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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

RAHMEEZ JACKSON and ALONDRA
MANZO ESPINOSA, individuals, on behalf of
themselves, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

GNC HOLDINGS LLC, a California limited
liability company; GNC LIVE WELL LLC, A
Delaware limited liability company; and DOES
1-50, Inclusive,

Defendants.

Case No. 24CV000627

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

Hearing Date: February 13, 2026

Hearing Time: 9:00am

Department: 23

Trial Date: June 8, 2026

Action Filed: January 16, 2024

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1 **I. INTRODUCTION**

2 Plaintiffs Rahmeez Jackson and Alondra Manzo Espinosa ("Plaintiffs") seek preliminary
3 approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims
4 ("Agreement" or "Settlement Agreement") in *Rahmeez Jackson, et al. v. GNC Holdings LLC, et*
5 *al.*, Sacramento Superior Court Case No. 24CV000627 (the "Action") and seek entry of an order:
6 (1) preliminarily approving the proposed settlement of the Action with Defendants GNC Holdings
7 LLC and GNC Live Well LLC (hereinafter "Defendants"); (2) approving the form and method for
8 providing class-wide notice; (3) directing that notice of the proposed settlement be given to the
9 class; and (4) scheduling a final approval hearing date to consider Plaintiffs' motion for final
10 approval of the settlement and entry of the Judgment, and Plaintiffs' motion for approval of a Class
11 Counsel Award.

12 Plaintiffs and Defendants have reached a full settlement of the Action, which is embodied
13 in the Agreement. A copy of the fully executed Agreement is attached as Exhibit 1 to the
14 Declaration of Shani O. Zakay ("SOZ Dec."), served and filed herewith. The settlement is fair,
15 reasonable, and adequate, and should be preliminarily approved. Plaintiffs respectfully request that
16 this Court grant preliminary approval of the Agreement and enter the proposed order submitted
17 herewith.

18 **II. DESCRIPTION OF THE SETTLEMENT AGREEMENT**

19 The Gross Settlement Amount to be paid by Defendants is One Million, Eight Hundred
20 Thousand Dollars and Zero Cents (\$1,800,000.00). Under the Agreement, the Gross Settlement
21 Amount consists of the following elements: (1) Individual Settlement Payments to the Settlement
22 Class Members; (2) Service Awards of not more than \$22,500.00 total, distributed as \$12,500.00 to
23 Plaintiff Jackson and \$10,000.00 to Plaintiff Espinosa, for their services on behalf of the Class; (3)
24 a PAGA Payment in the amount of \$100,000.00; (4) Settlement Administration Costs not to exceed
25 \$19,750.00; (5) a Class Counsel Award of up to \$635,000.00, consisting of attorneys' fees equal to
26 one-third of the Gross Settlement Amount estimated to be \$600,000.00 and an estimated \$35,000.00
27 for actually incurred attorneys' expenses. *See generally* Agreement at § III(N). There is no reversion
28

1 to Defendants and Defendants must separately pay for their share of the employer payroll taxes.
2 Agreement at §§ I(O), III(A)(4). SOZ Dec. at ¶ 10.

3 The Gross Settlement Amount shall be paid in two equal installments of Nine Hundred
4 Thousand Dollars and Zero Cents (\$900,000.00) each. The first installment will be made within 14
5 court days of the Effective Date. The second installment will be made 180 days following the first
6 payment. Agreement at §§ I(O), III(A)(3). The “Funding Date” means the date by which Defendants
7 have paid the entire Gross Settlement Amount to the Settlement Administrator. Agreement at §
8 I(N). No later than fifteen (15) calendar days after the Funding Date, the Settlement Administrator
9 will pay the following: the Settlement Class Members their Individual Settlement Payments and the
10 Aggrieved Employees their Individual Aggrieved Employee Settlement Payments; Class Counsel
11 their Class Counsel Award; Plaintiffs’ Service Awards; the Labor and Workforce Development
12 Agency (“LWDA”) its share of the PAGA Payment; and the Settlement Administrator its
13 Settlement Administration Costs, all in the amounts approved by the Court. Agreement at §§
14 III(N)(7);(9-12).

15 The Net Settlement Amount shall equal the net amount available for Individual Settlement
16 Payments to Settlement Class Members from the Gross Settlement Amount after deducting the
17 Court-approved amounts for the Service Awards, the Class Counsel Award, the PAGA Payment,
18 and the Settlement Administration Costs. Agreement at § I(S). The Settlement Administrator will
19 pay an Individual Settlement Payment from the Net Settlement Amount to each Settlement Class
20 Member. Agreement at § III(N)(1). The submission of a claim form is not required for the
21 Settlement Class Member to be paid his or her Individual Settlement Payment. Agreement at §
22 III(M)(2)(a). The Individual Settlement Payment for each Settlement Class Member will be
23 calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by
24 all Settlement Class Members during the Class Period and then multiplying that amount (the
25 “Payment Ratio”) by the total number of Workweeks worked by each Settlement Class Member
26 during the Class Period. Agreement at § III(N)(1). The entire Net Settlement Amount shall be
27 distributed. Agreement at § III(N)(1).

1 Class Members will have forty-five (45) days after the mailing of the Notice Packet¹ to
2 exclude themselves or submit written objections by following the directions in the Notice Packet.
3 Agreement at § I(HH). All Class Members who do not “opt out” will be deemed Settlement Class
4 Members and will be bound by the Settlement. Agreement at § III(M)(7). The Notice will advise
5 the Class Members of their right to object to the Settlement. Agreement at § III(M)(8).

6 If a Notice Packet is returned to the Settlement Administrator as non-delivered on or before
7 the Response Deadline, the Settlement Administrator will make all reasonable efforts to obtain a
8 correct address for the Settlement Class Member and re-mail the Class Notice to the Settlement
9 Class Member at his or her correct address. Agreement at § III(M)(4). Upon mailing of the
10 Individual Settlement Payments, if a Settlement Class Member’s Individual Settlement Payment
11 check is not cashed within 180 days after the Settlement Administrator’s mailing to the Settlement
12 Class Member, the funds from such uncashed checks will be transmitted to State Controller’s
13 Unclaimed Property Fund in the name of the Settlement Class Member who did not claim the funds.
14 Agreement at § III(N)(8).

15 The Parties have agreed to use Apex Class Action LLC, as the Settlement Administrator.
16 Agreement at § I(LL). Payment of the expenses of the Settlement Administrator from the Gross
17 Settlement Amount shall be made for the expenses of effectuating and administering the Settlement.
18 Agreement at § I(KK). The Settlement Administrator shall receive payment for services estimated
19 at \$19,750.00. Agreement at § III(N)(12), Declaration of Sean Hartranft (“Apex Dec.”) ¶ at 7.

20 Subject to Court approval, the Agreement provides for a Class Counsel Award comprised
21 of attorneys’ fees not to exceed one-third (1/3) of the Gross Settlement Amount and attorneys’
22 expenses up to \$35,000.00. §§ I(G), III(N)(10). In support of this request, Class Counsel will
23 provide evidentiary support, including lodestar method calculations. Subject to Court approval, the
24 Agreement provides for payment of Service Awards of no more than Twenty-Two Thousand, Five
25 Hundred Dollars (\$22,500.00) for Plaintiffs: Twelve Thousand Five Hundred Dollars and Zero
26 Cents (\$12,500.00) to Plaintiff Jackson and Ten Thousand Dollars and Zero Cents (\$10,000.00) to
27
28

¹ The Notice will be sent in English as well as in Spanish.

1 Plaintiff Espinosa, or such lesser amount as may be approved by the Court at Final Approval.²
2 Agreement at §§ I(II), III(N)(9).

3 Subject to Court approval, One Hundred Thousand Dollars and Zero Cents (\$100,000.00)
4 will be paid for settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant
5 to the requirements of Labor Code §2699(i), the PAGA Settlement shall be allocated \$75,000.00
6 (75%) to the LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil
7 penalties and \$25,000.00 (25%) for distribution to the Aggrieved Employees (“Aggrieved
8 Employee Payment”). Agreement at §§ I(D), I(R), I(Z), III(N)(11).

9 III. CASE BACKGROUND

10 On January 12, 2024, Plaintiff Jackson filed a Notice of Violations with the LWDA and
11 served the same on Defendants. SOZ Dec. at ¶ 15.

12 On January 16, 2024, Plaintiff Jackson filed a Class Action complaint in the Sacramento
13 Superior Court, Case No. 24CV000627 (the “Jackson Action”), alleging claims for: (1) Unfair
14 Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq.*; (2) Failure to Pay Minimum
15 Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages
16 in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in
17 Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to
18 Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
19 IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal.
20 Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab.
21 Code § 226; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201,
22 202 and 203. SOZ Dec. at ¶ 16.

23 On March 25, 2024, Plaintiff Jackson filed a separate representative action in Sacramento
24 Superior Court, Case No. 24CV005741 (“Jackson PAGA Action”), for a single cause of action for
25 Violations of the Private Attorneys General Act (“PAGA”) (Labor Code sections 2698 *et. seq.*). On
26

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

1 June 27, 2024, the Parties stipulated to the filing of a First Amended Complaint in the Jackson
2 Action to add a ninth cause of action for Violations of the Private Attorneys General Act (Labor
3 Code sections 2698 et. seq.). On July 10, 2024, Plaintiff Jackson filed a dismissal of the Jackson
4 PAGA Action, Case No. 24CV005741, which was then entered by the Court. SOZ Dec. at ¶ 17.

5 On September 17, 2024, Plaintiff Espinosa filed a Class Action complaint in the Los
6 Angeles Superior Court, Case No. 24STCV24172 ("Espinosa Action"), alleging claims for: (1)
7 Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal
8 Periods; (4) Failure to Provide Rest Periods; (5) Failure to Pay Reporting Time Wages; (6) Failure
9 to Provide and Maintain Complete and Accurate Wage Statements; (7) Failure to Reimburse
10 Necessary Business Expenses; and (8) Violation of California Business & Professions Code §§
11 17200, et seq. On the same day, Plaintiff Espinosa filed a Notice of Violations with the LWDA and
12 served the same on Defendants. On October 23, 2024, Defendants removed the Espinosa Action to
13 the United States District Court, Central District of California, Case No. 2:24-CV-09138. SOZ Dec.
14 at ¶ 18.

15 On August 20, 2025, for purposes of effectuating the settlement, Plaintiffs filed the
16 operative Second Amended Complaint in the Jackson Action, (the "Action") which consolidated
17 the claims of both Plaintiffs and added a tenth cause of action for Failure to Pay Reporting Time
18 Wages. SOZ Dec. at ¶ 19.

19 Plaintiffs seek to represent a putative class of all current and former non-exempt employees
20 who worked for Defendants GNC Holdings LLC and GNC Live Well LLC (collectively,
21 "Defendants") in California at any time during the period beginning October 30, 2020, through June
22 24, 2025 ("Class Period"). Agreement at §§ I(E), I(I). As of the date of mediation, Defendants
23 estimated there are approximately 2,684 Class Members that worked a total of 120,030 Workweeks
24 during the Class Period. Agreement at § III(A)(2). The Action seeks unpaid wages, statutory and
25 PAGA penalties, and a Class Counsel Award³. SOZ Dec. at ¶ 20.

26
27
28 ³ Plaintiffs will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Plaintiffs also seek to represent a PAGA group of Aggrieved Employees which is comprised
2 of all current and former non-exempt employees who worked for Defendants in California at any
3 time during the period beginning January 12, 2023, through June 24, 2025 ("PAGA Period").
4 Agreement at §§ I(C), I(Y). There are approximately 1,629 Aggrieved Employees who worked
5 approximately 36,190 Pay Periods during the PAGA Period. SOZ Dec. at ¶ 21.

6 Prior to mediation, Class Counsel investigated the facts relevant to the Action, including
7 conducting an independent investigation as to the allegations, reviewing documents and information
8 exchanged through informal discovery, and reviewing documents and information provided by
9 Defendants pursuant to informal requests for information to prepare for mediation. As part of this
10 process, Defendants provided Plaintiff Jackson's personnel file including his pay stubs, policies,
11 employment application, onboarding documents and timecards. Defendants also produced 49.1%
12 of the payroll data, equaling data for 1,317 Class Members and pages of relevant documents
13 including the Time of Hire Pamphlet and GNC Live Well's employment handbook detailing
14 Defendants' policies and procedures, including meal and rest break and sick pay policies, as well
15 as descriptions of various job titles, and Plaintiff Jackson's paystub details. In all, Class Counsel
16 analyzed over 9,500,000 unique cells of data and 273 pages of documents. SOZ Dec. at ¶ 22.

17 On March 26, 2025, the Parties participated in mediation presided by Tripper Ortman, Esq.,
18 an experienced mediator of wage and hour class and PAGA actions. Following the mediation, the
19 Parties accepted a Mediator's settlement proposal, which was subsequently memorialized in the
20 form of a Memorandum of Understanding. Thereafter, the Parties documented the agreement in the
21 form of a long-form Agreement, which was signed by the Parties and is now presented to this Court
22 for preliminary approval. SOZ Dec. at ¶ 23.

23 Although a resolution has been reached, Defendants deny any liability or wrongdoing of any
24 kind associated with the claims alleged in the Action, dispute any wages, damages and penalties
25 claimed by the Class Representatives, alleged in the Operative Complaint, and/or alleged in the
26 Class Representatives' PAGA notices to the LWDA are owed, and further contend that, for any
27 purpose other than settlement, the Action is not appropriate for class or representative action
28 treatment. Defendants contend, among other things, that at all times they complied with the

1 California Labor Code and the Industrial Welfare Commission Wage Orders. Plaintiffs contend that
2 Defendants violated California wage and hour laws. Plaintiffs further contend that the Action is
3 appropriate for class certification on the basis that Plaintiffs' claims meet the requisites for class
4 certification. Without admitting that class certification is proper, Defendants have stipulated that
5 the above Class may be certified for settlement purposes only. The Parties agree that certification
6 for settlement purposes is not an admission that class certification would be proper if the class
7 certification issues were litigated. Further, the Agreement is not admissible in this or any other
8 proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes of
9 settling the Action, the Parties stipulate and agree that the requisites for establishing class
10 certification with respect to the Class, as defined above, are satisfied. SOZ Dec. at ¶ 24.

11 Class Counsel conducted a thorough investigation into the facts of the Action. Class Counsel
12 diligently evaluated the Class Members' claims against Defendants. Prior to the mediation, counsel
13 for Defendants provided Class Counsel with access to the necessary data and information to
14 evaluate the claims by the Class. Class Counsel reviewed the production of documents from the
15 Defendants and conducted an extensive review of payroll data and policies with the assistance of
16 an expert (Berger Consulting Group ("BCG")). Based on the foregoing and their own independent
17 investigation, evaluation and experience, Class Counsel believes that the Settlement is fair,
18 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
19 circumstances, including the risk of significant delay, defenses asserted by Defendants, and
20 potential appellate issues. SOZ Dec. at ¶ 12.

21 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 22 **COURT TO GRANT PRELIMINARY APPROVAL**

23 When a proposed class-wide settlement is reached, the settlement must be submitted to the
24 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
25 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
26 litigation." (*Nordstrom Com. Cases*, 186 Cal.App.4th 576, 581 (2010) (quoting *Cellphone*
27 *Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009)).) Class action settlements are
28 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*

1 Co., 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
2 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

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

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

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

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

B. Factors To Be Considered in Granting Preliminary Approval

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

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

This Settlement is the result of extensive and hard-fought litigation and negotiations before an experienced and well-respected mediator. Defendants deny and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.⁴ Plaintiffs and Class Counsel recognize the expense and time involved in

⁴ Released Class Claims are defined in the Agreement at ¶ I(EE).

1 continuing to litigate and ultimately trying the Action against Defendants through possible appeals
2 which could take several years. Class Counsel have also taken into account the uncertain outcome
3 and risk of litigation, especially in complex actions such as the one here. Class Counsel are also
4 mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims
5 asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined
6 that the Settlement set forth in the Agreement is in the best interest of the Class Members. SOZ
7 Dec. at ¶ 13.

8 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
9 capable advocacy on both sides. The Parties were represented by experienced counsel who
10 zealously advocated their respective positions with the assistance of an experienced mediator.
11 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
12 vigorously conducted at arm’s length and without any suggestion of undue influence.” (*In re Wash.*
13 *Public Power*, 720 F. Supp. at 1392.)

14 **2. The Settlement Meets the Recognized Range of Reasonableness**

15 The Gross Settlement Amount of \$1,800,000.00 is within the range of reasonableness. To
16 determine whether a settlement is fair and reasonable, the court should “consider enough
17 information about the nature and magnitude of the claims being settled, as well as the impediments
18 to recovery, to make an independent assessment of the reasonableness of the terms to which the
19 parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In
20 making this determination, the court is “not to try the case” but rather “satisfy itself that the class
21 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this
22 analysis, courts do “not require any such explicit statement of value; [they] require[] a record which
23 allows an understanding of the amount that is in controversy and the realistic range of outcomes of
24 the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal
25 citation omitted).) The reasonableness of a settlement is not dependent upon its actual value
26 approaching the potential recovery plaintiffs might have received if they had succeeded at trial.⁵

27
28 ⁵ 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;

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

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

6 The Gross Settlement Amount of \$1,800,000.00 is fair and reasonable considering the
7 nature and magnitude of the claims being settled and the various potential impediments to
8 recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models
9 measuring Defendants’ liability exposure while accounting for the uncertainties of continued
10 litigation. The various models were informed by Class Counsel’s investigation, including the
11 analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’
12 liability exposure for *class claims* (excluding PAGA penalties) ranged between \$6,208,184.60
13 (“Realistic Estimate”) and \$17,892,906.00 (“Maximum Exposure”) if successful at trial. This
14 range reflects the uncertainty surrounding several of the claims, together with the uncertainty
15 surrounding derivative liability for waiting time penalties. SOZ Dec. at ¶ 25.

16 Thus, the Gross Settlement Amount of \$1,800,000.00 represents approximately 28.9% of
17 Defendants’ *class-wide* liability exposure as conservatively estimated by Class Counsel at the time
18 of mediation. The following summarizes Class Counsel’s estimation of Defendants’ exposure.
19 SOZ Dec. at ¶ 26.

20 i. Estimated Exposure for Meal Period Violations

21 Plaintiffs allege that Defendants failed to provide compliant meal periods. Specifically,
22 Plaintiffs allege that Defendants rounded or otherwise manipulated meal periods to exactly 30
23 minutes in length between 2020 and 2023, as reflected in Defendants’ timekeeping records which

24 *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v.*
25 *Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable
26 even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*
27 (S.D.N.Y. 2004) 225 F.R.D. 436, 460 (“settlement amount’s ratio to the maximum potential recovery need not be the
28 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 show that fifty-nine percent (59%) of all meal breaks during that period were recorded as exactly
2 thirty (30) minutes. Further, Plaintiffs allege that Defendants regularly violated California law by
3 failing to provide meal periods, providing late meal periods, or providing short meal periods. SOZ
4 Dec. at ¶ 27.

5 Defendants vigorously denied liability and argued they maintained facially compliant meal
6 period policies and practices. They argued that meal breaks are naturally expected to be exactly
7 thirty (30) minutes in length approximately sixty percent (60%) of the time and therefore contended
8 that their records were accurate and neither rounded nor manipulated. Defendants also argued that
9 they encouraged employees to take meal breaks and any short, late, or missed meal break was the
10 result of a voluntary decision by the employee. SOZ Dec. at ¶ 28.

11 The nature of Class Members' job duties presented significant evidentiary challenges
12 warranting a conservative damages approach. Class Members often worked with only a few other
13 employees present, and at times worked alone, which would have made it difficult to establish that
14 late, short, or missed meal periods resulted from Defendants' uniform policies or practices, rather
15 than the individual discretion employees exercised in their daily shifts. Proving liability at trial
16 would likely have required extensive individualized testimony from Class Members, undermining
17 the efficiency and predictability of class wide proof. SOZ Dec. at ¶ 29.

18 Taking Defendants' defenses into account, as well as the fact that evidence of these
19 violations would likely have relied mainly on testimony of Class Members, Plaintiffs applied a
20 fifty percent (50%) discount to this claim. Accordingly, Plaintiffs estimate Defendants' maximum
21 potential exposure on this claim to be approximately \$4,353,340.00 and realistic exposure to be
22 approximately \$2,176,670.00. SOZ Dec. at ¶ 30.

23 ii. Estimated Exposure for Failure to Pay for All Hours Worked

24 Plaintiffs alleged that Defendants required them to perform off-the-clock work, including
25 pre/post-shift duties such as opening and closing stores, performing keyholder responsibilities,
26 receiving and responding to work-related communications, and studying training materials and
27 newsletters to stay informed and knowledgeable on all new products. Plaintiffs also alleged that
28

1 Defendants engaged in timekeeping manipulation and unlawful rounding practices. SOZ Dec. at ¶
2 31.

3 Defendants vigorously denied liability for these claims. Defendants asserted, among other
4 things, that their written policies and procedures require non-exempt employees to record all time
5 worked and to not work off-the-clock, and that time records show that Class Members were paid
6 overtime for overtime hours worked. Defendants asserted that any deviation from these written
7 policies was location and individual-specific and thus created individualized issues of liability
8 unsuitable for class treatment. SOZ Dec. at ¶ 32.

9 In light of the above, and taking Defendants' defenses into account, Plaintiffs applied a
10 fifty percent (50%) discount to this claim and estimate Defendants' maximum potential exposure
11 to be approximately \$701,512.00 and realistic potential exposure to be approximately \$350,756.00.
12 SOZ Dec. at ¶ 33.

13 iii. Estimated Exposure for Rest Period Violations

14 Plaintiffs allege that Defendants failed to provide compliant rest periods. Under California
15 law, a rest period must consist of a "net" ten (10) minutes, meaning the rest period begins only
16 once the employee has reached an area away from the work area that is appropriate for rest, not
17 when the employee clocks out. Plaintiffs allege that Defendants nonetheless required employees
18 to clock out and in for rest periods and unlawfully limited paid rest time to exactly ten (10) minutes,
19 withholding compensation for any additional time employees remained clocked out. As a result,
20 Defendants' practice unlawfully shortened Class Members' rest breaks and effectively compelled
21 employees to remain on-premises to avoid having additional minutes deducted from their pay,
22 thereby exerting control over how employees spent their time during rest breaks in violation of
23 California law. SOZ Dec. at ¶ 34.

24 Again, Defendants deny liability and contend that employees were neither required by
25 Defendants' written policies to clock out for their rest periods nor required to remain on premises
26 during their rest breaks, and that Defendants maintained legally compliant rest period practices
27 throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens in establishing
28 this claim. Establishing Plaintiffs' rest period claim would depend in large part on Class Member

1 testimony, making it a riskier claim at class certification and liability stages. Defendants likely
2 would argue that any missed rest breaks were voluntary and that employees were not required to
3 remain on the premises. Certification would likely require multiple depositions of Class Members
4 who provided declarations, and Defendants would also have obtained opposing declarations stating
5 either rest breaks were taken, that employees were not required to clock out for their rest breaks,
6 and that if a rest break was missed, rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio*
7 *Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing
8 testimony before the Court, plaintiff’s evidence that Defendant may have an illegal, written rest
9 break policy is insufficient for this Court to find that common issues predominate.”); *Villa v.*
10 *United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed,
11 Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”) In
12 light of the above, and taking Defendants’ defenses into account, Plaintiffs applied a fifty percent
13 (50%) discount to this claim and estimates Defendants’ maximum potential exposure on this claim
14 to be \$1,841,943.00 and realistic potential exposure to be approximately \$920,971.50. SOZ Dec.
15 at ¶ 35.

16 iv. Estimated Exposure for Failure to Reimburse Business Expenses

17 Plaintiffs alleged that Defendants required Class Members to use their personal cell phones
18 in order to perform their daily job duties for Defendants, including but not limited to receiving and
19 responding work-related communications with co-workers and supervisors. Additionally, Class
20 Members were required to engage in self-study on training materials, GNC newsletters, and
21 merchandising bulletins. When completing training during their personal time, Class Members
22 used their own personal computers or cellular devices to meet this requirement. SOZ Dec. at ¶36.

23 Defendants denied such allegations and argued that Class Members who used their own
24 electronic devices for work purposes could simply utilize the expense policy to secure
25 reimbursement. Plaintiffs estimated Defendants’ maximum potential exposure for this claim at
26 \$20 a month reimbursement to be approximately \$613,200.00 and realistic exposure for this claim
27 at \$10 a month to be \$306,600.00. SOZ Dec. at ¶ 37.

28 ///

v. Estimated Exposure for Waiting Time Violations

Plaintiffs allege that Defendants' violations resulted in derivative violations of Labor Code sections 203. Although these penalties represented one of Defendants' largest dollar amount of exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendants argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, *Naranjo v. Spectrum Security Services* (2024) 15 Cal. 5th 1056, creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Taking Defendants' defenses into account, Plaintiffs applied a 90% discount to this claim and estimates Defendants' maximum exposure for waiting time penalties to be approximately \$6,845,671.00 and realistic liability to be approximately \$684,567.10. SOZ Dec. at ¶ 38.

vi. Estimated Exposure for Wage Statement Violations

Plaintiffs allege that Defendants failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiffs allege two categories of violations. First, that Plaintiffs and the Class Members are entitled to derivative wage statement penalties arising from Defendants' failure to pay meal and rest period premiums and all wages due. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal.5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Second, even when Defendants paid premiums, it committed a facial violation by miscalculating total hours worked on wage statements. SOZ Dec. at ¶ 39.

Defendants argued that its wage statements sufficiently identified the employing legal entity, that Plaintiffs' derivative claim would fail because the underlying claims would fail, and that Plaintiffs cannot establish the injury requirement on a class-wide basis. In light of these defenses—particularly the challenges to establishing knowing and intentional violations and the individualized injury requirement—Plaintiffs applied a fifty percent (50%) discount to this claim, estimating Defendants' maximum exposure to be approximately \$3,537,240.00 and approximate realistic liability to be \$1,768,620.00. SOZ Dec. at ¶ 40.

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vii. Defendants' PAGA Exposure

Class Counsel's damage model also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure to be approximately \$7,669,775.00. SOZ Dec. at ¶ 41. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Settlement 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 Settlement 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 \$100,000.00 which is approximately 5.56% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment (\$75,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payments approved by courts and should be approved. SOZ Dec. at ¶ 41.

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

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

3 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each
4 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
5 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff
6 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
7 the Labor Code by the defendant.”). Here, Plaintiffs would need to prove that each Aggrieved
8 Employee suffered a violation during each Pay Period the employee worked. Again, Defendants
9 raised several defenses that presented serious threats to the claims of the Plaintiffs and the
10 Aggrieved Employees. In addition to those arguments discussed *supra*, Defendants also argued
11 that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened
12 Plaintiffs’ claims on liability, value, and manageability as to the rest period claims. In all, Plaintiffs’
13 PAGA liability exposure is hotly contested. SOZ Dec. at ¶ 42.

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

20 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is
21 fair, just, and reasonable, and the Gross Settlement Amount represents a reasonable percentage of
22 estimated exposure when considered against the substantial litigation risks detailed in the next
23 section.

24 b. Inherent Risks of Continued Litigation Support Preliminary Approval.

25 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court
26 cannot and need not determine the merits of the contested facts and legal issues at this stage, and to
27 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value
28

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

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
4 the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009)
5 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
6 certification because employees’ declarations attesting to having taken meal and rest breaks
7 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best*
8 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
9 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
10 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
11 certification of driver meal and rest period claims based on the predominance of individual issues).
12 SOZ Dec. at ¶ 43.

13 Further, even if a class is certified, liability remains uncertain. The risks attendant to the
14 issue of Defendants’ liability in similar wage and hour actions are demonstrated by *Duran v. U.S.*
15 *Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor
16 plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209
17 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were
18 predominantly individualized questions of fact not susceptible to class treatment.”). SOZ Dec. at ¶
19 44.

20 Finally, even if a class is certified and Defendants are found liable for the class claims
21 alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs
22 and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-*
23 *Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and
24 remanded a \$110,000,000.00 judgement against an employer for, *inter alia*, inaccurately paying
25 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
26 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
27 hour misclassification action). SOZ Dec. at ¶ 45.

1 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
2 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
3 risk factor favoring settlement.

4 “The Settlement eliminates these and other risks of continued litigation, including the very
5 real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.
6 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through
7 trial is inherently perilous regardless of the strengths of the merits of the claims:

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

11 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18,
12 1990).)

13 Continuing to litigate this action would require continued and extensive resources coupled
14 with significant Court time to proceed through trial and post-trial motions; which can often take
15 years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
16 extensive expert testimony, particularly with regard to damages. But even if Plaintiffs are
17 successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs
18 fully expect that Defendants would appeal any favorable judgment. SOZ Dec. at ¶ 46. As
19 demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is
20 real. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in
21 favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms.*
22 *Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly
23 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with
24 uncertain results.” (*Id.* at 526.)

25 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,800,000.00 that
26 is 28.9% of Defendants’ *class-wide*, estimated liability exposure for damages and statutory
27 penalties. Given the amount of settlement here, as compared to potential value of the claims, offset
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1 by the various inherent risks to continued litigation, the settlement is fair and reasonable and should
2 be preliminarily approved. SOZ Dec. at ¶ 47.

3 c. The Settlement Does Not Improperly Grant Preferential Treatment to the Class
4 Representatives or Segments of the Class

5 The relief provided in the Settlement will benefit all Class Members who do not opt out.
6 The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments of the
7 Class in any way. Each Class Member will be entitled to a cash payment based on the plan of
8 allocation described herein. Each Settlement Class Member's Individual Settlement Payment will
9 be determined based upon the weeks worked by that employee during the prescribed Class Period.
10 The estimated amount each Class Member will receive per Workweek is \$8.52, with an estimated
11 average Individual Settlement Payment of \$381.05. Payments shall be allocated and treated as thirty
12 percent (30%) wages and seventy percent (70%) penalties and interest. SOZ Dec. at ¶ 11. Plaintiffs
13 will apply to the Court for Service Awards in consideration for their service, and for the risks
14 undertaken on behalf of the Class. Plaintiffs performed their duties admirably by working with
15 Class Counsel. The requested Plaintiffs' Service Awards are within the accepted range of awards
16 for purposes of preliminary approval. SOZ Dec. at ¶ 48.

17 d. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary
18 Approval of the Settlement

19 The stage of the proceedings at which this Settlement was reached also militates in favor of
20 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
21 a thorough investigation into the facts of the class action. Class Counsel began investigating the
22 Class Members' claims before this action was filed. Prior to the mediation, Class Counsel performed
23 significant review and analysis of Defendants' documents and pay records. Class Counsel engaged
24 in thorough research and analysis of the relevant claims and data. Class Counsel is also experienced
25 with the claims at issue here, as Class Counsel previously litigated and settled similar claims in
26 numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed
27 sufficient information to make an informed judgment regarding the likelihood of success on the
28 merits and results that could be obtained through further litigation. SOZ Dec. at ¶ 49.

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

4 In *Glass v. UBS Financial Services, Inc.*, the Northern District of California granted final
5 approval of an unpaid wages action although in *Glass* no formal discovery had been conducted prior
6 to the settlement:

7 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
8 observed, however, “[i]n the context of class action settlements, ‘formal discovery
9 is not a necessary ticket to the bargaining table’ where the parties have sufficient
10 information to make an informed decision about settlement.” *See In re Mego
Financial Corp. Securities Litigation*, 213 F.3d [454,] 459. (*Glass*, 2007 WL
221862 at *4.)

11 Here, Class Counsel was in a strong position to evaluate the fairness of this Settlement
12 because Class Counsel had the same, if not more, sufficient information, as well as an informal
13 document production.

14 e. The Court Should Preliminarily Approve the Service Awards

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

25 The Agreement provides for Service Awards of \$22,500.00⁶, with \$12,500.00 awarded to
26 Plaintiff Jackson and \$10,000 awarded to Plaintiff Espinosa. The service payment is fair and
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28 ⁶ The amounts of the requested Service Awards-\$10,000 and \$12,500- are reasonable by reference to the amounts that California
courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA.*
Fitness Int'l, LLC, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of

1 reasonable compensation for Plaintiffs' efforts in bringing the Action, assisting Class Counsel with
2 the litigation and settlement, regularly conferring with Class Counsel on the status of their cases
3 and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its
4 terms are fair and provide adequate relief for the Settlement Class members, and bearing the risk of
5 retaliation or other consequences from challenging their employer. SOZ Dec. at ¶ 50.

6 Class Counsel, on behalf of Plaintiffs, will file a formal motion for the negotiated Service
7 Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that
8 the above showing is sufficient for preliminary approval of the negotiated Service Awards and that
9 the requested amount is fair and reasonable given Plaintiffs' contributions. SOZ Dec. at ¶ 51.

10 f. The Court Should Preliminarily Approve the Class Counsel Award

11 The purpose of a Class Counsel Award in class action litigation is to reward counsel who
12 took the risk of non-payment and invested in a case that achieved a substantial positive result for
13 the class. California courts routinely award attorneys' fees equaling one-third or more of the
14 potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*

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

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

7 Class Counsel took this matter on a contingency fee basis and invested significant time and
8 expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
9 Individual Class Payment illustrates the demonstrably positive outcome for the Settlement Class
10 Members. Considering the positive outcome for the Class Members, and in light of the supporting
11 authority, the proposed Class Counsel Award is fair and reasonable. SOZ Dec. at ¶ 52.

12 The Class Counsel Award will be split among Class Counsel as follows: 42.5% to Zakay
13 Law Group, APLC; 42.5% to JCL Law Firm, APC; and 15% to King & Siegel LLP. Plaintiff
14 Jackson and Plaintiff Espinosa gave written approval of this fee split. SOZ Dec. at ¶ 53.

15 Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary
16 approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is
17 sufficient for preliminary approval of the negotiated Class Counsel Award. SOZ Dec. at ¶ 54.

18 g. The Court Should Preliminarily Approve Class Counsel’s Attorney Expenses

19 Attorneys who create a common fund for the benefit of a class are entitled to payment from
20 the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include
21 counsel’s incurred expenses because those who benefit from their effort should share in the cost.
22 *See Rider v. City of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis
23 in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys
24 to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *see*
25 *also Hartless*, 273 F.R.D. at 645-46 (common fund class action settlement where court awarded
26 litigation costs for consultants, online legal research, copying, postage, long distance charges, travel
27 expenses, filing fees, mediation fees and investigation fees). Prior to incurring costs for filing of
28 this Motion for Preliminary Approval, collectively Class Counsel expended \$29,649.35 prosecuting

1 this action. SOZ Dec. at ¶ 55; Declaration of Jean- Claude Lapuyade (“JCL Dec.”) at ¶ 21;
2 Declaration of Elliot Siegel (“ES Dec.”) at ¶ 17. All of Class Counsel’s out-of-pocket expenses are
3 the types of expenses normally charged to paying clients including the following: filing fees;
4 copying; postage; mediation fees; and expert costs, which were all incurred during, and were
5 necessary for the successful prosecution of the litigation and, thus, should be reimbursed. Class
6 Counsel will incur additional expenses to file the Motion for Preliminary Approval as well as the
7 Motion for Final Approval, but do not anticipate expenses to exceed \$35,000.00. SOZ Dec. at ¶ 55.

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

9 Plaintiffs contend that the proposed Settlement meets all the requirements for class
10 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
11 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
12 should conditionally certify the Class for settlement purposes only, defined as follows: all current
13 and former non-exempt employees who worked for Defendants in California at any time during the
14 Class Period. “Class Period” means the period beginning October 30, 2020, through June 24, 2025.
15 Agreement at §§ I(E), I(I). Plaintiffs expert estimated at the time of mediation that there were
16 approximately 2,684 Class Members who worked approximately 120,030 Workweeks during the
17 Class Period. Agreement at § III(A)(2). SOZ Dec. at ¶ 56.

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

19 Plaintiffs seek certification of this Class for settlement purposes under California Code of
20 Civil Procedure section 382. While Defendants reserve all rights to dispute that the Plaintiffs can
21 satisfy any of these requirements, Defendants will not dispute that these requirements may be
22 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
23 for purposes of settlement only.

24 **B. The Proposed Class is Ascertainable and Numerous**

25 Here, the approximately 2,684 current and former employees that comprise the Class are
26 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
27 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
28 (1981) (class of 48 members satisfies numerosity requirement.)) All of these employees are

ascertainable because the Class Members can readily be determined through examination of Defendants' employment files. SOZ Dec. at ¶ 57. For purposes of settlement only, Defendants will not oppose a finding of numerosity.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. (1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.")) Whether Plaintiffs are likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

Here, Plaintiffs contend that common questions of law and fact are present. Specifically: (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants failed to provide legally compliant meal and rest periods to Class Members; (iii) whether Defendants failed to timely furnish accurate, itemized and legal wage statements; (iv) whether Defendants failed to reimburse Class Members for necessary business expenses; (v) whether Defendants subjected Class Members to unfair business practices; and (vi) whether Defendants are liable for attorneys' fees and costs. SOZ Dec. at ¶ 58. Defendants will not oppose a finding of commonality for purposes of settlement only.

D. The Claims of the Plaintiffs Are Typical of the Class Claims

The typicality requirement requires Plaintiffs to demonstrate that the members of the class have the same or similar claims as Plaintiffs. "The typicality requirement is met when the claims of the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011

1 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
2 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
3 need not be substantially identical.” (50 F.3d at 1020.)

4 In the instant case, Plaintiffs contend that the typicality requirement is fully satisfied.
5 Plaintiffs, like every other member of the Class was employed by Defendants and are members of
6 the Class. Plaintiffs were subject to the same employment practices, meal and rest periods, and
7 received similar wage statements. Thus, the claims of the Plaintiffs and the Class Members arise
8 from the same course of conduct by the Defendants, involve the same employment policies, and are
9 based on the same legal theories. SOZ Dec. at ¶ 59. For purposes of settlement only, Defendants
10 will not oppose typicality.

11 **E. The Class Representatives Fairly and Adequately Protected the Class**

12 The Class Members are adequately represented because Plaintiffs and Class Counsel (a) do
13 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
14 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiffs are well aware of their
15 duties as representatives of the Class and have actively participated in the prosecution of this case
16 to date. First, Plaintiffs effectively communicated with Class Counsel, provided documents to them
17 and participated in investigation and negotiations in the Action. Second, Plaintiffs retained
18 competent counsel who are experienced in employment class actions. (See SOZ Dec. at ¶ 9; JCL
19 Dec. at ¶¶ 13-20; and ES Dec. at ¶¶ 6-12.) Third, there is no antagonism between the interests of
20 the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary
21 relief under the same set of facts and legal theories. SOZ Dec. at ¶ 60. Defendants will not dispute
22 such a finding for purposes of this settlement only.

23 **F. The Superiority Requirement is Met**

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

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

4 The Court has broad discretion in approving a practical notice program. The Parties have
5 agreed upon procedures by which the Class Members will be provided with written notice of the
6 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice
7 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be
8 approved by the Court, includes all relevant information. (See Exhibit A to the Agreement.) The
9 Notice Packet will state that the Class Members shall have forty-five (45) days from the date that
10 the Notice Packet is mailed to them to request exclusion or to submit an objection. The Class
11 Members will be given an opportunity to object to the terms of the Agreement and/or the request
12 for attorneys' fees and costs and to participate at the final approval hearing, in accordance with the
13 instructions set forth in the Notice Packet. Class Members will be instructed to only contact the
14 Settlement Administrator and/or Class Counsel and not the Court. Class Members who do not opt
15 out will automatically receive an Individual Settlement Payment. This notice program was designed
16 to meaningfully reach the Class Members and advise them of all pertinent information concerning
17 the Settlement. The mailing and distribution of the Notice Packet satisfies the requirements of due
18 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
19 notice to all persons entitled thereto. The Notice Packet provides information on the terms and
20 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
21 time, and place of the final settlement approval hearing; and the procedure and deadline for
22 submitting comments, objections, and requests for exclusion. The Notice Packet complies with
23 Rules of Court 3.766 and 3.769(f). SOZ Dec. at ¶ 61.

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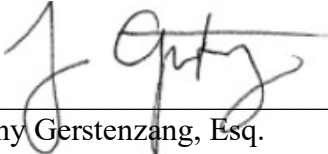
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VII. CONCLUSION

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

DATED: January 16, 2026

ZAKAY LAW GROUP, APLC

By: 
Jenny Gerstenzang, Esq.
Attorney for Plaintiffs