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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

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| SIXTO ALEGRIA FERNANDEZ, an individual, on behalf of himself, and on behalf of all persons similarly situated,<br><br>Plaintiff,<br>v.<br><br>HILTON GRAND VACATIONS COMPANY, LLC, a Delaware limited liability company, HILTON RESORTS CORPORATION dba HILTON GRAND VACATIONS, a Delaware stock corporation, HILTON GRAND VACATIONS CLUB, LLC, a Delaware limited liability company; and DOES 1-50, Inclusive,<br><br>Defendants. | Case No. CVRI2000689<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>Date: July 28, 2025<br>Time: 8:30am<br><br>Judge: Hon. Harold W. Hopp<br>Dept.: 1 |

## TABLE OF CONTENTS

/ / /

## TABLE OF AUTHORITIES

CASES

/ / /

RULES, CODES, AND STATUTES



SECONDARY SOURCES

## I. INTRODUCTION

Plaintiff Sixto Alegria Fernandez ("Plaintiff") seeks preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 144 Class Members who collectively worked approximately 7,324 Workweeks. Agreement at § (III)(A)(2). The basic terms of the Agreement provide for the following:

1. The **"Class Members," "Settlement Class," and "Class Period"** all current and former employees of Defendants Hilton Grand Vacations Company, LLC, Hilton Resorts Corporation dba Hilton Grand Vacations, and Hilton Grand Vacations Club, LLC (hereinafter collectively "Defendants") who worked for Defendants in a non-exempt position at the Palm Desert location ("Class Members") during the period from April 11, 2020, through April 14, 2025. ("Class Period"). Agreement at § I(H), I(I). The "Settlement Class" excludes any Class Member that submitted a valid and timely request for exclusion. Agreement at § I(KK).

2. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean all current and former employees of Defendants who worked for Defendants in a non-exempt and exempt position at the Palm Desert location ("Aggrieved Employees") during the period between February 5, 2023, through April 14, 2025. ("PAGA Period"). Agreement at §§ (I)(B); (I)(Y). At the time of mediation, there were approximately 73 Aggrieved Employees who worked a total of 1,684 Pay Periods during the PAGA Period. Agreement at § (III)(A)(2).

3. The "**Gross Settlement Amount**" is Two Hundred Thousand Dollars and Zero Cents ($200,000.00) that Defendants must pay into the QSF in connection with this Settlement, inclusive of the sum of the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Payment and the Settlement Administration Expenses and exclusive of the employer's share of payroll tax, if any, triggered by any payment under this settlement. Agreement at § (I)(P). The Gross Settlement Amount is non-reversionary and includes the following:

/ / /

[1] The Agreement is attached as Ex "A" to the Declaration of Sydney Castillo-Johnson, Esq. ("SCJ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

a. A "**Class Representative Service Award**" means the amount of up to and not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) that the Court authorizes to be paid to the Class Representative, in addition to his Individual Class Payment and his Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with the prosecution of the action. Agreement at § (I)(K).

b. A **"Class Counsel Award"** means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Class in the Action, consisting of attorneys' fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be $66,666.66 out of $200,000.00, plus costs and expenses in the amount of up to $25,000.00. Class Counsel's award for attorneys' fees will be divided equally between Class Counsel (50% to JCL Law Firm, APC; and 50% to Zakay Law Group, APLC). Agreement at §(I)(F).

c. A "**PAGA Payment**" of Ten Thousand Dollars and Zero Cents ($10,000.00) to be allocated from the Gross Settlement Amount in settlement of the Released PAGA Claims. Agreement at § (I)(V). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment ($7,500) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($2,500) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § (I)(C). The average Aggrieved Employee Payment is approximately $34.25. The estimated range of Aggrieved Employee Payments will be provided in Plaintiff's motion for final approval; and

d. "**Settlement Administration Expenses**" shall mean the amount to be paid for the costs of administration of the Settlement from the Gross Settlement Amount in an amount not to exceed $7,000.00. Agreement at §(I)(JJ).

4. The "**Net Settlement Amount**" of approximately $86,333.34 (Gross Settlement Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA Payment, and Settlement Administration Expenses) 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 § (III)(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual

Settlement Payment of ***$599.54***. The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. SCJ Dec., ¶ 5.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. SCJ Dec., ¶ 5.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. SCJ Dec., ¶ 6.

## II. FACTS AND PROCEDURE

### A. Overview of the Litigation and Mediated Settlement

Defendants own and operate hotels throughout the world, including hotels in the state of California, including the county of Riverside, where Plaintiff worked. Plaintiff worked for Defendants in California from March 2023 to October 2023. During his employment, Plaintiff claims that he was denied legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, "Team Member Handbook". Declaration of Sixto Alegria Fernandez ("Fernandez Dec.") at ¶¶ 1-5; SCJ Dec., ¶ 7.

Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish accurate, itemized wage statements. Defendants deny liability for each of Plaintiff's claims. Further, Defendants assert that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained facially compliant meal and rest period policies, paid their employees for all hours worked, and properly reimbursed all necessary business expenses. SCJ Dec., ¶ 8.

On February 5, 2024, Plaintiff served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). SCJ Dec., ¶ 9.

On April 11, 2024, Plaintiff filed a class action complaint in the Riverside County Superior Court, Case No. CVRI2402069 ("Class Action"). The Action alleged nine causes of action against Defendants for: (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 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code§ 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Violation of the Private Attorneys General Act [Labor Code § § 2698 *et seq*.] SCJ Dec., ¶ 10.

On February 13, 2025, the Parties participated in a full day mediation with Lou Marlin, Esq., a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec., ¶ 11.

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

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment, including copies of Plaintiff's paystubs. Class Counsel subsequently determined that Plaintiff's complaints justified further inquiry. SCJ Dec., ¶ 12.

Class Counsel then requested Plaintiff's employee files from Defendants. In response, Defendants produced several documents, including but not limited to, copies of Plaintiff's payroll records, time records and various company policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among other things, provide compliant meal and rest periods, and failed to pay for all hours worked, failed to reimburse necessary business expenses, and failure to furnish accurate itemized wage statements. SCJ Dec., ¶ 13.

To prepare for mediation, Defendants produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, average shift length for Class Members, number of current Class Members, number of former Class Members who were employed during the Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed dozens of policy documents and thousands of unique cells of time and payroll data. SCJ Dec., ¶ 14.

Class Counsel analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, Class Counsel estimated the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. Class Counsel also estimated the number of missed, late, or truncated meal and rest periods, the amount of off-the-clock work, and the amount of missed meal and rest period premiums paid during the Class Period. SCJ Dec., ¶ 15.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. SCJ Dec., ¶ 16.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SCJ Dec., ¶ 17.

**C. The Proposed Settlement Fully Resolves Plaintiff's Claims**

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

The proposed Settlement Class consists of all current and former employees of Defendants who worked for Defendants in a non-exempt position at the Palm Desert location during the period between April 11, 2020, through April 14, 2025. Agreement at § (I)(H); (I)(I). The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendants estimated that the Settlement Class was comprised of 144 individuals that worked approximately 7,324 Workweeks during the Class Period. Agreement at § (III)(L)(7); (III)(A)(2).

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

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $200,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments; (2) the Class Representative Service Award of up to $10,000.00; (3) the Class Counsel Award in the amount of $86,666.66, comprised of one-third of the Gross Settlement Amount ($66,666.66) plus costs and expenses supported by a declaration not to exceed $20,000.00; (4) PAGA Payment in the amount of $10,000.00; and (5) the Settlement Administration Expenses in the amount of $7,000.00. Agreement at § (I)(P).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § (I)(S). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § (III)(A)(1).

3. <u>The Funding Date</u>

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount on or before the Funding Date, plus any employer's share of payroll taxes by transmitting the funds to the Administrator within ten (10) calendar days after the Effective Date. Agreement at § (I)(O).

4. <u>Formula for Calculating Individual Class Payments</u>

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

Given that there are approximately 144 Settlement Class Members, <u>***the average gross recovery is approximately $599.54***</u> (Net Settlement Amount divided by Settlement Class Members). The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. SCJ Dec., ¶ 5.

For tax purposes, Individual Class Payments shall be allocated and treated as follows: 20% as wages ("Wage Portion"); 80% as penalties and interest ("Non-Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at § (III)(M)(3).

5. Formula for Calculating Aggrieved Employee Payments

Each Aggrieved Employee will receive an Aggrieved Employee Payment. Using the Class Data, the Settlement Administrator shall add up the total number of PAGA pay periods for all Aggrieved Employees during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employee will be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the "PAGA Payment Ratio" for each Aggrieved Employee. Each Aggrieved Employee's PAGA Payment Ratio will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved Employee's estimated share of the PAGA Payment. Agreement at § (III)(M)(2). For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099. (III)(M)(4).

6. Mailing of Individual Class Payments and Individual PAGA Payments

The Settlement Administrator will mail the Individual Settlement Payments and Aggrieved Employee Payments by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement at § (III)(M)(7). Any checks issued to Settlement Class Members and Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance. In the event an Individual Settlement Payment and/or Aggrieved Employee Payment check has not been cashed within one hundred and eighty (180) days, the check will be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The funds from any such uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the individual who did not cash their checks. Agreement at § (III)(M)(8).

7. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims for the Class Period. Agreement at § (III)(B). The Released Class Claims are all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § (I)(DD); (III)(B).

8. PAGA Release by Plaintiff and the State of California

Generally, as of the Funding Date, Plaintiff, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § (III)(C). The Released PAGA Claims are all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release any aggrieved employee's individual claims for wages or damages. Agreement at § (I)(EE).

## III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $200,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with mediator Lou Marlin, Esq. Mediator Marlin managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) The mediation concluded with a settlement after both sides agreed to a Mediator's proposal. SCJ Dec., ¶ 19.

Once the Parties reached a settlement, they engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these settlement negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SCJ Dec., ¶ 20.

2. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of $200,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc.*

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

*Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $200,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to settlement, Class Counsel developed economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA penalties), if Plaintiff was to be successful at trial, ranged between $647,401.99 ("Realistic Damages") and $1,469,546.98 ("Maximum Damages"). This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 30.89% ("Realistic Damages") and 13.61% ("Maximum Damages") of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure: SCJ Dec., ¶ 21.

(1) <u>Defendants' Estimated Exposure for Wage Statement Violations</u>

Defendants' Estimated Exposure for Wage Statement Violations Plaintiff alleged that Defendants failed to provide accurate itemized wage statements that include all items required by Labor Code § 226(a)(1)-(9). Plaintiff alleged that Defendants violated Labor Code § 226(a)(9) by issuing wage statements to Plaintiff and Class Members that failed to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Additionally, as a result of the failure to pay employees for all time worked and failure to pay for all premiums owed, the wage statements issued by Defendants do not indicate the correct number of hours worked, the amount of gross wages earned, or net wages earned during each pay period. SCJ Dec., ¶ 22.

Defendants denied liability for the claim and argued that they substantially complied with their obligation to provide the applicable hourly rates on the wage statements issued to its employees. Further, Defendants argued that even if they failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. Plaintiff's expert estimated that Defendants liability for this claim ranged from approximately $78,000.00 to $156,000.00. SCJ Dec., ¶ 23.

(2) Defendants' Estimated Exposure for Meal Period Violations

Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff alleges that Defendants failed to record the actual time that Class Members worked. As a result, a substantial amount of the meal periods were rounded to exactly thirty (30) minutes. SCJ Dec., ¶ 24.

Defendants argued, among other things, that it did not engage in meal rounding and provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendants also argued that it maintained facially complaint meal period policies, including enforceable meal period waivers. Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Based on Defendants' defenses, Plaintiff estimated the damages for this claim ranged from approximately $204,630.69 and $409,261.38. SCJ Dec. ¶ 25.

(3) Defendants' Estimated Exposure for Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff argued that he was required to work through his rest periods in order to finish work-related tasks. SCJ Dec., ¶ 26.

Again, Defendants denied liability and asserted that the workload is not such that it prevented employees from taking a break. Defendants maintained legally compliant written policies and actual practices concerning rest periods throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members and Defendants' witnesses, and the ability to rebut depositions and declarations submitted by Defendants. *See, e.g.,* *Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Plaintiff estimated the range of potential outcomes for this claim was between approximately $204,630.69 and $409,261.38. SCJ Dec., ¶ 27.

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

Plaintiff alleged that Defendants failed to include certain non-discretionary compensation when calculating the regular rate of pay when paying overtime wages, rest period premiums, meal period premiums, and sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation in the form of, among other things, "Referral Bonus," "Bonus," "Room Incentive," "Employee Referral Bonus Current," "Hiring Bonus Current," "Incentive Current," "Sign on Bonus Current," "Bonus Overtime Quarterly Current," and "Quarterly Bonus Current" payments, which were not properly calculated into the regular rate of pay for purposes of overtime, double time, and meal period premiums. SCJ Dec., ¶ 31. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California law requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. *See Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave. Cal. Labor Code § 246(1)(1)-(2). SCJ Dec., ¶ 28.

Conversely, Defendants denied liability and asserted that they correctly calculated the regular rate of pay. Specifically, Defendants asserted that each item of additional compensation paid to Class Members during the Class Period was discretionary and therefore did not need to be calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. Based on these defenses, Plaintiff estimated Defendants' exposure for this claim ranged from approximately $8,610.00 to $17,220.00. SCJ Dec., ¶ 29.

(5) <u>Defendants' Estimated Exposure for Unpaid Wages</u>

Plaintiff alleges that Defendants failed to pay for all hours worked. Specifically, Plaintiff alleges that he and other Class Members were required to perform pre- and post-shift work off-the-clock and were not compensated for that time. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among other things, that its written policies and procedures directed its employees to perform work only while on-the-clock. Defendants asserted that any deviation from these written policies was individual-specific and thus created individualized issues of liability unsuitable for class treatment. SCJ Dec., ¶ 30.

Based on Defendants' alleged practices requiring employees to work off-the-clock, Plaintiff assumed ten (10) minutes of unpaid compensable time per workweek by the Class Members during the Class Period. Plaintiff estimated Defendants' exposure for this claim ranged between approximately $50,644.11 and $101,288.22. SCJ Dec., ¶ 31.

(6) <u>Defendants' Estimated Exposure for Waiting Time Penalties</u>

Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor Code section 203. Defendants contend that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. As this claim is legally precarious, Plaintiff applied a 75% discount. Plaintiff estimated Defendants' exposure for these claims to be approximately $87,371.50 to approximately $349,486.00. SCJ Dec., ¶ 32.

(7) <u>Exposure for Failure to Reimburse for Mandatory Business Expenses</u>

Plaintiff alleges that Defendants failed to reimburse its employees for mandatory business expenses. Specifically, Defendants required Plaintiff and Class Members to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for Defendants but were not reimbursed or indemnified for the cost associated with the use of their personal cellular phones for Defendants' benefit. BCG estimated a reasonable $15 monthly reimbursement rate for Class Members for the use of their personal cell phones. SCJ Dec., ¶ 33. California employers who require employees to use a personal cellular device for work purposes must reimburse the employee for the cost incurred in furnishing the device, costs associated with such use. See Cal. Labor Code § 2802, providing that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"

Defendants deny these claims and also noted that even if these claims were true, they would affect only a small subset of that Class. As a result, Plaintiff applied a 50% discount and estimated Defendants' exposure for this claim between approximately $13,515.00 and $27,030.00. SCJ Dec., ¶ 34.

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

"Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between February 5, 2023, through April 14, 2025, and there are approximately 73 Aggrieved Employees who worked a total of 1,684 pay periods. SCJ Dec., ¶ 35.

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Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

| **Labor Code Section** | **Number of employees** | **Statutory penalty** | **Number of pay periods / violations** | **Violation rate** | **Total Penalties** |
|---|---|---|---|---|---|
| 351, 510, 558, 1194 and 1197 (unpaid wages) | 73 | $100 | 1,218 | 100% of total pay periods | $121,800 |
| 512 and 226.7 (meal period violations) | 73 | $50 | 1,691 | 50% of total pay periods | $84,550 |
| 512 and 226.7 (rest period violations) | 73 | $50 | 1,691 | 50% of total pay periods | $84,550 |
| 2802 (unreimbursed business expenses) | 73 | $100 | 1,750 | 100% of total pay periods | $7,500 |
| 226 (wage statements) | 73 | $100 | 1,750 | 100% of total pay periods | $175,000 |
| TOTAL | | | | | **$473,400** |

SCJ Dec., ¶ 36.

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 Payment 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 Payment 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).

Defendants argued, however, that PAGA penalties would not be assessed if defendants prevailed on the arguments for the underlying claims, that PAGA penalties cannot be stacked for different Labor Code provisions, and that the Court would exercise its discretion to reduce the amount of PAGA penalties significantly. Ultimately, the Parties negotiated a good faith PAGA penalties allocation of $10,000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties ($7,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties ($2,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Penalties approved by courts and should be approved. SCJ Dec., ¶ 37.

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

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

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

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

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also 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). SCJ Dec., ¶ 38.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also 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."). SCJ Dec., ¶ 39.

Finally, even if a class is certified and Defendants are found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). SCJ Dec., ¶ 40.

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. SCJ Dec., ¶ 41.

"The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation." (*In re Nvidia Derivs. Litig*. (N.D. Cal. 2008) 2008

WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is inherently perilous regardless of the strengths of merits of the claims:

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

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

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 Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 42. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $200,000.00 that is roughly between approximately 30.89% and 13.61% of Defendants' *class-wide* liability exposure for damages and statutory penalties, and between 30.48% and 10.26% of Defendants' maximum class wide liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 43.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § (III)(L)(2). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SCJ Dec., ¶ 44.

The Class Notice includes an exclusion form that Class Members can fill out in order to exclude themselves from the Settlement, and an Objection Form that Class Members can fill out in order to object to the terms of the Settlement. The Class Notice informs Class Members of where they can find the full text of the settlement agreement, the court address, and court website address. See Ex. A to the Agreement. SCJ Dec., ¶ 45.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) SCJ Dec., ¶ 46.

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

### C. The Court Should Preliminarily Approve the Class Representative Service Award

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

The Settlement provides for a Class Representative Service Award of $10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and for providing a general release of claims to Defendants in exchange for the Service Award. SCJ Dec., ¶ 47.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration from Plaintiff that describes the services he performed to prosecute this action, includes an estimate of time incurred by Plaintiff in performing these services, the risks he assumed or benefits he received in prosecuting this action, and identify any adverse consequences he suffered in prosecuting this action. Plaintiff has **not** negotiated any settlement of individual claims with Defendants separate from the settlement at bar. Fernandez Dec., ¶ 10; SCJ Dec. ¶ 48.

Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. SCJ Dec., ¶ 49.

### D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Settlement Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. SCJ Dec., ¶ 50.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Such motion will be accompanied by a declaration that provides evidence of the total amount of time spent by Class Counsel, a description of the work performed, and the reasonableness of the fees charged. Such declaration will also include a detailed description of the costs actually incurred. This declaration will include details related to fee splitting between Class Counsel, and Plaintiff's written notice of such. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ Dec., ¶ 51.

### E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes, Plaintiff contends, and Defendants does not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 52.

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

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. SCJ Dec., ¶ 53.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement 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. SCJ Dec., ¶ 54.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SCJ Dec., ¶ 55.

Additionally, Plaintiff is 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. SCJ Dec., ¶¶ 56-61; Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Jean-Claude Lapuyade ¶¶ 1-8.

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. SCJ Dec., ¶ 57.

## IV. CONCLUSION

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

Dated: June 27, 2025

**JCL LAW FIRM, APC**

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