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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JOSE RUELAS, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

SEA WEST SERVICES LLC, a California
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No. 23CV038585

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

Date: November 12, 2024

Time: 1:30 p.m.

Reservation ID: 534837948725

Judge: Hon. Noël Wise

Dept.: 21

TABLE OF CONTENTS

I.	INTRODUCTION	1
	1. The “Class Members”, “Settlement Class Members” and “Class Period”	1
	2. The “Aggrieved Employees” and “PAGA Period”	1
	3. The “Gross Settlement Amount”	1
	a. A “Service Award”	1
	b. “Class Counsel Award”	1
	c. “PAGA Payment”	2
	d. “Settlement Administration Costs”	2
	4. The “Net Settlement Amount”	2
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled Following Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiff’s Claims	7
	1. The Composition of the Settlement Class Members	7
	2. The Settlement Consideration	7

1	3. The Funding Date	8
2	4. Formula for Calculating Individual Settlement Payments	8
3	5. Release by Settlement Class Members	8
4	6. PAGA Release by Plaintiff and the LWDA	9
5	III. ARGUMENT	9
6	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
7	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel	10
8	2. The Settlement Falls Within the Recognized Range of Reasonableness	11
9	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	12
10	(1) Estimated Exposure for Wage Statement Violations	12
11	(2) Estimated Exposure for Rest Period Violations	13
12	(3) Estimated Exposure for Meal Period Violations	13
13	(4) Estimated Exposure for Unpaid Wages	13
14	(5) Estimated Exposure for Regular Rate Violations	14
15	(6) Estimated Exposure for Failure to Reimburse for Mandatory Business Expenses	14

///

1	(7) Estimated Exposure for Waiting Time Penalties	14
2		
3	(8) Defendant’s PAGA Exposure	15
4		
5	b. Inherent Risks of Continued Litigation Support Preliminary Approval	16
6	B. The Proposed Notice Informs the Class about the Case and Settlement	18
7		
8	C. The Court Should Preliminarily Approve the Service Award	19
9		
10	D. The Court Should Preliminarily Approve the Class Counsel Award	20
11	E. Provisional Certification for Settlement Purposes Is Appropriate	21
12		
13	1. The Standard for Class Certification	21
14		
15	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members	21
16		
17	IV. CONCLUSION	23

///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	10
5	<i>Acheson v. Express, LLC</i>	
6	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	20
7	<i>Aguilar v. Cingular Wireless, LLC</i>	
8	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	20
9	<i>Ali v. U.S.A. Cab Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	16
11	<i>In re Apple Computer, Inc. Derivative Litig.</i>	
12	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
13	<i>Baker v. LA. Fitness Int'l, LLC</i>	
14	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	19
15	<i>Barrett v. Doyon Security Services, LLC,</i>	
16	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	20
17	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
18	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	20
19	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
20	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	19
21	<i>Brinker</i>	
22	53 Cal. 4th at 1021-1022.....	16, 22
23	<i>Brown v. Fed Express Corp.</i>	
24	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	16
25	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
26	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	19
27	<i>Bufile v. Dollar Financial Group, Inc.</i>	
28	(2008) 162 Cal.App.4th 1193, 1207.....	21
	<i>Cacho v. Eurostar, Inc.</i>	
	(2019) 43 Cal.App.5th 885.....	16
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	20
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	15
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
	<i>Carrington v. Starbucks Corp.,</i>	
	30 Cal. App. 5th 504, 517, 539 (2018).....	16
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	18
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	9-10, 19
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	18
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	20
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	19

1	<i>Coleman v. Estes Express Lines, Inc.</i>	
2	No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013).....	19
3	<i>Contreras v. Serco Inc.,</i>	
4	No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012).....	20
5	<i>D’Amato v. Deutsche Bank</i>	
6	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
7	<i>Dunk v. Ford Motor Co.</i>	
8	(1996) 48 Cal.App.4th 1794, 1802.....	9
9	<i>Duran v. U.S. Bank National Association</i>	
10	(2014) 59 Cal.4th 1, 31.....	16
11	<i>Ethridge v. Universal Health Services, Inc.</i>	
12	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	19
13	<i>Fleming v. Covidien</i>	
14	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	15
15	<i>Fontana v. Elrod</i>	
16	(7 th Cir. 1987) 826 F.2d 729, 732.....	18
17	<i>Frank v. Eastman Kodak Co.</i>	
18	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	11
19	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
20	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	20
21	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
22	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
23	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i>	
24	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	19
25	<i>Hill v. Sunglass Hut Int’l, Inc,</i>	
26	No. BC422934 (L.A. County Super. Ct. July 2, 2012).....	19
27	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
28	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
	<i>Kabamba v. Victoria’s Secret Stores. LLC,</i>	
	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	19
	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106.....	18
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
	<i>Kisliuk v. ADT Security Services, Inc.,</i>	
	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	20
	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	21
	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	17-18
	<i>Magee v. American Residential Services, LLC</i>	
	No. BC423798 (L.A. County Super. Ct Apr. 21, 2011).....	19
	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	19
	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	11-12
	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
	///	

1	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.</i> , No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....	20
2	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 186 Cal.App.4th 399, 409.....	11
3	<i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	11, 18
4	<i>Nevarez v. Trader Joe’s Co.</i> , No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	20
5	<i>Newman v. Stein</i> (2d. Cir. 2002) 464 F.2d 689, 693.....	11
6	<i>In re Nordstrom Com. Cases</i> 186 Cal.App.4th 576, 589 (2010).....	15
7	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i> (1994) 27 Cal.App.4th 1085, 1089-90.....	9
8	<i>In re Nvidia Derivs. Litig.</i> (N.D. Cal. 2008) 2008 WL 5382544, at *3.....	17
9	<i>O’Conner v. Uber Technologies, Inc.</i> (9 th Cir. 2018) 904 F.3d 1087.....	17
10	<i>Officers for Justice v. Civil Serv. Comm’n</i> (9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 11
11	<i>In re Omnivision Tech, Inc.</i> (N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
12	<i>Ordaz v. Rose Hills Mortuary, LP.</i> , No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	20
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15	<i>Sav-On Drug Stores, Inc.</i> (2014) 34 Cal.4th 319, 326, 333.....	21
16	<i>Sheldon v. AHMC Monterey Park Hospital LP</i> No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	20
17	<i>Silva v. Catholic Moray Services, Inc.</i> , No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	20
18	<i>Stambaugh v. Super. Ct</i> (1976) 62 Cal.App.3d 231, 236.....	10
19	<i>State v. Levi Strauss & Co.</i> (1986) 41 Cal.3d 460, 482, 485.....	10, 19
20	<i>In re Taco Bell Wage & Hour Actions</i> 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	15
21	<i>Tien v. Tenet Healthcare Corp.</i> (2012) 209 Cal.App.4th 1077, 1088.....	16-17
22	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i> (1975) 48 Cal. App. 3d 143, 151-52.....	18
23	<i>Weisbarth v. Banc West Investment Services, Inc.</i> , No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	20
24	<i>Zamora v. Balboa Life & Casualty LLC</i> No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	20
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RULES, CODES, AND STATUTES

1		
2	<i>Cal. Bus & Prof. Code</i> §§ 17200.....	3
3	<i>Cal. Civ. Proc. Code</i> § 382.....	21
4	<i>Cal. Lab. Code</i> § 201.....	4
5	<i>Cal. Lab. Code</i> § 202.....	4
6	<i>Cal. Lab. Code</i> § 203.....	4, 15
7	<i>Cal. Lab. Code</i> § 226.....	4, 12
8	<i>Cal. Lab. Code</i> § 226.7.....	4
9	<i>Cal. Lab. Code</i> § 246.....	4
10	<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	3
11	<i>Cal. Lab. Code</i> § 512.....	4
12	<i>Cal. Lab. Code</i> § 1194.....	3
13	<i>Cal. Lab. Code</i> § 1197.....	3
14	<i>Cal. Lab. Code</i> § 1197.1.....	3
15	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	3-4
16	<i>Cal. Lab. Code</i> § 2802.....	4
17	<i>Rule of Court</i> Rule 3.769 (c)-(g).....	9
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I. INTRODUCTION

Plaintiff JOSE RUELAS (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 84 Class Members and 49 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**”, “**Settlement Class Members**” and “**Class Period**” shall mean all non-exempt employees who are or previously were employed by Defendant Sea West Coast Guard Federal Credit Union (“Defendant”)² and performed work in California during the period of July 17, 2019, to August 18, 2024 (“Class Period”). Agreement at § I(E). The Settlement Class Members exclude any Class Member that submits a valid and timely request for exclusion. Agreement at § I(MM).

2. The “**Aggrieved Employees**” and “**PAGA Period**” mean all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period of May 12, 2022 to August 18, 2024. Agreement at § I(C). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(2).

3. The “**Gross Settlement Amount**” is Two Hundred Ninety-Four Thousand Five Hundred Dollars and Zero Cents (\$294,500.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” of no more than \$10,000 to Plaintiff for his services on behalf of the Class Members. Agreement at § I(II);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$98,166.67, **and** attorneys’ expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at § I(G);

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¹ The Agreement is attached as Ex “1” 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.

² On July 27, 2023, Plaintiff filed the operative complaint which named Sea West Services LLC as a Defendant. On November 8, 2023, Defendant Sea West Coast Guard Federal Credit Union filed an Answer to the operative complaint and stated that it was erroneously sued as Sea West Services LLC. On January 16, 2024, Plaintiff filed an Amendment to the operative complaint to add Sea West Coast Guard Federal Credit Union as a DOE Defendant. No later than sixty (60) days of the Court’s entry of the order granting final approval of this Settlement, Plaintiff will move to dismiss Defendant Sea West Services LLC. Defendant Sea West Services LLC is encompassed in the definition of Released Parties as provided in the Agreement.

1 c. A “**PAGA Payment**” of \$10,000.00 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004.
3 The Settlement Administrator shall pay 75% of the PAGA Payment to the Labor and Workforce
4 Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the
5 PAGA Payment proportionately to all Aggrieved Employees (“Aggrieved Employee Payment”).
6 Agreement at § III(M)(11); and

7 d. “**Settlement Administration Costs**” not to exceed \$3,500 payable to the
8 Settlement Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Notice
9 Packet and Individual Settlement Payments. Agreement at § III(M)(12).

10 4. The “**Net Settlement Amount**” of approximately \$147,833.33 (Gross Settlement
11 Amount minus the requested Service Award, Class Counsel Award, PAGA Payment, and Settlement
12 Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis
13 according to the number of Workweeks each Settlement Class Member worked during the Class Period.
14 The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of
15 the Settlement Class resulting in an average Individual Settlement Payment of **\$1,759.92**. Agreement
16 at § III(M)(1); JCL Dec., ¶ 7.

17 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
18 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
19 The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is
20 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
21 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
22 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
23 denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

24 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
25 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
26 the Settlement Class Members meets or exceeds awards in similar wage and hour class actions.
27 Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff
28 respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a credit union that provides banking services in the state of California, including in the county of Alameda, where Plaintiff worked. This action asserts claims on behalf of Defendant's current and former non-exempt employees employed in California. Plaintiff worked for Defendant as a non-exempt employee in California between August of 2021 to January of 2023. At all times during his employment, Plaintiff was paid an hourly wage and was entitled to legally compliant meal and rest periods. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 9; Declaration of Jose Ruelas ("Ruelas Dec.") at ¶¶ 1-4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to furnish accurate itemized wage statements, failed to provide compliant meal and rest periods, failed to pay overtime and sick pay at the correct regular rate of pay, failed to reimburse for mandatory business expenses, and failed to pay all wages when due. 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, compliant meal and rest period policies, compliant wage statements, and timely payment all wages due upon separation of employment. JCL Dec., ¶ 10.

On May 12, 2023, Plaintiff served Defendant Sea West Services LLC and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant Sea West Services LLC'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"). JCL Dec., ¶ 11.

On July 17, 2023, Plaintiff filed a Class and Representative Action Complaint in the Alameda Superior Court, Case No. 23CV038585 ("Action"). The Action alleged ten causes of action for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 et seq.; (4) Failure to Provide

1 Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required
2 Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized
3 Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in
4 Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees for Required
5 Expenses in Violation of Cal. Lab. Code § 2802; (9) Unpaid Sick Pay in Violation of Cal. Lab. Code
6 §246; and (10) Violation of the Private Attorneys General Act [Labor Code §§ 2698, et seq.] JCL Dec.,
7 ¶ 12.

8 On July 17, 2023, Defendant filed an Answer to Plaintiff’s Class and Representative Action
9 Complaint and represented that it was erroneously sued as Defendant Sea West Services LLC. JCL
10 Dec., ¶ 13.

11 On January 16, 2024, Plaintiff filed an Amendment to the Class and Representative Action
12 complaint and served the LWDA with an amended PAGA Notice to name Defendant Sea West Coast
13 Guard Federal Credit Union, an unknown business entity, as DOE Defendant 1 in the Action. JCL Dec.,
14 ¶ 14.

15 After engaging in written discovery, the Parties agreed to mediate this action. To prepare for
16 mediation, the Parties agreed to informally exchange documents and data points subject to the
17 mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data
18 points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting
19 Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 15.

20 On June 4, 2024, the Parties participated in mediation presided over by Brandon McKelvey,
21 Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded
22 without a settlement, but Mediator McKelvey made a mediator’s proposal, which was subsequently
23 accepted by both Parties. Mediator McKelvey’s settlement proposal was memorialized in the form of
24 a Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
25 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
26 entire Agreement. JCL Dec., ¶ 16.

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

2 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
3 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
4 part of the interview process, Plaintiff produced documents related to his employment, including
5 payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's
6 complaints justified further inquiry. JCL Dec., ¶ 17.

7 Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response,
8 Defendant produced several documents, including but not limited to, copies of Plaintiff's hiring
9 documents, payroll records, and performance reviews. Class Counsel reviewed and analyzed the
10 documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant
11 failed to, among other things, pay for all time worked and provide compliant meal and rest periods.
12 JCL Dec., ¶ 18.

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

21 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
22 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
23 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
24 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
25 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶
26 20.

27 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
28 models. Among other things, BCG determined the approximate number of work shifts, workweeks,

1 pay periods, average length of shift and average number of hours worked per week and pay periods
2 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
3 periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of
4 underpayment of overtime, premiums, and sick time resulting from miscalculation of the regular rate
5 of pay, the amount of off-the-clock work, and the amount of unreimbursed business expenses incurred
6 by Class Members during the Class Period. JCL Dec., ¶ 21.

7 In advance of mediation, Class Counsel created a damage model predicated on the BCG analysis.
8 Class Counsel's model calculated Defendant's potential liability exposure while accounting for the
9 uncertainties of continued litigation. This damage model informed and guided Class Counsel during
10 the mediated settlement discussions. JCL Dec., ¶ 22.

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

22 **C. The Parties Settled Following Mediation**

23 On June 4, 2024, the Parties attended a full day of mediation with Brandon McKelvey, Esq., an
24 experienced mediator of wage and hour class and PAGA actions. Mediator McKelvey helped manage
25 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
26 The Parties made substantial progress with his assistance. Namely, the Parties exchanged information
27 regarding their respective claims and defense, including their respective evaluation of the damages.
28 The mediation concluded without a settlement, but Mediator McKelvey made a mediator's proposal,

1 which was subsequently accepted by both Parties. Mediator McKelvey's settlement proposal was
2 memorialized in the form of a Memorandum of Understanding. The complete and final terms of the
3 Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement
4 constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

5 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

6 1. The Composition of the Settlement Class Members

7 The proposed Settlement Class consists of all non-exempt employees who are or previously were
8 employed by Defendant and performed work in California from the period beginning July 17, 2019,
9 through August 18, 2024. The Settlement Class excludes any person who submits a timely and valid
10 request for exclusion. At the time of mediation, Defendant estimated that the Class was comprised of
11 84 Class Members that worked an approximately 7,045 workweeks during the Class Period.
12 Agreement at § III(A)(2).

13 2. The Settlement Consideration

14 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
15 Amount of \$294,500.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments
16 to the Settlement Class; (2) a Service Award of \$10,000 to Plaintiff for his services on behalf of the
17 Settlement Class; (3) a PAGA Payment in the amount of \$10,000.00; (4) Settlement Administration
18 Costs estimated at \$3,500; and (5) Class Counsel Award in the amount of up to \$114,166.67, comprised
19 of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$98,166.67 and
20 up to \$25,000 for actually incurred litigation expenses. See generally Agreement at § III(M)(9)-(12).

21 Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and
22 the Settlement Administration Costs, the Net Settlement Amount will be distributed to each
23 participating member of the Settlement Class. Agreement at § III(M)(1). There is no reversion to
24 Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement
25 at § III(A)(4).

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1 3. The Funding Date

2 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
3 Amount no later than sixty (60) days of the Court's entry of the order granting final approval of this
4 Settlement. Agreement at § I(N).

5 4. Formula for Calculating Individual Settlement Payments

6 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
7 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
8 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
9 the Settlement Administrator will include the number of Workweeks for each Class Member and the
10 number of Pay Periods worked during the relevant periods. Agreement at § III(M)(1). Each Settlement
11 Class Member's final Individual Settlement Payment for purposes of payment will be calculated by
12 dividing the number of Workweeks for each Class Member by the total number of Workweeks for all
13 Class Members, resulting in a Payment Ratio for each Class Member. The Payment Ratio will then be
14 multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
15 Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated
16 employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for
17 members of the Settlement Class who submit valid and timely requests for exclusion will be
18 redistributed to Class Members who do not submit valid and timely requests for exclusion on a pro rata
19 basis. Agreement at III(M)(1).

20 Given that there are approximately 84 Class Members, *the average gross recovery is*
21 *approximately \$1,759.92* (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 7.

22 5. Release by Settlement Class Members

23 Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement,
24 Plaintiff and the Settlement Class Members release the Released Parties (as defined in the Agreement)
25 from all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the
26 Operative Complaint in the Action which occurred during the Class Period, and expressly excluding
27 all other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
28 disability, social security, workers' compensation, and class claims outside of the Class Period

1 (“Released Class Claims”). Agreement at §§ I(EE).

2 6. PAGA Release by Plaintiff and the LWDA

3 Generally, upon the Funding Date, in exchange for the consideration set forth in this Agreement,
4 the Plaintiff, on behalf of the LWDA, and the State of California release the Released Parties from the
5 all PAGA claims alleged in Plaintiff’s Amended PAGA Notice to the LWDA which occurred during
6 the PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
7 wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and
8 PAGA claims outside of the PAGA Period (“Released PAGA Claims”) for the period beginning May
9 12, 2022 to August 18, 2024 (“PAGA Period”). Agreement at § I(FF); III(C).

10 **III. ARGUMENT**

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

12 The proposed Settlement, including a Gross Settlement Amount of \$294,500.00 meets the
13 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
14 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
15 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
16 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
17 notice of the settlement has been distributed to class members for their comments and objections.
18 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
19 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
20 inquire into the fairness of the proposed settlement”).)

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

goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation”).)

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

1. 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 Brandon McKelvey, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediator 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. The matter was resolved only after a full day of mediated negotiations managed by the

mediator who heard arguments, reviewed evidence and evaluated the Parties' respective claims and defenses. JCL Dec., ¶ 25.

Once the Parties reached a settlement, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

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

The Gross Settlement Amount of \$294,500.00 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.³ Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*

³ 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").

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

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

4 The Gross Settlement Amount of \$294,500.00 is fair and reasonable considering the nature and
5 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
6 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
7 liability exposure while accounting for the uncertainties of continued litigation. The various models
8 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
9 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
10 PAGA penalties) ranged between \$1,347,671.41 (“Conservative Model”) and \$2,083,702.06
11 (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several of the
12 claims, together with the uncertainty surrounding derivative liability for waiting time penalties. Thus,
13 the Gross Settlement Amount of \$294,500.00 represents approximately between 21.85% (“Aggressive
14 Model”) and 14.13% (“Conservative Model”) of Defendant’s *class-wide* liability exposure as estimated
15 by Class Counsel at the time of mediation. The following summarizes Class Counsel’s estimation of
16 Defendant’s exposure. JCL Dec., ¶ 27.

17 (1) Estimated Exposure for Wage Statement Violations

18 One of Plaintiff’s primary claims in the Action was that Defendant failed to provide accurate
19 itemized wage statements that include all items required by Labor Code § 226(a)(1)-(9), including all
20 applicable hourly rates in effect during the pay period. Further, as a result of Defendant’s failure to pay
21 employees for all time worked, the wage statements issued by Defendant do not indicate the correct
22 number of hours worked, the amount of gross wages earned, or net wages earned during each pay period.
23 JCL Dec., ¶ 28.

24 Defendant maintains that its wage statements are compliant, and further argued that Plaintiff
25 cannot show that Class Members suffered an “injury” because of wage statement violations, as required
26 by Labor Code section 226. Taking Defendant’s defenses into account, Plaintiff discounted this claim
27 25%. Plaintiff estimated that Defendant’s exposure on this claim ranged between \$106,087.50 and
28 \$141,450.00. JCL Dec., ¶ 29.

1 (2) Estimated Exposure for Rest Period Violations

2 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
3 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
4 able to take timely and duty-free rest periods. Additionally, Plaintiff argued that Defendant maintained
5 an unlawful written rest period policy that required employees to remain on premises during their rest
6 periods. JCL Dec., ¶ 30.

7 Again, Defendant denied liability and asserted that they maintained legally compliant rest period
8 policies and practices throughout the Class Period. Consequently, Plaintiff applied a 25% discount and
9 estimated that Defendant's exposure on this claim ranged between \$790,404.75 and \$1,053,873.00. JCL
10 Dec., ¶ 31.

11 (3) Estimated Exposure for Meal Period Violations

12 Plaintiff also alleged that Defendant failed to provide compliant meal periods, and further failed
13 to provide any meal period premiums. Specifically, Plaintiff alleged that because of rigorous work
14 schedules and Defendant's understaffing, Plaintiff and Class Members were unable to take timely and
15 duty-free meal periods. JCL Dec., ¶ 32.

16 Conversely, Defendant argued, among other things, that it provided Class Members with the
17 opportunity to take compliant meal periods. Further, Defendant argued that any missed meal periods
18 were voluntarily and did not trigger liability for premium payments. Thus, Defendant argued that there
19 was no potential liability for Plaintiff's alleged meal period violations. Consequently, Plaintiff applied
20 a 50% discount and estimated that Defendant's exposure on this claim ranged between \$198,736.20
21 and \$397,472.40. JCL Dec., ¶ 33.

22 (4) Estimated Exposure for Unpaid Wages

23 Plaintiff also alleged that Defendant failed to pay for all hours worked. Plaintiff alleged that as
24 a direct result of Defendant's time-keeping system and policies, Plaintiff and Class Members worked
25 off-the-clock each day as they had to wait for their computers to boot up, enter their passwords, open
26 a web browser, navigate through a website, and enter their credentials before they could clock in. JCL
27 Dec., ¶ 34.

28 Defendant vigorously denied liability for this claim. Defendant asserted, among other things,

1 that its written policies and procedures directed its employees to perform work only while on-the-clock.
2 Further, Defendant asserted that any deviation from these written policies was individual-specific and
3 thus, created individualized issues of liability unsuitable for class treatment. Thus, Plaintiff applied a
4 50% discount for this claim and estimated that Defendant's exposure for this claim ranged between
5 \$42,836.58 and \$85,673.16. JCL Dec., ¶ 35.

6 (5) Estimated Exposure for Regular Rate Violations

7 Plaintiff also alleged that Defendant miscalculated the regular rate of pay for purposes of
8 overtime and redeemed sick pay. Specifically, Plaintiff alleges that Class Members received non-
9 discretionary incentive compensation labeled on wage statements as "ERN," "Award ERN," "Bonus
10 ERN," and "Commissions" but failed to consider these non-discretionary bonuses when it calculated
11 the overtime rate and redeemed sick pay rate for Class Members. JCL Dec., ¶ 36.

12 Defendant denied that it paid any non-discretionary bonuses besides "Commissions" or that it
13 issued any other payments that had to be included in the regular rate. Due to the material question of
14 fact as to whether the non-commission based bonuses paid to Plaintiff and Class Members were non-
15 discretionary, Plaintiff applied a 25% discount for this claim and estimated that Defendant's exposure
16 for this claim ranged between \$52,703.25 and \$70,271.00. JCL Dec., ¶ 37.

17 (6) Estimated Exposure for Failure to Reimburse for Mandatory Business
18 Expenses

19 Plaintiff alleged that Class Members were required to use their personal cell phones in connection
20 with their job duties but were not reimbursed by Defendant. Specifically, Plaintiff alleges that Class
21 Members were required to use their personal cell phones to communicate with customers and to clock
22 in and out for work. Defendant maintains that necessary expenses for which reimbursements were
23 sought were paid. Thus, Plaintiff applied a 75% discount for this claim and estimated that Defendant's
24 exposure for this claim ranged between \$10,578.13 and \$42,312.50. JCL Dec., ¶ 38.

25 (7) Estimated Exposure for Waiting Time Penalties

26 Plaintiff also alleged that Defendant's labor code violations resulted in derivative liability for
27 waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
28 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could

1 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
2 Thus, Plaintiff applied a 50% discount for this claim and estimated that Defendant’s exposure for this
3 claim ranged between \$146,325.00 and \$292,650.00. JCL Dec., ¶ 39.

4 (8) Defendant’s PAGA Exposure

5 Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties. At
6 the time of mediation, Plaintiff estimated Defendant’s PAGA exposure was approximately \$347,500.
7 JCL Dec., ¶ 40.

8 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000.00 which is
9 approximately 3.4% of the Gross Settlement Amount. This amount falls well within the range of
10 approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid
11 to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment
12 (\$2,500) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is
13 within the range of PAGA Payments approved by courts and should be approved. JCL Dec., ¶ 41.

14 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
15 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
16 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
17 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
18 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
19 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
20 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
21 6, 2016) (PAGA penalties denied after trial).

22 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
23 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
24 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on
25 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
26 defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
27 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
28 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. In all, Plaintiff’s PAGA liability exposure is hotly contested. JCL Dec., ¶ 42.

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

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). JCL Dec., ¶ 43.

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

1 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
2 questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 44.

3 Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-
4 certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification
5 of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
6 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a \$110 million
7 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
8 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
9 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL Dec., ¶ 45.

10 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
11 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
12 factor favoring settlement. JCL Dec., ¶ 46.

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

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

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

23 Finally, continuing to litigate this action would require continued and extensive resources
24 coupled with significant Court time to proceed through trial and post-trial motions; which can often
25 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
26 extensive expert testimony, particularly with regard to damages. But even if Plaintiff is successful at
27 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
28 Defendant would appeal any favorable judgment. JCL Dec., ¶ 47. As demonstrated by *Magadia*,

1 *supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “Avoiding such a trial and
2 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
3 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
4 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
5 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

6 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$294,500.00 that is
7 roughly approximately 21.85% of Defendants’ *class-wide* liability exposure for damages and statutory
8 penalties, and approximately 14.13% of Defendant’s maximum class wide liability exposure for
9 damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as
10 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
11 the settlement is fair and reasonable. JCL Dec., ¶ 48.

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

13 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
14 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
15 information to decide whether they should accept the benefits offered, opt out and pursue their own
16 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
17 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
18 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
19 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
20 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
21 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁴

22 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
23 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
24 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
25 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the

26
27 ⁴ 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 procedure and time period within which to request for exclusion or to object to the Settlement, the date
2 for the final approval hearing, the formula used to calculate settlement payments, and the terms and
3 scope of the Released Class Claims. The Parties negotiated this method to ensure delivering the most
4 reasonable method of notice to the Class Members while ensuring cost effective administration of the
5 Settlement. JCL Dec., ¶ 49.

6 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
7 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
8 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
9 of the options open to dissenting class members.”). JCL Dec., ¶ 50.

10 **C. The Court Should Preliminarily Approve the Service Award**

11 Service Awards “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases*
12 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
13 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
14 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
15 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
16 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
17 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
18 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
19 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
20 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
21 (2009) 175 Cal.App.4th 785.)

22 The Settlement provides for a Service Award of \$10,000⁵ for Plaintiff. The service award is fair

23 ⁵ The amount of the requested Service Award-\$10,000-is reasonable by reference to the amounts that California courts (both federal and
24 state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No. BC438654
25 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell*
26 *Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment);
27 *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the
28 named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000
enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding
\$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar.
27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012)
(awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC*, No. BC368528 (L.A.
County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation
for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011)
(awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct.

1 and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with
2 the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the
3 strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are
4 fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 51.

5 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
6 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
7 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 52.

8 **D. The Court Should Preliminarily Approve the Class Counsel Award**

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

19 Class Counsel took this matter on a contingency fee basis and invested significant time and
20 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average

21 June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (LA.
22 County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (LA.
County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park*
23 *Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray*
Services, Inc., No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs);
24 *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement
payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement
25 payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding
\$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding
26 \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010)
(awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug.
6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD.
27 Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside
Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx)
(C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582
28 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos.
BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

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 is fair and reasonable. JCL Dec., ¶ 53.

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 Class Counsel Award. JCL Dec., ¶ 54.

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. JCL Dec., ¶ 55.

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 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.)

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

6 Because all Class Members are Defendant’s current and former employees, the class is readily
7 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 56.

8 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
9 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
10 liability can be determined by facts common to all members of the class. The wage and hour issues are
11 both numerous and substantial, and a class action is the most advantageous method of dealing with the
12 claims of the Settlement Class. JCL Dec., ¶ 57.

13 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
14 from the same factual basis and are based on the same legal theories applicable to the other Class
15 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
16 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
17 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
18 to advocate for the interests of the Class by initiating this litigation, participating in mediation, and
19 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 58.

20 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
21 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
22 gained state court settlement approval of the same class-wide causes of action that are at issue in this
23 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
24 represent the interests of this Class. JCL Dec., ¶¶ 59; 61-68, Declaration of Shani Zakay, ¶¶ 1-3.

25 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
26 each individual claim, the Class Members likely have little incentive to litigate their claims on an
27 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
28 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case

1 adjudication. JCL Dec., ¶ 60.

2 **IV. CONCLUSION**

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

6
7 Dated: October 17, 2024

JCL LAW FIRM, APC

8 By: 
9 Jean-Claude Lapuyade
Attorney for PLAINTIFF