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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

LISA MUNOZ, an individual, on behalf of Plaintiff, and on behalf of all persons similarly situated, Plaintiff, v. HI PRO, INC., a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. CIVSB2536842 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: May 10, 2027 Time: 8:30 a.m. Judge: Hon. Thomas S. Garza Dept.: S-27

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I. INTRODUCTION

Plaintiff LISA MUNOZ (hereinafter collectively "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 70 Class Members and 26 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class Members"** and **"Class Period"** shall mean "all non-exempt hourly employees employed by Defendant Hi-Pro, Inc. ("Defendant") in California at any time during the period beginning December 16, 2021, through August 4, 2026 ("Class Period"). Agreement at §§ I(E), I(I). At the time of mediation there were approximately 70 Class Members who worked approximately 3,319 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The **"Settlement Class Member"** refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § I(OO).

3. The **"Aggrieved Employees"** and **"PAGA Period"** refers to all current and former non-exempt hourly California employees employed by Defendant ("Aggrieved Employees") at any time during the period December 16, 2024 through August 4, 2026 ("PAGA Period"). Agreement at §§ I(C), I(BB). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ III(L)(7). At the time of mediation there were approximately 26 Aggrieved Employees who worked approximately 450 pay periods during the PAGA Period. Zakay Dec., ¶ 40.

4. The **"Effective Date"** refers to the date of the Court's entry of an order granting final approval of the Settlement and entering judgment thereon, if no objections are filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final approval order, then the Effective Date will be sixty (60) calendar days from the date the Court enters the order and judgment granting final approval of the settlement. If an appeal is taken from the Court's overruling of objections to the settlement, then the effective date of final approval will be twenty (20) calendar days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final.

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

5. The "**Funding Date**" shall mean the date by which Defendant has paid the entire Gross Settlement Amount and employer's share of payroll tax to the Settlement Administrator in accord with the terms of this Agreement.

6. The "**Gross Settlement Amount**" is One Hundred Forty-Seven Thousand Five Hundred Dollars and Zero Cents ($147,500.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the following:

a. "**Service Award**" in the amount of up to $7,500 to Plaintiff for her services on behalf of the Class Members. Agreement at § I(JJ);

b. A payment of "**Class Counsel Award**" in the amount not to exceed one-third of the Gross Settlement Amount for attorney's fees, currently estimated to be $49,166.67 ***and*** actual out-of-pocket litigation costs and expenses in the amount of up to $25,000.00, to be paid to Class Counsel. Agreement at § I(G);

c. A payment of "**PAGA Payment**" in the amount of $10,000.00 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 $6,500.00 representing 65% of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute $3,500.00 representing 35% of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § I(Y); and

d. "**Settlement Administration Costs**" not to exceed $6,000.00 payable to the Settlement Administrator, Xpand Legal Consulting, LLC, for, *inter alia,* the administration of the Class Notice and Individual Settlement Payments. Agreement at § I(NN).

7. The "**Net Settlement Amount**" refers to the portion of the Gross Settlement Amount that remains after accounting for any Aggrieved Employee Payments, the LWDA Payment, Service Award, Class Counsel Award, and the Settlement Administration Costs. Agreement at § I(U). The Net Settlement Amount is approximately $49,833.33 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 ***$711.90***. Zakay Dec., ¶ 8.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the 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. Zakay Dec., ¶ 8.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds 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. Zakay Dec., ¶ 9.

II. FACTS AND PROCEDURE

A. Overview of the Litigation and Mediated Settlement

Defendant owns and operates a transportation and logistics business in California, including in San Bernardino County where Plaintiff worked. This action asserts claims on behalf of all non-exempt employees employed by Defendant in California at any time during the Class Period. Plaintiff worked for Defendant as a non-exempt employee in California from June of 2024 to January of 2025. Declaration of Lisa Munoz ("Munoz Dec.") at ¶ 4. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." Zakay Dec., ¶ 10; Munoz Dec., ¶ 4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish

accurate itemized wage statements, and failed to pay all wages upon separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts 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 it maintained compliant timekeeping policies and practices, compliant meal and rest period policies, compliant reimbursement policies, maintained issued compliant wage statements, and timely paid all wages due upon separation of employment. Zakay Dec., ¶ 11.

On December 16, 2025, Plaintiff served 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 Defendant's 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"). Zakay Dec., ¶ 12.

On December 16, 2025, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB2536842 ("Action"). The Action alleged eight causes of action against Defendant 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 Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; and (8) Failure to Reimburse Employees for Required Business Expenses in Violation Of Cal. Lab. Code § 2802. Zakay Dec., ¶ 13.

On February 20, 2026, Plaintiff filed a representative action for violations of PAGA in the San Bernardino Superior Court, Case No. CIVSB2606223 ("PAGA Action"). Zakay Dec., ¶ 14.

On August 3, 2026, Plaintiff filed a First Amended Complaint in the Action alleging an additional cause of action and incorporating related claims and factual allegations for alleged violations of PAGA that were raised in the PAGA Action. On August 25, 2026, the PAGA Action was dismissed without prejudice. Zakay Dec., ¶ 15.

Prior to initiating formal discovery, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members' time data, and certain payroll data points. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. Zakay Dec., ¶ 16.

On June 4, 2026, the Parties participated in a full day mediation with mediator Doug Leach, Esq. Despite arms-length negotiations and bargaining, the Parties were unable to reach a settlement. However, Mediator Leach issued a mediator's proposal, which was ultimately accepted by the Parties and memorialized in a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. Zakay Dec., ¶ 17.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

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

Further, Plaintiff's employee file was requested from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff's employment agreements, payroll and time records, and separation documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked, reimburse for mandatory business expenses,

issue accurate itemized wage statements, and provide compliant meal and rest periods. Zakay Dec., ¶ 19.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced time records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia,* compensation, timekeeping, and meal and rest period policies. In total, Class Counsel reviewed approximately 2,723 pages of policy documents and time and payroll data for Class Counsel to analyze. Zakay Dec., ¶ 20.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze Defendant's time and payroll data. Zakay Dec., ¶ 21.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of missed meal period premiums paid during the Class Period, the amount of unpaid wages due to rounding, the amount of unreimbursed business expenses, and the amount of off-the-clock work performed by the Class Members during the Class Period. Zakay Dec., ¶ 22.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. Zakay Dec., ¶ 23.

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 their 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 Members' time and payroll records; (5) analyzing Defendant's 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 Defendant's 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. Zakay Dec., ¶ 24.

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, 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. Zakay Dec., ¶ 25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all non-exempt employees employed by Defendant in California at any time during the period beginning December 16, 2021 through August 4, 2026, who do not file a timely and valid Request for Exclusion. Agreement at §§ I(I); I(OO). In the data exchanged at the time the Agreement was executed, there were approximately 70 Class Members that worked approximately 3,319 workweeks. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement

Amount of $147,500.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) Service Award of $7,500.00 to Plaintiff for her services on behalf of the Settlement Class; (3) PAGA Payment in the amount of $10,000.00; (4) Settlement Administration Costs estimated at $6,000.00; (5) Class Counsel Award in the amount of $74,166.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $49,166.67 and an estimated $25,000.00 for actually incurred litigation expenses. *See generally* Agreement at § III(M)(9)-(12).

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

3. The Funding Date

Defendant will fund the $147,500.00 Gross Settlement Amount in two installments: the first installment of $87,500.00 will be due fourteen (14) days after the Effective Date; and the second installment of $60,000.00 will be due ninety (90) calendar days after the first installment. Agreement at § III(A)(3).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payments. The Class Data provided by Defendant to the Settlement Administrator will include the number of eligible Workweeks for each Settlement Class Member. 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. Agreement at § III(M)(1). Each Individual Settlement Payments will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.).

Given that there are approximately 70 Settlement Class Members, ***the average gross recovery is***

approximately $711.90 (Net Settlement Amount divided by Settlement Class Members). Zakay Dec., ¶ 8.

5. Release by Settlement Class Members

As of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. The Released Parties are defined as Defendant and its current or former officers, partners, directors, shareholders, owners, investors, assigns, attorneys, insurers, agents, independent contractors, exempt employees, joint employers, staffing companies, labor contractors, predecessors, successors, parents, subsidiaries, affiliates, related entities or other representatives of any kind, and related parties. The Released Class Claims are defined as any and all wage and hour claims, rights, demands, debts, liabilities, causes of action, primary rights, or claims for relief arising out of or related to work performed by Class Members during the Class Period that: 1) are alleged, were alleged, could have reasonably been alleged in the Operative Complaint in the Action based on the facts alleged (including previously filed Complaints in the Action); or 2) arise out of the facts, transactions or occurrences alleged in the Complaints in the Action, whether under federal, state, or common law, including, violations of the California Labor Code, the California Business and Professions Code sections 17200, et seq., the Industrial Welfare Commission Wage Orders, and the Fair Labor Standards Act. By way of illustration only and not as a limitation, this release includes all types of recovery and relief available for the above-referenced claims and theories of relief, including, without limitation, any claims for unpaid or untimely payment of any wages or other amounts owed, unpaid minimum wage, unpaid overtime, unpaid double-time pay, non-compliant meal periods or rest breaks or for premium pay, failure to provide sick pay, failure to provide notice of paid sick time accrual, failure to pay reporting time pay, unreimbursed expenses, failure to timely pay wages during employment or upon separation and for waiting-time penalties, failure to maintain accurate records or provide requested records, failure to provide accurate, itemized wage statements or other wage statement violations, unfair business practices arising from the Labor Code violations released herein, and including claims arising therefrom for damages, reimbursement, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive or declaratory relief, chargebacks,

liquidated damages or similar relief. This release does not include claims for vested retirement benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, Social Security, or workers' compensation. This release also does not include claims for PAGA penalties, which are separately released by the Aggrieved Employees. Agreement at § I (GG).

6. Release by the Aggrieved Employees

Upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, the LWDA, the State of California, the Plaintiff and the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include any and all claims for civil penalties arising out of or related to work performed by Aggrieved Employees for any acts or omissions during the PAGA Period that are alleged or were alleged, or could have reasonably been alleged in the Operative Complaint in the Action (including any previously filed Complaint in the Action) and the PAGA Notice. This release includes all claims for PAGA penalties available for the above-referenced claims and theories of relief, including, without limitation, any claims for PAGA penalties arising from unpaid or untimely payment of any wages or other amounts owed, unpaid minimum wage, unpaid overtime, unpaid double-time pay, non-compliant meal periods or rest breaks or for premium pay, failure to provide sick pay, failure to provide notice of paid sick time accrual, failure to pay reporting time pay, unreimbursed expenses, failure to timely pay wages during employment or upon separation and for waiting-time penalties, failure to maintain accurate records or provide requested records, failure to provide accurate, itemized wage statements or other wage statement violations, and including any claims arising therefrom for any monetary or non-monetary relief, and claims for attorneys' fees, expenses, and costs, that may be obtained under PAGA. Agreement at § I(HH).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $147,500.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary

conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal.App.4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with the mediator Doug Leach, Esq. Mediator Leach 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.").) At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. Mediator Leach only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses. Zakay Dec., ¶ 26.

Once the Parties agreed to the Mediator's proposal, 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. Zakay Dec., ¶ 27.

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. Zakay Dec., ¶ 28.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's 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. Zakay Dec., ¶ 29.

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

The Gross Settlement Amount of $147,500.00 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

[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").

reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $147,500.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's 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 Defendant's liability exposure for *class claims* (excluding PAGA penalties) to be approximately $418,790.50 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 35.22% of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure. Zakay Dec., ¶ 30.

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

Plaintiff's primary claim in the Action alleged that Defendant failed to pay its employees for all hours worked under two separate theories. First, Plaintiff alleges that Defendant employed a rounding practice which resulted in an underpayment of wages to Plaintiff and other Class Members. Specifically, Plaintiff's expert found that approximately 7,857 shifts (56.1% of shifts) were underpaid compared to 3,993 (28.5% of shifts) overpaid shifts. Second, Plaintiff alleges that Defendant failed to pay for all hours worked due to off-the-clock pre-shift work performed by Plaintiff and the Class Members. Specifically, Plaintiff and other Class Members were expected and required to arrive early for their shifts in order to boot up their computers, navigate to a timekeeping website, and enter login credentials before being able to clock in – all while off-the-clock. Zakay Dec., ¶ 31.

Defendant denied liability and asserted that its employees were paid for all time worked. Further, Defendant argued that this claim resulted in minimal actual damage to the Class Members and that its

rounding policies complied with *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889. Plaintiff estimated Defendant's liability for unpaid wages to be $49,612.00 based on the regular and overtime hours that were not paid due to rounding and estimating that 5 minutes per shift was lost due to Defendant's de minimis rule. Zakay Dec., ¶ 32.

(2) Exposure for Meal Period Violations.

Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that they are owed meal period premiums for meal period violations that occurred during the Class Period. Additionally, an analysis of the Class Members' time and payroll date revealed that 61.8% of all meal periods were rounded to exactly thirty (30) minutes. Zakay Dec., ¶ 33.

Conversely, Defendant argued, among other things, that they did not engage in meal rounding and provided all their employees with the opportunity to take compliant meal periods. Defendant also argued that they maintained facially complaint meal period policies, including valid meal period waivers, and paid meal period premiums during shifts when violations occurred. Thus, Defendant 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. Accordingly, Plaintiff applied a 25% discount to the meal break claim. Plaintiff estimated Defendant's liability for non-compliant meal breaks to be $45,963.00. Zakay Dec., ¶ 34.

(3) Exposure for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free rest periods. Again, Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognize 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

who provided declarations, and Defendant argued that they obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Accordingly, Plaintiff applied a 75% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim to be $80,876.75. Zakay Dec., ¶ 35.

(4) Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Class Members to use their personal cellular phones as a result of and in furtherance of their job duties but did not reimburse them. Specifically, Plaintiff and Class Members were required to use their personal cell phones in order to send and receive work-related communications as part of their job duties. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An 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…"). Plaintiff estimated Defendant's damages stemming from this claim to be $16,840. This number was calculated by assuming that each Class Member was owed $20 per month for each month employed, as reimbursement for the use of their personal cell phones. Zakay Dec., ¶ 36.

(5) Exposure for Derivative Penalties

Generally, Plaintiff alleges that Defendant's aforementioned violations resulted in derivative violations of California Labor Code Sections 203 and 226(a). Plaintiff applied a 25% discount to Defendant's estimated waiting time penalties and wage statement penalties based on Defendant's defenses to the underlying claims. As such, Plaintiff estimated Defendant's waiting time penalties to

be $192,723.75 based on 47 terminated employees. Plaintiff estimated Defendant's wage statement penalties to be $32,775.00. Zakay Dec., ¶ 37.

(5) Defendant's PAGA Exposure

In all, Class Counsel projected Defendant's liability exposure for PAGA claims to be $75,950.00 if successful at trial. Zakay Dec., ¶ 38. 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).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $10,000 which is 6.77% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Sixty-Five percent (65%) of the PAGA Payment ($6,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining thirty-five percent (35%) of the PAGA Payment ($3,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. Zakay Dec., ¶ 39.

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).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendant raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. Zakay Dec., ¶ 42.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 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). Zakay Dec., ¶ 41.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's 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."). Zakay Dec., ¶ 42.

Finally, even if a class is certified and Defendant is 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). Zakay Dec., ¶ 43.

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. Zakay Dec., ¶ 44.

"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 regard 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 Defendant would appeal any favorable judgment. Zakay Dec., ¶ 45. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. "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 $147,500.00 that is approximately 35.22% of Defendant's maximum class wide liability exposure for damages and statutory penalties. Given the settlement amount here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. Zakay Dec., ¶ 46.

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 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 Class Claims. 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. Zakay Dec., ¶ 47.

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.").)

C. The Court Should Preliminarily Approve the 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*

[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.

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 Plaintiff: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Enhancement payments "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 Service Award of $7,500.00 to 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 the case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. Zakay Dec., ¶ 48.

Class Counsel, on behalf of Plaintiff, will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. Zakay Dec., ¶ 49.

D. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a payment to Class Counsel for 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 Class Members, and in light of the supporting authority, the proposed Class Counsel Award payment is fair and reasonable. Zakay Dec., ¶ 50.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. Zakay Dec., ¶ 51.

E. Provisional Certification for Settlement Purposes Is Appropriate

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

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. (*Bufil 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 Settlement Class Members.

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 Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. Zakay Dec., ¶ 53.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's 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. Zakay 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 she 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 her 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. Zakay 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. Zakay Dec., ¶¶ 7, 56.

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. Zakay Dec., ¶ 57.

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: October 29, 2026

ZAKAY LAW GROUP, APLC

By: _____

Jackland K Hom, Esq.