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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GEORGE AUSTIN THOMAS, individually, and on behalf of other members of the general public similarly situated; Plaintiff, v. REISS (RETAIL) LIMITED, a United Kingdom corporation; and DOES 1 through 100, inclusive, Defendant.	Case No: 24STCV27146 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: March 4, 2026 Time: 10:00 a.m. Judge: Hon. Samantha Jessner Dept.: 7

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I. INTRODUCTION

Plaintiff George Austin Thomas ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 260 Class Members and 163 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class Member"** shall mean all current and former hourly-paid or non-exempt employees who worked for Defendant Reiss (Retail) Limited ("Defendant") within the State of California at any time during the period beginning on October 16, 2020, through October 1, 2025. Agreement at § 1.4. **"Class Period"** means the period from October 16, 2020 through October 1, 2025. Agreement at §1.12.

a. A **"Participating Class Member"** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.37.

b. The "**Class Size**" is comprised of 260 individuals who collectively worked approximately 9,000 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at §§ 4.1, 8.

2. The **"Aggrieved Employees"** means all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time from August 12, 2023, through October 1, 2025. Agreement at §§ 1.3, 1.32. **"PAGA Period"** means the period from August 12, 2023, through October 1, 2025. Agreement at § 1.32. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. At the time of mediation, there were approximately 163 Aggrieved Employees who worked a total of 2,341 PAGA Pay Periods during the PAGA Period. Agreement at § 4.1.

3. The "**Gross Settlement Amount**" is Three Hundred Forty-Two Thousand, Five Hundred Dollars and Zero Cents ($342,500.00). Agreement at § 1.24. The Gross Settlement Amount includes the following:

a. A "**Class Representative Service Award**" of not more than $10,000.00 to

[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.

Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at § 3.2.1.

b. **"Class Counsel Award"** in the amount of not more than thirty-five (35%) percent of the Gross Settlement Amount, *and* reimbursement of litigation costs of up to Thirty Thousand Dollars and Zero Cents ($30,000.00). Agreement at § 3.2.2;

c. A "**PAGA Payment**" in the amount of Twenty Thousand Dollars and Zero Cents ($20,000.00) which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 35% to the Aggrieved Employees ($7,000.00) and the 65% to LWDA ($13,000.00) in settlement of PAGA claims ("LWDA Payment"). Agreement at §§ 1.29, 1.35, 3.2.5; and

d. "**Settlement Administration Costs**" not to exceed Six Thousand, Two Hundred and Twenty-Five Dollars and Zero Cents ($6,225.00) payable to the Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") and costs associated with administration of the settlement. Agreement at §§ 1,2, 1.47, 3.2.3.

4. The "**Net Settlement Amount**" of approximately One Hundred Fifty-Six Thousand, Four Hundred Dollars and Zero Cents ($156,400.00) (Gross Settlement Amount less the PAGA Payment, Class Representative Service Award, Class Counsel Award, and the Settlement Administration Costs) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § 1.30. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of ***$601.54***. JCL Dec., ¶ 7.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, 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., ¶ 7.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a global fashion brand that operates a chain of retail stores in the state of California, including in Los Angeles County, where Plaintiff worked. Plaintiff was employed by Defendant as an hourly-paid, non-exempt employee from approximately November 2023 to April 2024. Declaration of George Austin Thomas. ("Thomas Dec.") at ¶ 5.

Generally, Plaintiff claims that Defendant failed to properly calculate the regular rate of pay for purposes of overtime, sick pay, and meal period premiums, failed to pay for all hours worked, failed to provide compliant meal and rest periods, failed to reimburse necessary expenditures, failed to furnish accurate itemized wage statements, and failed to timely pay wages when due. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims. JCL Dec., ¶ 10.

On August 12, 2024, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice, pursuant to Labor Code section 2699.3, subdivision (a). JCL Dec., ¶ 11, Agreement at § 2.1

On October 16, 2024, Plaintiff commenced the Class Action by filing a complaint alleging the following ten (10) causes of action against Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 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); and (10) Violation of California Business & Professions Code § 17200, et seq. ("Class Complaint"). JCL Dec., ¶ 12, Agreement at § 2.2.

On October 16, 2024, Plaintiff commenced the PAGA Action by filing a representative action complaint ("PAGA Complaint") against Defendant in Los Angeles County Superior Court, Case No. 24SMCV05097, alleging a single cause of action for violations of the Private Attorneys General Act, California Labor Code § 2698 *et seq.* JCL Dec., ¶ 13, Agreement at § 2.3.

On July 30, 2025, the Parties participated in an all-day mediation presided over by Christopher E. Panetta, Esq., which is the subject of the instant motion. JCL Dec., ¶ 14, Agreement at § 2.5.

On September 4, 2025, for purposes of effectuating the settlement, Plaintiff filed a First Amended Complaint in the Class Action to include the PAGA claim ("First Amended Complaint") and subsequently dismissed without prejudice the PAGA Complaint on September 18, 2025. The First Amended Complaint is the "Operative Complaint" in this Action. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged. JCL Dec., ¶ 15, Agreement at § 2.4.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. This investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including wage statements, time records, and Defendant's onboarding documents as well as policies and procedures. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 16.

Following the filing of the complaint, the Parties engaged in discovery. The Parties agreed to stay formal discovery to focus on an early resolution and engaged in informal discovery in preparation for mediation. To prepare for mediation, Defendant produced nearly 100% of the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents and over one million unique cells of time and payroll data. JCL Dec., ¶ 17.

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. JCL Dec., ¶ 18.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid and underpaid overtime due to regular rate violations, and the potential liability for off-the-clock work and derivative claims. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 19.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed 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., ¶ 20.

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

C. The Parties Settled At Mediation

On July 30, 2025, the Parties participated in an all-day mediation with Christopher E. Panetta, Esq., a respected mediator of wage and hour class and representative actions. Agreement at § 2.5. The Parties made substantial progress with Mr. Panetta's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation involved extensive, arm's-length negotiations and concluded with a settlement of Plaintiff's class and PAGA claims, which was subsequently memorialized in a Memorandum of Understanding and ultimately the final Agreement now before the Court. Class Counsel submits that the Settlement, incorporated herein in full, constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The proposed Class consists of all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the period beginning on October 16, 2020, through October 1, 2025. Agreement at §§ 1.4, 1.12. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § 1.37. Defendant estimates that the Class is comprised of approximately 260 individuals who collectively worked approximately 9,000 Workweeks during the Class Period. Agreement at §§ 4.1, 8.

2. The Settlement Consideration

The Parties agreed to settle the underlying claims in exchange for the Gross Settlement Amount of $342,500.00. The Gross Settlement Amount includes: (1) Individual Class Payments to Participating Class Members; (2) a Class Representative Service Award of not more than $10,000.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of $20,000.00; (4) Settlement Administration Costs not to exceed $6,225.00; and (5) a Class Counsel Award comprised of attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount and reimbursement of up to $30,000.00 for litigation expenses. See generally Agreement at § 3.

Subject to the Court approving these deductions, the Net Settlement Amount will be distributed to each Participating Class Member. Agreement at § 1.30. There is no reversion to Defendant, and Defendant must separately pay for its share of employer-side payroll taxes. Agreement at § 3.1.

3. The Funding Date

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than sixty (60) days after the final approval order is entered. Agreement at § 4.3.

4. Formula for Calculating Individual Class Payments

Participating Class Members will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. Agreement at § 3.2.4. The Class Data provided by Defendant to the Administrator will include the information necessary to allow the Administration to calculate the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § 1.8. The Administrator will calculate each Class Member's final Individual Class Payment by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiply the result by each Settlement Class Member's Workweeks worked during the Class Period. Agreement at § 3.2.4. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § 3.2.4.1. Individual Class Payments for members of the Participating Class Members who submit valid and timely requests for exclusion will be redistributed to Participating Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2. Given that there are approximately 260 Class Members, ***the average gross recovery is approximately $601.54*** (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 7.

5. Release by Participating Class Members

Upon entry of final judgment and funding of the Gross Settlement Amount, all Participating Class Members will release the Released Parties, as defined in the Settlement Agreement, from all class claims alleged, or that reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period. The release expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation. Agreement at § 5.2.

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

Upon entry of final judgment and funding of the Gross Settlement Amount, the State of California and all Aggrieved Employees will release the Released Parties, as defined in the Settlement Agreement, from all PAGA claims and penalties alleged, or that reasonably could have been alleged based on the facts alleged, in the operative complaint and Plaintiff's PAGA Notice to the LWDA which occurred during the PAGA Period. This release also expressly excludes claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, and workers' compensation. Agreement at § 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $342,500.00 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 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.)

On July 30, 2025, the Parties participated in a full-day mediation with Christopher E. Panetta, Esq., a skilled and respected neutral specializing in the resolution of complex wage and hour disputes. Agreement at § 2.5. (*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.").) The negotiations were adversarial and noncollusive, and the resulting Agreement reflects a compromise of genuinely disputed claims. The Parties reached a settlement at the time of mediation, and subsequently engaged in negotiations regarding the written terms of the settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

Plaintiff is represented by JCL Law Firm, APC, Zakay Law Group, APLC, and Lawyers for Justice, P.C. These firms are highly experienced in prosecuting wage and hour class actions and have been appointed as class counsel in numerous similar cases throughout California. Defendant is represented by Conn Maciel Carey LLP, a well-regarded firm with significant expertise in defending employers in complex employment litigation. The fact that the Settlement was negotiated by experienced counsel on both sides, with the aid of a neutral mediator, strongly supports the presumption of fairness. JCL Dec., ¶ 24.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 25.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this 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 believes 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., ¶ 26.

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

The Gross Settlement Amount of $342,500.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $342,500.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time

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

and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) ranged between $620,076.50 and $1,230,394.00, if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 27.8% and 55.2% 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>Defendant's Estimated Exposure for Regular Rate Violations</u>

Plaintiff alleges Defendant failed to include certain non-discretionary compensation when calculating the regular rate of pay for overtime wages, meal-period premiums, and paid sick leave. Specifically, Defendant paid Class Members non-discretionary commissions (labeled on wage statements as "C COMMISSION") but did not include those commissions in the regular rate for any pay period in which a Class Member also earned overtime, received a meal-period premium, or used paid sick time. JCL Dec., ¶ 28. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California law requires meal period premiums to be paid at an employee's regular rate of pay. *See Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California Labor Code section 246(l)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave. Cal. Labor Code § 246(1)(1)-(2). Defendant contends that it properly calculated the regular rate of pay, and moreover argued that the number of instances in which an employee earned overtime during the same period in which they earned a commission was minimal. Plaintiff estimates Defendant's liability from these regular-rate violations is $ 9,759.00. JCL Dec., ¶ 28.

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

Plaintiff also alleges that Defendant failed to pay employees for all hours worked. Specifically, Plaintiff asserts that although Defendant paid overtime on a weekly basis, it failed to pay overtime wages to employees who worked more than eight hours in a single workday. In addition, Class Members and Aggrieved Employees were required to perform off-the-clock work before and after their scheduled shifts, including participating in bag checks, taking out trash, moving shipment boxes, and organizing merchandise on the sales floor. JCL Dec., ¶ 29.

Defendant vigorously denied liability for this claim. Defendant argued that the off-the-clock claim was not suitable for class treatment because individualized issues predominated. For example, even assuming Plaintiff performed work while off-the-clock, which Defendant disputes, the time spent would vary drastically from class member to class member that it could not be established by common proof. JCL Dec., ¶ 30.

Recognizing these risks and uncertainties in certifying the claim, Plaintiff's Realistic Damage Model applied a 50% discount to this category of damages. Plaintiff therefore estimates Defendant's exposure for this claim to range between $17,394.00 and $34,788.00. JCL Dec., ¶ 31.

(3) <u>Defendant's Estimated Exposure for Meal Period Violations</u>

Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically, Class Members and Aggrieved Employees were required to remain available via cell phone while clocked out during their off-duty meal breaks and were also required to perform work during those breaks, including assisting associates with client interactions, addressing inventory issues, and working on the sales floor. The data produced by Defendant further showed that no meal-period premiums were paid until 2024, and that premiums were paid in only approximately 11% of instances where the records reflect that a meal period was short, late, or missed during the Class Period. JCL Dec., ¶ 32.

Defendant denies liability for these alleged violations and argues that each of its stores are appropriately staffed to allow for all employees to have the opportunity to take compliant meal periods. Moreover, Defendant argued that any determination of noncompliant meal periods would require highly individualized inquiries not suitable for class treatment. In light of these risks, Plaintiff applied a 50% discount to the meal-period claim in the Realistic Damage Model to account for the individualized nature of the evidence. Plaintiff estimates Defendant's exposure for this claim to range between $53,804.00 and $107,608.00. JCL Dec., ¶ 33.

(4) <u>Defendant's Estimated Exposure for Rest Period Violations.</u>

Plaintiff alleges that Defendant failed to provide compliant rest periods. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259, the California Supreme Court held that "employers … must relinquish control over how employees spend their time" during rest periods. Likewise, Labor Code section 226.7, subdivision (c), provides that if an employer fails to provide an employee with a meal, rest, or recovery period in accordance with state law or an applicable Industrial Welfare Commission Wage Order, "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." JCL Dec., ¶ 34.

Plaintiff alleges that the job duties of Class Members and Aggrieved Employees were dynamic and demanding and stores were staffed leanly. As a result, Class Members were often required to complete multiple tasks and assist customers as needed. When rest breaks were provided, they were frequently short, delayed, or interrupted by work-related duties. JCL Dec., ¶ 35.

Defendant denies liability for these alleged violations and contends that its written policies and practices regarding rest periods were legally compliant throughout the Class Period. Defendant further argues that this claim is highly individualized, as it depends on whether one or more managers may have deviated from company policy by instructing Class Members to remain on-site during their breaks. Establishing liability would likely require competing testimony as to whether rest breaks were actually taken or 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"). JCL Dec., ¶ 36.

Given these evidentiary and certification risks, Plaintiff applied a 50% discount to the rest-period claim in the Realistic Damage Model. Plaintiff estimates Defendant's exposure for this claim to range between $53,804.00 and $107,608.00. JCL Dec., ¶ 37.

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(5) Defendant's Estimated Exposure for Failure to Reimburse

Plaintiff alleged that Defendant failed to reimburse employees for necessary business expenses in violation of Labor Code section 2802, including for the use of personal cell phones to clock in and out on the ADP Workforce application and for work-related communications with supervisors and managers. In fact, Defendant's written policies expressly require non-exempt employees to "keep track of hours worked on ADP Workforce[.]" California employers who require employees to use a personal cellular device for work purposes must reimburse the employee for the cost incurred in furnishing the device, including voice and data service. (See Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...") JCL Dec., ¶ 38.

Defendant denies these allegations, and maintains that employees are not required to download any apps onto their personal cell phones, as each store has a time clock that can be used to clock in and out. Defendant further argued that it encourages employees to use the in-store time clocks as opposed to the app. Taking into account Defendant's defenses, Plaintiff estimated Defendant's potential exposure for this claim to range from approximately $23,310.00 to $46,620.00. JCL Dec., ¶ 39.

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

Generally, Plaintiff alleges 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 Plaintiff 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 Plaintiff prevailed on every penalty claim, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Plaintiff 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). Plaintiff 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, Plaintiff estimated the exposure for waiting time penalties to range from approximately $359,380.00 to $718,761.00 and penalties for inaccurate wage statements to range from $102,625.00 to $205,250.00. JCL Dec., ¶ 40.

(7) <u>Defendant's PAGA Exposure</u>

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure to be approximately $312,775.00. JCL Dec., ¶ 41. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA 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 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 $20,000.00 which is 5.84% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Sixty-five percent (65%) of the PAGA Payment ($13,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining thirty-five percent (35%) of the PAGA Payment ($7,000.00) distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 42.

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

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%.

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, (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 *7.)

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

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 44. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $342,500.00 that is roughly between approximately 27.8% and 55.2% of Defendant's *class-wide* liability exposure for damages. 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., ¶ 45.

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

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

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

[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.

Members of their rights and remedies. The Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. 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 submit requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims and Released PAGA Claims. Agreement at § 7. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 46

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) JCL Dec., ¶ 47.

C. The Court Should Preliminarily Approve the Class Representative 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,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Award of $10,000.00 to Plaintiff. The Class Representative Service Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendant a general release of all claims arising out of his employment. JCL Dec., ¶ 48.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 49.

D. The Court Should Preliminarily Approve the Requested Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the requested Class Counsel Award is fair and reasonable. JCL Dec., ¶ 50.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Attorneys' Fees. JCL Dec., ¶ 51.

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E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 52.

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

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

2. <u>The Proposed Participating 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,* 166 Cal.App.4th at 1334.) Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. (*Id.*)

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

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

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 53.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Participating Class Members. JCL Dec., ¶ 54.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 55.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶ 56; Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Maria Halwadjian, ¶¶ 2-7.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 57.

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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: October 30, 2025

ZAKAY LAW GROUP, APLC

By: ______________________________

Jennifer Gerstenzang, Esq.