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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

PASSION MORRIS, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HABERFELDE FORD, a California corporation;
JIM BURKE FORD LINCOLN, an unknown
business entity; and DOES 1 through 100,
Inclusive,

Defendants.

Case No. BCV-23-100471

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

Date: August 13, 2024

Time: 8:30 a.m.

Location: Metropolitan Division Justice
1415 Truxtun Ave
Bakersfield, CA 93301

Judge: Hon. Thomas S. Clark

Dept.: 17

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.....23

1 **I. INTRODUCTION**

2 Plaintiff PASSION MORRIS (“Plaintiff”) respectfully submits this memorandum in support
3 of her Motion for Preliminary Approval of the Class Action and PAGA Settlement of the action
4 *Passion Morris v. Haberfelde Ford, et al.*, (Case No. BCV-23-100471, operative complaint filed
5 on or about February 14, 2023) (the “Action”), filed against Defendants Haberfelde Ford and Jim
6 Burke Ford Lincoln (“Defendants”). Plaintiff seeks entry of an order: (1) preliminarily approving
7 the proposed settlement of the Action with Defendants; (2) approving the form and method for
8 providing class-wide notice; (3) directing that notice of the proposed settlement be given to the
9 class; and (4) scheduling a final approval hearing date to consider Plaintiff’s motion for final
10 approval of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of
11 attorneys’ fees and litigation expenses.

12 Plaintiff and Defendants have reached a full settlement of the Action, which is embodied in
13 the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims¹ (the
14 “Agreement”), a copy of which is attached as Exhibit #1 to the Declaration of Jackland K. Hom
15 (“Decl. Hom”), served and filed herewith. The Settlement is fair, reasonable, and adequate, and
16 should be preliminarily approved. Plaintiff respectfully requests that this Court grant preliminary
17 approval of the Agreement and enter the proposed order submitted herewith.

18 **II. DESCRIPTION OF THE SETTLEMENT**

19 The Gross Settlement Amount to be paid by Defendants is One Million Five Hundred
20 Thousand Dollars and Zero Cents (\$1,500,000.00). (Agreement at I(F); I(Q); III(A)(1). The Gross
21 Settlement Amount consists of the following elements: (1) the Individual Settlement Payments to
22 Settlement Class Members, (2) Aggrieved Employee Payments, (3) the PAGA Penalties, (4)
23 Attorneys’ Fees, (5) Attorneys’ Expenses, (collectively “Attorneys’ Fees and Expenses”) (6)
24 Enhancement Award, and (7) Administration Costs. (Agreement at I(Q)). The Gross Settlement
25 Amount excludes Defendants’ share of employer payroll taxes, which Defendants shall pay to the
26 Administrator separately. (Agreement at III(A)(1)). The Gross Settlement Amount shall be all-in

27 _____
28 ¹ All citations to the Agreement incorporate by this reference a citation to the Declaration of Jackland K. Hom (“Decl. Hom”), filed concurrently herewith. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 with no reversion to Defendants. (*Id.*)

2 After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in
3 the Agreement), Defendants will fund the Gross Settlement Amount within thirty (30) days of the
4 Court’s entry of an order granting final approval of the settlement. (Agreement at I(N), I(P)). Within
5 fifteen (15) days after Defendants fund the Gross Settlement Amount, the Administrator will mail
6 checks for Individual Settlement Payments, Aggrieved Employee Payments, the LWDA Payment,
7 the Administration Costs, the Enhancement Award, the Attorneys’ Fees and Expenses. (Agreement
8 at III(M)(7)).

9 The Net Settlement Amount shall equal the amount available for Individual Settlement
10 Payments after deducting the Court-approved amounts for the Aggrieved Employee Payments, the
11 LWDA Payment, Enhancement Award, Attorneys’ Fees and Expenses, and the Administration
12 Costs. Agreement at I(S). The Individual Settlement Payments will be calculated as follows: The
13 Settlement Administrator shall add up the total number of Workweeks for all Class Members. The
14 respective Workweeks for each Class Member will be divided by the total Workweeks for all Class
15 Members, resulting in the Payment Ratio for each Class Member. Each Class Member’s Payment
16 Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member’s
17 estimated Individual Settlement Payments. (Agreement at III(M)(1)).

18 Class Members will have forty-five (45) days after the mailing of the Class Notice to exclude
19 themselves or submit written objections. Agreement at I(II). The deadlines will be extended an
20 additional fifteen (15) calendar days for Class Members whose notice is re-mailed. Agreement at
21 III(L)(4). All Class Members who do not submit a valid Request for Exclusion form will be deemed
22 Settlement Class Members and will be bound by the Settlement. The Notice will advise the Class
23 Members of their right to object to the Settlement. (Agreement at III(L)(8)).

24 If a check is returned to the Settlement Administrator, the Settlement Administrator will
25 make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-mail
26 the check to the Settlement Class Member at his or her correct address. (Agreement at III(L)(4)). If
27 a Settlement Class Member’s Individual Settlement Payment check is not cashed within 180 days
28 after the Settlement Administrator’s last mailing to the Settlement Class Member, all funds

1 represented by such uncashed checks, plus any interest accrued thereon, shall be paid to the Court
2 Appointed Special Advocates (CASA) of Kern County pursuant to California Code of Civil
3 Procedure section 386. (Agreement at III(M)(8)).

4 The Parties have agreed to use APEX Class Action, LLC as the Settlement Administrator.
5 Payment of the expenses of the Settlement Administrator from the Gross Settlement Amount shall
6 be made for the expenses of effectuating and administering the Settlement. The Settlement
7 Administrator shall receive payment for services estimated at approximately Ten Thousand Dollars
8 and Zero Cents (\$10,000.00). Agreement at I(B); III(M)(12); Decl. Hom at ¶ 5. A declaration from
9 APEX Class Action, LLC outlining its qualifications and providing for the estimated administration
10 costs is filed concurrently with this Motion.

11 Subject to Court approval, the Agreement provides for Attorneys' Fees not to exceed Thirty-
12 Five (35) percent of the Gross Settlement Amount, currently estimated to be \$1,500,000.00, and
13 Attorneys' Expenses, not to exceed \$25,000. (Agreement at I(E), I(F), III(M)(10)). Subject to Court
14 approval, the Agreement provides for payment of an Enhancement Award to Plaintiff of no more
15 than \$10,000, or such lesser amount as may be approved by the Court at Final Approval.²
16 (Agreement at I(O)). (Decl. Hom at ¶¶ 40, 43.)

17 Subject to Court approval, \$50,000 of the Gross Settlement Amount will be allocated for
18 settlement of claims for civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to
19 the requirements of Labor Code §2699(i), the Settlement Administrator shall pay 75% of this
20 amount (\$37,500.00) to the California Labor and Workforce Development Agency ("LWDA") as
21 the LWDA's share of the settlement of civil penalties ("LWDA Payment"), and 25% (\$12,500.00)
22 shall be distributed as individual payments to the Aggrieved Employees ("Aggrieved Employee
23 Payment"). Aggrieved Employee Payments will be calculated as follows: The Settlement
24 Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees
25 during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will
26

27 ² Plaintiff will address the reasonableness of this award when filing their final approval papers, including the
28 enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA
2 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio
3 will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved
4 Employee’s estimated share of the Aggrieved Employee Payment. (Agreement at I(W);
5 III(M)(11)).

6 **III. CASE BACKGROUND**

7 On February 14, 2023, Plaintiff filed her class action complaint alleging ten causes of action
8 for; (1) Violation of Cal. Lab. Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal. Lab.
9 Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of Cal. Lab. Code § 226.7
10 (Unpaid Rest Period Premiums); (4) Violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1 (Unpaid
11 Minimum Wages); (5) Violation of Cal. Lab. Code §§ 201 and 202 (Final Wages Not Timely Paid);
12 (6) Violation of Cal. Lab. Code § 204 (Wages Not Timely Paid During Employment); (7) Violation
13 of Cal. Lab. Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of Cal. Lab. Code §
14 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of Cal. Lab. Code §§ 2800 and
15 2802 (Unreimbursed Business Expenses); and (10) Violation of Cal. Business & Professions Code
16 §§ 17200, *et seq.* (Decl. Hom at ¶ 10.)

17 Plaintiff’s complaint alleged that Defendants failed to provide compliant meal and rest
18 periods, failed to allow employees to take duty-free meal and rest periods, failed to pay all
19 minimum, regular and overtime wages, failed to correctly calculate the regular rate of pay, failed to
20 pay for all hours worked, failed to maintain true and accurate records; failed to reimburse employees
21 for required business expenditures, failed to provide accurate itemized wage statements, and failed
22 to timely pay wages due during, and upon termination of employment. *Id.* Shortly after filing the
23 action, the Parties engaged in written discovery. Prior to the Parties’ respective discovery response
24 deadlines, the Parties agreed to attend private mediation. Prior to mediation, the Parties agreed to
25 informally exchange documents and information in connection with the Action. As part of this
26 process, Defendants provided time and pay records for 218 employees, approximately 33.9% of the
27 total Class. Plaintiff’s statistician found this to be sufficient to develop a meaningful damages
28 model. Additionally, the 33.9% sample is statistically reliable, approximately resulting in a

1 confidence level of 95% with a margin of error of 5.4%. In addition to the time and payroll records,
2 Defendants produced written policies and agreements contained in, among other things, the
3 Employee Policy Handbook. (Decl. Hom at ¶ 11.)

4 On March 15, 2024, the Parties participated in an all-day mediation presided over by Brian
5 Sinclair, Esq., a mediator of wage and hour class actions. After arms-length negotiations and
6 bargaining, the Parties reached a settlement in principle of \$1,500,000, with the understanding that
7 this settlement would also include not only a release of the PAGA claims alleged, but also a release
8 of class claims for the same Labor Code violations, and within the same time period. The Parties
9 thereafter documented the agreement in the form of a Settlement Agreement, which was signed by
10 the Parties and is now presented to this Court for preliminary approval. (Decl. Hom at ¶ 12.)

11 In order to facilitate the Settlement, on March 18, 2024, Plaintiff filed a Notice of Violations
12 with the LWDA and served the same on Defendants. On July 3, 2024, Plaintiff filed a First
13 Amended Complaint to add an additional cause of action for violations of the Private Attorneys
14 General Act, California Labor Code section 2698, *et seq.* (Decl. Hom at ¶ 13.)

15 Plaintiff seeks to represent a putative class of all non-exempt employees who are or
16 previously were employed by Defendants, who performed work in California during the period of
17 February 14, 2019 through June 13, 2024 (the “Class Period”). The Action seeks unpaid wages,
18 statutory and PAGA penalties, attorneys’ fees, and litigation costs³. Plaintiff also seeks to represent
19 a PAGA group of Aggrieved Employees which is comprised of all non-exempt employees who are
20 or previously were employed by Defendants, who performed work in California during the period
21 of February 12, 2023 through June 13, 2024 (the “PAGA Period”). (Decl. Hom at ¶ 14.)

22 Although a resolution has been reached, Defendants deny that they have violated any
23 applicable law, committed any wrong against Plaintiff or any other current or former employee, or
24 that they have otherwise damaged Plaintiff or any other current or former employee in any way.
25 Further, Defendants contend that class certification would be inappropriate for any reason other
26 than for settlement. Plaintiff contends that Defendants violated California wage and hour laws.

27
28 ³ Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Plaintiff further contends that the Action is appropriate for class certification on the basis that the
2 Plaintiff's claims meet the requisites for class certification. Without admitting that class certification
3 is proper, Defendants have stipulated that the above Class may be certified for settlement purposes
4 only. (Agreement at III(AA)). The Parties agree that certification for settlement purposes is not an
5 admission that class certification would be proper if the class certification issues were litigated.
6 (Agreement at III(BB)).

7 Class Counsel has conducted a thorough investigation into the facts of the action. Class
8 Counsel has diligently evaluated the Class Members' claims against Defendants. Prior to the
9 mediation, counsel for Defendants provided Class Counsel with access to the necessary data and
10 information as noted above to evaluate the claims by the Class. Class Counsel reviewed the
11 production of documents from the Defendants and conducted an extensive review of a significant
12 sample of time records and data with the assistance of an expert, Berger Consulting Group
13 ("BCG"). Based on the foregoing and their own independent investigation, evaluation and
14 experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the
15 best interest of the Class in light of all known facts and circumstances, including the risk of
16 significant delay, defenses asserted by Defendants, and potential appellate issues. (Decl. Hom at ¶
17 15.)

18 IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS 19 COURT TO GRANT PRELIMINARY APPROVAL

20 When a proposed class-wide settlement is reached, the settlement must be submitted to the
21 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
22 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
23 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
24 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
25 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*
26 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
27 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)
28

1 The primary question presented on an application for preliminary approval of a proposed
2 class action settlement is whether the proposed settlement is “within the range of possible approval.”
3 (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
4 (7th Cir. 1982).) Preliminary approval is merely the prerequisite to giving notice so that “the
5 proposed settlement... may be submitted to members of the prospective Class for their acceptance
6 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
7 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
8 LEXIS 151997, *3 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed
9 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
10 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
11 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
12 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and
13 adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly
14 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).)
15 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
16 is made after notice of the settlement is given to the Class Members and a final settlement hearing
17 is held by the Court.

18 **A. The Role of The Court in Preliminary Approval of a Class Action Settlement**

19 Approval of a proposed settlement of a class action suit is a matter within the broad
20 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
21 In considering a potential settlement for preliminary approval purposes, the trial court does not have
22 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
23 dispute, and need not engage in a trial on the merits. (*Wershba*, *supra*, 91 Cal. App. 4th at 239-40;
24 *Dunk*, *supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a
25 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
26 *for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).)
27 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
28 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of

1 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
2 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
3 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
4 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
5 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With
6 regard to class action settlements, the opinions of counsel should be given considerable weight both
7 because of counsel’s familiarity with this litigation and previous experience with cases such as
8 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
9 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
10 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
11 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

12 **B. Factors To Be Considered in Granting Preliminary Approval**

13 In determining whether to grant preliminary approval, the court considers whether the “(1)
14 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
15 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
16 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
17 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
18 determinative. Here, the Settlement meets all of these criteria for preliminary approval.

19 **1. The Settlement is the Product of Serious, Informed and Arm’s Length**
20 **Negotiations by Experienced Counsel**

21 This Settlement is the result of extensive and hard-fought litigation and negotiations before
22 an experienced and well-respected mediator. Defendants denied and continue to deny any
23 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
24 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
25 Released Class Claims and Released PAGA Claims. The Released Class Claims include all class
26 claims alleged in the operative complaint, or which could have been alleged in the operative
27 complaint based on the facts alleged, which occurred during the Class Period, and expressly
28 excluding all other claims, including claims for vested benefits, wrongful termination,

1 unemployment insurance, disability, social security, workers' compensation, and class claims
2 outside of the Class Period. (Agreement at I(EE)).

3 The Released PAGA Claims include all PAGA claims alleged in the operative complaint in
4 the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period,
5 and expressly excluding all other claims, including claims for vested benefits, wrongful termination,
6 unemployment insurance, disability, social security, workers' compensation, and PAGA claims
7 outside of the PAGA Period. (Agreement at I(FF)).

8 Plaintiff and Class Counsel recognize the expense and time involved in continuing to litigate
9 and ultimately trying the Action against Defendants through possible appeals which could take
10 several years. Class Counsel have also taken into account the uncertain outcome and risk of
11 litigation, especially in complex actions such as the one here. Class Counsel are also mindful of,
12 and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted
13 in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the
14 Settlement set forth in the Agreement is in the best interest of the Class Members. (Decl. Hom at ¶
15 16.)

16 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
17 capable advocacy on both sides. The Parties were represented by experienced counsel who
18 zealously advocated their respective positions with the assistance of an experienced mediator.
19 Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were
20 vigorously conducted at arms' length and without any suggestion of undue influence." (*In re Wash.*
21 *Public Power*, 720 F. Supp. at 1392.)

22 **2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of** 23 **Approval**

24 The proposed Settlement here has no "obvious deficiencies" and is well within the range of
25 possible approval. All Class Members will receive an opportunity to participate in the Settlement
26 and receive payment according to the same formula if they do not opt out.

27 The Gross Settlement Amount of \$1,500,000.00 is within the range of reasonableness. To
28 determine whether a settlement is fair and reasonable, the court should "consider enough

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

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

15 The Gross Settlement Amount of \$1,500,000.00 is fair and reasonable considering the nature
16 and magnitude of the claims being settled and the various potential impediments to recovery. Prior
17 to mediation, Class Counsel retained BCG to develop economic damage models measuring
18 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
19 various models were informed by Class Counsel’s investigation, including the analysis of a
20 significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure
21 for *class claims* (excluding penalties) at \$3,328,403.50 and Defendants’ *maximum* exposure
22 (including waiting time and wage statement penalties) at \$5,905,445.50. Thus, the Gross Settlement
23 Amount of \$1,500,000.00 represents approximately 45% of Defendants’ *class-wide* liability
24 exposure and 25.4% of Defendants’ *maximum* exposure. Decl. Hom at ¶ 17. Defendants’ estimated
25 exposure is summarized below.

26 **i. Exposure for Failure to Properly Calculate Employees’ Regular Rate of Pay**

27 Plaintiff alleges Defendants failed to include certain non-discretionary bonuses when
28 calculating the regular rate of pay in paying meal period premiums. Defendants paid Class Members

1 non-discretionary incentive compensation in the form of various bonus payments. This
2 performance-based bonus compensation was required to be calculated into the regular rate of pay
3 for purposes of meal period premiums. In reviewing the paystubs, it is clear that the bonus
4 compensation was not calculated into the regular rate of pay. Plaintiff estimates Defendants'
5 exposure for the underpayment of meal period premiums caused by Defendants' failure to properly
6 take into account non-discretionary bonuses when calculating employees' regular rate of pay for
7 meal period premiums to be \$196,489. Decl. Hom at ¶ 18.

8 **ii. Exposure for Meal and Rest Period Violations**

9 Plaintiff also alleged in this action that Defendants consistently violated the law by failing
10 to provide meal periods. Even when Defendants did provide meal breaks, they regularly violated
11 the law by providing late, short, and interrupted meal and rest periods. Specifically, Plaintiff and
12 Class Members were required to perform work-related tasks during their meal and rest periods,
13 including but not limited to, fulfilling orders, assisting customers and receiving and responding to
14 work-related communications. In total, Class Counsel estimated Defendants' exposure for the meal
15 and rest claims at \$2,332,664. Decl. Hom at ¶ 19.

16 Defendants argued, inter alia, that it provided the Class Members with compliant meal and
17 rest periods and maintained facially compliant meal and rest period policies, such that any missed
18 meal and rest periods were by choice of each individual Class Member. Thus, Defendants argued
19 that there was no potential liability for Plaintiff's alleged meal and rest period violations and any
20 claimed violations required a highly individualized inquiry not suitable to class treatment. Decl.
21 Hom at ¶ 20.

22 **iii. Exposure for Work Performed Off-The-Clock**

23 Plaintiff alleges Defendants required Plaintiff and Class Members to perform work related
24 trainings and other work-related tasks "off-the-clock". Specifically, Plaintiff alleges that she and
25 Class Members were required to undergo mandatory Covid-19 health screenings, including
26 temperature checks, before clocking in for their shifts. Further, Plaintiff and Class Members were
27 required to engage in work-related communications prior to clocking in for their shifts. Plaintiff and
28 Class Members were prohibited from clocking in before undergoing mandatory Covid-19

1 temperature checks because Defendants did not allow employees work if they exhibited any
2 symptoms. Similarly, Plaintiff was not able to clock in before participating in work-related
3 communications with supervisors and salespeople because these conversations occurred as soon as
4 employees entered the work premises and prior to clocking in. Decl. Hom at ¶ 21.

5 Defendants vigorously denied liability for this claim. Defendants argued that Plaintiff and
6 Class Members were paid for all their time worked and any time spent performing off-the-clock
7 tasks was voluntary, de minimus and, thus, not compensable. As such, Defendants argued that all
8 Class Members were properly paid minimum and overtime compensation for all hours worked.
9 Plaintiff estimated Defendants' exposure for this claim at \$639,070.50. Decl. Hom at ¶ 22.

10 **iv. Exposure for Unreimbursed Business Expenses**

11 Plaintiff further alleged that Defendants required the Class to use personal cell phones to
12 receive and respond to work-related communications with supervisors, co-workers and customers.
13 California employers who require employees to use a personal cellular device for work purposes
14 must reimburse the employee for the cost incurred in furnishing the device, including voice and
15 data service. (See *Cal. Labor Code* § 2802(a), providing that "An employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
18 employer...".) Defendants vigorously denied liability for this claim and argued that employees
19 were not required to use their personal cell phone for work-related purposes and all incurred
20 personal expenses, if any, were fully reimbursed. Plaintiff estimated Defendants' exposure for this
21 claim at \$160,180 or \$10 per month for each member of the Class during the Class Period. Decl.
22 Hom at ¶ 23.

23 **v. Exposure for Wage Statement Violations and Waiting Time Penalties**

24 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative
25 liability for wage statement violations and waiting time penalties. Class Counsel considered the
26 arguable presence of various penalties and weighed the potential recoveries against probable
27 defenses. Specifically, Defendants argued that Plaintiff could not prove the "willful" prong needed
28 to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants argued

1 that Plaintiff could not show that Class Members suffered an “injury” because of wage statement
2 violations, as required by Labor Code section 226. (*Naranjo v. Spectrum Security Services, Inc.*
3 (2023) 88 Cal.App.5th 927.) Notwithstanding the uncertain nature of the claims, Plaintiff estimated
4 Defendants’ exposure for these penalties to be approximately \$2,577,042 (\$1,285,692 for Labor
5 Code section 203 penalties and \$1,291,350 for Labor Code section 226 penalties). Decl. Hom at ¶
6 24.

7 **vi. Defendants’ PAGA Exposure**

8 In total, Class Counsel projected Defendants’ liability exposure for PAGA claims at
9 \$2,427,400 if successful at trial. Decl. Hom at ¶ 25. The proposed PAGA allocation of the Gross
10 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
11 56, 77. Where settlements “negotiate a good faith amount” for PAGA Payment and “there is no
12 indication that this amount was the result of self-interest at the expense of class members,” such
13 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
14 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
15 Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
16 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942,
17 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
18 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
19 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
20 the total settlement).

21 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of
22 \$50,000 which is 3.3% of the Gross Settlement Amount. This amount falls well within the range of
23 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500.00) will
24 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
25 PAGA Penalties (\$12,500.00) will be distributed to the Aggrieved Employees, which is within the
26 range of PAGA Penalties approved by courts and should be approved. Decl. Hom at ¶ 26.

27 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming*
28 *v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA

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

7 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
8 the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
9 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
10 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
11 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee
12 suffered a violation for each pay period the employee worked. Again, Defendants raised several
13 defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees.
14 In addition to those arguments discussed *supra*, Defendants also argued that the Court of Appeals
15 decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on
16 liability, value, and manageability as to the rest period claims. Decl. Hom at ¶ 27.

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

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

25 **3. Inherent Risks of Continued Litigation Support Preliminary Approval.**

26 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court
27 cannot and need not determine the merits of the contested facts and legal issues at this stage,
28 [Citation], and to the extent courts assess this factor, it is to 'determine whether the decision to settle

1 is a good value for a relatively weak case or a sell-out of an extraordinary strong case.” (*Misra v.*
2 *Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
4 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
5 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and
6 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
7 overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner*
8 *v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour
9 misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31
10 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
11 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might
12 not take their breaks were predominantly individualized questions of fact not susceptible to class
13 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
14 certification because employees’ declarations attesting to having taken meal and rest breaks
15 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
16 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
17 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
18 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
19 certification of driver meal and rest period claims based on the predominance of individual issues).
20 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
21 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
22 risk factor favoring settlement. Decl. Hom at ¶ 28.

23 “The Settlement eliminates these and other risks of continued litigation, including the very
24 real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.
25 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through
26 trial is inherently perilous regardless of the strengths of merits of the claims: [N]othing is assured
27 when litigating against commercial giants with vast litigative resources, particular in such complex
28 litigation as this, which would strain the cognitive capacities of any jury. Defense judgments were

1 hardly beyond the realm of possibility. Accordingly, this factor weighs in favor of preliminary
2 approval. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June
3 18, 1990).)

4 Finally, continuing to litigate this action would require continued and extensive resources
5 coupled with significant Court time to proceed through trial and post-trial motions; which can often
6 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
7 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful
8 at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects
9 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999
10 F.3d 668, the risk of an appeal and subsequent reversal is real. Decl. Hom at ¶ 29. “Avoiding such
11 a trial and the subsequent appeals in this complex case strongly militates in favor of settlement
12 rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV*
13 (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its
14 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
15 (*Id.* at 526.)

16 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,500,000.00 that
17 is approximately 45% of Defendants’ *class-wide* liability exposure as estimated by Class Counsel
18 at the time of mediation. Given the amount of the settlement here, as compared to potential value
19 of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
20 reasonable. Decl. Hom at ¶ 30.

21 **4. The Settlement Does Not Improperly Grant Preferential Treatment to the** 22 **Class Representative or Segments of The Class**

23 The relief provided in the Settlement will benefit all Class Members who do not opt out.
24 The Settlement does not improperly grant preferential treatment to Plaintiff or segments of the Class
25 in any way. Each Class Member will be entitled to a cash payment based on the plan of allocation
26 described herein. Each Settlement Class Member’s Individual Settlement Payment will be
27
28

1 determined based upon the weeks worked by that employee during the prescribed Class Period.
2 (Decl. Hom at ¶ 31.)

3 Plaintiff will apply to the Court for an Enhancement Award in consideration of her service,
4 and for the risks undertaken on behalf of the Class. Plaintiff performed her duties admirably by
5 working with Class Counsel. The requested Enhancement Award of \$10,000 is within the accepted
6 range of awards for purposes of preliminary approval. Plaintiff has not negotiated individual
7 settlement payments with Defendants. (See Decl. Hom at ¶ 32.)

8 **5. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
9 **Preliminary Approval Of The Settlement**

10 The stage of the proceedings at which this Settlement was reached also militates in favor of
11 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
12 a thorough investigation into the facts of the class action. Prior to the mediation, Class Counsel
13 performed a significant review and analysis of Defendants' documents, time records and pay
14 records. Class Counsel engaged in a thorough research and analysis of the relevant claims and data.
15 (Decl. Hom at ¶ 33.) Class Counsel are also experienced with the claims at issue here, as Class
16 Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the
17 Settlement did not occur until Class Counsel possessed sufficient information to make an informed
18 judgment regarding the likelihood of success on the merits and results that could be obtained
19 through further litigation. (Decl. Hom at ¶ 34.)

20 There can be no doubt that Counsel for both Parties possessed sufficient information to make
21 an informed judgment regarding the likelihood of success on the merits and the results that could
22 be obtained through further litigation.

23 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

24 Plaintiff contends that the proposed Settlement meets all the requirements for class
25 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
26 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
27 should conditionally certify the Class for settlement purposes only, defined as follows: all non-
28 exempt employees who are or previously were employed by Defendants, who performed work in

1 California during the period of February 14, 2019 through June 13, 2024. Defendants estimate the
2 Settlement Class is comprised of 644 individuals who collectively worked approximately 65,462
3 workweeks during the Class Period. (Agreement at III(A)(2)).

4 **A. California Code of Civil Procedure §382**

5 Plaintiff seeks certification of this Class for settlement purposes under California Code of
6 Civil Procedure section 382. While Defendants reserve all rights to dispute that the Plaintiff can
7 satisfy any of these requirements, Defendants will not dispute that these requirements may be
8 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
9 for purposes of settlement only.

10 **B. The Proposed Class Is Ascertainable and Numerous**

11 Here, the approximately 644 current and former employees that comprise the Class are
12 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
13 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
14 (1981) (class of 48 members satisfies numerosity requirement)). All of these employees are
15 ascertainable because the Class Members can readily be determined through examination of
16 Defendants' employment files. (Decl. Hom at ¶ 35.) For purposes of settlement only, Defendants
17 will not oppose a finding of numerosity.

18 **C. Common Issues of Law and Fact Predominate**

19 Predominance of common issues of law or fact does not require that the common issues be
20 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
21 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) "Predominance is a comparative
22 concept, and 'the necessity for class members to individually establish eligibility and damages does
23 not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
24 if there is a predominant common legal question regarding how an employer's policies impact its
25 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he
26 common legal question remains the overall impact of Diva's policies on its drivers.")) Whether
27 Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the
28

1 question is “essentially a procedural one that does not ask whether an action is legally or factually
2 meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

3 Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i)
4 whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
5 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to
6 correctly calculate the regular rate of pay for purposes of meal period premiums, (iv) whether
7 Defendants failed to issue wage statements that complied with Labor Code 226(a); (v) whether
8 Defendant failed to pay wages when due; (vi) whether Defendant failed to reimburse for mandatory
9 business expenses; and (vii) whether Defendants are liable for attorneys’ fees and costs. (Decl. Hom
10 at ¶ 36.) Defendants will not oppose a finding of commonality for purposes of settlement only.

11 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

12 The typicality requirement requires Plaintiff to demonstrate that the members of the class
13 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
14 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
15 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
16 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
17 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
18 need not be substantially identical.” (50 F.3d at 1020.)

19 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.
20 Plaintiff, like every other member of the Class, was employed by Defendants and is a member of
21 the Class. Plaintiff was subject to the same practices affecting all other Class Members concerning
22 non-compliant meal and rest periods and Defendants’ failure to pay meal or rest period premiums,
23 unpaid wages as a result of off-the-clock work, unreimbursed business expenses, regular rate of pay
24 calculations, and received similar wage statements. Plaintiff’s claims and the Class Members’
25 claims arise from the same course of conduct by Defendants, involve the same policies, are based
26 on the same legal theories, and are subject to the same defenses. Plaintiff did not separately negotiate
27 an individual settlement with Defendants. (Decl. Hom at ¶ 37.) For purposes of settlement only,
28 Defendants will not oppose typicality.

1 **E. The Class Representative Fairly and Adequately Protected the Class**

2 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
3 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
4 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff has been and continues
5 to be aware of her duties as the representative of the class and has actively participated in the
6 prosecution of the case to date, with the Class Members' interests as a priority. Plaintiff understood
7 at the time she filed that as a class representative, she owed a duty to the putative Class Members
8 to faithfully prosecute this Action with their best interests at the forefront of every decision.

9 First, Plaintiff effectively communicated with Class Counsel, provided documents to them
10 and participated in the investigation and negotiations in the Action. Second, Plaintiff retained
11 competent counsel who are experienced in employment class actions. Third, there is no antagonism
12 between the interests of Plaintiff and those of the Class. Both Plaintiff and the Class Members seek
13 monetary relief under the same set of facts and legal theories. (Decl. Hom at ¶ 38.) Defendants will
14 not dispute such a finding for purposes of this settlement only.

15 **F. The Superiority Requirement Is Met**

16 To certify a class, the Court must determine that a class action is superior to other available
17 methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of
18 common issues will reduce litigation costs and promote greater efficiency, a class action may be
19 superior to other methods of litigation." (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
20 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
21 the Plaintiff. Defendants will not dispute such a finding for purposes of this settlement only.

22 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

23 The Court has broad discretion in approving a practical notice program. The Parties have
24 agreed upon procedures by which the Class Members will be provided with written notice of the
25 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice
26 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be
27 approved by the Court, includes all relevant information. (*See Exhibit A* to the Agreement.) The
28 Notice Packet will state that the Class Members shall have forty-five (45) days from the date that

1 the Notice Packet is mailed to them to request exclusion or to submit an objection. The Class
2 Members will be given an opportunity to object to the terms of the Agreement and/or the request
3 for attorneys' fees and costs and to participate at the final approval hearing, in accordance with the
4 instructions set forth in the Notice Packet. Class Members will be instructed to only contact the
5 Settlement Administrator, Class Counsel and/or Defendants' Counsel and not the Court. Class
6 Members who do not opt out will automatically receive an Individual Settlement Payment. This
7 notice program was designed to meaningfully reach the Class Members and advises them of all
8 pertinent information concerning the Settlement. The mailing and distribution of the Notice Packet
9 satisfies the requirements of due process, is the best notice practicable under the circumstances, and
10 constitutes due and sufficient notice to all persons entitled thereto. The Notice Packet provides
11 information on the terms and provisions of the Settlement; the benefits that the Settlement provides
12 for Class Members; the date, time, and place of the final settlement approval hearing; and the
13 procedure and deadline for submitting comments, objections, and requests for exclusion. The Notice
14 Packet complies with Rules of Court 3.766 and 3.769(f). (Decl. Hom at ¶ 39.)

15 **VII. THE COURT SHOULD PRELIMINARILY APPROVE THE**
16 **ENHANCEMENT AWARD**

17 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination*
18 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000);
19 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class
20 Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action*
21 *Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are
22 intended to compensate class representatives for work done on behalf of the class, to make up for
23 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
24 willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale
25 for making enhancement or incentive awards to named plaintiffs is that they should be
26 compensated for the expense or risk they have incurred in conferring a benefit on other members
27 of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)
28

1 The Settlement provides for an Enhancement Award of \$10,000⁴ for Plaintiff. The
2 Enhancement Award is fair and reasonable compensation for the Plaintiff's efforts bringing the
3 action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class
4 Counsel on the status of her case and the strategies for prosecuting the claims, conducting a
5 mediation to come to a fair and equitable agreement reviewing the proposed Settlement to ensure
6 that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide
7 Defendants a general release of all claims arising out of her employment. (Decl. Hom at ¶ 40.)

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9 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California
10 courts (both federal and state) have repeatedly found to be reasonable in wage and hour class action settlements: *See*
11 *Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000
12 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No.
13 BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
14 *Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the
15 named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
16 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct.
17 May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*,
18 No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass*
19 *Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the
20 named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011)
21 (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their
22 general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr.
23 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No.
24 BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs);
25 *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement
26 payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000
27 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A.
28 County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*,
No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named
plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013)
(awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County
Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*,
No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar*
v. Cingular Wireless, LLC, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement
payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010)
(awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v.*
Serco Inc., No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment);
Guerrero v. R.R. Donnelley & Sons Co., No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000
enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011)
(awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange
County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services,*
LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement
payment).

1 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated
2 Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully
3 submits that the above showing is sufficient for preliminary approval of the negotiated
4 Enhancement Award. (Decl. Hom at ¶ 41.)

5 **VIII. THE COURT SHOULD PRELIMINARILY APPROVE ATTORNEYS’**
6 **FEES AND EXPENSES**

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

17 Class Counsel took this matter on a contingency fee basis and invested significant time and
18 expense successfully prosecuting Plaintiff’s claims. Considering the positive outcome for the
19 Class Members, and in light of the supporting authority, the proposed award of Class Counsel
20 Award is fair and reasonable. (Decl. Hom at ¶ 42.)

21 Plaintiff will file a formal motion for the negotiated award of the Attorneys’ Fees and
22 Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits
23 that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees.
24 (Decl. Hom at ¶ 43.)

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IX. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final fairness hearing for a date that is at least one hundred twenty (120) days after the date of Preliminary Approval.

DATED: July 19, 2024

ZAKAY LAW GROUP, APLC

By: 
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Jackland K. Hom
Attorney for Plaintiff