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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALBERT AJERO , an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, v. WILDCAT DISCOVERY TECHNOLOGIES, INC., a Delaware corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 37-2023-00055145-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: July 3, 2025 Time: 10:15 a.m. Judge: Hon. Wendy M. Behan Dept.: C-66

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I. INTRODUCTION

Plaintiff ALBERT AJERO ("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 110 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class Members" and "Class Period"** shall mean all current and former non-exempt employees who worked for Defendant Wildcat Discovery Technologies, Inc. ("Defendant") in California at any time during the period between December 20, 2019, and April 25, 2025 ("Class Period"). Agreement at §§ I(E), I(I). The Settlement Class Members are all Class Members who have not submitted a timely and valid request for exclusion. Agreement at § I(JJ).

2. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean all current and former non-exempt employees who worked for Defendant in California at any time during the period between November 15, 2022, and April 25, 2025. Agreement at §§ I(C), I(W).

3. The "**Gross Settlement Amount**" is Three Hundred Sixty Thousand Dollars and Zero Cents ($360,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

   a. A "**Service Award**" in the amount of $10,000.00 to Plaintiff for his services on behalf of the Class Members. Agreement at §§ I(FF), and III(L)(9);

   b. A payment of a "**Class Counsel Award**" consisting of attorneys' fees not to exceed one-third of the Gross Settlement Amount and currently estimated to be $120,000.00 out of $360,000 plus reimbursement of actually-incurred costs of up to $30,000.00, to be paid to Class Counsel. Agreement at §§ I(G), III(L)(10);

   c. A "**PAGA Payment**" of $20,000.00 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment ($15,000.00)

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

to the California Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the Aggrieved Employees by the Settlement Administrator ("Aggrieved Employee Payment"). Agreement at §§ I(X),III(L)(11); and

d. "Settlement Administration Costs" not to exceed $7,000.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice Packet and Individual Settlement Payments. Agreement at §§ I(GG),III(L)(12).

4. The "**Net Settlement Amount**" of approximately $173,000.00 (Gross Settlement Amount less Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs) which will be allocated to all Settlement Class Members based on the respective Workweeks for each Class Member divided by the total Workweeks for all Class Members. The Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Payment of ***$1,572.73***. Agreement at § III(L)(1); SCJ Dec., ¶ 5.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds 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. SCJ Dec., ¶ 6.

/ / /

II. FACTS AND PROCEDURE

A. Overview of the Litigation and Mediated Settlement

Defendant is a leading US-based battery material developer and supplier, , with its headquarters in San Diego County, where Plaintiff worked. Plaintiff was employed by Defendant from November 2022 to May 2023. At all times during his employment, Plaintiff was classified by Defendant as a non-exempt employee, paid on an hourly basis, and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." SCJ Dec., ¶ 7; Declaration of Albert Ajero ("AA Dec.") at ¶¶ 4-5.

On November 15, 2023, Plaintiff served Defendant 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'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"). SCJ Dec., ¶ 8.

On December 20, 2023, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2023-00055145-CU-OE-CTL ("Action"). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200 *et seq.*; (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 Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203 (the "Action"). SCJ Dec., ¶ 9.

On January 23, 2024, Plaintiff filed the operative First Amended Complaint to include an additional cause of action for Violations of the Private Attorneys General Act pursuant to Labor Code section 2698, *et seq*. ("PAGA"). SCJ Dec., ¶ 10.

Generally, Plaintiff claims that Defendant failed to pay employees for all time worked, failed to provide them with legally compliant meal and rest breaks, failed to reimburse for required business expenses, failed to properly calculate the regular rate of pay for purposes of overtime and sick pay, failed to provide accurate itemized wage statements, and failed to timely pay wages due upon separation of employment. Defendant forcefully deny liability for each of Plaintiff's claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, payment of minimum wages and overtime, facially compliant meal and rest period polices, reimbursement to its employees for business expenses, properly calculated the regular rate of pay for purposes of overtime and sick pay, provided compliant wage statements, and timely payment of all wages due upon separation of employment. SCJ Dec., ¶ 11.

The Parties agreed relatively early in the litigation to attend private mediation. To facilitate settlement negotiations, Defendant agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sampling of the Class Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. SCJ Dec., ¶ 12.

On March 26, 2025, the Parties mediated the Action with Honorable Brian C. Walsh (Ret.), a retired jurist and mediator of class and PAGA actions. The Parties engaged in arms-length settlement negotiations with Judge Walsh's assistance. Specifically, Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation was successful and the Parties subsequently memorialized the agreement in the form of a Memorandum of Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion SCJ Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including, among other things, copies of his wage statements. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. SCJ Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response, Defendant produced documents, including but not limited to, Plaintiff's hiring and separation documents, payroll records, and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, failed to pay employees for all time worked, failed to provide them with proper meal and rest breaks, failed to reimburse for required business expenses, failed to properly calculate the regular rate of pay for purposes of overtime and sick pay, failed to provide accurate itemized wage statements, and failed to timely pay wages upon termination. SCJ Dec., ¶ 15.

Considering the many anticipated factual disputes and the high cost of litigation, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class Member time and payroll records, aggregate workweek and pay period data, and copies of applicable policies, and agreements containing, *inter alia,* compensation, timekeeping and meal and rest period policies. In total, Defendant produced thousands of pages of pertinent policy documents and payroll data for Class Counsel to analyze. SCJ Dec., ¶ 16.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, BCG is uniquely qualified to analyze Defendant's time and payroll data. SCJ Dec., ¶ 17.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods during the Class Period, and the average length of shift and average number of hours worked per week and per pay period during the Class Period. BCG also estimated the amount of meal and rest period premiums paid during the Class Period, the amount of unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock work performed by the Class Members during the Class Period. SCJ Dec., ¶ 18.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. SCJ Dec., ¶ 19.

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

/ / /

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The proposed Class consists of all non-exempt employees who are or previously were employed by Defendant. and performed work in California during the period between December 20, 2019 and April 25, 2025. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at §§ I(E), I(I), and I(LL). In the data exchanged for mediation, there were approximately 110 Class Members that worked an estimated 9,000 workweeks during the Class Period. Agreement at § III(A)(2).

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

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $360,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of $10,000.00 to Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $20,000.00; (4) Settlement Administration Costs estimated at $7,000.00; and the (5) Class Counsel Award in the amount of $150,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $120,000.00 and an estimated $30,000.00 for actually incurred litigation expenses. *See* generally Agreement at § III(L).

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

3. <u>Formula for Calculating Individual Settlement Payments</u>

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective

Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Agreement at § III(L)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(L)(1).

Given that there are approximately 110 Settlement Class Members, ***<u>the average gross recovery is approximately $1,572.73</u>*** (Net Settlement Amount divided by Settlement Class Members). SCJ Dec., ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of $283.35); *Almanza v. The Express Group Inc*., San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery $174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery $715.97) and *Crawford et al. v. Outlook Amusements, Inc*., Los Angeles Superior Court Case No. BC617160 (average net recovery $333.98).

4. <u>Release by Class Members</u>

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from any and all class claims that have been alleged or that reasonably could have been asserted against Defendant based on the facts alleged in the Operative Complaint that occurred during the Class Period, including, but not limited to, claims arising under Labor Code Sections 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1194, 1197, 1197.1, 1198, 2698, 2699, 2699.3, 2699.5, 2802, Business & Professions Code Section 17200 et seq., and the California Industrial Welfare Commission Wage Orders. Agreement at §I(BB); III(B).

/ / /

5. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims alleged in the Operative Complaint and Plaintiff's PAGA Notice which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation and PAGA claims outside the PAGA Period. Agreement at §§ I(CC); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $360,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with Honorable Brian C. Walsh (Ret.), an experienced mediator of wage and hour class and PAGA actions. Judge Walsh 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 resolved only after Judge Walsh heard arguments, reviewed evidence, evaluated the Parties' respective claims and defenses, and issued a Mediator's Proposal. SCJ Dec., ¶ 21.

Once the Parties agreed to Judge Walsh's Proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action and PAGA 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. SCJ Dec., ¶ 22.

2. <u>Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.</u>

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to formal and informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SCJ Dec., ¶¶ 14-22.

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

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

The Gross Settlement Amount of $360,000.00 is within the range of reasonable settlement for preliminary approval. 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. 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 Gross Settlement Amount Meets the Recognized Range of Reasonableness.

The Gross Settlement Amount of $360,000.00 is well within the range of reasonableness considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. SCJ Dec., ¶ 24. 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.*) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

Class Counsel retained BCG to develop economic damage models measuring Defendant's potential liability exposure with respect to the Class and PAGA claims. The damage models were informed by Class Counsel's investigation, including the analysis of the time and payroll data Defendant produced. Regarding Defendant's liability for class claims, Class Counsel projected Defendant's liability exposure (excluding penalties) at $815,564.40 ("Conservative Model") and Defendant's *total* exposure for class claims (including waiting time and wage statement penalties, but exclusive of PAGA penalties) at $1,867,485.20 ("Aggressive Model"). Thus, the Gross Settlement Amount of $360,000.00 represents approximately 19.28% of Defendant's *total* liability exposure and 44.14% of Defendant's *maximum* class-wide exposure. SCJ Dec., ¶ 25.

(1) <u>Estimated Exposure for Failure to Pay for All Hours Worked</u>

One of Plaintiff's primary claims in the Action was that Defendant failed to pay for all hours worked. Specifically, Plaintiff alleged that Defendant required employees to perform pre- and post-shift work off-the-clock, including but not limited to, preparing tools such as soldering irons, cables, wires, and cutting instruments, moving battery power supply units. Based on Plaintiffs' testimony, BCG assumed that Class Members performed approximately 5 minutes of unpaid work each workweek. SCJ Dec., ¶ 26.

Defendant denied liability for this claim. Defendant asserted that it had in place compliant

[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").

written policies requiring its employees to accurately record all of their time worked and that its employees were paid for all time worked. Furthermore, Defendant argued that the off-the-clock claim was not suitable for class treatment because individualized issues predominated. Thus, Plaintiff applied a 75% discount for this claim and estimated Defendant's exposure was between $20,445.50 and $81,782.00. SCJ Dec., ¶ 27.

(2) Estimated Exposure for Meal Period Violations

Plaintiff alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleged that as a result of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff alleges that Defendant failed to record the actual time that Class Members worked. As a result, most of the meal periods were allegedly rounded to exactly thirty (30) minutes, which Plaintiff argued creates a presumption of a meal period violation. Because Defendant produced mostly rounded time records, a majority of the time records reflect compliant meal periods. SCJ Dec., ¶ 28.

Defendant contends that it fully complied with California meal period laws and maintained compliant policies and practices. Defendant also argued that it did not engage in rounding of meal period start and end times and provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Further, Defendant argued that it maintained facially complaint meal period policies. Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class. SCJ Dec. ¶ 29.

In light of the foregoing, and considering Defendant's defenses, Plaintiff applied a 50% discount and estimated that Defendant's exposure ranged from $325,537.55 to $923,698.76. SCJ Dec., ¶ 30.

(3) Estimated Exposure for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff argued that he was required to work through his rest periods in order to finish work-related tasks. SCJ Dec., ¶ 31.

Again, Defendant denied liability and asserted that it maintained legally compliant written policies and practices concerning rest periods throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Accordingly, Plaintiff's Conservative Model applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcome for this claim was between approximately $325,537.55 dollars to approximately $651,075.10. SCJ Dec., ¶ 32.

(4) <u>Estimated Exposure for Failure to Pay for Mandatory Business Expenses</u>

Plaintiff also alleged that Defendant failed to pay for mandatory business expenses. Specifically, Plaintiff alleged that Defendant required employees to use their personal cell phones for work-related communications with Defendant's managers and supervisors and to upload photos and information to Teams. Based on Plaintiff's testimony BCG assumed a reasonable $5 per month of unreimbursed business expenses. SCJ Dec., ¶ 33. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer….").

Defendant denied liability and asserted that its employees were paid for all mandatory business expenses. Furthermore, Defendant argued that, even if successful, this claim resulted in minimal actual damage to the Class Members. Thus, Plaintiff applied a 50% discount to the rest break claim and estimated Defendant's exposure ranged from $325,537.55 dollars to $651,075.10. SCJ Dec., ¶ 34.

(5) <u>Estimated Exposure for Regular Rate Violations</u>

Plaintiff also alleged that Defendant miscalculated the regular rate of pay for purposes of overtime and redeemed sick pay. Specifically, Plaintiff alleges that Class Members received non-discretionary incentive compensation labeled on wage statements as "BONUS (25)," and "GROUP TE(22)," payments, which were not properly calculated into the regular rate of pay for purposes of overtime and redeemed sick pay. SCJ Dec., ¶ 35. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Defendant, for their part, asserted that the incentive payments identified by Plaintiff were discretionary in nature and otherwise not required to be included in the regular rate of pay for purposes of calculating overtime or redeemed sick pay. Defendant contends that these payments fell outside the scope of compensation subject to regular rate calculations under applicable California law and dispute that any miscalculation occurred. In light of the above, Plaintiff applied a 50% discount to this claim and estimated Defendant's exposure ranged between $9,092.50 and $18,185.00. SCJ Dec., ¶ 36.

(6) <u>Estimated Exposure for Wage Statement Violations</u>

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that because of Defendant's failure to provide meal and rest periods and calculate the regular rate of pay properly as required by the California Labor Code, Plaintiff and other Class Members are entitled to *derivative* wage statement penalties. SCJ Dec., ¶ 37.

As explained above, the violation rate for Plaintiff's regular rate claims is modest. Further, when there is an objectively reasonable, good faith defense presented by Defendant, Defendant is not liable for civil derivative wage or waiting time penalties. (*See Naranjo v. Spectrum Security Services* (2024) 15 Cal. 5th 1056). Thus, given Defendant's arguments listed above, it highlights the difficulty Plaintiff faces in succeeding on the merits of a wage statement violation claim. Considering Defendant's defenses and the fact that all of Defendant's wage statement violations were all derivative, Plaintiff discounted this claim 50% to account for this risk. Plaintiffs estimated that Defendant's exposure on this claim ranged between $110,050.00 and $220,100.00. SCJ Dec., ¶ 38.

(7) Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. However, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo, supra,* 15 Cal.App.1056, creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claims, Plaintiff discounted the waiting time penalty claim by 90% and estimated Defendant's exposure for these claims ranged between $23,777.80 and $237,778.00. SCJ Dec., ¶ 39.

(8) Defendant's PAGA Exposure

Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff conservatively estimated Defendant's PAGA exposure to be approximately $11,670.00, and aggressively estimated $682,550.00. SCJ Dec., ¶ 40.

Here, the Parties negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 5.5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA penalties. Seventy-Five percent (75%) of the PAGA Payment ($15,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. SCJ Dec., ¶ 41.

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

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%. Thus, the PAGA claims likewise face significant uncertainty. SCJ Dec., ¶ 42. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. *Id*. This is particularly the case considering Defendant's financial condition. *Id.* Moreover, events occurring during the COVID-19 pandemic could motivate the Court to further reduce the penalty award to avoid what it may consider a confiscatory taking. *Id.*

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. SCJ Dec., ¶ 43.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). SCJ Dec., ¶ 44.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."). SCJ Dec., ¶ 45.

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). SCJ Dec., ¶ 46.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. SCJ Dec., ¶ 47.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 48. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $360,000.00 that is between 19.28% and 44.14% of Defendant's liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 49.

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

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.

App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” (*Kass,* 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)[3]

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. Agreement at § III(M)(1). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SCJ Dec., ¶ 50.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet satisfy due process and the requirements of California law. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.”).) SCJ Dec., ¶ 51.

C. The Court Should Preliminarily Approve the Service Award

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Enhancement

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

payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

Approximately 110 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Service Award of $10,000.00 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. SCJ Dec., ¶ 52.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. SCJ Dec., ¶ 53.

D. The Court Should Preliminarily Approve the Payment of the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a payment of Class Counsel Award and in the amount of one-third of the Gross Settlement Amount ($120,000.00) and reimbursable litigations costs in an amount not to exceed $30,000.00. Agreement § III(L)(10). Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ 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. SCJ Dec., ¶ 55.

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

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

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

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

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

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

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

The California 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. SCJ Dec., ¶ 57.

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 Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SCJ Dec., ¶ 58.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. SCJ Dec., ¶ 59.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SCJ Dec., ¶¶ 60-64; Declaration of Jean-Claude Lapuyade at ¶¶ 3-8; Declaration of Shani O. Zakay at ¶ 3.

IV. CONCLUSION

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

Dated: June 10, 2025

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