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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SHANE ANDERSEN and MICHAEL GAUQUIER, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

v.

TERRA VISTA MANAGEMENT, INC., a California corporation; CAMPLAND, LLC, a Delaware limited liability company; DE ANZA SAN DIEGO FOOD AND BEVERAGE, INC., a California corporation; DE ANZA CORPORATION, a California corporation; BAYSIDE VILLAGE MARINA LLC, a California limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No: 24CU006415C

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

Date: March 13, 2026
Time: 10:30 a.m.

Judge: Hon. Loren Freestone
Dept.: C-64

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I. INTRODUCTION

Plaintiffs Shane Andersen and Michael Gauquier ("Plaintiffs") seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 1,009 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all non-exempt employees employed by Terra Vista Management, Inc., Campland, LLC, De Anza San Diego Food and Beverage, Inc., De Anza Corporation, or Bayside Village Marina LLC ("Defendants") in California at any time during the period beginning on July 18, 2020, through September 25, 2025 (the "Class Period"). Agreement at §§ I(E), I(I); I(M).

a. The **"Settlement Class Members"** means all Class Members who have not submitted a timely and valid Request for Exclusion from the Settlement. Agreement at § I(NN).

b. The "**Class Size**" is comprised of 1,009 individuals who collectively worked approximately 64,000 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** and **"PAGA Period"** means all non-exempt employees employed by Defendants in California during the period beginning July 18, 2023, through September 25, 2025. Agreement at §§ I(C), I(AA). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(M)(7). At the time of mediation, there were approximately 571 Aggrieved Employees during the PAGA Period.

3. The "**Gross Settlement Amount**" is Six Hundred Sixty Thousand Dollars and Zero Cents ($660,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. "**Service Awards**": A Service Award of not more than $10,000.00 to Plaintiff Gauquier and a Service Award of not more than $5,000.00 to Plaintiff Andersen in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § I(JJ), III(N)(9).

b. **"Class Counsel Award"** in the amount of not more than $259,978.00, comprised

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

of 33.33% of the Gross Settlement Amount for attorney's fees, currently estimated to be $219,978.00, ***and*** litigation expenses not to exceed $40,000.00, to be paid to Class Counsel. Agreement at §§ I(G); III(N)(10);

c. A "**PAGA Payment**" of Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Settlement Administrator shall pay sixty-five (65%) of the PAGA Payment ($16,250.00) to the Labor and Workforce Development Agency ("LWDA Payment"). Thirty-five percent (35%) of the PAGA Payment ($8,750.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ III(N)(11); and

d. "**Settlement Administration Costs**" not to exceed $11,950.00 payable to the Settlement Administrator, Atticus Administration LLC., for, *inter alia,* the administration of the Notice of Pendency of Class and Representative Action Settlement and Final Hearing Date ("Notice Packet") and costs associated with administration of the settlement. Agreement at §§ I(LL), I(MM); III(N)(12).

4. The "**Net Settlement Amount**" of approximately $348,072 (Gross Settlement Amount less the requested Class Counsel Award, Service Awards, PAGA Payment, and Settlement Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(N)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately ***$344.97***. SOZ Dec., ¶ 7. The uncashed funds will be transmitted to the State Controller's Unclaimed Property fund in the name of the Class Member who did not claim the funds. Agreement at § III(N)(8).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. SOZ Dec., ¶ 7.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant Terra Vista Management, Inc. ("TVM") is a property management company and provides property management services for certain owners of properties in California, including in San Diego County, where Plaintiffs worked at a property owned by another Defendant which is managed by TVM. SOZ Dec., ¶ 9. Plaintiff Andersen was employed by TVM from September 2022 to June 2024. Plaintiff Gauquier was employed by TVM from August 2022 to September 2023. Throughout their employment, Plaintiffs were subject to Defendant TVM's written policies and procedures. See Declaration of Shane Andersen at ¶ 4, Declaration of Michael Gauquier at ¶ 4.

Generally, Plaintiffs' actions allege that Defendants failed to provide compliant meal and rest periods, failed to pay all hours worked, failed to pay overtime, redeemed sick pay, and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, as detailed below. SOZ Dec., ¶ 10.

<u>Plaintiff Gauquier's Class & PAGA Complaints</u>

On July 18, 2024, Plaintiff Gauquier served a PAGA notice on the LWDA and Defendants. Shortly after, on July 24, 2024, he filed a class action complaint in San Diego Superior Court, Case No. 24CU002703C (the *Gauquier* Action). Declaration of Nicholas J. Ferraro ("NJF Dec."), ¶¶ 2-4. On October 16, 2024, Plaintiff Gauquier filed a Representative Action complaint under PAGA in Case No.

24CU002703C. NJF Dec., ¶ 5.

Plaintiff Andersen's Class & PAGA Complaints

On August 16, 2024, Plaintiff Andersen served a PAGA notice on the LWDA and Defendants. On the same day, Plaintiff Andersen filed a class action complaint in San Diego Superior Court, Case No. 24CU006415C (the "*Andersen* Class Action), alleging claims for unfair competition, failure to pay minimum and overtime wages, meal and rest period violations, wage statement violations, failure to pay wages when due, and failure to reimburse business expenses. On October 21, 2024, Plaintiff Andersen filed a separate PAGA action in Case No. 24CU018389C (the "*Andersen* PAGA Action). SOZ Dec., ¶11.

On October 23, 2024, Defendants filed a motion to compel arbitration in the Andersen Class Action, requesting that the Court dismiss Plaintiff Andersen's Class Claims, and compel his individual wage and hour claims to arbitration. After full briefing and oral argument, the Court issued an order on April 28, 2025, denying Defendants' motion in its entirety on the grounds that the arbitration agreement was procedurally and substantively unconscionable, thus unenforceable. SOZ Dec., ¶12. Defendants appealed the Court's Order, which is currently pending. SOZ Dec., ¶13.

Mediation and Settlement

Both Plaintiffs and Defendants agreed to mediate the Action. To prepare for mediation, the Parties agreed that Defendant would informally produce additional documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members' time and payroll data, certain payroll data points, and pertinent wage and hour policies. As discussed infra, Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. SOZ Dec., ¶ 14.

On March 4, 2025, the Parties participated in a full-day mediation with experienced mediator Steve Pearl, Esq. The mediation did not conclude with a settlement. However, after further arm's-length negotiations, the Parties reached an agreement to settle on or about July 28, 2025, which was subsequently memorialized in a Memorandum of Understanding executed in early November, 2025. SOZ Dec., ¶15.

To facilitate the settlement, on December 8, 2025, Plaintiff Andersen Amended his PAGA notice to include all Released PAGA Claims that accrued during the PAGA Period, to the extent they were not already included. Also to facilitate the settlement, the Parties to the *Andersen* Class Action stipulated to allow Plaintiff leave to file a First Amended Complaint which added Plaintiff Gauquier as a named plaintiff, added Bayside Village Marina LLC as a defendant, and included all released class claims and a single PAGA cause of action encompassing all released PAGA claims. This First Amended Complaint was filed on December 26, 2025. The Parties to the Anderson Class Action also filed a joint motion to stay the appeal pending trial court's approval of the settlement. SOZ Dec., ¶16.

On January 14, 2026, Plaintiff Andersen filed a Request for Dismissal, without prejudice, in the *Andersen* PAGA Action, Case No. 24CU018389C. On January 29, 2026, Plaintiff Gauquier filed a Request for Dismissal in the *Gauquier* Action, Case No. 24CU002703C, without prejudice, making the Andersen Class Action, Case No. 24CU006415C, the controlling case. SOZ Dec., ¶ 17.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff Andersen's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff Andersen. As part of the interview process, Plaintiff Andersen produced documents related to his employment, including wage statements. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. SOZ Dec., ¶18.

Class Counsel subsequently requested Plaintiff Andersen's employee file from Defendants. In response, Defendants produced over 150 pages of documents, including but not limited to, copies of Defendants' written policies and Plaintiff's payroll records and timesheets. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims. SOZ Dec., ¶ 19.

Separately, Class Counsel investigated Plaintiff Gauquier's claims. Class Counsel sent employer statutory records requests under Labor Code §§ 226, 432, and 1198.5 to obtain Plaintiff Gauquier's employment, payroll, and personnel files. Upon receipt of the records, Class Counsel, in conjunction with Plaintiff Gauquier, conducted a thorough investigation regarding the putative claims, including interviewing Plaintiff Gauquier and witnesses, reviewing policies and employment records, accessing publicly available information about Defendants, searching the LWDA website, Pacer, and state court dockets for any related cases, and conducting legal research and analysis. NJF Dec., ¶ 6.

To prepare for mediation, Defendants produced the 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 policies, and agreements. SOZ Dec., ¶ 20.

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. SOZ Dec., ¶ 21.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, and the amount of meal and rest period premiums paid during the Class Period. SOZ Dec., ¶ 22.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. SOZ Dec., ¶ 23.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 24.

C. The Parties Settled after Mediation

On March 4, 2025, the Parties participated in a full day mediation with mediator Steve Pearl, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediator helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Pearl's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation did not conclude with a settlement. However, after further arm's-length negotiations, the Parties reached a settlement on or about July 28, 2025, which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU") executed in early November 2025. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Settlement Class Members</u>

The proposed Class consists of all non-exempt employees employed by Defendants in California at any time during the Class Period. Agreement at § I(E). The Settlement Class Members exclude any person who submits a timely and valid request for exclusion. Agreement at § I(NN). At the time of mediation, Defendants estimated that the Class was comprised of 1,009 individuals who worked approximately 64,000 Workweeks during the Class Period. Agreement at § III(A)(2).

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of $660,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Service Award of not more than $10,000.00 to

Plaintiff Gauquier and a Service Award of not more than $5,000.00 to Plaintiff Andersen for their services on behalf of the Class; (3) a PAGA Payment in the amount of $25,000; (4) Settlement Administration Costs estimated at $11,950.00; (5) Class Counsel Award in the amount of $259,978.00, comprised of attorneys' fees equal to 33.3% of the Gross Settlement Amount estimated to be $219,978.00 and an estimated $40,000.00 for actually incurred litigation expenses. See generally Agreement at §§ I(G); III(N)(10).

Subject to the Court approving the Service Awards, Class Counsel Award, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at §§ I(Q), I(T); I(NN). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § I(P); III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount within thirty (30) business days of the Effective Date. Agreement at § I(O).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data provided by Defendants to the Settlement Administrator will include information that will allow the Settlement Administrator to calculate the number of eligible Workweeks for each Settlement Class Member. The Individual Settlement Payments will be calculated by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Agreement at § III(N)(1). Each Individual Settlement Payments will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.). *Id.*

Given that there are approximately 1,009 Class Members, ***the average gross recovery is approximately $344.97*** (Net Settlement Amount divided by Settlement Class Members). SOZ Dec., ¶ 7.

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5. Release by Settlement Class Members

As of the Funding Date, Plaintiffs and all Settlement Class Members (except those who timely and validly opt out of the Settlement) will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ III(B).

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

As of the Funding Date, Plaintiffs as agents and proxies of the State of California (including the LWDA), the LWDA, and the State of California, on behalf of themselves and on behalf of all Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ III(C).

7. Plaintiff's Andersen's Release

On September 9, 2024, Plaintiff Andersen filed a lawsuit against Defendants alleging causes of action for retaliation in violation of Labor Code Sections 98.6, 1102.5, and 6310, constructive discharge in violation of public policy, breach of implied contract, and breach of contract. Plaintiff Andersen asserted these claims on behalf of himself, as an individual, and not on a class-wide basis. These claims are separate from the wage and hour claims in the case at bar.

Separate from the Class Action and PAGA Settlement, Plaintiff Andersen entered into an individual settlement with Defendants in which he granted Defendants a broad release of all claims, including the claims outlined in his individual lawsuit. Plaintiff will file this settlement agreement under seal for the Court to review in camera, at the Court's request. SOZ Dec., ¶ 26.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $660,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

§ 11.51.)

The Parties participated in mediation with the mediator Steve Pearl, Esq. Mediator Pearl managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) The mediation did not conclude with a settlement. However, after further arm's-length negotiations, the Parties reached a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. SOZ Dec., ¶ 27. The Parties then engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SOZ Dec., ¶ 28.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SOZ Dec., ¶ 29.

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

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

The Gross Settlement Amount of $660,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $660,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models

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

were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' likely liability exposure for *class claims* (excluding PAGA Penalties) to be approximately $2,175,931.97 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 30% of Defendants' realistic, class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. SOZ Dec., ¶ 31.

(1) <u>Defendants' Estimated Exposure for Failure to Pay for All Hours Worked</u>

Plaintiffs allege Defendants failed to pay them and the Class Members for all hours worked due to frequent off-the-clock work that Class Members were required to perform. Specifically, Plaintiffs allege that they and the Class Members were instructed to clock out once their scheduled shift time had ended to avoid incurring any overtime hours. They would continue to perform work, however, including completing paperwork, counting money, making drops, loading and unloading tools and supplies, receiving and responding to maintenance calls, and performing various plumbing and electrical work. SOZ Dec. ¶ 32. Defendants deny that any Class Members were instructed to clock out but continue working to avoid overtime, and contend that to the contrary, Class Members were explicitly told not to work off-the-clock, and that various systems were in place to capture any time spent working after a Class Members' scheduled shift. Defendants also noted that the tasks listed were only performed by a small group of Class Members, rather than the Class as a whole. Taking Defendants' defenses into account, Plaintiff estimates Defendants' exposure for this claim to be $259,593.81. This number was calculated by assuming that Class Members worked on average 3 minutes off-the-clock during every shift. SOZ Dec., ¶ 33.

(2) <u>Defendants' Estimated Exposure for Regular Rate Violations</u>

Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and other forms of remuneration such as housing benefits and related lodging expenses when calculating the regular rate of pay for purposes of overtime wages, meal period premiums, and redeemed sick pay. Plaintiffs allege that when they and Class Members earned this extra remuneration and overtime wages, meal period premiums or redeemed sick pay in the same pay period, Defendants paid overtime at 1.5x their straight time rate, and paid redeemed sick pay and meal period premiums at their straight time rate, rather than taking the additional remuneration into account. Plaintiffs allege this runs counter to the DLSE Enforcement Policies and Interpretations manual which specifically states that "housing benefits" are to be added to cash wages paid for purposes of determining the "regular rate of pay". Plaintiff estimates Defendants' exposure for this claim to be $17,247. This number was calculated by adding the underpayment of all pay periods that included overtime, a meal period premium or redeemed sick pay in the same pay period as non-discretionary additional remuneration. SOZ Dec., ¶ 34.

(3) <u>Estimated Damages for Meal Period Violations</u>

Plaintiffs also allege that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs allege that they and other Class Members frequently experienced meal periods that were late, short, or interrupted due to the nature of the work performed (e.g. plumbing and maintenance emergencies). Plaintiff also alleged that: 8% of first meal periods were recorded after the fifth hour, over 44% of shifts 5-6 hours in duration did not have any recorded meal period, and 80% of shifts between 10-12 hours did not have any recorded meal period. Defendants contended that Class Members waived first meal periods when a shift was 6 hours or less in duration, and likewise waived second meal periods when shifts were 10 hours or less in duration, which significantly reduced their liability. Taking Defendants' defenses into account, Plaintiff estimates Defendants' exposure for this claim to be $377,705.71. This number was calculated by adding the total instances of late, short and missed meal periods, excluding first meal periods missed when shifts were 5-6 hours and second meal periods were missed in shifts of 10-12 hours, and offsetting that number by the total amount of meal period premiums Defendants paid. SOZ Dec., ¶ 35.

(4) <u>Defendants' Estimated Exposure of Rest Period Violations</u>

Plaintiff also alleged that they, along with the Class, were frequently unable to take compliant rest periods for the same reasons that they were unable to take compliant meal periods. Defendants denied these allegations, contending that they maintained compliant rest periods in policy and in practice. Moreover, Defendants contend that establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices. Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this claim to be $188,852. This number was calculated by mirroring the estimated damages for meal period violations and applying a 50% discount to account for the obstacles anticipated in establishing class certification and liability. SOZ Dec., ¶ 36.

(5) Defendants' Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendants required Class Members to use personal cell phones for work-related communications. Additionally, Plaintiff and other Class Members were required to use their personal vehicles to pick up work-related products and meet with vendors. Lastly, Plaintiffs allege that Defendants required Plaintiffs and Class Members to purchase and use their personal tools to perform their job duties. Plaintiff estimates Defendants' exposure for this claim to $154,119.00. This number was calculated by assuming each Class Member was owed $15 per month. A 30% discount was then applied to account for the fact that all Class Members may not have used their personal cell phones for work purposes, not all Class Members may not have been required to use their personal vehicles (or that such trips were infrequent), and to account for the fact that not all Class Members may have been required to purchase their own tools. SOZ Dec., ¶ 37.

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

Plaintiff contends that Defendants' alleged violations resulted in derivative violations of Labor Code section 203 and 226. Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants contend that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code Section 203. Additionally, Defendants contend that Plaintiff cannot show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class were entitled to these penalties. See, e.g., *Howard v. CVS Caremark Corp*., 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.,* 832 F. Supp.2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). These claims represented Plaintiffs' most legally precarious and uncertain claims. Taking this into account, Plaintiff estimated Defendants' exposure for waiting time penalties to be $819,436.10. This number was calculated by assuming all Class Members would be owed waiting time penalties for the maximum time frame of 30 days. A 65% discount was then applied to account for the obstacles of proving the underlying claim(s) for each Class Member, and likewise establishing the "willful" prong for each Class Member. Plaintiff estimated Defendants' exposure for wage statement penalties to be $358,977.50. This number was calculated by assuming each wage statement furnished by Defendant within the statutory period was deficient. A 65% discount was then applied to account for the obstacles of proving the underlying claim(s) for each Class Member, and likewise establishing that each Class Member suffered an "injury". SOZ Dec., ¶ 38.

(7) <u>Defendants' PAGA Exposure</u>

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately $833,840. SOZ Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $25,000 which is 4% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Sixty-Five percent (65%) of the PAGA Payment ($16,250.00) will be paid to the LWDA ("LWDA Payment") with the remaining thirty-five percent (35%) of the PAGA Payment ($8,750.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts and should be approved. SOZ Dec., ¶ 40.

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. SOZ Dec., ¶ 41.

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

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

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

Additional, continuing to litigate this action would require continued and extensive resources coupled with significant court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SOZ Dec., ¶ 42. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

Finally, Defendants' appeal of this Court's order denying their Motion to Compel Arbitration is currently stayed. If Plaintiffs continue to litigate this action, they risk an adverse ruling from the Appellate Court, which could preclude their ability to litigate Plaintiff's claims on a class-wide basis. The settlement here thus avoids the risk that Plaintiff's class claims are dismissed by the Appellate Court. SOZ Dec., ¶ 43.

In this matter, Class Counsel negotiated a Gross Settlement Amount of $660,000.00 that is roughly 30% of Defendants' realistic *class-wide* liability exposure for damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SOZ Dec., ¶ 44.

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

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

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to request for exclusions or object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § III(M)(2). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SOZ Dec., ¶ 45.

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

C. The Court Should Preliminarily Approve the Service Awards

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

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

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 Award of not more than $10,000.00 to Plaintiff Gauquier and a Service Award of not more than $5,000 to Plaintiff Andersen. The Service Awards are fair and reasonable compensation for Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and, as to Plaintiff Gauquier, agreeing to provide Defendants a general release of all claims arising out of his employment. SOZ Dec., ¶ 46.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Award. SOZ Dec., ¶ 47.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. SOZ Dec., ¶ 48.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SOZ Dec., ¶ 49.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiffs contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. SOZ Dec., ¶ 50.

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

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. SOZ Dec., ¶ 51. Factually, Defendants' 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 Class Members. SOZ Dec., ¶ 52.

Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, reviewing documents received via informal discovery, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 53.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SOZ Dec., ¶¶ 6, 54; Declaration of Jean-Claude Lapuyade, ¶¶ 3-8; Declaration of Nicholas Ferraro, ¶¶ 13-24.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. SOZ Dec., ¶ 55.

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IV. CONCLUSION

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

Dated: February 19, 2026

ZAKAY LAW GROUP, APLC

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