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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MARK DUTILLIEUL, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

METHODOLOGY, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No. C22-00759

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

Date:

Time:

Judge: Hon. Judge Charles S. Treat
Dept.: 12

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I. INTRODUCTION

Plaintiff MARK DUTILLIEUL (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class and Representative Action Settlement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 352 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all current and former non-exempt employees of defendant METHODOLOGY, INC. (“Defendant”) who worked for Defendant within the State of California (“Class”) from April 19, 2018 through August 16, 2023 (“Class Period”). Agreement at ¶¶ 3-4. The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at ¶ 4.

2. The “**PAGA Employees**” and “**PAGA Period**” means all Class Members that worked for Defendant (“PAGA Employees”) during the period of May 16, 2022 through August 16, 2023 (“PAGA Period”). Agreement at ¶¶ 11-12. PAGA Employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is Two Hundred Thousand Dollars (\$200,000.00). Agreement at ¶ 29(c). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Payment**” of not more than \$10,000.00 to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for a general release. Agreement at ¶ 29(o);

b. “**Attorneys’ Fees and Costs**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$66,666.66 *and* litigation costs and expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at ¶ 29(n);

c. A “**PAGA Allocation**” of Twenty Thousand Dollars (\$20,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Allocation (\$15,000.00) to the Labor and Workforce Development Agency (“PAGA Penalty

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

Payment”). Twenty-five percent (25%) of the PAGA Allocation (\$5,000.00) will be distributed to the PAGA Employees (“PAGA Settlement Payment”). Agreement at ¶ 10; and

d. “**Settlement Administration Costs**” not to exceed \$9,650.00 payable to the Settlement Administrator, Apex Class Action Administration, for, *inter alia*, the administration of the Notice Packet and Settlement Administration Costs. Agreement at ¶ 29(q).

4. The “**Net Settlement Amount**” of approximately \$73,683.34 (Gross Settlement Amount less the requested Service Payment, Attorneys’ Fees and Costs, PAGA Penalty Payment and Settlement Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The 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 Settlement Payment of **\$209.33**. Agreement at ¶¶ 17, 29(f)(i)(j); JCL Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage 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., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates a gourmet meal preparation business that prepares and delivers meals directly to consumers, including in California, where Plaintiff worked. Plaintiff worked for Defendant

1 as a material handler and as a delivery driver between 2018 and 2019. Plaintiff was employed as a
2 non-exempt employee, paid on an hourly basis. In addition to his base hourly rates, Plaintiff was also
3 entitled to, among other things, overtime pay and meal and rest periods. Throughout his employment,
4 Plaintiff was subject to Defendant's written policies and general employment practices. JCL Dec., ¶
5 8.

6 Generally, Plaintiff claims that Defendant, among other claims, failed to include non-
7 discretionary payments into the regular rate of pay for purposes of overtime, failed to provide compliant
8 meal and rest periods, and failed to reimburse employees for all necessary business expenses.
9 Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied
10 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
11 including but not limited to, facially compliant meal and rest period policies and compliant wage
12 statements. JCL Dec., ¶ 9.

13 On April 19, 2022, Plaintiff filed a class action complaint in the Contra Costa County Superior
14 Court, Case No. C22-00759 (the "Action"). The Action alleged ten causes of action against Defendant
15 for: (1) failure to pay overtime wages in violation of California *Labor Code* sections 510 and 1198; (2)
16 failure to provide required meal periods in violation of California *Labor Code* sections 226.7 and
17 512(a); (3) failure to provide required rest periods in violation of California *Labor Code* sections 226.7;
18 (4) failure to pay minimum wages in violation of California *Labor Code* sections 1194, 1197 and
19 1197.1; (5) failure to provide wages when due upon termination in violation of California *Labor Code*
20 sections 201 and 202; (6) failure to provide wages when due during employment in violation of
21 California *Labor Code* section 204; (7) failure to provide accurate itemized wage statements in
22 violation of California *Labor Code* section 226(a); (8) failure to keep requisite payroll records in
23 violation of California *Labor Code* section 1174(d); (9) failure to reimburse employees for necessary
24 business expenses in violation of California *Labor Code* sections 2800 and 2802; and (10) Unfair
25 Competition in violation of *Bus. and Prof. Code* §§ 17200. On March 19, 2024, Plaintiff filed a First
26 Amended Complaint to add a claim for violations of the Private Attorneys General Act ("PAGA"). JCL
27 Dec., ¶ 10.

28 After engaging in written discovery, the Parties agreed to mediate this action. To prepare for

1 mediation, the Parties agreed to informally produce additional documents and data points subject to the
2 mediation privilege, including but not limited to, the Class Members' time data and certain payroll data
3 points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting
4 Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 11.

5 On May 16, 2023, the Parties participated in a full day mediation with highly regarded wage and
6 hour mediator Judge Mitchel R. Goldberg (Ret.). Defendant raised an inability to pay defense prior to
7 the Parties' mediation. Judge Goldberg was selected to mediate the case due to his experience as a
8 bankruptcy judge specializing in cases where ability to pay is the main issue in dispute. Plaintiff also
9 retained Creal & Creal, an accountancy corporation that regularly performs litigation support and
10 forensic accounting services, including providing opinions to solvency. Kenneth Creal, CPA, reviewed
11 a number of financial documents and conducted an investigation into the assets owned by Defendant,
12 as well as tax returns, balance sheets, and profit and loss statements. The mediation concluded without
13 a settlement. However, the Parties continued to engage in settlement discussions, with the assistance of
14 Judge Goldberg, and reached an agreement after both sides agreed to a Mediator's proposal. The
15 settlement amount and payment terms were recommended to the Parties only after Judge Goldberg
16 completed a comprehensive review of Defendant's financials. The agreement was memorialized in the
17 form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form
18 settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 12.

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

20 Months before filing the Action, Class Counsel began its pre-filing investigation into the
21 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
22 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,
23 including portions of Defendant's handbooks, compensation policies and time and payroll records. At
24 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
25 inquiry. JCL Dec., ¶ 13.

26 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
27 Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff's
28 hiring documents, payroll and time records, performance reviews and separation documents. Class

Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, provide accurate wage statements and to provide compliant meal and rest periods. JCL Dec., ¶ 14.

Prior to mediation, Defendant produced a sample of time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to 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 thousands of unique cells of time and payroll data. JCL Dec., ¶ 15.

Class Counsel then retained the statisticians and economists at 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., ¶ 16.

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 shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of unpaid overtime due to the miscalculation of the regular rate of pay during the Class Period. JCL Dec., ¶ 17.

Prior to mediation, Class Counsel created several damage models predicated on BCG's analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 18.

C. The Parties Settled with the Assistance of the Mediator

On May 16, 2023, the Parties conducted a full day of mediation with Judge Mitchel R. Goldberg (Ret.). After more than eight hours of arm's length and adversarial negotiations, the mediation concluded without a settlement, but ultimately settled after both sides agreed to a Mediator's proposal.

1 The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class
2 Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the
3 claims at issue. JCL Dec., ¶¶ 22-24.

4 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

5 1. The Composition of the Settlement Class Members

6 The proposed Settlement Class consists of all current and former non-exempt employees of
7 Defendant who worked for Defendant within the State of California at any time between April 19, 2018
8 through August 16, 2023. The Settlement Class excludes any person who submits a timely and valid
9 request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was
10 comprised of 352 individuals that worked approximately 12,532 workweeks during the Class Period.
11 Agreement at ¶ 4.

12 2. The Settlement Consideration

13 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
14 Amount of \$200,000.00. The Gross Settlement Amount includes: (1) Settlement Payments to the
15 Settlement Class; (2) a Service Payment of \$10,000.00 to Plaintiff for his services on behalf of the
16 Settlement Class; (3) a PAGA Allocation in the amount of \$20,000.00; (4) Settlement Administration
17 Costs estimated at \$9,650.00; (5) Attorneys' Fees and Costs in the amount of \$91,666.66, comprised
18 of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$66,666.66 and
19 an estimated \$25,000.00 for actually incurred litigation expenses. See generally Agreement at ¶ 29(n).

20 Subject to the Court approving the Service Payment, Attorneys' Fees and Costs, PAGA Penalty
21 Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to
22 each participating member of the Settlement Class Member. Agreement at ¶ 29(f). There is no
23 reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes.
24 Agreement at ¶ 29(d)(h).

25 3. The Funding Date

26 Defendant will fund the Gross Settlement Amount through a payment plan spanning a 27-month
27 period. The first payment in the amount of \$7,407.40 shall be paid thirty days after the Parties execute
28 the long-form settlement agreement. Thereafter, Defendant will be responsible for submitting 25 equal

1 payments in the amount of \$7,407.40 every thirty days. The twenty-seventh and final payment will be
2 in the amount of \$7,407.60 and will be submitted thirty days after the twenty-sixth payment.
3 Agreement at ¶ 29(g).

4 4. Formula for Calculating Settlement Class Payments

5 Each Class Member will receive a Settlement Class Payment. The Settlement Class Payments
6 will be proportional to the number of Covered Workweeks each Class Member worked for Defendant
7 in California during the Class Period. The Class Data provided by Defendant to the Settlement
8 Administrator will include the number of Covered Workweeks for each Class Member and the number
9 of PAGA Pay Periods worked during the relevant periods. Each Class Member's final Settlement Class
10 Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the
11 Class Member's total number of Covered Workweeks, and the denominator of which is the total
12 number of Covered Workweeks of all Class Members. Each Settlement Class Payment will be reduced
13 by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Settlement
14 Class Payments for members of the Settlement Class who submit valid and timely requests for
15 exclusion will be redistributed to Settlement Class Members who do not submit valid and timely
16 requests for exclusion on a pro rata basis. Agreement at ¶ 29(i).

17 Given that there are approximately 352 Settlement Class Members, the average gross recovery
18 is approximately \$209.33 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
19 ¶ 6.

20 5. Release by Settlement Class Members

21 Generally, upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of
22 Defendant's obligation to provide the Settlement Administrator a sum in the amount required to satisfy
23 all required payments and distributions to the Settlement and the Order and Judgment of final approval,
24 Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released
25 Class Claims (all claims stated in the Action, or that could have been stated based on the facts alleged
26 in the Action, implicitly or explicitly, including but not limited to state wage-and-hour claims
27 (including all claims under the California Labor Code) for unpaid minimum and overtime wages, meal
28 and rest period violations, untimely payment of wages, wage statement violations, recordkeeping

violations, unreimbursed business expenses, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including but not limited to Labor Code §§ 201-203, 204, 210, 218.6, 226, 226.3, 226.7, 246, 510, 512, 1174, 1194, 1197, 1198, 1197.1, 2800, 2802, derivative claims under California Business & Professions Code §§ 17200, *et seq.*, and all claims under the governing Wage Orders). Agreement at ¶¶ 15, 40.

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

Generally, upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions to the Settlement and the Order and Judgment of final approval, Plaintiff, acting as the representative of the State of California, on behalf of the PAGA Employees, will release the Released Parties from all claims *for civil penalties* under PAGA that have been pleaded or could have been pleaded, based upon the factual allegations and issues set forth in the Notice to the LWDA and alleged in Plaintiff's First Amended Complaint, including civil penalties under PAGA, fees, and all other claims under PAGA based on allegations made or which could have been made in the Action based on the facts and allegations pleaded in Plaintiff's Notice to the LWDA and the Complaint, including claims for PAGA penalties arising from allegations of unpaid minimum and overtime wages, failure to provide meal periods, failure to authorize rest periods, failure to provide accurate wage statements, failure to timely pay wages during employment, failure to timely pay final wages, failure to keep records, and failure to indemnify necessary business expenditures. Agreement at ¶¶ 15, 40.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$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.")) 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.

1 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
2 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
3 inquire into the fairness of the proposed settlement”).)

4 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
5 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
6 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
7 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
8 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
9 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
10 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
11 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
12 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
13 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
14 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
15 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
16 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
17 action litigation”).)

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

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

26 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
27 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
28 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is

1 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
2 § 11.51.)

3 The Parties participated in mediation the highly respected mediator Judge Mitchel R. Goldberg
4 (Ret.). Judge Goldberg managed the Parties' expectations and provided a useful, neutral analysis of
5 the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF
6 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs
7 considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir.
8 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to
9 ensure that the proceedings were free of collusion and undue pressure.")) At all times, the Parties'
10 negotiations were at an arm's length, adversarial and non-collusive. Additionally, Judge Goldberg was
11 selected to mediate the case due to his experience as a bankruptcy judge specializing in cases where
12 ability to pay is the main issue in dispute. The matter resolved only when Judge Goldberg issued a
13 Mediator's proposal that the Parties accepted after further settlement discussions. Judge Goldberg only
14 arrived at his proposal after hearing arguments, reviewing evidence, completing a comprehensive
15 review of Defendant's financials, and evaluating the Parties' respective claims and defenses. JCL Dec.,
16 ¶ 24.

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

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

24 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
25 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
26 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
27 Although no two cases are identical, this research provided Class Counsel with a marker to inform
28 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed

1 Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense
2 counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL
3 Dec., ¶ 20.

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

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

11 The Gross Settlement Amount of \$200,000.00 is within the range of reasonableness. To
12 determine whether a settlement is fair and reasonable, the court should "consider enough information
13 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
14 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
15 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
16 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
17 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such
18 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
19 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*
20 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
21 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
22 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

23 ² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
24 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
28 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").

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 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding potential statutory and PAGA Penalties) at \$1,454,629.00 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 13.75% of Defendant’s class-wide exposure. The following summarizes Plaintiff’s analysis of Defendant’s liability exposure. JCL Dec., ¶ 25.

(1) Defendant’s Estimated Exposure for Failure to Pay for All Hours Worked

Plaintiff’s primary claim in the Action alleged Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserts that Defendant failed to include non-discretionary payments in calculating the regular rate of pay when paying overtime. Plaintiff’s expert identified that Class Members were paid non-discretionary bonus payments in the form of “Additional Earnings” and “Bonuses.” However, these incentive payments were not calculated into the Class Members’ regular rate of pay for purposes of calculating overtime pay. JCL Dec., ¶ 26.

Defendant vigorously denied liability for this claim. Defendant argued that non-discretionary incentive payments were included in the regular rate of pay and any incentive payments not included in the regular rate of pay were discretionary in nature. Plaintiff estimated Defendant’s exposure for this claim at \$4,075.00, but also subjected Defendant to derivative waiting time and wage statement penalties. JCL Dec., ¶ 27.

(2) Estimated Damages for Meal Period Violations

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,

1 Plaintiff assert that Defendant regularly failed to provide a second meal period on all shifts of more
2 than ten (10) hours, and to a lesser extent, failed to provide compliant first meal periods on shifts
3 exceeding five (5) hours. Consequently, Plaintiff alleges that he is owed meal period premiums for
4 meal period violations that occurred during the Class Period. JCL Dec., ¶ 28.

5 Conversely, Defendant denied these claims. Defendant maintains that it fully complied with
6 California meal period laws and maintained legally compliant policies and practices. Courts have found
7 that where an employer's meal period policies are compliant, individualized issues exist as to the
8 reasons for missed, late or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical*
9 *Center*, (2018) 19 Cal.App.5th 832, 851 (holding that although only 11.1% of the employees' time
10 punches for meal periods were within the first 5 hours, the claim was not certifiable because
11 individualized issues existed as to the reasons for the late meal periods). If successful, Defendant
12 availed itself to a complete defense of Plaintiff's meal period claim. Defendant also asserted that it
13 paid meal period premiums to its employees in those pay periods when meal period violations occurred
14 throughout the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff's
15 alleged meal period violations. JCL Dec., ¶ 29.

16 Plaintiff's meal period claim (together with the rest period claim) likely represented the most
17 factually contested claim in the Actions. Accounting for the strength of Defendant's defenses, and the
18 arguably individualized nature of the claim, Plaintiffs estimated the damages for this claim at
19 \$675,942.00. JCL Dec., ¶ 30.

20 (3) Estimated Damages for Rest Period Violations

21 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
22 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were
23 required to remain on the premises and on-call, and were unable to take timely and duty-free rest
24 periods. JCL Dec., ¶ 31.

25 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
26 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
27 burdens in establishing this claim. Establishing Plaintiff's rest period claim would depend, almost
28 entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages.

1 Defendant likely would have argued that only a small number of Class Members missed their rest
2 breaks. Certification likely would have required depositions of Class Members who provided
3 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
4 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
5 Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court,
6 plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this
7 Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D.
8 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
9 written policy does not generate uniform practices.”). Plaintiff estimated Defendant’s exposure for this
10 claim at \$675,942.00. JCL Dec., ¶ 32.

11 (4) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

12 Plaintiff alleged Defendant failed to reimburse Class Members for all necessary business
13 expenses. Specifically, Plaintiff asserts that Defendant failed to reimburse Class Members for the use
14 of their personal cell phones for Defendant’s benefit. JCL Dec., ¶ 33.

15 Defendant argued that Class Members were not required to use their personal cell phones for
16 work purposes and were instead prohibited from using their personal cell phones during their shifts.
17 Plaintiff estimated Defendant’s exposure for this claim at \$98,670.00. JCL Dec., ¶ 34.

18 (5) Defendant’s Exposure for Wage Statement Violations and Waiting Time
19 Penalties

20 Plaintiff also alleged that the Defendant’s labor code violations resulted in derivative liability
21 for wage statement violations and waiting time penalties. Class Counsel considered the arguable
22 presence of various penalties and weighed the potential recoveries against probable defenses.
23 Specifically, Defendant argued that Plaintiff could not prove the “willful” prong needed to obtain
24 waiting time penalties under Labor Code section 203. Additionally, Defendant argued that Plaintiff
25 could not show that Class Members suffered an “injury” because of wage statement violations, as
26 required by Labor Code section 226. *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th
27 927. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant’s exposure for
28

1 waiting time penalties to be approximately \$1,202,413.00 (\$962,613.00 for LC 203 penalties and
2 \$239,800.00 for LC 226 penalties). JCL Dec., ¶ 35.

3 (6) Defendant's PAGA Exposure

4 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
5 the time of mediation, Plaintiffs estimated Defendant's PAGA exposure at \$1,228,000.00. JCL Dec., ¶
6 36. The proposed PAGA allocation of the Gross Settlement Amount is fair, just and reasonable. *Moniz*
7 *v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount"
8 for PAGA penalties and "there is no indication that this amount was the result of self-interest at the
9 expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands*
10 *Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve
11 of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9
12 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA),
13 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie*
14 *v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23,
15 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent
16 of the total settlement).

17 Here, the Parties negotiated a good faith PAGA Allocation in the amount of \$20,000.00 which is
18 10% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
19 Allocations. Seventy-Five percent (75%) of the PAGA Settlement (\$15,000.00) will be paid to the
20 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed to the
21 PAGA Employees, which is within the range of PAGA penalties approved by courts and should be
22 approved. JCL Dec., ¶ 37.

23 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
24 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
25 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
26 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
27 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
28 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class

1 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
2 6, 2016) (PAGA penalties denied after trial).

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

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

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

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

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

1 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
2 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
3 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
5 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
6 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
7 settlement. JCL Dec., ¶¶ 38-39.

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

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

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

18 Finally, continuing to litigate this action would require continued and extensive resources
19 coupled with significant Court time to proceed through trial and post-trial motions; which can often
20 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
21 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
22 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
23 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
24 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and the
25 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
26 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
27 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
28 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

1 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$200,000.00 that is
2 roughly a recovery of 13.75% of Defendant’s class-wide exposure. Given the amount of the settlement
3 here, as compared to potential value of the claims, offset by the various inherent risks to continued
4 litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

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

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

15 The Parties jointly drafted the Class Notice, which fairly and neutrally informs the Class
16 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
17 mail the proposed Class Notice to all Class Members. The Class Notice will include information
18 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
19 definition, the procedure, and time period within which to requests for exclusions or objections to the
20 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
21 and the terms and scope of the Released Claims. Agreement at ¶ 29(s). This method was negotiated
22 by the Parties to ensure delivering the most reasonable method of notice to the Class Members while
23 ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 42.

24 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
25 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 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.

(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 Payment

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Service Payment of \$10,000 for Plaintiff. The service payment is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of 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 Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of his employment. JCL Dec., ¶ 44.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Payment. JCL Dec., ¶ 45.

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

The purpose of an award of Attorneys’ Fees and Costs in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix*,

1 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
2 percentage method or the lodestar method is used, fee awards in class actions average around one-third
3 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
4 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
5 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
6 one-third fee is consistent with market rates).)

7 Class Counsel took this matter on a contingency fee basis and invested significant time and
8 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
9 Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members.
10 Considering the positive outcome for the Class Members, and in light of the supporting authority, the
11 proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 46.

12 Attorneys for Plaintiff have entered a Fee Sharing Agreement, which is attached to the
13 Declarations of Class Counsel in compliance with Cal Rules of Court 3.769(b). Plaintiff will file a
14 formal motion for the negotiated Attorneys’ Fees and Costs once preliminary approval of the Settlement
15 is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval
16 of the negotiated attorneys’ fees. JCL Dec., ¶ 47.

17 **E. Provisional Certification for Settlement Purposes is Appropriate**

18 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
19 of the Class is appropriate. JCL Dec., ¶ 48.

20 1. The Standard for Class Certification

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

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

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

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

In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Brinker*, 53 Cal. 4th at 1021-1022 (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., ¶ 49.

The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire Settlement 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 Settlement Class. JCL Dec., ¶ 50.

Plaintiff’s wage and hour claims are typical of the proposed Settlement 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 Settlement Class. Plaintiff alleges that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated their ability to advocate for the interests of the Class Member by initiating this litigation, undertaking

1 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
2 51.

3 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
4 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
5 gained state court settlement approval of the same class-wide causes of action that are at issue in this
6 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
7 represent the interests of this Class. JCL Dec., ¶¶ 53-60, Declaration of Shani Zakay, ¶¶ 1-3.

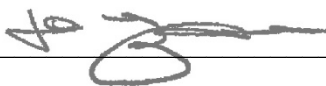
8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each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

13 IV. CONCLUSION

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

17
18 Dated: March 26, 2024

JCL LAW FIRM, APC

19 By: 
20 Jean-Claude Lapuyade, Esq.