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situated and aggrieved

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

AJEET S. RAM and LATOSHA DEHART,
individuals, and on behalf of all others similarly
situated and aggrieved,

Plaintiffs,

v.

PACTIV PACKAGING, INC., a Delaware
corporation; EVERGREEN PACKAGING LLC, a
Delaware limited liability company; PACTIV
LLC, a Delaware limited liability company;
PACTIV EVERGREEN GROUP HOLDINGS
INC., a Delaware corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2022-9879

[Complaint Filed: July 29, 2024]

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

Date:

Time:

Judge: Hon. Jayne Lee

Department: 10C

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I. INTRODUCTION

Plaintiffs AJEET S. RAM and LATOSHA DEHART (collectively “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 1,498 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” means all persons who are or previously were employed by Defendant Evergreen Packaging LLC, Defendant Pactiv LLC, Defendant Pactiv Evergreen Group Holdings Inc., or Defendant Pactiv Packaging, Inc. in California and classified as non-exempt employees at any time during the period beginning July 2, 2022, through July 14, 2025 (“Class Period”). Agreement at §§ I(E), I(I).

2. The “**Settlement Class Members**” or “**Settlement Class**” means all Class Members who have not submitted a timely and valid request for exclusion from the Settlement. Agreement at §I(NN).

3. “**Aggrieved Employees**” means all persons who are or previously were employed by Defendant Evergreen Packaging LLC, Defendant Pactiv, LLC, Defendant Pactiv Evergreen Group Holdings Inc., or Defendant Pactiv Packaging, Inc. in California and classified as non-exempt employees at any time during the period beginning July 2, 2022, to July 14, 2025 (“PAGA Period”). Agreement at §§I(C), I(AA).

4. The “**Gross Settlement Amount**” or is Two Million Four Hundred Thousand Dollars and Zero Cents (\$2,400,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. “**Service Awards**” of \$10,000.00 to each Plaintiff (total of \$20,000.00), or an amount that the Court authorizes, in recognition of their efforts and risks in assisting with the prosecution of the Actions. Agreement at §§ I(JJ), III(N)(9).

b. “**Class Counsel Award**” in the amount of not more than \$920,000.00, comprised of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, currently estimated to be \$840,000.00, and litigation expenses not to exceed \$80,000.00, to be paid to Class

¹ The Agreement is attached as Ex. “1” to the Declaration of Shani O. Zakay (“SOZ Dec.”) at ¶ 4. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 4. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

Counsel. Agreement at §§ I(G), III(N)(10).

c. A **“PAGA Payment”** of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$75,000.00) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment (\$25,000.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ I(D) I(S), I(Z), III(N)(11); and

d. **“Settlement Administration Costs”** not to exceed \$14,945.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and costs associated with administration of the settlement. Agreement at §§ I(LL), I(MM), III(N)(12).

7. The **“Net Settlement Amount”** of approximately One Million Three Hundred Forty-Five Thousand Fifty-Five Dollars and Zero Cents (\$1,345,055.00) (Gross Settlement Amount less the requested Class Counsel Award, Service Awards, PAGA Payment, and Settlement Administration Costs) which 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 §§ I(T), III(N)(1).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class Members is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length following an all-day mediation on May 13, 2025, presided over by Steve Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions. Agreement at § II(L). 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. 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

1 approval and falls within the range of reasonableness. The average Individual Class Settlement
2 Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions.
3 Moreover, the proposed classes are appropriate for provisional certification. Accordingly, Plaintiffs
4 respectfully request the Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 9.

5 II. FACTS AND PROCEDURE

6 A. Overview of the Litigation

7 This Settlement reflects a global settlement of four separate cases brought against Defendants:
8 the *Ram* Class Action, the *Ram* PAGA Action, the *Dehart* Class Action, and the *Dehart* PAGA Action.

9 Defendants own and operate a packaging and manufacturing company throughout the state of
10 California, including in San Joaquin County and Stanislaus County, where Plaintiffs worked. Plaintiff
11 Ram was employed by Defendants from approximately August 3, 2021 through approximately
12 October 5, 2022 as a non-exempt employee. Plaintiff Dehart was employed by Defendants from
13 approximately September 2018 to January 2024 as a non-exempt, hourly-paid employee. Throughout
14 their employment, Plaintiffs were subject to Defendants' policies and procedures. SOZ Dec., ¶ 10.;
15 Declaration of Latosha Dehart ("Dehart Dec.") at ¶ 3; Declaration of Ajeet Ram ("Ram Dec.") at ¶ 3.

16 Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide
17 compliant meal periods, failed to properly calculate the regular rate of pay for purposes of period
18 premiums and redeemed sick pay, failed to furnish accurate itemized wage statements, failed to
19 reimburse necessary business expenses, and failed to pay all wages upon separation. Defendants deny
20 liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all
21 applicable employment laws and raised several other significant defenses to Plaintiffs' claims. SOZ
22 Dec., ¶ 11.

23 The *Ram* Actions

24 On October 26, 2022, Plaintiff Ram filed a Class Action complaint in the San Joaquin Superior
25 Court, Case No. STK-CV-UOE-2022-9879 ("*Ram* Class Action"), alleging the following eight causes
26 of action: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to
27 Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Pay All Wages Due Upon
28 Separation from Employment; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal.

Lab. Code § 226; (7) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (8) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 *et seq.*

On December 21, 2022, Plaintiff Ram filed a Notice of Violations with the LWDA and served the same on Defendants. On September 20, 2023, after sixty-five (65) days had passed without any action by the LWDA with respect to the Labor Code violations alleged in the Ram PAGA Notice, Plaintiff Ram filed a separate representative action in San Joaquin Superior Court, Case No. STK-CV-UOE-2023-10000, for a single cause of action for violations of PAGA pursuant to Labor Code §§ 2698, *et seq.* (the "*Ram PAGA Action*").

On June 13, 2024, Plaintiff Ram, only, engaged in mediation related to the *Ram Class Action* and *Ram PAGA Action* with Defendants Pactiv Packaging, Inc., which did not result in settlement.

On May 1, 2025, the Court consolidated the *Ram Class Action* and the *Ram PAGA Action* for all purposes, designating the *Ram Class Action* as the lead case.

The Dehart Actions

On July 26, 2024, Plaintiff Dehart filed a Notice of Violations with the LWDA and served the same on Defendants. On July 29, 2024, Plaintiff Dehart filed a Class Action complaint in the Stanislaus Superior Court, Case No. CV-24-005982 (the "*Dehart Class Action*"), alleging the following eight causes of action: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802. On October 11, 2024, Plaintiff Dehart filed a First Amended Complaint in the Dehart Class Action, adding a ninth cause of action for Failure to Pay Vacation Wages Due in Violation of Cal. Lab. Code § 227.3. SOZ Dec., ¶ 12.

On October 18, 2024, after sixty-five (65) days had passed without any action by the LWDA

1 with respect to the Labor Code violations alleged in the Dehart PAGA Notice, Plaintiff Dehart filed a
2 separate representative action in Stanislaus Superior Court, Case No. CV-24-008375, for a single cause
3 of action for violations of PAGA pursuant to Labor Code §§ 2698, *et seq.* (the "*Dehart* PAGA Action").
4 SOZ Dec., ¶ 13.

5 **Global Mediation and Subsequent Actions Taken by the Parties in Furtherance of the**
6 **Settlement**

7 Defendant, Plaintiff Ram, and Plaintiff Dehart agreed to participate in a global mediation. Prior
8 to mediation, the Parties engaged in further investigation and the exchange of documents and
9 information in connection with the actions. As part of this process, Defendants provided a significant
10 sample of time records and payroll records, policies, as well as other documents and information, to
11 Class Counsel to review and analyze. On May 13, 2025, the Parties participated in a full day mediation
12 with Steve Rottman, Esq., an experienced mediator of wage and hour class and PAGA actions. After
13 arms-length negotiations and bargaining, the Parties reached an agreement to settle, and subsequently
14 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
15 and negotiated a long-form settlement agreement, which is the subject of the instant motion. SOZ Dec.,
16 ¶ 14.

17 On April 10, 2026, pursuant to the Parties' stipulation, Plaintiff Ram filed a First Amended
18 Complaint in the *Ram* Class Action which adds Plaintiff DeHart as a named plaintiff and asserts, *inter*
19 *alia*: (1) all of the facts, theories, and alleged California Labor Code violations, as alleged in the
20 operative complaint in the *DeHart* Class Action and *DeHart* PAGA Action; (2) all of the facts, theories
21 and alleged California Labor Code violations for civil penalties pursuant to the PAGA, California Labor
22 Code sections 2698, *et seq.* as alleged in the *DeHart* PAGA Action; (3) all of the facts, theories, and
23 alleged California Labor Code violations, as alleged in the *Ram* PAGA Action; and (4) all of the facts,
24 theories and alleged California Labor Code violations for civil penalties pursuant to the PAGA, as
25 alleged in the Ram and DeHart PAGA Notices. SOZ Dec., ¶ 15.

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

27 Months before filing the Actions, Class Counsel began their pre-filing investigation into the
28 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,

1 including payroll documents. At the conclusion of the interviews, Class Counsel determined that each
2 of Plaintiffs' complaints appeared to substantiate Plaintiffs' claims that Defendants failed to, among
3 other things, pay for all time worked, provide compliant meal periods, reimburse for all mandatory
4 business expenses, issue accurate itemized wage statements, and pay all wages when due. SOZ Dec.,
5 ¶ 16; Declaration of David Bibiyan ("DB Dec.") at ¶ 17.

6 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
7 Plaintiffs' claims and Defendants' liability exposure to the Class Members. In response to Class
8 Counsel's request, Defendants produced, among other things, the time and payroll records for a
9 representative sampling of the Class Members, aggregate workweek and pay period data, and copies
10 of applicable policies and agreements. In total, Defendants produced hundreds of pages of pertinent
11 documents for Class Members for Class Counsel to analyze and millions of unique cells of data. SOZ
12 Dec., ¶ 17.

13 Class Counsel then retained the statisticians and economists at Berger Consulting Group
14 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
15 damage modeling consulting services specializing in wage and hour class actions. BCG's team of
16 financial and data analysts are credentialed and experienced experts in their fields and have provided
17 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
18 Defendants' time and payroll data. SOZ Dec., ¶ 18.

19 Prior to mediation, BCG analyzed the time and payroll data provided by Defendants to assist in
20 the development of various damage models. Among other things, BCG's analysis estimated the
21 number of workweeks, pay periods, average rate of pay, and the regular rate of pay. BCG also estimated
22 the amount of unreimbursed business expenses, unpaid wages due to rounding and regular rate
23 violations, the number of missed, late, or truncated meal periods, number of missed meal and rest period
24 premiums paid during the Class Period and the amount of resulting PAGA penalties for identified Labor
25 Code violations. SOZ Dec., ¶ 19.

26 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
27 Plaintiffs' suitability as a putative class representatives through interviews, background investigations,
28 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching

1 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
2 of employer; (4) analyzing the Settlement Class's time and payroll data; (5) analyzing Defendants'
3 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
4 which could affect settlement approval; (7) estimating Defendants' liability for purposes of settlement;
5 (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class
6 Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments
7 to recovery, such as to make an independent assessment of the reasonableness of the terms to which
8 the Parties have agreed. SOZ Dec., ¶ 20.

9 Class Counsel only agreed to enter the Settlement following this thorough investigation and
10 evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace
11 for similar settlements, and considering the risk of significant delay and uncertainty associated with
12 litigation, and the various defenses asserted by Defendants, Class Counsel believes this Agreement to
13 be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
14 adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 21.

15 **C. The Parties Settled at Mediation**

16 On May 13, 2025, the Parties conducted a full day of mediation with Steve Rottman, Esq., an
17 experienced wage and hour mediator. Mediator Rottman helped manage the Parties' expectations and
18 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
19 progress with the mediator's assistance. Namely, the Parties exchanged information regarding their
20 respective claims and defenses, including their respective evaluation of the damages. The mediation
21 concluded with a global settlement of both Plaintiff Ram's and Plaintiff Dehart's class and PAGA
22 claims, which were subsequently memorialized in the form of a Memorandum of Understanding. The
23 complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel
24 submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at
25 issue. SOZ Dec., ¶ 22.

26 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

27 1. The Composition of the Settlement Class Members and Aggrieved Employees

28 The proposed Class consists of all persons who are or previously were employed by Defendant

Evergreen Packaging LLC, Defendant Pactiv LLC, Defendant Pactiv Evergreen Group Holdings Inc., or Defendant Pactiv Packaging, Inc. in California and classified as non-exempt employees at any time during the Class Period. Agreement at §§ I(E), I(I). The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(NN). Defendants estimated at the time of mediation that the Class is comprised of 1,498 individuals who collectively worked approximately 129,000 Workweeks during the Class Period. SOZ Dec., ¶ 23.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$2,400,000.00. Agreement at § I(O). The Gross Settlement Amount includes: (1) Individual Class Settlement Payments to the Settlement Class Members; (2) Service Awards of \$10,000.00 to each of the two Plaintiffs (total of \$20,000.00), or an amount that the Court authorizes, in recognition of their efforts and risks in assisting with the prosecution of the Actions; (3) a PAGA Payment in the amount of \$100,000.00; (4) Settlement Administration Costs not to exceed \$14,945.00; (5) a Class Counsel Award of up to \$920,000.00, comprised of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, currently estimated to be \$840,000.00, and litigation expenses of up to \$80,000.00. *See generally* Agreement at §§ I(G), I(JJ), I(LL), I(O), I(S), I(Z), III(N).

The Gross Settlement Amount shall be all-in with no reversion to Defendants. Agreement at § I(O). Defendants are responsible for the employer's share of payroll taxes, which shall be paid separately and in addition to the Gross Settlement Amount. Agreement at § I(O). 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(T). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$75,000.00) to the California Labor and Workforce Development Agency. Agreement at § III(N)(11). Twenty-five percent (25%) of the PAGA Payment (\$25,000.00) will be distributed to the Aggrieved Employees. Agreement at §§ I(D), III(N)(11).

3. The Funding Date

Defendants will fund the Gross Settlement Amount within sixty (60) days of the Effective Date. Agreement at § I(N).

1 4. Formula for Calculating Individual Class Settlement Payments

2 Each Settlement Class Member will receive an Individual Class Settlement Payment. The
3 Individual Class Settlement Payment will be proportional to the number of Workweeks each Class
4 Member worked for Defendants in California during the Class Period. Agreement at § III(N)(1). Using
5 the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class
6 Members. The respective Workweeks for each Class Member will be divided by the total Workweeks
7 for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's
8 Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's
9 estimated Individual Class Settlement Payment. Agreement at § III(N)(1). Each Individual Class
10 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
11 employee payroll taxes, etc.). Agreement at § III(N)(1). Individual Class Settlement Payments for Class
12 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class
13 Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their
14 respective Payment Ratios. Agreement at § III(N)(1).

15 5. Release by Settlement Class Members

16 Generally, as of the Effective Date and Defendants fully funding of the Gross Settlement Amount
17 and employer's share of payroll taxes, in exchange for the consideration set forth in the Agreement,
18 Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Class
19 Claims for the Class Period. Agreement at § III(B). The Released Class Claims means all class causes
20 of action, claims, or California Labor Code violations alleged, or reasonably could have been alleged
21 based on the facts alleged, in the Actions or the Operative Complaint, which occurred during the Class
22 Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
23 termination, unemployment insurance, disability, social security, workers' compensation, and class
24 claims outside of the Class Period. Agreement at § I(FF).

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

26 Generally, upon entry of final judgment and funding of the Gross Settlement Amount and
27 employer's share of payroll taxes, in exchange for the consideration set forth in the Agreement, the
28 Plaintiffs, the LWDA and the State of California release the Released Parties from the Released PAGA

1 Claims for the PAGA Period. Agreement at § III(C). As a result of this release, the Aggrieved
2 Employees shall be precluded from bringing claims against Defendants for the Released PAGA Claims.
3 Agreement at § III(C). The Released PAGA Claims means all PAGA claims alleged in the Actions, the
4 Operative Complaint, and Plaintiffs' PAGA Notices to the LWDA submitted on December 21, 2022
5 and July 26, 2024, which occurred during the PAGA Period, and expressly excluding all other claims,
6 including claims for vested benefits, wrongful termination, unemployment insurance, disability, social
7 security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §
8 I(GG).

9 **III. ARGUMENT**

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

11 The proposed Settlement, including a Gross Settlement Amount of \$2,400,000.00, meets the
12 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
13 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
14 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
15 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
16 notice of the settlement has been distributed to class members for their comments and objections.
17 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
18 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
19 inquire into the fairness of the proposed settlement”).)

20 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
21 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
22 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
23 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
24 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
25 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
26 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
27 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
28 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely

1 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
2 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
3 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
4 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
5 action litigation”).)

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

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

14 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
15 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
16 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
17 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
18 § 11.51.)

19 The Parties participated in mediation with Steve Rottman, Esq., an experienced wage and hour
20 class action mediator. Mediator Rottman managed the Parties’ expectations and provided a useful,
21 neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No.
22 C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
23 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.
24 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
25 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
26 negotiations were at an arm’s length, adversarial, and non-collusive. The mediation concluded with a
27 global settlement of both Plaintiffs’ class and PAGA claims. The Parties subsequently drafted and
28 negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the

1 final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
2 represent a reasonable compromise of the claims at issue. SOZ Dec., ¶ 24.

3 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
4 Settlement’s Reasonableness.

5 As detailed *infra*, Class Counsel conducted a very thorough investigation into the factual and
6 legal issues in dispute. Prior to mediation, Class Counsel fully assessed the nature and magnitude of
7 the claims being settled, as well as the impediments to recovery. Ultimately, Class Counsel made an
8 informed and independent assessment of the reasonableness of the terms to which the Parties have
9 agreed. SOZ Dec., ¶ 25.

10 Class Counsel only agreed to enter the Settlement following this thorough investigation and
11 evaluation of Plaintiffs’ claims. Based on this investigation of the facts, applicable law, and marketplace
12 for similar settlements, and considering the risk of significant delay, uncertainty associated with
13 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
14 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
15 reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 26.

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

17 The Gross Settlement Amount of \$2,400,000.00 is within the range of reasonableness. To
18 determine whether a settlement is fair and reasonable, the court should “consider enough information
19 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
20 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
21 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the
22 court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
23 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
24 explicit statement of value; [they] require [] a record which allows an understanding of the amount that
25 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
26 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
27 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
28

1 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
3 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc.*
4 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

6 The Gross Settlement Amount of \$2,400,000.00 is fair and reasonable considering the nature
7 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’
9 liability exposure while accounting for the uncertainties of continued litigation. The various models
10 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
11 and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding
12 PAGA Penalties) at \$11,343,131.15. Thus, the Gross Settlement Amount of \$2,400,000.00 represents
13 21% of Defendants’ class-wide liability exposure as estimated by Class Counsel at the time of
14 mediation. The following summarizes Defendants’ liability exposure. SOZ Dec., ¶ 27.

15 (1) Defendants’ Estimated Exposure for Failure to Pay All Wages

16 Plaintiffs alleged that Defendants employed a time rounding policy that favored Defendants,
17 rather than the Class Members. Plaintiffs allege such a rounding practice violates California law, as
18 outlined by the court in *See’s Candy Shops, Inc. v. Superior Court* 210 Cal.App.4th 889, 903 (2012).
19 Plaintiffs estimated Defendants’ exposure for this claim to be \$1,080,097.00. Plaintiffs’ expert
20 calculated this number by adding up all time that Class Members were underpaid during the Class
21 Period, based on the data provided by Defendant. Plaintiffs did not apply any discounts to this
22 calculation. SOZ Dec., ¶ 28.

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

1 (2) Defendants' Estimated Exposure for Failure to Properly Calculate the Regular
2 Rate of Pay

3 Plaintiffs alleged that Defendants paid Class Members various non-discretionary bonuses and shift
4 differentials but failed to properly calculate these into Class Members' regular rates of pay for purposes of
5 meal period premiums and redeemed sick pay. These additional forms of non-discretionary remuneration
6 are labeled on Class Members' wage statements as: SFU SHIFT PREMIUM, Premium Pay - Shift
7 Differential, BN4 GAIN SHARING, BN3 SAFETY INCENT, BN5 SIGNING BONUS, AW3 ATTEND
8 AWARD, Bonus - HIP, BNS BONUS, Bonus - Safety Excellence, SF3 Shift Premium, SF2 Shift Premium,
9 BN6 RETENTION BON, BNR Bonus Retention, Bonus - Sign On, Premium Pay - Trainer Upgrade, AW1
10 AWARD, Premium Pay - Call In or Call Back). Plaintiffs estimated Defendants' exposure for this claim to
11 be \$97,523.00. Plaintiffs' expert calculated this number by adding the total amounts that Class Members
12 were underpaid their redeemed sick pay and meal period premiums during the Class Period due to this error.
13 Plaintiffs did not apply any discounts to this number. SOZ Dec., ¶ 29.

14 (3) Defendants' Unlawful Meal Period Practices

15 Plaintiffs alleged that due to the demanding nature of the job and the fact that the packaging
16 facilities were open 24 hours, Class Members were frequently asked to come in early or to stay late. For
17 example, an employee that was set to work a shift from 3pm – 11pm might come in early to cover the last
18 4 hours of the prior shift, or alternatively, may stay late to cover the first four hours of the next shift. This
19 employee would then work either 11am – 11pm, or 3pm – 3am. When this would occur, Defendants would
20 not account for the added time and fail to offer timely meal periods. This is supported by the data informally
21 produced by Defendant, which showed that over 14% of shifts included a first meal break that was recorded
22 after the end of the 5th hour of work. Moreover, the data showed a large number of shifts (approximately
23 36%) were less than 30 minutes in length. Plaintiffs estimated Defendants' exposure for this claim to be
24 \$6,228,118.50. This number was calculated by adding the premiums that would be due assuming every
25 short meal period, every late first meal period, and every missed second meal period in a shift over 12 hours
26 was non-compliant. Plaintiffs then applied a 25% discount to account for instances in which a compliant
27 meal period was offered, but the Class Member instead recorded a non-compliant meal period. For example,
28 instances in which a full 30-minute meal period was offered, but a Class Member clocked back in after 28

1 or 29 minutes had elapsed. SOZ Dec., ¶ 30.

2 (4) Defendants' Failure to Reimburse All Necessary Business Expenditures

3 Plaintiffs alleged that they and other Class Members were required to use their personal cell phones
4 in order to communicate with supervisors and Defendants' employees about schedules and shifts.
5 Defendants frequently contacted class members to ask them to come in early for their shift. Plaintiffs allege
6 that no compensation was given to Plaintiffs or other Class Members for their personal cell phone use.
7 Plaintiffs estimated Defendants' exposure for this claim to be \$1,001,075.00. Plaintiffs' expert
8 calculated this number by assuming each Class Member should have been reimbursed \$25 per month
9 for their personal cell phone use. Plaintiffs did not apply any discounts to this number. SOZ Dec., ¶
10 31.

11 (5) Defendants' Estimated Exposure for Wage Statement Penalties

12 Plaintiffs alleged that Defendants failed to furnish employees with accurate itemized wage
13 statements as required by California Labor Code section 226. Specifically, Named Plaintiffs alleged
14 that as a result of Defendants' failure to pay all hours worked, provide all meal period premiums, and
15 calculate the regular rate of pay correctly, the wage statements issued to Plaintiffs and Class Members
16 were inaccurate. SOZ Dec., ¶ 32. Defendants denied liability for the underlying claims, and also argued
17 that Plaintiffs could not establish the "knowing and intentional" element or the injury requirement on a
18 class-wide basis. Defendants asserted that to the extent any wage statement deficiencies resulted from
19 inadvertent errors rather than intentional violations, which would preclude penalty awards. In light of
20 the above, Plaintiffs estimated Defendants' exposure for wage statement penalties to be \$1,465,800.
21 This was calculated by assuming that each of the wage statements issued by Defendants within the
22 statutory period were deficient. Named Plaintiffs then applied a 65% discount to account for the
23 obstacles listed above. SOZ Dec., ¶ 33.

24 (6) Defendants' Estimated Exposure for Waiting Time Penalties

25 Plaintiffs alleged that Defendants' aforementioned violations resulted in a derivative violation
26 of California Labor Code sections 203. Class Counsel considered the arguable presence of various
27 penalties and weighed the potential recoveries against probable defenses, including potential obstacles
28 in proving the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.

1 Although the Class arguably could have seen a significant payout for these penalties if Plaintiffs
2 prevailed on the underlying claims, Plaintiffs would not recover any derivative penalties if they failed
3 to prove the underlying claims. Moreover, Plaintiffs would have to establish class certification to prove
4 the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS
5 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v.*
6 *Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad
7 faith or actual injury). In light of the above, Plaintiffs estimated Defendants' exposure for waiting time
8 penalties to be \$1,470,517.65. This was calculated by assuming that each of the separated employees
9 would be eligible for Labor Code section 203 penalties for the full 30-days allowed under the statute,
10 and then applying a 65% discount to account for the obstacles listed above. SOZ Dec., ¶ 34.

11 (7) Defendants' PAGA Exposure

12 Class Counsel's damage models also estimated Defendants' exposure for PAGA Payment. At
13 the time of mediation, Plaintiffs estimated Defendants' PAGA exposure to be approximately
14 \$3,959,487.50 if successful at trial. SOZ Dec., ¶ 35. The proposed PAGA allocation of the Gross
15 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
16 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication
17 that this amount was the result of self-interest at the expense of class members," such amounts are
18 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
19 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the
20 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
21 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
22 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
23 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
24 PAGA claim settlements in the range of zero to two percent of the total settlement).

25 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$100,0000.00 which
26 is 4.2% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
27 Payment. Seventy-Five percent (75%) of the PAGA Payment (\$75,000) will be paid to the LWDA
28 ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000.00)

1 will be distributed to the Aggrieved Employees, which is within the range of PAGA payments approved
2 by courts and should be approved.

3 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
4 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
5 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
6 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
7 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
8 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
9 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
10 6, 2016) (PAGA penalties denied after trial).

11 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
12 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
13 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
14 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
15 Again, the *Carrington* decision was after the plaintiff prevailed at trial, and even then, the PAGA
16 penalties were reduced by 90%. For the aforementioned reasons, the PAGA allocation of the Gross
17 Settlement Amount is fair, just, and reasonable.

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

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

24 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
25 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
26 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
27 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
28 trial court to enter judgement in favor of the employer. See also *O'Conner v. Uber Technologies, Inc.*

(9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also* *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful

1 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
2 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
3 668, the risk of an appeal and subsequent reversal is real. “Avoiding such a trial and the subsequent
4 appeals in this complex case strongly militates in favor of settlement rather than further protracted and
5 uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.)
6 Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy
7 and expensive litigation with uncertain results.” (*Id.* at 526.)

8 Given the amount of the settlement here, as compared to potential value of the claims, offset by
9 the various inherent risks to continued litigation, the settlement is fair and reasonable.

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

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

20 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
21 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
22 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
23 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definitions,
24 the procedure and time period within which to requests for exclusions or objections to the Settlement,
25 the date for the final approval hearing, the formula used to calculate settlement payments, and the terms

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

1 and scope of the released claims. See generally Agreement at § III(M). The Parties negotiated this
2 method to ensure delivering the most reasonable method of notice to the Class Members while ensuring
3 cost effective administration of the Settlement. SOZ Dec., ¶ 36.

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

8 **C. The Court Should Preliminarily Approve the Service Awards**

9 Service awards “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases*
10 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
11 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
12 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
13 UCLA L. Rev. 1303 (2006).) Service awards “are intended to compensate class representatives for
14 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
15 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
16 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
17 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
18 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
19 (2009) 175 Cal.App.4th 785.)

20 The Settlement provides for Service Awards of up to \$10,000 for each Plaintiff,⁴ subject to the
21 Court’s approval. The service awards are fair and reasonable compensation for Plaintiffs’ efforts
22 bringing the actions, assisting Class Counsel with the litigation and settlement, regularly conferring
23 with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing
24 the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement

25 ⁴ The amount of the requested enhancement payments is reasonable by reference to the amounts that California courts (both federal and
26 state) have repeatedly found to be reasonable for wage and hour class action settlements: See *Magee v. American Residential Services,*
27 *LLC*, No. BC423798 (L.A. County Super. Ct Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial*
28 *Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named
plaintiffs); *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); *Aguiar v. Cingular Wireless. LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding
\$14,767 enhancement payment).

1 Class. SOZ Dec., ¶ 37.

2 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards
3 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
4 showing is sufficient for preliminary approval of the negotiated Service Awards. SOZ Dec., ¶ 38.

5 **D. The Court Should Preliminarily Approve the Class Counsel Fees Payment**

6 The purpose of an award of class counsel's attorney's fees in class action litigation is to reward
7 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
8 result for the class. California courts may award attorneys' fees equaling 35% or more of the potential
9 value of the common fund, the amount requested under this settlement. *See, e.g., Restoration Hardware*
10 *Wage and Hour Cases*, No. JCCP4794 (Los Angeles County Super. Ct.) (awarding 35% of the gross
11 settlement fund in fees); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award);
12 *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40%
13 fee award); *Leal v. Wyndham Worldwide Corp.*, No. 37-2009-00084708 (San Diego Super. Ct.)
14 (38% fee award); *Crandall v. U-Haul Int'l., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% fee award);
15 *Kritz v. Fluid Components, Inc.*, No. GIN057142 (San Diego Super. Ct.) (35% fee award); *Bushnell v.*
16 *Cremar, Inc.*, No. 657778 (Orange County Sup.Ct.) (38% award); *Haitz v. Meyer, et al.*, No. 572968-
17 3 (Alameda County Sup. Court) (40% fee award); *Christine Arman v. Circor Aerospace, Inc.*, No. RIC
18 1613578 (Riverside Superior Court Case) (35% fee award); *Araz Parseghian, et al. v. Homestreet*
19 *Bank*, No. 34-2018-00241855-CU-OE-GDS (Sacramento Superior Court) (35% fee award).

20 Class Counsel took this matter on a contingency fee basis and invested significant time and
21 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
22 Individual Class Settlement Payment illustrates the demonstrably positive outcome for the Settlement
23 Class Members. Considering the positive outcome for the Class Members, and in light of the
24 supporting authority, the proposed award of Class Counsel Award is fair and reasonable. SOZ Dec., ¶
25 39.

26 Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Award once
27 preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing
28 is sufficient for preliminary approval of the negotiated attorneys' fees. SOZ Dec., ¶ 40.

1 **E. Provisional Certification for Settlement Purposes Is Appropriate**

2 For Settlement only, Plaintiffs contend, and Defendants do not dispute, that provisional
3 certification of the Class is appropriate. SOZ Dec., ¶ 41.

4 1. The Standard for Class Certification

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

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

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

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

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

28 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., ¶ 42.

The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide, and 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 Settlement Class. SOZ Dec., ¶ 43.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 44.

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., ¶¶ 45; 7; Declaration of Jean-Claude Lapuyade, Esq. at ¶¶ 3 - 8; Declaration of David Bibiyan, Esq. at ¶¶ 2 - 14.

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., ¶ 46.

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Dated: April 24, 2026

By: Jaclyn Joyce, Esq.
Attorney for Plaintiffs