

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

TIFFANY BRITTON and KAYJHONNIE
SMITH, individually, and on behalf of other
members of the general public similarly
situated,

Plaintiffs,

vs.

MOUNTAIN VALLEY CHILD AND
FAMILY SERVICES, INC., a California
Corporation; and DOES 1 through 100,
Inclusive,

Defendants.

Case No. CU0000023

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

Date: September 15, 2023

Time: 10:00 a.m.

Judge: Hon. S. Robert Tice-Raskin

Dept.: 6

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1 I. INTRODUCTION

2 Plaintiff TIFFANY BRITTON and Plaintiff KAYJHONNIE SMITH (“Plaintiffs”) seek
3 preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release
4 of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for
5 approximately 531 Class Members and 330 PAGA Class Members. The basic terms of the Agreement
6 provide for the following:

7 1. The “**Class Members**” and “**Class Period**” shall mean “all current and former non-
8 exempt California employees who worked at Defendant MOUNTAIN VALLEY CHILD AND
9 FAMILY SERVICES, INC. (“Defendant”) (“Class Members”) at any time during the period of April
10 19, 2018 through June 18, 2023 (“Class Period”). Agreement at ¶¶ I(F), I(I). At the time of mediation
11 there were approximately 531 Class Members who worked approximately 37,351 Workweeks during
12 the Class Period.

13 2. The “**Settlement Class Member**” refers to all Class Members who do not file a timely
14 and valid Request for Exclusion. Agreement at ¶ I(KK).

15 3. The “**PAGA Class Members**” and “**PAGA Period**” refers to all current and former non-
16 exempt California employees who worked at Defendant at any time during the PAGA Period (“PAGA
17 Class Members”). Agreement at ¶ I(U). The “PAGA Period” refers to the period beginning March 20,
18 2022 through June 18, 2023. Agreement at ¶ I(Y). PAGA Class Members do not have the ability to opt-
19 out of the PAGA portion of the settlement. Agreement at ¶¶ III(K)(2)(a), III(K)(7). At the time of
20 mediation there were approximately 330 PAGA Class Members who worked approximately 2,256 pay
21 periods during the PAGA Period. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 17.

22 4. The “**Gross Settlement Amount**” is Four Hundred Thousand Dollars and Zero Cents
23 (\$400,000.00). Agreement at ¶ I(O). The Gross Settlement Amount is non-reversionary and includes
24 the following:

25 a. “**Service Awards**” in the amount of \$10,000.00 to each Plaintiff for her services
26 on behalf of the Class Members. Agreement at ¶¶ I(HH), III(L)(9);

27
28 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

b. A payment of “**Attorneys’ Fees and Attorneys’ Expenses**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$133,333.33 **and** litigation costs and expenses not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at ¶¶ I(C), I(D), III(L)(10);

c. A “**PAGA Payment**” in the amount of \$20,000.00 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay \$15,000.00 representing 75% of the PAGA Penalties to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute \$5,000.00 representing 25% of the PAGA Penalties to the PAGA Class Members (“PAGA Class Member Payment”). Agreement at ¶¶ I(W), III(L)(11); and

d. “**Claims Administration Expenses**” not to exceed \$8,500.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at ¶¶ I(E), I(JJ), III(L)(12).

3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount that remains after accounting for Attorneys’ Fees and Attorneys’ Expenses, Service Awards, PAGA Payments, and Claims Administration Expenses. Agreement at ¶ I(Q). The Net Settlement Amount is approximately \$198,166.67 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. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately **\$373.19**. JCL Dec., ¶ 7.

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 Defendant prevailing at trial. JCL Dec., ¶ 7.

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant owns and operates residential treatment programs for boys and girls, which provide
9 mental health services and therapeutic behavioral services, including in Nevada County, where
10 Plaintiffs worked. This action asserts claims on behalf of all of Defendant's current and former non-
11 exempt employees, employed in California at any time during the Class Period. Plaintiff Britton
12 worked for Defendant as a non-exempt employee in California from August 2017 to August 2019.
13 Plaintiff Smith has worked for Defendant as a non-exempt employee in California from September
14 2022 to present. At all times during their employment, Plaintiffs earned an hourly wage and were
15 entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for
16 all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's written
17 policies and procedures. JCL Dec., ¶ 9; Declaration of Tiffany Britton ("TB Dec.") at ¶¶ 1-5;
18 Declaration of Kayjhonnie Smith ("KS Dec.") at ¶¶ 1-5.

19 Generally, Plaintiffs claim that Defendant failed to include non-discretionary incentive
20 compensation when calculating the regular rate of pay when paying overtime wages, meal period
21 premiums, and sick pay, failed to provide compliant meal and rest periods, failed to pay for all hours
22 worked, failed to reimburse for required business expenses, failed to furnish accurate itemized wage
23 statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of
24 Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws
25 and raised several other significant defenses to Plaintiffs' claims, including but not limited to, asserting
26 that it maintained compliant reimbursement policies, maintained facially compliant meal and rest
27 period policies, issued compliant wage statements, and timely paid all wages when due. JCL Dec., ¶
28 10.

1 On April 19, 2022, Plaintiff Britton filed a class action complaint in the Nevada County Superior
2 Court, Case Number CU0000023 (“Action”). The Action alleged ten causes of action against
3 Defendant for: (1) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 and 1198; (2)
4 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512(a); (3) Failure
5 to Provide Required Rest Periods in Violation of Cal. Lab Code § 226.7; (4) Failure to Pay Minimum
6 Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (5) Failure to Pay Final Wages When
7 Due in Violation of Cal. Labor Code §§ 201 and 202; (6) Failure to Pay Wages When Due During
8 Employment in Violation of Cal. Labor Code § 204; (7) Failure to Provide Accurate Itemized
9 Statements in Violation of Cal. Lab. Code § 226(a); (8) Failure to Keep Requisite Payroll Records in
10 Violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse Employees for Required Expenses in
11 Violation of Cal. Lab. Code § 2802; and (10) Unfair Competition in Violation of Cal. Bus. & Prof.
12 Code §§ 17200, *et seq.* JCL Dec., ¶ 11.

13 On March 20, 2023, Plaintiff Smith served Defendant and the Labor and Workforce
14 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Smith’s
15 PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various
16 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
17 Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General
18 Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). On June 12, 2023, Plaintiffs filed a First Amended
19 Complaint, which added Plaintiff Smith as a named plaintiff and alleged an eleventh cause of action
20 for Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 12.

21 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties
22 agreed to informally exchange additional documents and data points subject to the mediation privilege,
23 including but not limited to, employee handbooks, the Class Members’ time data, and certain payroll
24 data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger
25 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

26 On April 18, 2023, the Parties participated in a full day mediation with respected jurist and
27 experienced wage and hour mediator Hon. Brian C. Walsh (Ret.). After arms-length negotiations and
28 bargaining, the mediation concluded with a settlement, which was subsequently memorialized in the

1 form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
2 and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec.,
3 ¶ 14.

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

5 Months before filing the Action, Class Counsel began their pre-filing investigation into
6 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
7 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,
8 including their wage statements and Defendant's employee handbook. At the conclusion of the
9 interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. JCL Dec., ¶
10 15.

11 Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response,
12 Defendant produced various documents, including but not limited to, copies of Plaintiffs' employment
13 agreements, performance evaluations, timekeeping policies, payroll and time records, and separation
14 documents. Class Counsel reviewed and analyzed the documents and determined the documents
15 appeared to substantiate Plaintiffs' claim that Defendant failed to, among other things, include non-
16 discretionary incentive pay in the regular rate of pay, pay for all time worked, issue accurate itemized
17 wage statements, and provide compliant meal and rest periods. JCL Dec., ¶ 16.

18 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
19 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
20 documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to
21 the Class Members. In response to Class Counsel's request, Defendant produced time records for the
22 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal
23 premiums paid to the Class Members, average hourly rate for the Class Members, and copies of
24 applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping, and
25 meal and rest period policies. In total, Defendant produced tens of thousands of pages of time and
26 payroll data for Class Counsel to analyze. JCL Dec., ¶ 17.

27 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
28 Members' payroll and time data. BCG provides data analysis and damage modeling consulting

1 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
2 credentialed and experienced experts in their fields and have provided their expertise on thousands of
3 cases. Stated differently, BCG is well-qualified to analyze Defendant's time and payroll data. JCL
4 Dec., ¶ 18.

5 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
6 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
7 pay periods, average length of shift and average number of hours worked per week and pay periods
8 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
9 periods, the amount of missed meal period premiums paid during the Class Period, the amount of
10 unpaid wages due to miscalculation of the regular rate of pay, the amount of unreimbursed business
11 expenses, and the amount of off-the-clock work performed by the Class Members during the Class
12 Period. JCL Dec., ¶ 19.

13 In advance of mediation, Class Counsel created several damage models predicated on the BCG
14 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting
15 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
16 during the mediated settlement discussions. JCL Dec., ¶ 20.

17 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
18 Plaintiffs' suitability as a putative class representative through interviews, background investigations,
19 and analysis of his employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
20 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
21 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
22 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
23 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's
24 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
25 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
26 claims being settled, as well as the impediments to recovery, such as to make an independent
27 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

28 Class Counsel only agreed to enter the Settlement following this thorough investigation and

evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, 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. JCL Dec., ¶ 22.

C. The Parties Settled at Mediation

On March 18, 2023, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.), a respected jurist and mediator of wage and hour class and representative actions. Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all current and former non-exempt California employees who worked at Defendant during the period of April 19, 2018 through June 18, 2023, who do not file a timely and valid Request for Exclusion. Agreement at ¶¶ I(F), I(KK). In the data exchanged at the time the Agreement was executed, there were approximately 531 Class Members that worked approximately 37,351 workweeks. JCL Dec., ¶ 17.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$400,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) Service Awards of \$10,000.00 to each Plaintiff for her services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$20,000.00; (4) Claims Administration Expenses estimated at \$8,500.00; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$153,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated

1 to be \$133,333.33 and an estimated \$20,000.00 for actually incurred litigation expenses. *See generally*
2 Agreement at ¶ III(L).

3 Subject to the Court approving the Service Awards, Attorneys' Fees and Attorneys' Expenses,
4 PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be
5 distributed to each participating member of the Settlement Class. Agreement at ¶ III(L)(1). There is
6 no reversion to Defendant and Defendant must separately pay for its share of the employer payroll
7 taxes. Agreement at ¶ III(A)(1).

8 3. The Funding Date

9 Assuming there are no objectors, and no appeal is filed, Defendant will begin funding the
10 \$400,000.00 Gross Settlement Amount on the later of February 18, 2024 or ninety (90) days after the
11 Court's entry of the order granting final approval of this Settlement. Agreement at ¶ I(N).

12 4. Formula for Calculating Individual Settlement Payments

13 Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data
14 provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks
15 for each Settlement Class Member. The Individual Settlement Payments will be calculated by dividing
16 the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class
17 Members during the Class Period and multiplying the result by each Settlement Class Member's
18 Workweeks. Agreement at ¶ III(L)(1). Each Individual Settlement Payment will be reduced by any
19 legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

20 Given that there are approximately 531 Settlement Class Members, **the average gross recovery**
21 **is approximately \$373.19** (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
22 ¶ 7.

23 5. Release by Settlement Class Members

24 Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to
25 release the Released Parties from the Released Class Claims. The Released Class Claims are defined
26 as all class claims alleged in the operative complaint, including the First Amended Complaint (which
27 includes PAGA claims) or which could have been alleged in the operative complaint based on the facts
28 alleged, 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, PAGA claims (which are separately released) and class claims outside of the Class Period. Agreement at ¶¶ III(B), I(DD).

6. PAGA Release by the State of California on behalf of the PAGA Class Members

Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, Plaintiff Smith, acting as the representative of the State of California, on behalf of the PAGA Class Members, will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all PAGA claims alleged in the First Amended Complaint and Plaintiff Smith's March 20, 2023 PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at ¶¶ III(C), I(EE).

III. ARGUMENT

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

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

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (See *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length

1 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
2 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
3 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
4 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
5 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
6 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
7 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
8 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
9 action litigation”).)

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

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

18 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
19 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
20 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
21 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
22 § 11.51.)

23 The Parties participated in mediation with respected mediator Hon. Brian C. Walsh, Ret. Judge
24 Walsh managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks
25 to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist.
26 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
27 inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a
28 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the

proceedings were free of collusion and undue pressure.”).) Prior to and during the mediation and settlement discussions, the Parties exchanged information and engaged in a detailed discussion regarding their evaluate of the case and various aspects of the matter, including but not limited to, the risks and delays of further litigation, as well as evidence of Defendant’s financial condition and ability to pay a settlement. At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive. The Parties only reached a Settlement after Judge Walsh heard arguments, reviewed evidence, evaluated the Parties’ respective claims and defenses, and accounted for Defendant’s financial ability to pay any agreed upon settlement. JCL Dec., ¶ 24.

Once the Parties reached a settlement, the parties subsequently executed a binding and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 26.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs’ claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, 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. JCL Dec., ¶ 27.

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

2 The Gross Settlement Amount of \$400,000.00 is within the range of reasonableness. To
3 determine whether a settlement is fair and reasonable, the court should “consider enough information
4 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
5 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
6 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
7 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
8 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
9 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
10 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
11 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
12 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
13 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
14 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
15 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
16 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

19 The Gross Settlement Amount of \$400,000.00 is fair and reasonable considering the nature and
20 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
21 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
22 liability exposure while accounting for the uncertainties of continued litigation. The various models

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

1 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
2 and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding
3 wage statement, waiting time, and PAGA Penalties) at \$2,242,392.00 and for *all* claims at
4 \$5,116,341.00 if successful at trial. Thus, the Gross Settlement Amount of \$400,000.00 represents
5 approximately 17.8% of Defendant's *class-wide* liability exposure and approximately 7.8% of
6 Defendant's total liability exposure as estimated by Class Counsel at the time of mediation. The
7 following summarizes Defendant's estimated exposure. JCL Dec., ¶ 28.

8 (1) Exposure for Failure to Pay for All Hours Worked

9 Plaintiffs' primary claim in the Action alleged that Defendant failed to pay its employees for all
10 hours worked. Specifically, Plaintiffs assert that Defendant failed to include bonuses and incentive
11 compensation payments in the regular rate of pay for purposes of overtime, meal period premiums, and
12 sick pay. Further, Plaintiffs asserted Defendant required its employees to perform work-related
13 activities pre and post shift to start their daily duties, undergo pre-shift COVID screenings, and/or finish
14 the tasks they were unable to complete during their shifts, as well as respond to work-related
15 communications. JCL Dec., ¶ 29.

16 Defendant vigorously denied liability for this claim. Defendant argued, among other things, that
17 all Class Members were properly paid minimum and overtime compensation for all hours worked and
18 that Class Members were instructed not to work off-the-clock. Further, Defendant argued that all non-
19 discretionary incentive compensation was properly included in the regular rate of pay. Plaintiffs
20 estimated Defendant's exposure for this claim at \$349,238.00. JCL Dec., ¶ 30.

21 (2) Exposure for Meal Period Violations.

22 Plaintiffs also allege that Defendant failed to provide compliant meal periods. Specifically,
23 Plaintiffs allege that as a result of their rigorous work schedules, Plaintiffs and Class Members were
24 not able to take timely and duty-free meal periods. Consequently, Plaintiffs alleges that they are owed
25 meal period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶
26 31.

27 Conversely, Defendant argued, among other things, that they provided all of their employees
28 with the opportunity to take compliant meal periods. Defendant also argued that they maintained

1 facially compliant meal period policies. Further, Defendant argued that all direct-care employees were
2 not entitled to off-duty meal periods pursuant to Industrial Welfare Commission Wage Order No. 5.
3 Accordingly, Plaintiffs reduced the violation rate for meal periods by half. JCL Dec., ¶ 32. Plaintiffs
4 estimated Defendant’s exposure for this claim at \$988,106.50. JCL Dec., ¶ 32.

5 (3) Exposure for Rest Period Violations

6 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
7 Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs and Class Members were not
8 able to take timely and duty-free rest periods. JCL Dec., ¶ 33.

9 Again, Defendants denied liability, asserted that they maintained legally compliant rest period
10 policies and practices throughout the Class Period, and asserted that direct-care employees were not
11 entitled to rest periods pursuant to Wage Order No. 5. Moreover, Plaintiffs recognize the evidentiary
12 burdens establishing this claim. Establishing Plaintiffs’ rest period claim would rely, almost entirely,
13 on Class Member testimony, making it a riskier claim at class certification and liability stages.
14 Certification likely would have required depositions of Class Members who provided declarations, and
15 Defendant argued that they obtained opposing declarations stating either rest breaks were taken, or rest
16 breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013
17 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that
18 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
19 common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
20 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not
21 generate uniform practices.”). Accordingly, Plaintiff assumed a conservative 25% violation rate for
22 rest periods. Plaintiffs estimated Defendant’s exposure for this claim at \$706,127.50. JCL Dec., ¶ 34.

23 (4) Exposure for Unreimbursed Business Expenses

24 Plaintiffs alleged that Defendant required Class Members to incur personal expenses for the use
25 of their own personal cellular phones. California employers who require employees to incur personal
26 business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab.
27 Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary
28 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her

1 duties, or of his or her obedience to the directions of the employer....”). However, Defendant failed to
2 fully reimburse Plaintiff and Class Members for the costs incurred for the use of their personal cellular
3 phones in violation of California Labor Code section 2802. JCL Dec., ¶ 35.

4 Again, Defendant denied any liability for this claim. Defendant argued that most of its
5 employees did not use cellphones as a part of the performance of their duties and on the rare occasion
6 where employees did incur business expenses, these expenses were fully reimbursed. Plaintiffs
7 estimated Defendant’s exposure for this claim at \$198,920.00. JCL Dec., ¶ 36.

8 (5) Exposure for Wage Statement Violations and Waiting Time Penalties

9 Plaintiffs allege that Defendant’s alleged violations resulted in derivative violations of Labor
10 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
11 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue
12 that Plaintiffs could not prove the “willful” prong needed to obtain waiting time penalties under Labor
13 Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class
14 Members suffered an “injury” because of wage statement violations, as required by Labor Code section
15 226. Defendant could also argue that that meal and rest period violations do not entitle employees like
16 Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement
17 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiffs could
18 not give the penalty claims great weight given that they depended on proving the underlying claims,
19 which had their own risks. Plaintiffs estimated Defendant’s exposure for this claim at \$2,253,299.00.
20 JCL Dec., ¶ 37.

21 (6) Defendant’s PAGA Exposure

22 In all, Class Counsel projected Defendant’s liability exposure for PAGA claims at \$620,650.00
23 if successful at trial. JCL Dec., ¶ 38. The proposed PAGA allocation of the Gross Settlement Amount
24 is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
25 “negotiate a good faith amount” for PAGA Payment and “there is no indication that this amount was the
26 result of self-interest at the expense of class members,” such amounts are generally considered
27 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
28 Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two

1 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
2 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
3 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
4 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
5 in the range of zero to two percent of the total settlement).

6 Here, the Parties negotiated a good faith payment for PAGA Payment in the amount of \$20,000
7 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved
8 PAGA Payments. Seventy-Five percent (75%) of the PAGA Penalties (\$15,000.00) will be paid to the
9 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment
10 (\$5,000.00) will be distributed to the PAGA Class Members, which is within the range of PAGA
11 Payments approved by courts and should be approved. JCL Dec., ¶ 39.

12 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
13 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
14 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
15 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
16 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
17 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
18 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
19 6, 2016) (PAGA penalties denied after trial).

20 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
21 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
22 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
23 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
24 defendant."). Here, Plaintiffs would need to prove that each PAGA Class Member suffered a violation
25 for each pay period the employee worked. Again, Defendant raised several defenses that presented
26 serious threats to the claims of the Plaintiff and the PAGA Class Members. In addition to those
27 arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v.*
28

1 *Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and
2 manageability as to the rest period claims. JCL Dec., ¶ 40.

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

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

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

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

17 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
18 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
19 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
20 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
21 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
22 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
23 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
24 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
25 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
26 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
27 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
28 having taken meal and rest breaks demonstrated that individualized inquiries were required to show

1 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
2 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
3 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
5 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
6 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
7 settlement. JCL Dec., ¶ 41.

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

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

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

18 Finally, continuing to litigate this action would require continued and extensive resources
19 coupled with significant Court time to proceed through trial and post-trial motions; which can often
20 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
21 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
22 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
23 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
24 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 42. “Avoiding such a trial and
25 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
26 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
27 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
28 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

1 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$400,000.00 that is
2 approximately 17.8% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the
3 time of mediation. Given the amount of the settlement here, as compared to potential value of the
4 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
5 JCL Dec., ¶ 43.

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

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

16 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
17 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
18 mail the proposed Notice Packet to all Class Members. The Notice Packet will include information
19 regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the procedure,
20 and time period within which to requests for exclusions or objections to the Settlement, the date for the
21 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
22 the Released Class Claims. Agreement at ¶ III(K). This method was negotiated by the Parties to ensure
23 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
24 administration of the Settlement. JCL Dec., ¶¶ 44-45.

25 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
26

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

1 Packet satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
2 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
3 compromise and of the options open to dissenting class members.”).)

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

5 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
6 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
7 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
8 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
9 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
10 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
11 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
12 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
13 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
14 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
15 (2009) 175 Cal.App.4th 785.)

16 The Settlement provides for Service Awards of \$10,000.00 for each Plaintiff. The service award
17 is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class
18 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of
19 their case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure
20 that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 46.

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

24 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Expenses**

25 The purpose of a payment to Class Counsel for Attorneys’ Fees and Expenses in class action
26 litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a
27 substantial positive result for the class. California courts routinely award attorneys’ fees equaling one-
28 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 Plaintiffs’ 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 Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Expenses payment is fair and reasonable. JCL Dec., ¶ 48.

Plaintiffs will file a formal motion for the negotiated Attorneys’ Fees and Expenses once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 49.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that provisional certification of the Class is appropriate. JCL Dec., ¶ 50.

1. The Standard for Class Certification

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. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

14 Because all Class Members are Defendant’s current and former employees, the class is readily
15 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 51.

16 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
17 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
18 liability can be determined by facts common to all members of the class. The wage and hour issues are
19 both numerous and substantial, and a class action is the most advantageous method of dealing with the
20 claims of the Settlement Class. JCL Dec., ¶ 52.

21 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
22 from the same factual basis and are based on the same legal theories applicable to the other Class
23 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
24 Class. Plaintiffs allege that they was injured by the same company-wide practices to which the proposed
25 Class Members were subject to and seeks the same relief. Plaintiffs have already demonstrated their
26 ability to advocate for the interests of the Class Member by initiating this litigation, undertaking
27 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
28 53.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 54, 56-62, Declaration of Shani Zakay, ¶¶ 1-3.

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. JCL Dec., ¶ 55.

IV. CONCLUSION

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

Dated: August 22, 2023

ZAKAY LAW GROUP, APLC

By: 
Julieann Alvarado, Esq.
Attorneys for Plaintiff