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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

BRANDYN SCOTTO and ANGEL RODRIGUEZ, individually, and on behalf of other members of the general public similarly situated; Plaintiffs, vs. COVI CONCRETE CONSTRUCTION, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 30-2023-01351136-CU-OE-CXC **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Dept.: CX102 Judge: Layne H. Melzer Date: September 11, 2025 Time: 2:00 p.m. Reservation No. 74583065

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I. INTRODUCTION

Plaintiffs BRANDYN SCOTTO and ANGEL RODRIGUEZ ("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 794 members of the Class. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former hourly-paid or non-exempt employees who worked for Covi Concrete Construction, Inc. within the State of California at any time during the Class Period, defined as September 26, 2019, to November 20, 2024. Agreement at §§ I(E), I(J). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(NN).

2. The **"Aggrieved Employees"** and **"PAGA Period"** mean all current and former hourly-paid or non-exempt employees who worked for Covi Concrete Construction, Inc. within the State of California at any time during the PAGA Period. Agreement at § I(C), The PAGA Period means the period between April 28, 2023, to November 20, 2024 ("PAGA Period"). Agreement at § I(AA).

3. The "**Gross Settlement Amount**" is One Million, Two Hundred Thousand Dollars ($1,200,000.00) that Defendant Covi Concrete Construction, Inc. ("Defendant") must pay into the QSF, in connection with this Settlement. Agreement at §I (P). The releases granted to Defendant only become effective upon the funding of the Gross Settlement Amount. §III(B)-(D). The Gross Settlement Amount is all-in with no reversion and exclusive of the employer's share of payroll tax, if any, triggered by any payment under this Settlement (Agreement at §I (P)) and includes:

a. "**Service Awards**" in the amount of Ten Thousand Dollars ($10,000.00), or in an amount that the Court authorizes, to be paid to each Class Representative ($20,000.00 total) and for agreeing to a broad general release of California Civil Code section 1542. Agreement at §§ I(JJ); III(D)(E).

b. A "**Class Counsel Award**" in the amount not to exceed one-third of the Gross Settlement Amount, currently estimated to be Four Hundred Thousand Dollars ($400,000.00) ***and***

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

litigation costs and expenses not to exceed Thirty Thousand Dollars ($30,000.00), to be paid to Class Counsel. Agreement at § III(M)(10).

c. A "**PAGA Payment**" of Sixty Thousand Dollars ($60,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Amount"). The Settlement Administrator shall pay 75% of the PAGA Payment ($45,000.00) ("LWDA Payment") to the California Labor and Workforce Development Agency. The Settlement Administrator shall distribute 25% of the PAGA Payment ($15,000.00) ("Aggrieved Employee Payment") to the Aggrieved Employees. Agreement at § III(N)(11)

d. "**Settlement Administration Costs**" not to exceed Eleven Thousand Five Hundred Fifty Dollars ($11,550.00) payable to the proposed Settlement Administrator, Apex Class Action LLC, for the administration of the Notice Packet and Individual Settlement Payments. Agreement at § III(N)(12).

4. The "**Net Settlement Amount**" of approximately Six Hundred Seventy Eight Thousand Four Hundred and Fifty Dollars ($678,450.00) (Gross Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) which will be allocated to all participating members of the Class, i.e., Settlement Class Members, on a pro-rata basis according to the number of Workweeks each Settlement Class member performed during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of ***$854.47***. Agreement at §§ I(T); III(N)(1); Declaration of Jean-Claude Lapuyade (JCL Dec.), ¶ 5.

5. The "**Released Class Claims"** means the release from Settlement Class Members of all class claims alleged, or reasonably could have been alleged, based on the facts alleged, in the Operative Complaint in the *Scotto* Action including any other derivative claims including claims for statutory or civil penalties (except for PAGA penalties which are separately released herein), liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief, which occurred during the Class Period, and expressly excluding claims for vested

benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(FF).

6. The "**Released PAGA Claims"** means the release from the Aggrieved Employees of all PAGA claims alleged based on the facts asserted in the operative complaint in the *Scotto* Action and Plaintiff Rodriguez's PAGA notice to the LWDA including any other derivative claims including claims for statutory or civil PAGA penalties, interest, attorneys' fees, litigation and other costs, which occurred during the PAGA Period, and expressly excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I(GG).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. 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 and hour cases (*see infra)*. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 5.

The proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. The average Individual Settlement Share to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request that this Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a concrete contracting business that builds parking structures, a California Corporation based in Huntington Beach, where Plaintiffs worked. JCL Dec. ¶ 7. Plaintiff Scotto was employed by Defendant as a carpenter laborer from August 2020 to June 2021, and again from November 2021 through March 2022 as an hourly, non-exempt laborer. Plaintiff Rodriguez was employed by Defendant from June 2021 to July 2023 as an hourly, non-exempt laborer. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular, and overtime wages for all hours worked. As non-exempt employee, Plaintiffs were subject to Defendant's written policies and procedures and general employment practices. JCL Dec., ¶ 8.

Generally, Plaintiffs claim that Defendant failed to pay them and the Class Members for all hours worked, failed to provide compliant meal and rest periods, failed to provide accurate itemized wage statements, failed to reimburse mandatory business expenses, and failed to pay all wages due at the time of their separation. Defendant denies liability for each of Plaintiffs' claims. Defendant asserts that it fully complied with all applicable employment laws. Defendant asserts that it had clear, compliant policies and procedures for taking rest and meal periods. Defendant raised several other significant defenses to Plaintiffs' claims, including but not limited to, lack of any evidence of minimum wage violations. JCL Dec., ¶ 9.

On September 26, 2023, Plaintiff Scotto filed a Class Action complaint in the Orange County Superior Court, Case No. 30-2023-01351136-CU-OE-CXC ("Scotto Action"), alleging claims 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 and 202 (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. JCL Dec., ¶ 10.

On April 29, 2024, Plaintiff Rodriguez filed a Notice of Violations ("PAGA Notice") with the Labor and Workforce Development Agency ("LWDA") and served the same on Defendant. Plaintiff Rodriguez'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 the California Labor Code Private Attorneys General Act, Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 11.

On April 30, 2024, Plaintiff Rodriguez filed a Class Action complaint in the Orange County Superior Court, Case No. 30-2024-01396787-CU-OE-CXC ("Rodriguez Action"), alleging claims for: (1) Failure to Pay Minimum Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802]; (6) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (7) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (8) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. JCL Dec., ¶ 12.

The Parties agreed to mediate this action, as deemed in the best interest of the Parties, in particular in light of the many anticipated factual disputes. To prepare for mediation, the Parties agreed to informally produce certain documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members' time and payroll data. As discussed infra, Class Counsel retained the Berger Consulting Group, to analyze Defendant's time and payroll data. JCL Dec., ¶ 13.

On November 20, 2024, the Parties participated in mediation presided over by Tripper Ortman, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator's settlement 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. JCL Dec., ¶ 14.

On March 26, 2025, for purposes of obtaining approval of the Parties' global settlement of both the Scotto Action and Rodriguez Action, Plaintiff Scotto filed a First Amended Complaint in the Scotto Action that added Rodriguez as a Plaintiff, and further adds Rodriguez's class and PAGA claims against Defendant. The Parties have agreed that upon the Court's final approval of the Settlement, the Parties will dismiss the separately pending Rodriguez Action, without prejudice. JCL Dec., ¶ 15.

/ / /

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs' complaints. Class Counsels' investigation started with several lengthy interviews with Plaintiffs. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 16, Kane Moon Declaration (KM Dec.), ¶¶ 7, 10.

Class Counsel subsequently requested Plaintiff Scotto's employee file from Defendant. In response, Defendant produced several documents, including but not limited to, copies of Plaintiff Scotto's hiring documents and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff Scotto's claims that Defendant failed to, among other things, pay for all time worked and to provide compliant meal and rest periods. Shortly thereafter, Class Counsel initiated the Scotto action. Following a separate lengthy pre-filing investigation into Plaintiff Rodriguez's claims, Class Counsel subsequently filed the Rodriguez action. JCL Dec., ¶ 17.

Class Counsel has conducted a thorough investigation into the facts, merit, and strengths of Plaintiff Rodriguez's case, including through the Parties' exchange of documents and information and on Class Counsel's own independent investigation and evaluation. KM Dec., ¶ 7.

In light of the many anticipated factual disputes, the parties agreed early in the litigation that it would be in the best interest of both parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendants' liability exposure to the Class Members. In response to Class Counsel's request, Defendants produced the time and payroll records for the Class Members, and aggregate workweek and pay period data for the Settlement Class. In total, Defendants produced over 12,000 pdf pages containing unique time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 18.

Class Counsel then retained the statisticians and economists at Berger Consulting Group ("BCG"), to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze

Defendant's time and payroll data. JCL Dec., ¶ 19.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shift, work weeks, pay periods, average rate of pay, average length of shift and average number of hours worked per week and pay period during the Class Period. BCG also estimated the number of missed or late meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period. JCL Dec., ¶ 20.

In advance of mediation, Class Counsel created a damage model predicated on BCG analysis. Class Counsel's model calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. This damage model informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 21.

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

C. The Parties Settled at Mediation

On November 20, 2024, the Parties participated in mediation presided over by Tripper Ortman, Esq., an experienced mediator of wage and hour class and PAGA actions. Tripper Ortman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Tripper Ortman's assistance. Namely, the parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After a full day of arm's length and adversarial negotiations, the mediation concluded with a settlement after both sides agreed to Tripper Ortman proposal, which was 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. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Class

The proposed Class consists of all Defendant's current and former hourly-paid or non-exempt employees employed within the state of California at any time between September 26, 2019, to November 20, 2024. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(NN). There are approximately 794 members of the Settlement Class that worked an estimated 47,222 workweeks during the Class Period. Agreement at §III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $1,200,000.00. The Gross Settlement Amount funds: (1) Individual Settlement Payments to the Settlement Class; (2) Service Awards of $10,000.00 to each Plaintiff (a total of $20,000.00) for their services on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of $60,000.00; (4) Settlement Administration costs estimated at $11,550.00, (5) a Class Counsel Award in the amount of $430,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount, estimated to be at least $400,000.00, and an estimated $30,000.00 for actually incurred litigation expenses. Agreement at §III(N)(9)-(12).

Subject to the Court approving the Service Awards, Class Counsel Award, PAGA Payment, and Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating Class Member, i.e., Settlement Class Members. Agreement at §III(N)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at §III(A)(1).

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3. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at §III(N)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § III(N)(1). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class member who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(N)(1).

Given that there are approximately 794 Settlement Class Members, and assuming there are no opt-outs from the Settlement, ***the average gross recovery is approximately $854.47*** (Net Settlement Amount divided by Settlement Class Members). This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (*See, e.g., Shachno et al. v. KT Hotels, LLC, et al.,* San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of $283.35)).

4. Release by Settlement Class Members

Generally, as of the Effective Date, Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Claims that accrued during the Class Period.. Agreement at §§ I(FF), III(B).

5. Release by the LWDA and the Aggrieved Employees

Generally, upon the Effective Date, the LWDA and the Aggrieved Employees will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ I(GG), III(C).

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III. DISCUSSION

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

The proposed Settlement, including the Gross Settlement Amount of $1,200,000.00, 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.").) In California, 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 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) ("Newberg").) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation. . . . ." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation").)

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

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

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

The Parties participated in mediation presided over by Tripper Ortman, Esq., an experienced mediator of wage and hour class and PAGA actions. Tripper Ortman managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The 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. Tripper Ortman only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 24.

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

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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.

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 in light of 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. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

The Gross Settlement Amount of $1,200,000.00 is well 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 plaintiff might have received if he had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $1,200,000.00 is fair and reasonable, considering the nature and magnitude of the claims being settled and the various factual and legal issues in dispute and potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop varied economic damages 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 time and payroll data. Class Counsel projected Defendant's liability exposure for class claims (excluding PAGA Penalties) to be approximately $3,973,578 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 30% of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure. JCL Dec., ¶ 27.

(1) <u>Estimated Damages for Failure to Pay Wages</u>

Plaintiffs claim that Defendant failed to pay wages to Plaintiffs, Class Members, and Aggrieved Employees. Specifically, Plaintiffs allege that Defendant did not provide non-exempt employees with any means to record the times they started and stopped work. Instead, they signed a notebook to confirm their attendance each day and were also asked to sign pre-printed weekly timesheets that included their scheduled, rounded hours, rather than the exact hours they worked that week. Plaintiffs

[2] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

contend that the scheduled time recorded did not account for time spent cleaning up at the end of the day and checking borrowed tools back in, or donning and doffing safety equipment, including harnesses. Defendant denies this claim, and argued that the Class Members were charged with recording their own time, and to the extent they left the scheduled time in their timesheets, the scheduled time was designed to account for clean-up, donning and doffing equipment and organizing tools, such that these employees would have been overpaid if they did not alter the scheduled times. Moreover, Defendant argued that Plaintiff's off the clock claims were highly individualized and not suitable for class treatment. Taking into account Defendant's assertions and the testimonial evidence required to prove Plaintiffs' claims, Plaintiffs estimate Defendant's liability stemming from this claim is approximately **$606,074.14**. JCL Dec., ¶ 28.

(2) Estimated Damages for Meal Period Violations

Plaintiffs allege that Defendant failed to provide compliant meal periods. Specifically, Plaintiffs allege that Defendant failed to record the time actually spent by Class Members taking meal breaks, as there was no mechanism by which they could clock out or in for meal breaks. Instead, Defendant presented Class Members with pre-printed sheets showing rounded meal breaks that were always *exactly* 30 minutes in length and always listed as the same time each day. These records contradict experiences of Class Members and Aggrieved Employees who experienced missed, late, short, and interrupted meal breaks due to the rigorous demands of their job, and daily tasks that could not be paused for breaks, such as pouring concrete. Moreover, when Class Members and Aggrieved Employees were able to take a meal period, they were tethered to the job site, unable to leave and instructed to get back to work as soon as they finished eating. JCL Dec., ¶ 29. Defendant denies these claims and maintains that it fully complied with California meal period laws and maintained legally compliant policies and practices. Defendant argues the work schedules accurately reflect Class Members' and Aggrieved Employees' meal periods. Courts have found that where an employer's meal period policies are compliant, individualized issues exist as to the reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, (2018) 19 Cal.App.5th 832, 851 (holding that although only 11.1% of the employees' time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). If successful, Defendant would avail itself to a complete defense of Plaintiffs' meal period claim. Additionally, Defendant argued time records evidenced nearly 100% compliant meal periods. Consequently, Defendant argued that Plaintiff's claims were based almost entirely on testimonial evidence. Thus, Defendant argued that Plaintiff's meal break claim was highly individualized and not suitable for class treatment. Taking this into account, along with Defendant's defenses, Plaintiffs estimate Defendant's liability stemming from this claim to be approximately **$1,031,827.61**. JCL Dec., ¶ 30.

(3) Estimated Damages for Rest Period Violations

Plaintiffs also alleged that Defendant failed to provide compliant rest periods and were specifically instructed by their supervisors that they were not permitted to take rest periods or leave the job site. Again, Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices at all times throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant would have argued that only a small number of Class Members actually missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). In light of the above, and taking into account Defendant's defenses, Plaintiffs estimate Defendant's liability stemming from this claim to be approximately **$1,031,827.61.** JCL Dec., ¶ 31.

(4) Estimated Exposure for Unreimbursed Expenses

Plaintiffs claim that Defendant failed to reimburse Class Members for necessary expenses, specifically, that they were required to use their own personal tools in order to perform their jobs but were not paid twice the minimum wage. Section 9(B) of the Wage Orders provides in part, "When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." Defendant's written policies reflect this requirement and even mandated Class Members and Aggrieved Employees sign a form stating that if they did not have the necessary tools to complete the task, they would not be allowed to execute the task and would not be paid. Plaintiffs also allege they and the Class Members were also required to use their own cellular phones for work purposes. Defendant argued that not every Class Member needed to bring their own tools, and that the amount each Class Member spent on tools would vary widely. Additional, testimonial evidence would be required to prove how much reimbursement each Class Member was owed. Taking into account Defendant's defenses, Plaintiffs estimated Defendant's liability resulting from this claim to be approximately $**357,500.00**. JCL Dec., ¶ 32.

(5) Estimated Exposure for Failure to Pay Daily Overtime

Plaintiffs alleged that from the start of the Class Period until 2024, Defendant paid only weekly overtime to Class Members and failed to pay daily overtime. Thus, in any week in which a Class Member worked more than 8 hours per day but less than 40 hours that week, that Class Member was not paid any overtime compensation. Plaintiffs estimated the exposure for this claim to be approximately **$64,591**. JCL Dec., ¶ 33.

(6) Exposure for Wage Statement Violations and Waiting Time Penalties

Generally, Plaintiffs allege that Defendant's aforementioned violations resulted in derivative violations of California Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses, including potential obstacles in proving the willful" prong needed to obtain waiting time penalties under Labor Code section 203, showing that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code 226, or that meal and rest period violations may not entitle employees like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement penalties. (*See Naranjo v. Spectrum Security Services, Inc.*, (2019) 40 Cal. App. 5th

444 (review granted); *Maldonado v. Epsilon Plastics, Inc*. (2018) 22 Cal. App. 5th 1308.) Although the Class arguably could have seen a significant payout for these penalties if Plaintiffs prevailed on every penalty claim, Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiffs would have to overcome damaging precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp*., 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc*., 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which according to Defendant, were not supported by the facts. In light of the above, Plaintiffs estimated the exposure for these claims to be approximately **$1,111,053** ($802,053 for waiting time penalties and $309,000 for wage statement penalties). JCL Dec., ¶ 34.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be approximately **$2,228,450**. JCL Dec., ¶ 35.

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 also In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiffs and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims on liability, value, and manageability as to the rest period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested. JCL Dec., ¶ 36.

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, (See *Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625 (9th Cir.1982)), and to the extent courts assess this factor, it is to 'determine whether the decision to settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.'" (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at p. 7.)

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Donohue v. AMN Services, LLC* (2018) 29 Cal.App.5th 1068 (cert granted.) In *Donohue*, Fourth District Court of Appeal affirmed Hon. Joel Pressman's denial of class certification for missed meal and rest periods by call center employees. (*See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at pp. 11-13 (following *Brinker v. Super. Ct.* (2012) 53 Cal.4th 1004 and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).) Plaintiffs are confident about the strength of their claims. Nonetheless, Plaintiffs recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or substantially impair the value of Plaintiffs' lawsuit. Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 37.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigations are complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment. JCL Dec., ¶ 38. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221

F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $1,200,000.00 that is roughly **30%** of Defendant's estimated liability exposure. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 39.

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

The 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, supra,* 67 Cal.App.3d at 106.) In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)[3]

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class of their rights and remedies in this action. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to entire Class. The Notice 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 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. This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class while ensuring cost effective

[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.

administration of the Settlement. JCL Dec., ¶ 40.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. JCL Dec., ¶ 41. (*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 Award

Service awards "are fairly typical in class action cases." (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of $10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez, supra,* 563 F.3d at pp. 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.)

Approximately 794 members of the Class will share in the estimated $678,450.00 Net Settlement Amount due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for a Service Award of $10,000[4] for each Plaintiff. The Service Awards are

[4] The amount of the requested enhancement payment-$10,000 for each Plaintiff- is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC,* No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding $10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.,* No. BC417335 (L.A. County Super. Ct Mar. 21, 2011) (awarding $10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.,* No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding $10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.,* No. BC429042 (LA. County Super. Ct. Oct. 3, 2013) (awarding $10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.,* No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding $10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.,* No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding $10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc,* No. BC422934 (LA. County Super. Ct. July 2, 2012) (awarding $10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC,* No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of $ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC,* No. BC423798 (LA. County Super. Ct Apr. 21, 2011) (awarding $15,000 enhancement payment);

fair and reasonable compensation for Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class, and agreeing to provide Defendant a general release of all claims arising out of their employment. JCL Dec., ¶ 42.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶ 43.

D. The Court Should Preliminarily Approve the Negotiated 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

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Mares v. BFS Retail & Commercial Operations, LLC, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding $15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.,* No. BC373910 (LA. County Super. Ct. Jan. 29, 2010) (awarding $10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.,* No. BC386500 (LA. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP,* No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding $10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.,* No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding $10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc,* No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding $10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC,* No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding $25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC, No.* 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding $10,000 enhancement payment); *Aguiar v. Cinguar Wireless. LLC,* No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding $14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.,* No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding $10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC,* No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding $10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.,* No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding $10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.,* No. RIC 10005196 (Riverside Super. Ct July 16, 2013) (awarding $10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.,* No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding $10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.,* No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013) (awarding $10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC,* Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding $10,000 enhancement payment).

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 Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a Class Counsel Award in the amount of one-third of the Gross Settlement Amount and litigation costs and expenses not to exceed $30,000. Agreement at § III(N)(10). In light of the positive outcome for the Class, and in light of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 44.

Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 44.

E. California Law Authorizes Provisional Certification for Settlement Purposes

Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 45.

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

California Rules of Court, Rule 3.769(d). provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n. 19.) Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" (Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162

Cal.App.4th 1193, 1207; *Sav-On, supra,* 34 Cal.4th at 333.)

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

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

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

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

Generally, the proposed Class consists of all of Defendant's current and former non-exempt California employees during the Class Period. Defendant's records show that the Settlement Class Members consists of approximately 794 individuals, making joinder of all Settlement Class Members impracticable. Further, because all Class Members are Defendant's current and former non-exempt employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 47.

The California statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. While Defendant disputes whether the class would be appropriate if the litigation were to continue, they agree to class certification for purposes of this settlement only. 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. JCL Dec., ¶ 48.

Plaintiffs wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class was subject and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, and evaluating the proposed settlement to assure that it is fair. Again, Defendant disputes whether Plaintiffs' claims are typical of the Class for purposes of any continued litigation of the Action, but agree for the purposes of this settlement only that Plaintiffs assert claims that are typical of the Class, including claims for meal and rest break practices and unpaid wages. JCL Dec., ¶ 49.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 50, 52-58, SOZ Dec., ¶ 3, KM Dec., ¶¶ 14-33, Declaration of Vartan Madoyan, ¶¶ 6-11.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 51.

IV. CONCLUSION

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

Dated: June 9, 2025

JCL LAW FIRM, APC

By: ______________________________
Jean-Claude Lapuyade, Esq.