proper sick leave; failure to provide
14 written notice of paid sick leave; payment for all hours worked, including off-the-clock work; rounding
15 and/or time-shaving; misclassification; failure to provide accurate itemized wage statements; failure to
16 reimburse business expenses; failure to timely pay all wages during employment; failure to timely pay
17 all wages due at separation of employment; unlawful deductions; failure to provide one day's rest in a
18 seven day workweek; failure to maintain accurate records, including payroll records and records of
19 hours worked; waiting time penalties; and including without limitation any and all potential claims for
20 penalties recoverable under PAGA predicated upon California Labor Code sections 200-204, 206, 210,
21 218, 218.5, 218.6, 221, 225.5, 226, 226.3, 226.7, 233, 246, 256, 510, 512, 551, 552, 558, 1174, 1174.5,
22 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698 et seq., any duplicative or similar provisions
23 arising under the Wage Orders of the California Industrial Welfare Commission, including, without
24 limitation, Wage Orders 4-2001, 7-2001; and any other PAGA penalty claims whatsoever alleged in
25 the Operative Complaint and/or LWDA Notices, during the PAGA Period. Agreement at ¶¶ I(HH);
26 III(F).

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III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$3,050,000.00, 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 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

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

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

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation with the highly respected mediator Brandon McKelvey.
12 Mediator McKelvey managed the Parties’ expectations and provided a useful, neutral analysis of the
13 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
14 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
15 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
16 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
17 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were
18 at an arm’s-length, adversarial and non-collusive. The matter resolved only when Mediator McKelvey
19 issued a Mediator’s proposal that the Parties accepted after further settlement discussions. Mediator
20 McKelvey only arrived at his proposal after hearing arguments, reviewing evidence and evaluating the
21 Parties’ respective claims and defenses. JCL Dec., ¶ 27.

22 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in protracted negotiations
23 regarding the written terms of the class action settlement. The Parties maintained the arm’s-length, non-
24 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
25 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
26 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 28.

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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 Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 29.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 30.

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

The Gross Settlement Amount 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.³ Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount 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 all available time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) at \$8,100,700 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 25.8% of Defendant’s class-wide exposure. The following summarizes Plaintiffs’ analysis of Defendant’s liability exposure. JCL Dec., ¶ 31.

(1) Defendant’s Estimated Exposure for Miscalculating the Regular Rate of Pay

Plaintiffs allege that Defendant failed to accurately calculate the regular rate of pay for purposes of meal period premiums and redeemed sick pay. Specifically, Plaintiffs allege that Defendant paid Class Members non-discretionary incentive compensation. Defendant’s policies expressly detail the non-discretionary, performance-based nature of this compensation, as demonstrated in its policies and offer letters to employees. Defendant denied liability and denied any miscalculation of the regular rate

³ 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 of pay. Plaintiffs estimate Defendant's liability as a result of its alleged failure to properly calculate the
2 regular rate of pay is to be \$198,078.00. JCL Dec., ¶ 32.

3 (2) Estimated Damages for Rest Period Violations

4 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
5 Plaintiffs alleged Defendant required Class Members to remain on the premises during rest periods and
6 moreover, and were frequently unable to take timely and duty-free rest periods. Again, Defendant
7 denied liability and asserted that they maintained legally compliant rest period practices throughout the
8 Class Period. Moreover, Plaintiffs recognize the evidentiary burdens in establishing this claim.
9 Establishing Plaintiffs' rest period claim would depend, almost entirely, on Class Member testimony,
10 making it a riskier claim at class certification and liability stages. Defendant likely would have argued
11 that only a small number of Class Members, if any, missed their rest breaks and, if they did miss a rest
12 break, it was their voluntary choice as employees were always authorized and permitted to take their
13 rest breaks. Certification likely would have required depositions of Class Members who provided
14 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
15 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
16 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
17 plaintiff's evidence that Defendant may have an illegal, written rest break policy is insufficient for this
18 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
19 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
20 written policy does not generate uniform practices.") Plaintiffs estimated Defendant's exposure for this
21 claim at \$849,804.21. JCL Dec., ¶ 33.

22 (3) Defendant's Estimated Exposure for Off-The-Clock Work

23 Plaintiffs further allege that Defendant failed to pay their employees for all hours worked.
24 Plaintiffs allege that Defendant failed to compensate Plaintiffs and Class Members for time spent
25 working off-the-clock, including time spent performing keyholder duties such as performing security
26 sweeps of the premises, disarming/arming alarms, and turning on/off all equipment on the premises,
27 which were required to be done off-the-clock pre-shift and post-shift. Additionally, Plaintiffs allege
28 that Plaintiffs and Class Members also received and responded to work-related communications off-

1 the-clock. Plaintiffs estimate this off-the-clock work totaled several minutes per shift. As a result,
2 Plaintiffs and Class Members were not compensated for the time spent under Defendant's control.
3 Defendant denied liability for this claim and maintains that it had legally compliant policies and
4 practices that prohibited off-the-clock work. Plaintiffs estimated Defendant's exposure for this claim
5 at \$3,073,403.00. JCL Dec., ¶ 34.

6 (4) Estimated Damages for Meal Period Violations

7 Plaintiffs allege that Defendant failed to provide compliant meal periods. When they were
8 provided, they were late, short, or interrupted. Plaintiffs allege that oftentimes Plaintiffs, Class
9 Members and Aggrieved Employees were required to work through their meal periods by remaining
10 on-duty or on-call and responding to work-related communications. Defendant maintains that they
11 fully complied with California meal period laws and maintained legally compliant policies and
12 practices. Plaintiffs estimated the damages for this claim at \$480,885.50. JCL Dec., ¶ 35.

13 (5) Defendant's Estimated Exposure for Unreimbursed Business Expenses

14 Plaintiffs alleged that Defendant required Plaintiffs, Class Members, and Aggrieved Employees
15 to use their personal cell phones and personal vehicles to do their jobs but were not reimbursed.
16 Specifically, Plaintiffs allege that they and the Class Members were required to use their personal cell
17 phones to receive and respond to work-related communications with co-workers, supervisors, and
18 clients, and driving to and from clients. Defendant denies such allegations. Plaintiffs estimated
19 Defendant's potential exposure for this claim to be approximately \$1,412,466.25. JCL Dec., ¶ 36.

20 (6) Defendant's Exposure for Wage Statement Violations and Waiting Time
21 Penalties

22 Generally, Plaintiffs allege that Defendant's aforementioned violations resulted in derivative
23 violations of California Labor Code sections 203 and 226(a). Class Counsel considered the arguable
24 presence of various penalties and weighed the potential recoveries against probable defenses, including
25 potential obstacles in proving the "willful" prong needed to obtain waiting time penalties under Labor
26 Code section 203, showing that Class Members suffered an "injury" because of wage statement
27 violations, as required by Labor Code section 226, or that meal and rest period violations may not
28 entitle employees like Plaintiffs and the Class Members to pursue the derivative waiting time and

itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2022) 13 Cal.5th 93; *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal. App. 5th 1308.) Although the Class arguably could have seen a significant payout for these penalties if Plaintiffs prevailed on every penalty claim, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiffs would have to overcome damaging precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which according to Defendant, were not supported by the facts. In light of the above, Plaintiffs estimated the exposure for these claims to be approximately **\$5,014,736.55** (\$2,813,381.55 for waiting time penalties and \$2,201,355.00 for wage statement penalties). JCL Dec., ¶ 37.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure at \$8,100,700.00. JCL Dec., ¶ 38. The proposed PAGA Payment from 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 penalties 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 penalties 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 \$150,000.00, which is 4.9% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA

1 Payments. Seventy-five percent (75%) of the PAGA Payment (\$112,500.00) will be paid to the LWDA
2 (“LWDA Payment”) with the remaining twenty-five percent (25%) to be distributed to the Aggrieved
3 Employees, which is within the range of PAGA penalties approved by courts and should be approved.
4 JCL Dec., ¶ 39.

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

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

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

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

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

27 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
28 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
2 million judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgment in favor of the employer. *See also O'Connor v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor of
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. JCL Dec., ¶ 40.

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

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

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

28 Finally, continuing to litigate this action would require continued and extensive resources

1 coupled with significant Court time to proceed through trial and post-trial motions, which can often
2 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
3 extensive expert testimony, particularly with regard to damages. But even if Plaintiffs are successful
4 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
5 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
6 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 41. “Avoiding such a trial and
7 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
8 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
9 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
10 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

11 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$3,050,000 that is
12 roughly a recovery of 25.8% of Defendant’s class-wide exposure. Given the amount of the settlement
13 here, as compared to the potential value of the claims, offset by the various inherent risks to continued
14 litigation, the settlement is fair and reasonable. JCL Dec., ¶ 42.

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

16 The Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977)
17 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to
18 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object
19 to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-
20 52.) The notice must advise class members “that they may be excluded from the class if they so request
21 and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.”
22 (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar
23 reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cartt v. Super. Ct.* (1975) 50
24 Cal.App.3d 960, 972.)⁴

25 The Parties jointly drafted the Notice Packet, which fairly and neutrally informs the Class

26
27 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet 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 request exclusion from 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 claims. Agreement at ¶¶ III(O)(2)(a); Exhibit A to the Agreement. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost-effective administration of the Settlement. JCL Dec., ¶ 43.

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

C. The Court Should Preliminarily Approve the Service Awards

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).) Enhancement 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 Service Awards of \$10,000.00 for each Plaintiff, for a total of \$20,000.00. The service payments are fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with

1 Class Counsel on the status of the case and the strategies for prosecuting the claims, reviewing the
2 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement
3 Class, and agreeing to provide Defendant a general release of all claims arising out of their employment.
4 JCL Dec., ¶ 44.

5 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards
6 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
7 showing is sufficient for preliminary approval of the negotiated Service Payments. JCL Dec., ¶ 45.

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

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

19 Class Counsel took this matter on a contingency fee basis and invested significant time and
20 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
21 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
22 Considering the positive outcome for the Class Members, and in light of the supporting authority, the
23 proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 46.

24 Attorneys for Plaintiffs have entered a Fee Sharing Agreement, which is attached to the
25 Declarations of Class Counsel in compliance with California Rules of Court 3.769(b). Plaintiffs will
26 file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses once preliminary
27 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient
28 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 47.

1 **E. Provisional Certification for Settlement Purposes Only is Appropriate**

2 For Settlement purposes only, Plaintiffs contend, and Defendant does not dispute, that
3 provisional certification of the Class is appropriate. JCL Dec., ¶ 48.

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.* (2004) 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, supra*, 34 Cal.4th at 333.)

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

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

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

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

28 Because all Class Members are Defendant’s current and former employees, Plaintiffs allege that

1 the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL
2 Dec., ¶ 49.

3 Further, Plaintiffs allege that the statutes relating to each of the Plaintiffs' claims apply with
4 equal force and effect to the entire Class. Factually, Plaintiffs allege that Defendant's policies and
5 practices apply class-wide and Defendant's liability can be determined by facts common to all members
6 of the class. The wage and hour issues are both numerous and substantial, and a class action is the most
7 advantageous method of dealing with the claims of the Class. JCL Dec., ¶ 50.

8 Plaintiffs allege that Plaintiffs' wage and hour claims are typical of the proposed Class because
9 they arise from the same factual basis and are based on the same legal theories applicable to the other
10 Class Members. Likewise, Plaintiffs allege that Plaintiffs' interests are entirely coextensive with the
11 interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to
12 which the proposed Class Members were subject and seek the same relief. Plaintiffs allege that
13 Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating
14 this litigation, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 51.

15 Additionally, Plaintiffs allege that Plaintiffs are represented by competent Class Counsel who
16 have extensive experience in litigating wage and hour class action cases. Plaintiffs allege that Class
17 Counsel have successfully briefed, argued, certified, and gained state court settlement approval of the
18 same class-wide causes of action that are at issue in this case. Plaintiffs allege that Class Counsel's
19 wage and hour class action experience establishes that they are well qualified to represent the interests
20 of this Class. JCL Dec., ¶¶ 53-60, Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Eve Howe, ¶ 3.

21 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
22 each individual claim, the Class Members likely have little incentive to litigate their claims on an
23 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
24 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
25 adjudication. JCL Dec., ¶ 52.

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Dated: October 6, 2025

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