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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN BERNARDINO**

DENISE FLORES, and AMANDA HICKS,  
individuals, on behalf of themselves, and on  
behalf of all persons similarly situated,

Plaintiffs,

vs.

J & P ASSET MANAGEMENT INC., an Ohio  
Corporation; J & P HOSPITALITY  
MANAGEMENT, LLC, an Ohio Limited  
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No. CIVSB2407059

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

Date: February 18, 2027

Time: 8:30 am

Judge: Hon. Michael A. Sachs  
Dept.: S28

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## I. INTRODUCTION

Plaintiffs DENISE FLORES (“Plaintiff Flores”) and AMANDA HICKS (“Plaintiff Hicks”) (collectively “Plaintiffs”) seek preliminary approval of the Putative Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for approximately 155 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 of J&P Asset Management Inc., and J&P Hospitality Management, LLC (“Defendants”) that worked in the State of California at any time (“Class Members”) during the period commencing February 1, 2020, and ending November 20, 2026 (“Class Period”). Agreement at ¶¶ 1.7, 1.12. The Settlement Class Members are all Class Members who have not submitted a timely and valid Request for Exclusion. *Id.*

2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all current and former non-exempt employees of Defendants that worked in the State of California at any time (“Aggrieved Employee”) during the period commencing November 27, 2022, and ending November 20, 2026. Agreement at ¶¶ 1.4, 1.36.

3. The “**Gross Settlement Amount**” is One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00). Agreement at ¶ 1.23. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Payment**” in the amount of \$10,000.00 to each Plaintiff (totaling \$20,000.00) for their services on behalf of the Class Members. Agreement at ¶¶ 1.14, 3.2.1;

b. A payment of “**Attorneys’ Fees**” consisting of attorneys’ fees not to exceed thirty-three percent (33%) of the Gross Settlement Amount, or \$59,400.00, which shall be split 50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC. Agreement at ¶¶ 1.6; 3.2.2;

c. A payment for “**Litigation Costs**” for reimbursement of actually-incurred

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<sup>1</sup> 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.

litigation costs of up to Forty Thousand Dollars and Zero Cents (\$40,000.00), to be paid to Class Counsel. Agreement at ¶¶ 1.6, 3.2.2;

d. 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 Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$15,000.00) to the California Labor and Workforce Development Agency. Twenty-five percent (25%) of the PAGA Payment (\$5,000.00) will be distributed to the Aggrieved Employees by the Administrator. Agreement at ¶¶ 1.34, 3.2.5; and

e. “**Administration Expenses Payment**” not to exceed \$6,450.00 payable to the Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and Individual Class Payment. Agreement at ¶¶ 1.2; 3.2.3.

4. The “**Net Settlement Amount**” of approximately \$34,150.00 (Gross Settlement Amount less Attorneys’ Fees, Litigation Costs, Class Representative Payment, PAGA Payment, and Administration Expenses Payment) 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 Settlement Payment of **\$220.32**. Agreement at ¶ 1.29; 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 Defendants 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 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, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. SCJ Dec., ¶ 6.

## II. FACTS AND PROCEDURE

### A. Overview of the Litigation and Mediated Settlement

Defendants own and operate hotels in California, including the county of San Bernardino, where Plaintiffs worked. Plaintiff Flores was employed by Defendants as a non-exempt employee, paid on an hourly basis, from June 2020 to March 2023. Plaintiff Hicks was employed by Defendants as a non-exempt employee, paid on an hourly basis from May 2022 through March 2023. At all times during Plaintiffs' employment, they were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout Plaintiffs' employment, Plaintiffs were subject to Defendants' written policies and procedures contained in, among other documents, the "Team Member Employee Handbook." SCJ Dec., ¶ 7; Declaration of Denise Flores ("DF Dec.") at ¶¶ 4-5; Declaration of Amanda Hicks ("AH Dec.") at ¶ 4.

On November 27, 2023, Plaintiff Flores served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Flores's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq. ("PAGA"). SCJ Dec., ¶ 8.

On February 1, 2024, Plaintiff Flores filed the instant Class and Representative Action Complaint in the San Bernardino Superior Court alleging eight (8) causes of action against Defendants for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure

1 to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (9) Failure to  
2 Pay Vacation Wages Due in Violation of Cal. Lab. Code § 227.3; and (10) Violation of the Private  
3 Attorneys General Act in Violation of Cal. Lab. Code §§ 2698, *et seq.* (the “Action”). SCJ Dec., ¶ 9.

4 On July 22, 2024, Plaintiff Flores commenced formal written discovery propounding, among  
5 other things, special interrogatories, requests for production of documents, and requests for admission.  
6 SCJ Dec. ¶ 10.

7 On July 7, 2026, Plaintiffs filed a First Amended Complaint (“Operative Complaint”), which  
8 added Plaintiff Hicks as a named Plaintiff. SCJ Dec., ¶ 11.

9 Generally, Plaintiffs claim that Defendants failed to properly calculate the failed to provide  
10 legally compliant meal and rest breaks, failed to pay employees for all time worked, regular rate of pay  
11 for purposes of overtime, failed to reimburse for required business expenses, failed to provide accurate  
12 itemized wage statements, and failed to timely pay wages due upon separation of employment.  
13 Defendants deny liability for each of Plaintiffs’ claims. Further, Defendants assert that they fully  
14 complied with all applicable employment laws and raised several other significant defenses to  
15 Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies, payment  
16 of all wages at the correct regular rate of pay, reimbursement to its employees for business expenses,  
17 provided compliant wage statements, and timely payment of all wages due upon separation of  
18 employment. SCJ Dec., ¶ 12.

19 After obtaining time records, payroll records, wage statements, and written employment policies,  
20 the Parties agreed to attend private mediation. As discussed *infra*, Plaintiffs’ counsel retained the  
21 forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll  
22 data. SCJ Dec., ¶ 13.

23 On May 28, 2026, the Parties mediated the Action with Eve Wagner, Esq., a mediator of class  
24 and PAGA actions. The Parties engaged in arms-length settlement negotiations with Mediator  
25 Wagner’s assistance. Specifically, Mediator Wagner helped manage the Parties’ expectations and  
26 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial  
27 progress with Mediator Wagner’s assistance. Namely, the Parties exchanged information regarding  
28 their respective claims and defenses, including their respective evaluation of the damages. The

mediation concluded with a settlement. The Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec., ¶ 14.

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

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including, among other things, copies of their wage statements, time records, handbooks, and separation documents. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints justified further inquiry. SCJ Dec., ¶ 15.

Class Counsel subsequently requested Plaintiffs' employee files from Defendants. In response, Defendants produced documents including, but not limited to, copies of Plaintiffs' hiring documents, payroll and time records, and Defendants' written policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claims that Defendants failed to, among other things, provide compliant meal and rest periods, pay for all hours worked, reimburse employees for mandatory business expenses, and furnish accurate itemized wage statements. SCJ Dec., ¶ 16.

Prior to mediation, Plaintiff propounded formal written discovery and filed multiple motions to compel to obtain complete responses to special interrogatories and requests for production from both Defendants. Defendants also produced time and payroll records for the Class Members, aggregate workweek and pay period data, aggregate meal premiums paid to the Class Members, the average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed thousands of pages of documents and hundreds of thousands of unique cells of time and payroll data. SCJ Dec., ¶ 17.

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 Defendants' time and payroll data. SCJ Dec., ¶ 18.

1 BCG analyzed Defendants' time and payroll data to assist in the development of various damage  
2 models. Among other things, BCG determined the approximate number of work shifts, workweeks,  
3 pay periods, average length of shift, and average number of hours worked per week during the Class  
4 Period. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount  
5 of off-the-clock work performed by Class Members, the amount of unreimbursed business expenses,  
6 and the amount of missed meal period premiums paid during the Class Period. SCJ Dec., ¶ 19.

7 In advance of mediation, Class Counsel created several damage models predicated on the BCG  
8 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting  
9 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel  
10 during the mediated settlement discussions. SCJ Dec., ¶ 20.

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

22 Class Counsel only agreed to enter the Settlement following this thorough investigation and  
23 evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and  
24 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
25 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this  
26 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,  
27 reasonable, and adequate, the Court should preliminarily approve the Settlement. SCJ Dec., ¶ 22.

28 ///

1 **C. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

2 1. The Composition of the Class

3 The proposed Class consists of all current and former non-exempt employees of Defendants that  
4 worked in the State of California at any time during the period commencing February 1, 2020, and  
5 ending November 20, 2026. The Settlement Class excludes any person who submits a timely and valid  
6 Request for Exclusion. Agreement at ¶¶ 1.7, 1.12. In the data exchanged for mediation, there were  
7 approximately 155 Class Members that worked an estimated 6,600 workweeks during the Class Period.  
8 Agreement at ¶ 4.1.

9 2. The Settlement Consideration and Funding Date

10 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement  
11 Amount of \$180,000.00. The Gross Settlement Amount includes: (1) Individual Class Payment to the  
12 Settlement Class; (2) a Class Representative Payment of \$10,000.00 to each Plaintiff for their services  
13 on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$20,000.00; (4)  
14 Administration Expenses Payment estimated at \$6,450.00; (5) Attorneys' Fees in the amount of  
15 \$59,400.00 equal to thirty-three percent (33%) of the Gross Settlement Amount; and (6) Litigation  
16 Costs up to the amount of \$40,000.00 for actually incurred litigation expenses. *See generally* Agreement  
17 at ¶ 3.

18 Subject to the Court approving the Class Representative Payments, Attorneys' Fees, Litigation  
19 Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be  
20 distributed to each participating member of the Settlement Class. *See generally* Agreement at ¶ 3.2.4.  
21 There is no reversion to Defendants and Defendants must separately pay for their share of the employer  
22 payroll taxes. Agreement at ¶ 3.1.

23 Assuming there are no objectors and no appeal is filed, Defendants shall fully fund the Gross  
24 Settlement Amount and Defendants' share of payroll taxes by transmitting the funds to the  
25 Administrator on the later of sixty-one (61) days after the Court grants Final Approval or May 28, 2027.  
26 Agreement at § 4.3.

27 3. Formula for Calculating Individual Class Payment

28 Each Settlement Class Member will receive a Settlement Payment. The Settlement Payment will

be proportional to the number of Workweeks each Settlement Class Member worked for Defendants in California during the Class Period. The Individual Class Payments will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and (b) multiplying the result by each Settlement Class Member's Workweeks worked during the Class Period. Agreement at ¶ 3.2.4.

Each Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Class Payment 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. Agreement at ¶ 3.

Given that there are approximately 155 Settlement Class Members, the average gross recovery is approximately \$220.32 (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., *Almanza v. The Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery \$174.68).

#### 4. Release by Class Members

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at ¶ 5.2.

#### 5. PAGA Release by Plaintiffs and the Aggrieved Employees

Generally, upon the Funding Date, Plaintiffs, acting as the representative of the State of California, and the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims. Agreement at ¶ 5.3.

### III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$180,000.00 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. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel.

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is  
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,  
3 § 11.51.)

4 The Parties participated in mediation with Eve Wagner, an experienced mediator of wage and  
5 hour class and PAGA actions. Mediator Wagner managed the Parties' expectations and provided a  
6 useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative*  
7 *Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's  
8 participation weighs considerably against any inference of a collusive settlement); *D'Amato v.*  
9 *Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification  
10 settlement negotiations helps to ensure that the proceedings were free of collusion and undue  
11 pressure.")) At all times, the Parties' negotiations were at an arm's length, adversarial and non-  
12 collusive. The matter was resolved only after Mediator Wagner heard arguments, reviewed evidence,  
13 evaluated the Parties' respective claims and defenses. SCJ Dec., ¶ 23.

14 Once the Parties agreed to a settlement, the Parties engaged in protracted negotiations regarding  
15 the written terms of the class action and PAGA settlement. The Parties maintained the arm's length,  
16 non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The  
17 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are  
18 fair, adequate and represent a reasonable compromise of the claims at issue. SCJ Dec., ¶ 24.

19 2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the  
20 Settlement's Reasonableness.

21 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into  
22 the factual and legal issues in dispute. In addition to formal discovery, document review, data analysis  
23 and legal research, Class Counsel also researched similar wage and hour actions. Although no two  
24 cases are identical, this research provided Class Counsel with a marker to inform settlement discussions  
25 and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to  
26 realistically assess the value of the claims and intelligently engage defense counsel in settlement  
27 discussions that culminated in the proposed settlement now before the Court. SCJ Dec., ¶ 25.

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

1 evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and  
2 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
3 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this  
4 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,  
5 reasonable, and adequate, the Court should preliminarily approve the Settlement. SCJ Dec., ¶ 26.

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

7       The Gross Settlement Amount of \$180,000.00 is within the range of a reasonable settlement for  
8 preliminary approval. To determine whether a settlement is fair and reasonable, the court should  
9 "consider enough information about the nature and magnitude of the claims being settled, as well as  
10 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to  
11 which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)  
12 In making this determination, the court is "not to try the case" but rather "satisfy itself that the class  
13 action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis,  
14 courts do "not require any such explicit statement of value; [they] require[] a record which allows an  
15 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."  
16 " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)  
17 The reasonableness of a settlement is not dependent upon its actual value approaching the potential  
18 recovery plaintiffs might have received if they had succeeded at trial. Indeed, "[t]he determination  
19 whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a  
20 particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In*  
21 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

24       The Gross Settlement Amount of \$180,000.00 is well within the range of reasonableness  
25 considering the nature and magnitude of the claims being settled and the various potential impediments  
26 to recovery. SCJ Dec., ¶ 27. To determine whether a settlement is fair and reasonable, the court should  
27 "consider enough information about the nature and magnitude of the claims being settled, as well as  
28 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to

1 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)  
2 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class  
3 action settlement is within the ‘ballpark of reasonableness.’” (*Id.*) For this analysis, courts do “not  
4 require any such explicit statement of value; [they] require[] a record which allows an understanding  
5 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v.*  
6 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The  
7 reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery  
8 plaintiffs might have received if they had succeeded at trial.<sup>2</sup> Indeed, “[t]he determination whether a  
9 settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized  
10 sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael*  
11 *Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

12 Class Counsel retained BCG to develop economic damage models measuring Defendants’  
13 potential liability exposure with respect to the Class and PAGA claims. The damage models were  
14 informed by Class Counsel’s investigation, including the analysis of the time and payroll data  
15 Defendants produced. Regarding Defendants’ liability for class claims, Class Counsel projected  
16 Defendants’ *total* exposure for class claims (including waiting time and wage statement penalties, but  
17 exclusive of PAGA penalties) at \$539,412.02. Thus, the Gross Settlement Amount of \$180,000.00  
18 represents approximately 33.37% of Defendants’ *total* liability exposure. SCJ Dec., ¶ 28.

19 (1) Estimated Exposure for Meal Period Violations

20 Plaintiffs alleged that Defendants failed to provide compliant meal periods. Specifically,  
21 Plaintiffs alleged that Defendants engaged in a practice of recording meal periods by rounding time  
22

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23 <sup>2</sup> Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a  
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs  
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*  
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.  
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to  
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,  
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration  
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the  
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,  
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*  
*Justice v. Civil Serv. Comm.* (9<sup>th</sup> 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 punches, with Plaintiffs' expert finding that 56.8% of first meal periods were recorded as exactly 30  
2 minutes in length. Additionally, Plaintiff Flores reported that she regularly worked single-staffed shifts  
3 at the front desk with no one to relieve her, and that Defendants changed employees' meal records after  
4 they were entered, creating a false paper trail of compliance. Although the violation rate for the  
5 percentage of shifts when the first meal break was recorded after the end of the 5th hour was only 3.1%  
6 and the percentage of shifts greater than 6 hours without a recorded first meal break was only 2.6%,  
7 Plaintiffs argued these artificially low rates reflect Defendants' practice of rounding and manipulating  
8 time records rather than actual compliance. Plaintiffs further alleged that Defendants' practice of  
9 rounding meal period time punches is facially unlawful under *Donohue v. AMN Services, LLC* (2021)  
10 11 Cal.5th 58, and that records showing noncompliant meal periods raise a rebuttable presumption of  
11 meal period violations. SCJ Dec., ¶ 29.

12 Defendants contended that they fully complied with California meal period laws, maintained  
13 compliant policies and practices, and paid meal period premiums. Defendants also argued that they  
14 provided all their employees with the opportunity to take compliant meal periods and that their time  
15 records accurately reflect meal period compliance. Thus, Defendants argued that there was no potential  
16 liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly  
17 individualized inquiry not suitable to class. In light of the foregoing, and considering Defendants'  
18 defenses, Plaintiffs estimated that Defendants' exposure was approximately \$12,503.04. SCJ Dec., ¶  
19 30.

## 20 (2) Estimated Exposure for Rest Period Violations

21 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,  
22 Plaintiffs alleged that Defendants required employees to remain on premises and on-call during rest  
23 periods, required employees to keep their personal cell phones on them and remain available to respond  
24 to guests and management during rest periods, and that Plaintiffs' rest periods were interrupted every  
25 day due to understaffing and high guest demand. Plaintiffs argued this conduct constitutes the kind of  
26 employer control prohibited by *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. SCJ  
27 Dec., ¶ 31.

28 Again, Defendants denied liability and asserted that they maintained legally compliant rest

1 period policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the  
2 evidentiary burdens in establishing this claim. Establishing Plaintiffs' rest period claim would depend,  
3 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability  
4 stages. Certification likely would have required depositions of Class Members who provided  
5 declarations, and Defendants surely would have obtained opposing declarations stating either rest  
6 breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D.  
7 Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 ("Because of the competing testimony before the Court,  
8 Plaintiffs' evidence that Defendants may have an illegal, written rest break policy is insufficient for  
9 this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.*  
10 (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 ("Indeed, Plaintiff's own evidence confirms that  
11 the written policy does not generate uniform practices."). Plaintiffs estimated Defendants' exposure for  
12 this claim was approximately \$12,503.04. SCJ Dec., ¶ 32.

13 (3) Estimated Exposure for Failure to Pay for All Hours Worked

14 Plaintiffs also alleged that Defendants failed to pay their employees for all hours worked under  
15 two theories. First, Plaintiffs alleged that Defendants required Plaintiffs and Class Members to perform  
16 off-the-clock work, including counting money and briefing the oncoming shift for approximately 5  
17 minutes after clocking out. SCJ Dec., ¶ 33.

18 Second, Plaintiffs alleged that Defendants' Ready to Work Policy required on-site employees to  
19 remain on call outside of their regular scheduled shifts to respond to guest needs and emergencies, and  
20 that this on-call requirement constituted a "report to work" triggering reporting time pay obligations  
21 under the applicable Wage Order and *Ward v. Tilly's* (2019) 31 Cal.App.5th 1167. Employees received  
22 a minimum payment of \$50 per month as on-call compensation, but Plaintiffs alleged that this did not  
23 satisfy California's reporting time pay requirements for all on-call events. SCJ Dec., ¶ 34.

24 Defendants denied liability for all components of this claim and argued that employees were paid  
25 for all time worked. Considering Defendants' defenses, Plaintiffs estimated Defendants' exposure for  
26 this claim was approximately \$28,856.30. SCJ Dec., ¶ 35.

27 (4) Estimated Exposure for Failure to Pay Overtime at the Regular Rate of Pay

28 Plaintiffs allege that Defendants failed to include certain non-discretionary bonuses and

1 commissions when calculating the regular rate of pay when paying overtime wages and meal period  
2 premiums. Specifically, Defendant paid Class Members non-discretionary incentive compensation in  
3 the form of “Ready to Work” payments for remaining on-call, which were not properly calculated into  
4 the regular rate of pay for purposes of overtime and meal period premiums. SCJ Dec., ¶ 36. The regular  
5 rate of pay, which can change from pay period to pay period, includes adjustments to the straight time  
6 rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the  
7 per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container*  
8 *Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a  
9 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553. California law also requires  
10 meal period premiums and rest period premiums to be paid at an employee’s regular rate of pay. See  
11 *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

12 Conversely, Defendants denied liability and asserted that the Ready to Work payments were  
13 limited to few employees. Defendants also argued that they properly included non-discretionary  
14 compensation into the regular rate calculation for purposes of overtime wages. As a result, Plaintiffs  
15 estimated the range of damages for this claim was \$12,014.64. SCJ Dec., ¶ 37.

16 (5) Estimated Exposure for Failure to Reimburse for Mandatory Business  
17 Expenses

18 Plaintiffs also alleged that Defendants failed to reimburse employees for mandatory business  
19 expenses. Specifically, Plaintiffs alleged that Defendants required employees to use their personal cell  
20 phones for work-related purposes throughout the Class Period, including communicating with  
21 housekeeping and maintenance, receiving work schedules distributed by management via group text  
22 message, and remaining accessible during on-call periods and rest breaks. Cal. Labor Code § 2802,  
23 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or  
24 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or  
25 her obedience to the directions of the employer...” Based on Plaintiffs’ testimony BCG assumed a  
26 reasonable \$10 per month of unreimbursed business expenses. Despite this mandatory use of personal  
27 cell phones, Defendants failed to reimburse Plaintiffs for any portion of their cell phone expenses.  
28 Plaintiffs’ expert estimated a reasonable \$20 per month of unreimbursed business expenses per Class

1 Member. SCJ Dec., ¶ 38.

2 Defendants denied liability for this claim and argued, among other things, that use of personal  
3 cell phones was not required and that any business expenses incurred by employees were fully  
4 reimbursed. Considering Defendants' defenses, Plaintiffs estimated Defendants' exposure for this  
5 claim was \$11,860.00. SCJ Dec., ¶ 39.

6 (6) Estimated Exposure for Wage Statement Violations

7 Plaintiffs also alleged that Defendants failed to furnish their employees with accurate itemized  
8 wage statements. Specifically, Plaintiffs allege that as a result of Defendants' failure to provide meal  
9 and rest periods as required by the California Labor Code and pay for all wages, Plaintiffs and other  
10 Class Members are entitled to derivative wage statement penalties. (*See Naranjo, supra*, 15  
11 Cal.App.1056 (concluding that meal premiums are "wages" entitling employees to derivative wage  
12 statement penalties). Defendants argued that this claim would fail because the underlying claims would  
13 fail and that, even if it failed to furnish accurate wage statements, Plaintiffs could not establish the  
14 injury requirement on a class-wide basis. Considering Defendants' defenses and the fact that all of  
15 Defendants' wage statement violations were all derivative, Plaintiffs estimated that Defendants'  
16 exposure on this claim was \$166,400.00. SCJ Dec., ¶ 40.

17 (7) Estimated Exposure for Waiting Time Penalties

18 Plaintiffs also alleged that the Defendants' labor code violations resulted in derivative liability  
19 for waiting time penalties. However, this is Plaintiffs' most uncertain claim. Specifically, Defendants  
20 argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under  
21 Labor Code section 203. Additionally, for the reasons stated above, *Naranjo, supra*, 15 Cal.App.1056,  
22 creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim.  
23 Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendants' exposure for this  
24 claim was approximately \$295,275.00. SCJ Dec., ¶ 41.

25 (8) Defendants' PAGA Exposure

26 Class Counsel's also estimated Defendants' exposure for PAGA penalties arising from the  
27 aforementioned violations. At the time of mediation, Plaintiffs conservatively estimated Defendants'  
28 PAGA exposure to be approximately \$8,320.00 and aggressively estimated \$143,500. SCJ Dec., ¶ 42.

1 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$20,000.00 which is  
2 11% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA  
3 penalties. Seventy-Five percent (75%) of the PAGA Payment (\$15,000.00) will be paid to the LWDA  
4 (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$5,000.00)  
5 will be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved  
6 by courts and should be approved. SCJ Dec., ¶ 43.

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

15 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.  
16 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the  
17 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with  
18 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.  
19 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA  
20 penalties were reduced by 90%. Thus, the PAGA claims likewise face significant uncertainty. There is  
21 a risk that the Court would consider the maximum civil penalty available to be confiscatory. *Id.*

22 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,  
23 just, and reasonable. SCJ Dec., ¶ 44.

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

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

1 (C.D. Cal. 2009) 2009 WL 4581276, at \*7.)

2 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the  
3 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176  
4 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class  
5 certification because employees' declarations attesting to having taken meal and rest breaks  
6 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*  
7 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification  
8 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*  
9 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest  
10 period claims based on the predominance of individual issues). SCJ Dec., ¶ 45.

11 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of  
12 Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*  
13 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage  
14 and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088  
15 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized  
16 questions of fact not susceptible to class treatment."). SCJ Dec., ¶ 46.

17 Finally, even if a class is certified and Defendants is found liable for the class claims alleged,  
18 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and  
19 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*  
20 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded  
21 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed  
22 the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies,*  
23 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). SCJ  
24 Dec., ¶ 47.

25 Collectively, the examples cited above illustrate the uncertain nature of class litigation.  
26 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk  
27 factor favoring settlement. SCJ Dec., ¶ 48.

28 "The Settlement eliminates these and other risks of continued litigation, including the very real

1 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008  
2 WL 5382544, at \*3.) Indeed, potential appeals aside, litigating a complex case through trial is  
3 inherently perilous regardless of the strengths or merits of the claims:

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

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

10 Finally, continuing to litigate this action would require continued and extensive resources  
11 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
12 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
13 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful  
14 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect  
15 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d  
16 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 49. “Avoiding such a trial and  
17 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further  
18 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221  
19 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are  
20 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

21 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$180,000.00 that is  
22 approximately 33.37% of Defendants’ liability exposure for class damages. Given the amount of the  
23 settlement here, as compared to potential value of the claims, offset by the various inherent risks to  
24 continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 50.

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

26 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*  
27 *Young* (1977) 67 Cal.App.3d 100, 106.). The purpose of the notice is to give class members sufficient  
28 information to decide whether they should accept the benefits offered, opt out and pursue their own

1 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.  
2 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class  
3 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not  
4 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class  
5 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*  
6 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)<sup>3</sup>

7 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class  
8 Members of their rights and remedies. The Administrator will first verify addresses, then mail the  
9 proposed Class Notice to all Class Members. The Class Notice will include information regarding the  
10 nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the  
11 procedure and time period within which to requests for exclusions or objections to the Settlement, the  
12 date for the final approval hearing, the formula used to calculate settlement payments, and the terms  
13 and scope of the Released Class Claims. Agreement at ¶ 7.4. The Parties negotiated this method to  
14 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost  
15 effective administration of the Settlement. SCJ Dec., ¶ 51.

16 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice  
17 satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of Cal. v.*  
18 *Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the  
19 terms of the proposed compromise and of the options open to dissenting class members.”).) SCJ Dec.,  
20 ¶ 52.

### 21 **C. The Court Should Preliminarily Approve the Class Representative Payment**

22 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*  
23 *Cases* (2010) 186 Cal.App.4th 1380, 1393; *Rodriguez v. West Publishing Corp.* (9<sup>th</sup> Cir. 2009) 563 F.3d  
24 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive*  
25 *Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement

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

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

7 Approximately 155 Class Members will share in the Net Settlement Amount due entirely to the  
8 effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for  
9 a Class Representative Payment of \$10,000.00 for each Plaintiff. The Class Representative Payment  
10 is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting Class  
11 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his  
12 case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its  
13 terms are fair and provide adequate relief for the Settlement Class. SCJ Dec., ¶ 53.

14 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class  
15 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully  
16 submit that the above showing is sufficient for preliminary approval of the negotiated Class  
17 Representative Payment. SCJ Dec., ¶ 54.

18 **D. The Court Should Preliminarily Approve the Payment of the Attorneys’ Fees and**  
19 **Litigation Costs**

20 The purpose of a payment of the Attorneys’ Fees and Litigation Costs in class action litigation  
21 is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial  
22 positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more  
23 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*  
24 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the  
25 percentage method or the lodestar method is used, fee awards in class actions average around one-third  
26 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*  
27 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at  
28 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a

one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Settlement Payment illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a payment of Attorneys' Fees and in the amount of up to thirty-three percent (33%) of the Gross Settlement Amount (\$59,400.00) and Litigation Costs in an amount not to exceed \$40,000.00. Agreement ¶ 3.2.2. 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. Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ Dec., ¶ 55.

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

For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 56.

**1. The Standard for Class Certification**

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

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

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where

1 they may be readily identified without unreasonable expense or time by reference to official records.  
2 (*Id.*)

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

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

11 Because all Class Members are Defendants’ current and former employees, the class is readily  
12 ascertainable from Defendants’ regular business records, i.e., payroll records. SCJ Dec., ¶ 57.

13 The California statutes relating to each of Plaintiffs’ claims apply with equal force and effect to  
14 the entire Settlement Class. Factually, Defendants’ policies and practices apply class-wide and  
15 Defendants’ liability can be determined by facts common to all members of the class. The wage and  
16 hour issues are both numerous and substantial, and a class action is the most advantageous method of  
17 dealing with the claims of the Settlement Class. SCJ Dec., ¶ 58.

18 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise  
19 from the same factual basis and are based on the same legal theories applicable to the other Class  
20 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement  
21 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the  
22 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated  
23 their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking  
24 extensive class discovery, and evaluating the proposed settlement to ensure that it is fair. SCJ Dec., ¶  
25 59.

26 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
27 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
28 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., ¶ 60.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SCJ Dec., ¶¶ 61-65; 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 preliminary approval, the Parties request that the Court preliminarily approve the settlement.

Dated: September 30, 2026

**JCL LAW FIRM, APC**

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