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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CALVIN WATSON, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

PIER 39, LP, a California limited partnership; and
DOES 1 through 100, inclusive,

Defendants.

Case No. CGC-23-608701

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

Date: June 5, 2026

Time: 10:00 a.m.

Judge: Hon. Ethan P. Schulman

Dept.: 304

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I. INTRODUCTION

Plaintiff Calvin Watson (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 165 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” means all individuals who were employed by Defendant as non-exempt/hourly employees in the State of California during the period from August 29, 2019 through either October 1, 2024 or, if applicable, the Alternative End Date (“Class Period”). Agreement at § I(D); I(H).

a. The “**Settlement Class Members**” means all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § I(KK).

b. The “**Class Size**” is comprised of 165 individuals who collectively worked approximately 13,000 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § XI.

2. The “**PAGA Group Members**” and “**PAGA Period**” means all individuals who were employed by Defendant as non-exempt/hourly employees in the State of California during the period from August 29, 2022 through either October 1, 2024 or, if applicable, the Alternative End Date (“PAGA Period”). Agreement at §§ I(X), I(AA). PAGA Group Members do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § I(FF).

3. The “**Total Settlement Amount**” is Six Hundred Forty Thousand Dollars (\$640,000.00). Agreement at § I(LL). The Total Settlement Amount is non-reversionary and includes the following:

a. An “**Enhancement Award**” of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ I(N), III(B)(1).

b. “**Attorneys’ Fees and Litigation Costs**” not to exceed 35% of the Total Settlement Amount (currently estimated to be \$224,000.00) for attorneys’ fees, *and* litigation costs not

¹ The Agreement is attached as Ex “1” to the Declaration of Vartan Madoyan (“VM Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the VM Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 to exceed \$25,000.00, to be paid to Class Counsel. Agreement at § I(B), III(B)(2).

2 c. “**PAGA Penalties**” means Seventy-Five Thousand Dollars (\$75,000.00) to be
3 allocated from the Total Settlement Amount for settlement of claims for civil penalties under the Private
4 Attorneys General Act of 2004 (“PAGA Settlement Amount”). The Settlement Administrator shall
5 pay sixty-five (65%) of the PAGA Settlement Amount (\$48,750) to the Labor and Workforce
6 Development Agency (“LWDA Payment”). Thirty-five percent (35%) of the PAGA Settlement
7 Amount (\$26,250.00) will be distributed to the PAGA Group Members (“Employee PAGA Amount”).
8 Agreement at § I(Z).

9 d. “**Administration Costs**” not to exceed \$6,250.00 payable to the Settlement
10 Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and all
11 administrative costs of the settlement. Agreement at §§ I(A), III(B)(3).

12 4. The “**Net Settlement Amount**” of approximately \$299,750.00 (means the Total
13 Settlement Amount, less the requested Attorneys’ Fees and Litigation Costs, Enhancement Award,
14 PAGA Penalties, and Administration Costs, which will be allocated to all Settlement Class Members
15 on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked
16 during the Class Period. Agreement at §§ I(S). The entire Net Settlement Amount will be paid to all
17 Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
18 Settlement Payment of **\$1,816.67**. SOZ Dec., ¶ 8.

19 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
20 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
21 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
22 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
23 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
24 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
25 denied or of Defendant prevailing at trial. SOZ Dec., ¶ 4.

26 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
27 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
28 the Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the

proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 5.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

On August 29, 2023, Plaintiff commenced the class action lawsuit entitled *Calvin Watson v. Pier 39, LP, et al.*, in the Superior Court of California for the County of San Francisco, Case No. CGC23608701 by filing the Class Action Complaint for Damages, which alleged ten causes of action against Defendant for: (1) California Labor Code sections 510 and 1198 (failure to pay overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1 (failure to pay minimum wages); (5) California Labor Code sections 201-203 (failure to timely pay final wages); (6) California Labor Code section 204 (failure to timely pay wages during employment); (7) California Labor Code section 226(a) (failure to provide accurate wage statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll records); (9) California Labor Code sections 2800 and 2802 (failure to reimburse necessary business expenses); and (10) California Business & Professions Code sections 17200, *et seq.* See Declaration of Vartan Madoyan (“VM Dec.”) ¶ 4.

On November 15, 2023, Defendant filed its Answer to Plaintiff’s Complaint, denying each and every allegation set forth in the Complaint. On the same day, the Parties commenced written discovery. VM Dec. ¶ 5.

On July 31, 2024, the Parties participated in a full day mediation with wage and hour and PAGA mediator Daniel Turner, Esq. The mediation concluded with a settlement after both Parties accepted a mediator’s proposal. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion, and amended the complaint for purposes of effectuating the settlement. VM Dec., ¶ 6.

On September 2, 2025, Plaintiff submitted a PAGA Notice with the LWDA asserting claims against Defendant. SOZ Dec. ¶ 6. For purposes of effectuating settlement, the Parties stipulated to allow Plaintiff leave to file a First Amended Complaint (“FAC”) for the purpose of adding factual

1 allegations and legal claims covered by the Parties' settlement, including, but not limited to, adding a
2 cause of action for violation of the PAGA. On September 4, 2025, the Court signed an order granting
3 Plaintiff leave to file a FAC. Plaintiff filed the FAC on November 7, 2025. SOZ Dec. ¶ 7.

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

5 Months before filing the Action, Class Counsel began its pre-filing investigation into the
6 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
7 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment.
8 At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified
9 further inquiry. VM Dec., ¶ 7.

10 To prepare for mediation, Defendant informally produced a random sampling of Class Members'
11 time and pay records, as well as information and documents concerning the claims set forth in the
12 Action, including but not limited to, Defendant's employee handbooks and relevant wage and hour
13 policies, as well as datapoints, including but not limited to, information regarding the number of Class
14 Members and PAGA Group Members, the number of workweeks worked by the Class Members, and
15 the number of pay periods worked by the PAGA Group Members. VM Dec., ¶ 8.

16 Class Counsel evaluated the Class Members' payroll and time data to develop various damage
17 models. Among other things, Class Counsel worked with a third-party data expert to determine the
18 approximate amount of allegedly unpaid wages, amount of allegedly unpaid overtime wages, number
19 of workweeks, pay periods, average length of shifts and average number of hours worked per week.
20 Class Counsel also estimated the number of allegedly missed, late, or truncated meal and rest periods,
21 the amount of allegedly unpaid wages, the amount of allegedly unpaid overtime, and the amount of
22 allegedly missed meal and rest period premiums paid during the Class Period. VM Dec., ¶ 9.

23 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
24 Plaintiff's suitability as a putative class representative through interviews, background investigations,
25 and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching
26 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
27 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's
28 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues

1 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
2 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
3 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
4 claims being settled, as well as the impediments to recovery, such as to make an independent
5 assessment of the reasonableness of the terms to which the Parties have agreed. VM Dec., ¶ 10.

6 Class Counsel only agreed to enter the Settlement following this thorough investigation and
7 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
8 for similar settlements, and considering the risk of significant delay and uncertainty associated with
9 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement
10 to be in the best interests of the Class Members. VM Dec., ¶ 11. Because the Settlement's terms are
11 fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

12 **C. The Parties Settled at Mediation**

13 On July 31, 2024, the Parties conducted a full day of mediation with Daniel Turner, Esq.
14 Mediator Turner helped manage the Parties' expectations and provided a useful, neutral analysis of the
15 issues and risks to both sides. The Parties made substantial progress with Mediator Turner's assistance.
16 Namely, the Parties exchanged information regarding their respective claims and defenses, including
17 their respective evaluation of the damages. The mediation concluded with a settlement after both sides
18 accepted a mediator's proposal. VM Dec., ¶ 12. The complete and final terms of the Parties' settlement
19 are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair,
20 adequate, and reasonable compromise of the claims at issue.

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

22 1. The Composition of the Settlement Class Members

23 The proposed Class consists of all individuals who were employed by Defendant as non-exempt
24 /hourly employees in the State of California during the Class Period (August 29, 2019 through either
25 October 1, 2024 or, if applicable, the Alternative End Date). Agreement at §§ I(D), I(H). The
26 Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement
27 at § I(KK). At the time of mediation, Defendant estimated that the Class was comprised of 165
28 individuals that worked approximately 13,000 workweeks during the Class Period. Agreement at § XI.

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Total Settlement
3 Amount of \$640,000.00. The Total Settlement Amount includes: (1) Individual Settlement Payments
4 to the Settlement Class Members; (2) an Enhancement Award of not more than \$10,000.00 to Plaintiff
5 for his services on behalf of the Class and, equally important, for a general release of claims; (3) PAGA
6 Penalties in the amount of \$75,000.00; (4) Administration Costs estimated at \$6,250.00; (5) Attorneys'
7 Fees and Litigation Costs in the amount of \$249,000.00, comprised of attorneys' fees equal 35% of the
8 Total Settlement Amount estimated to be \$224,000.00 and an estimated \$25,000.00 for actually
9 incurred litigation expenses. See generally Agreement at §§III(B)(1)-(4), III(C).

10 Subject to the Court approving the Enhancement Award, Attorneys' Fees and Litigation Costs,
11 PAGA Penalties, and the Administration Costs, the Net Settlement Amount will be distributed to each
12 Settlement Class Member. Agreement at § III(C). There is no reversion to Defendant and Defendant
13 must separately pay for its share of the employer payroll taxes. Agreement at § III(A).

14 3. The Funding Date

15 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Total Settlement
16 Amount within twenty-five (25) days of the Effective Date. The Effective Date is the date on which
17 the Court's Judgement becomes final. Agreement at §§ I(M), VI(B).

18 4. Formula for Calculating Individual Settlement Payments

19 Settlement Class Members will receive an Individual Settlement Payment. The Individual
20 Settlement Payment will be proportional to the number of Workweeks each Class Member worked for
21 Defendant in California during the Class Period. Agreement at § III(C). The Class List provided by
22 Defendant to the Settlement Administrator will include the number of Workweeks worked by each
23 Class Member during the Class Period and the number of Pay Periods each PAGA Group Member
24 worked during the PAGA Period. Agreement at § I(E). Each Class Member's final Individual
25 Settlement Payment will be calculated by using a fraction, the numerator of which is the Class
26 Member's total number of Workweeks, and the denominator of which is the total number of
27 Workweeks of all Class Members. Agreement at § III(C). For purposes of these calculations, a
28 Workweek shall mean any week during which a Class Member worked for Defendant for at least one

day as a non-exempt/hourly employee during the Class Period. Agreement at § I(MM). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

Given that there are approximately 165 Participating Class Members, the average gross recovery is approximately \$1,816.67 (Net Settlement Amount divided by Settlement Class Members). SOZ Dec., ¶ 8.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § VII(A).

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

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the PAGA Group Members, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § VII(A).

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$640,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th

1 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
2 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
3 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
4 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
5 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
6 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
7 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
8 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
9 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
10 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
11 action litigation”).)

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

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

20 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
21 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
22 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
23 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
24 § 11.51.)

25 The Parties participated in mediation the highly respected mediator Daniel Turner, Esq.
26 Mediator Turner managed the Parties’ expectations and provided a useful, neutral analysis of the issues
27 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008
28 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably

1 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
2 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
3 proceedings were free of collusion and undue pressure.”).) The Parties reached a settlement after
4 accepting a mediator’s proposal. Agreement at § II(F).

5 Following the mediation, the Parties engaged in negotiations regarding the written terms of the
6 settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement
7 terms are fair, adequate and represent a reasonable compromise of the claims at issue. SOZ Dec., ¶ 9.

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

10 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
11 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
12 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
13 Although no two cases are identical, this research provided Class Counsel with a marker to inform
14 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
15 Class Counsel to realistically assess the value of Plaintiff’s claims and intelligently engage defense
16 counsel in settlement discussions that culminated in the proposed settlement now before the Court. VM
17 Dec., ¶ 13.

18 Class Counsel only agreed to enter the Settlement following their thorough investigation and
19 evaluation of Plaintiff’s claims. Based on this investigation of the facts, applicable law, and
20 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
21 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
22 Agreement to be in the best interests of the Class Members. VM Dec., ¶ 14. Because the Settlement’s
23 terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

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

25 The Total Settlement Amount of \$640,000.00 is within the range of reasonableness. To
26 determine whether a settlement is fair and reasonable, the court should “consider enough information
27 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
28 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 plaintiff might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Total Settlement Amount of \$640,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel worked with a third party to review the data produced by Defendants and develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. VM Dec., ¶ 15. Class Counsel calculated the potential and realistic values of each claim as follows:

Based on data provided by Defendant and extrapolated by Plaintiff, the total number of Class Members as of mediation (i.e. the relevant time period of August 29, 2019 to July 31, 2024) was estimated to be approximately 165 individuals who worked an estimated total of at least 13,000 workweeks with an average hourly rate of pay of \$25.33. VM Dec., ¶ 16(a).

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”).

1 With respect to Plaintiff's claim (as detailed above), Class Counsel considered Defendant's
2 arguments, which among other things included that the employer's practices, policies, and procedures
3 complied with the law, that Defendant paid Class Members over the California minimum wage for all
4 hours worked, that Defendant correctly paid overtime for all overtime hours worked, that no off-the-
5 clock was permitted by policy or practice, that no waiting-time penalties were due because waiting-
6 time penalties only arise from "willful" failure to pay wages due and owing at the time of termination
7 or resignation, that Plaintiff and Class Members suffered no actual injury from the alleged wage
8 statement violations and that this alleged violation and the alleged recordkeeping violation are entirely
9 derivative of the other causes of action, and that a policy and practice of reimbursing employees for
10 necessary business-related expenses exists. Class Counsel also considered the likelihood of Plaintiff's
11 success in establishing that any of provisions of the California Labor Code, on which the civil penalties
12 under PAGA and the UCL claim are predicated, were violated and that such violations were injurious
13 and/or warranted imposition of civil penalties. Class Counsel also considered that trial courts have wide
14 discretion when assessing penalties under PAGA, and that it could be determined that individual
15 liability issues predominate (e.g., due to purported variation in shifts, locations, job duties, and other
16 circumstances which could raise individualized questions of fact) and could pose challenges to
17 certification, and the merits of Plaintiff's claims. VM Dec., ¶ 16(b).

18 Class Counsel considered information, data, and documents obtained from Plaintiff, Defendant,
19 and other sources, and created violation, damages, and penalties valuations and models prior to reaching
20 the Settlement. Based thereon, Plaintiff calculated the potential value of the claims. However, the
21 potential value of each claim assumed an exposure based on the above-captioned action having been
22 certified and Plaintiff having proven all elements of the claims and entitlement to monetary recovery
23 in the above-captioned action (on a class-wide and a representative basis), despite risks associated with
24 obtaining and maintaining certification, risks to establishing liability and any underlying California
25 Labor Code and IWC Wage Order violations and damages, and significant additional costs that would
26 have to be incurred in order to certify the above captioned action and establish liability, damages, and
27 penalties amounts in the cases. Plaintiff faced the risk of the Court finding that individualized issues
28 predominate, such that the cases are not suitable for class treatment. While Class Counsel disagreed

1 with Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and
2 realities of the cases, applicable case law and regulations, the extensive time and pay records produced
3 by Defendant, the costs and expenses of further litigation and certification, and risks to recovery, and
4 applied appropriate discounts for them. VM Dec., ¶ 16(c). Class Counsel calculated the potential and
5 realistic values of each claim as follows:

6 Failure to Pay Overtime Wages: The potential value of this claim was estimated to be
7 \$494,000.00 (13,000 workweeks x 1 hour of unpaid overtime wages x overtime hourly rate of \$38.00,
8 which is 1.5x the average hourly rate of \$25.33). At this juncture, a discount of 60% was applied to
9 account for the risks associated with obtaining and maintaining class certification (bringing the value
10 of this claim closer to \$197,600.00), a discount of 50% was applied to account for the risks associated
11 with succeeding on the merits and establishing liability (bringing the value of this claim closer to
12 \$98,800.00), and a discount of 50% was applied to account for the risks associated with proving the
13 extent of damages and obtaining an award thereof (bringing the value of this claim closer to
14 \$49,400.00). VM Dec., ¶ 16(d).

15 Failure to Pay Minimum Wages: The potential value of this claim was estimated to be
16 \$329,290.00 (13,000 workweeks x 1 hour of unpaid minimum wages x average hourly rate of \$25.33).
17 At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and
18 maintaining class certification (bringing the value of this claim closer to \$131,716.00, a discount of
19 50% was applied to account for the risks associated with succeeding on the merits and establishing
20 liability (bringing the value of this claim closer to \$65,858.00), and a discount of 50% was applied to
21 account for the risks associated with proving the extent of damages and obtaining an award thereof
22 (bringing the value of this claim closer to \$32,929.00). VM Dec., ¶ 16(e).

23 Failure to Provide Compliant Meal Periods and Associated Premiums: The potential value of
24 this claim was estimated to be \$329,290 (13,000 workweeks x 1 meal period premium x average hourly
25 rate of \$25.33). At this juncture, a discount of 50% was applied to account for the risks associated with
26 obtaining and maintaining class certification (bringing the value of this claim closer to \$164,645.00), a
27 discount of 50% was applied to account for the risks associated with succeeding on the merits and
28 establishing liability (bringing the value of this claim closer to \$82,322.50), and a discount of 60% was

1 applied to account for the risks associated with proving the extent of damages and obtaining an award
2 thereof (bringing the value of this claim closer to \$32,929.00). VM Dec., ¶ 16(f).

3 Failure to Provide Compliant Rest Periods and Associated Premiums: The potential value of
4 this claim was estimated to be \$658,580.00 (13,000 workweeks x 2 rest period premiums x average
5 hourly rate of \$25.33). At this juncture, a discount of 65% was applied to account for the risks
6 associated with obtaining and maintaining class certification (bringing the value of this claim closer to
7 \$230,503.00), a discount of 50% was applied to account for the risks associated with succeeding on the
8 merits and establishing liability (bringing the value of this claim closer to \$115,251.50), and a discount
9 of 60% was applied to account for the risks associated with proving the extent of damages and obtaining
10 an award thereof (bringing the value of this claim closer to \$46,100.60). VM Dec., ¶ 16(g).

11 Failure to Timely Pay Wages During Employment: The value of this claim is considered as a
12 part of the valuation of the PAGA claim as there is arguably no separate private right of action. VM
13 Dec., ¶ 16(h).

14 Failure to Timely Pay Wages After Termination (and Waiting-Time Penalties): Based on
15 information and data provided by Defendant, it was estimated that approximately 71 Class Members
16 had been terminated during the three-year statute of limitations. Assuming that these individuals were
17 not timely paid all wages due to them upon termination, the potential value of waiting-time penalties
18 was estimated to be \$431,623.20 collectively (71 individuals x [30 days x hourly rate of \$25.33 x 8
19 hours]), or approximately \$6,079.20 per individual. At this juncture, a discount of 50% was applied to
20 account for the risks associated with obtaining and maintaining class certification (bringing the value
21 of this claim closer to \$215,811.60), a discount of 60% was applied to account for the risks associated
22 with succeeding on the merits and establishing liability (bringing the value of this claim closer to
23 \$86,324.64), and a discount of 60% was applied to account for the risks associated with proving the
24 extent of damages and obtaining an award thereof (bringing the value of this claim closer to
25 \$34,529.86). VM Dec., ¶ 16(i).

26 Failure to Provide Compliant Wage Statements: The potential value of this claim was calculated
27 to be \$297,550.00 ([165 initial violations x \$50 statutory penalty] + [6,890 subsequent violations x
28 \$100 statutory penalty]). At this juncture, a discount of 50% was applied to account for the risks

1 associated with obtaining and maintaining class certification (bringing the value of this claim closer to
2 \$148,775.00), a discount of 50% was applied to account for the risks associated with succeeding on the
3 merits and establishing liability (bringing the value of this claim closer to \$74,387.50), and a discount
4 of 50% was applied to account for the risks associated with proving the extent of damages and obtaining
5 an award thereof (bringing the value of this claim closer to \$37,193.75). VM Dec., ¶ 16(j).

6 Failure to Maintain Payroll Records: Arguably, civil penalties would only be recoverable by
7 the Labor Commissioner, therefore, the value of this claim is considered as a part of the valuation of
8 the PAGA claim. VM Dec., ¶ 16(k).

9 Failure to Reimburse Necessary Business Expenses: The potential value of this claim was
10 estimated to be \$62,400 (13,000 workweeks x \$4.80 unreimbursed business expenses). At this juncture,
11 a discount of 50% was applied to account for the risks associated with obtaining and maintaining class
12 certification (bringing the value of this claim closer to \$31,200), a discount of 50% was applied to
13 account for the risks associated with succeeding on the merits and establishing liability (bringing the
14 value of this claim closer to \$15,600), and a discount of 50% was applied to account for the risks
15 associated with proving the extent of damages and obtaining an award thereof (bringing the value of
16 this claim closer to \$7,800.00). VM Dec., ¶ 16(l).

17 PAGA Penalties: The amount of civil penalties at issue, which the Court could determine
18 whether or not to assess and whether or not to reduce based on the facts and circumstances of the case
19 (to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor
20 Code section 2699(e)(2)), were estimated to be approximately \$187,250.00 (107 PAGA Group
21 Members estimated to have worked during one-year statutory period x \$1,950 civil penalties for various
22 PAGA Labor Code claims). At this juncture a discount of 25% was applied to account for the risks
23 associated with possible bifurcation of discovery and/or trial and establishing manageability (bringing
24 the value of this claim closer to \$140,437.50), a discount of 50% was applied to account for the risks
25 associated with succeeding on the merits and establishing liability (bringing the value of this claim
26 closer to \$70,218.75), and a discount of 40% was applied to account for the risks associated with the
27 Court's discretion to reduce civil penalties and obtaining an award of civil penalties (bringing the value
28 of this claim closer to \$42,131.35) VM Dec., ¶ 16(m).

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

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

7 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
8 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
9 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
10 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
11 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
12 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
13 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
14 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
15 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
16 individualized questions of fact not susceptible to class treatment.”); *A.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
18 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
19 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
20 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
21 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
22 certification of driver meal and rest period claims based on the predominance of individual issues).
23 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
24 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
25 settlement. SOZ Dec., ¶ 10.

26 “The Settlement eliminates these and other risks of continued litigation, including the very real
27 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
28 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is

1 inherently perilous regardless of the strengths of merits of the claims:

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

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

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

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

20 The Settlement Class Members are entitled to the best practical notice under the circumstances.
21 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
22 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
23 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
24 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
25 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
26 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
27 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
28

1 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

2 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
4 mail the proposed Class Notice to all Class Members. The Notice shall set forth the scope of the release,
5 stating the number of relevant Workweeks and Pay Periods and the estimated amount of their Individual
6 Settlement Payment. Agreement at § IX(C)(3). The Parties negotiated this method to ensure delivering
7 the most reasonable method of notice to the Class Members while ensuring cost effective administration
8 of the Settlement. SOZ Dec., ¶ 11.

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

13 **C. The Court Should Preliminarily Approve the Enhancement Award**

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

25 The Settlement provides for an Enhancement Award of \$10,000.00 to Plaintiff. The
26

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

Enhancement Award is fair and reasonable compensation for Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendant a general release of all claims arising out of his employment. VM Dec., ¶ 18.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Enhancement Award. SOZ Dec., ¶ 12.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs

The purpose of a payment of attorneys' fees and litigation costs 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. 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 Attorneys' Fees and Litigation Costs are fair and reasonable. SOZ Dec., ¶ 13.

Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once preliminary approval of the Settlement is granted. Attorneys' fees will be divided between Class Counsel as follows: (85% to Lawyers for Justice, PC, 7.5% to JCL Law Firm, APC, and 7.5% to Zakay Law Group, APLC). SOZ Dec., ¶ 14. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees and costs.

1 **E. Provisional Certification for Settlement Purposes Is Appropriate**

2 For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that
3 provisional certification of the Class is appropriate. SOZ Dec., ¶ 15.

4 1. The Standard for Class Certification

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

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

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

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

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

28 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. SOZ Dec., ¶ 16.

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. SOZ Dec., ¶ 17.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, reviewing various documents and speaking at length with his attorneys, and evaluating the proposed settlement to assure that it is fair. VM Dec., ¶ 19.

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. VM Dec., ¶ 20; SOZ Dec., ¶¶ 18-19; Declaration of Jean Claude Lapuyade, ¶¶ 5-9.

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. SOZ Dec., ¶ 20.

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

1 the Court preliminarily approve the Settlement.

2
3 Dated: January 30, 2026

ZAKAY LAW GROUP, APLC

4 By: /s/ Jaclyn Joyce

Jaclyn Joyce, Esq.

5 Attorney for Plaintiff
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