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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MIRANDA LOPEZ, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

vs.

BEHAVIOR FRONTIERS, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV15331

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

Date: October 6, 2023

Time: 10:00 a.m.

Judge: Hon. Elihu M. Berle

Dept.: 6

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I. INTRODUCTION

Plaintiff MIRANDA LOPEZ (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 4,615 Class Members and approximately 2,475 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **“Class”** and **“Class Period”** shall mean all individuals employed by Defendant in California in a non-exempt position (**“Class”**) during the period from May 9, 2018 to July 31, 2023 (**“Class Period”**). Agreement at §§ 1.7, 1.12.

a. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.36.

b. The **“Class Size”** is comprised of 4,615 individuals who collectively worked approximately 174,622 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 4.1.

2. The **“Aggrieved Employees”** and **“PAGA Period”** means all individuals employed by Defendant in California in a non-exempt position (**“Aggrieved Employees”**) during the period of May 17, 2022, to July 31, 2023 (**“PAGA Period”**). Agreement at §§ 1.4, 1.32. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. Defendant estimates approximately 2,475 Aggrieved Employees who worked 27,650 pay periods during the PAGA Period. Agreement at § 4.1.

3. The **“Gross Settlement Amount”** is Two Million Dollars and Zero Cents (\$2,000,000.00). Agreement at § 1.23. The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Payment”** of not more than \$10,000 to Plaintiff in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ 3.2.1, 5.1.

b. **“Attorneys’ Fees and Litigation Costs”** in the amount not to exceed one-third

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

of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$666,666.67 *and* litigation expenses not to exceed \$40,000, to be paid to Class Counsel. Agreement at §§ 1.5, 3.2.2;

c. A “**PAGA Payment**” of Sixty Thousand Dollars (\$60,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$45,000) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$15,000) will be distributed to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at § 1.25, 1.28, and 1.35; and

d. “**Administration Expenses Payment**” not to exceed \$33,000 payable to the Settlement Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Class Notice and issuance of settlement checks. Agreement at § 3.2.3.

4. The “**Net Settlement Amount**” of approximately \$1,190,333.33 (Gross Settlement Amount less the requested Attorneys’ Fees and Litigation Costs, Class Representative Payment, PAGA Payment, and Administration Expenses Payment) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ 1.29, 3.2.4. An additional four Workweeks will be added to the total Workweeks for any Participating Class Member who is no longer employed by Defendant. The entire Net Settlement Amount will be paid to all Participating Class Members resulting in an average Individual Class Payment of **\$257.93**. JCL Dec., ¶ 7.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the

1 Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
2 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
3 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

4 **II. FACTS AND PROCEDURE**

5 **A. Overview of the Litigation**

6 Defendant provides Applied Behavior Analysis (“ABA”) services to children with autism
7 throughout California, including in Los Angeles County where Plaintiff worked. Plaintiff worked for
8 Defendant in California during 2019 as a non-exempt employee, paid on an hourly basis. At all times
9 during her employment, Plaintiff alleges that she was denied legally compliant meal and rest periods,
10 and minimum wages and overtime compensation. Throughout her employment, Plaintiff was subject
11 to Defendant’s written policies and procedures contained in, among other documents, the “Behavior
12 Frontiers Employee Handbook.” JCL Dec., ¶ 9.

13 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
14 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
15 accurate itemized wage statements, failed to pay overtime and paid sick time at the correct rate of pay,
16 failed to properly pay reporting time pay, and failed to pay all wages timely during employment and
17 upon separation. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant asserts
18 that it fully complied with all applicable employment laws and raised several other significant defenses
19 to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
20 compliant wage statements, and that it timely paid all wages due upon separation of employment. JCL
21 Dec., ¶ 10.

22 On May 9, 2022, Plaintiff filed a class action complaint in the Los Angeles County Superior
23 Court, Case No. 22STCV15331 (“Action”). The Action alleged ten causes of action against Defendant
24 for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of
25 California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of
26 California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code
27 §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201
28 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not

1 Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant
2 Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll
3 Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business
4 Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.* JCL Dec., ¶ 11.

5 Both Parties propounded written discovery in July of 2022. After responding to discovery, the
6 Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce
7 additional documents and data points subject to the mediation privilege, including but not limited to, a
8 sample of the Class Members’ time and payroll data and certain payroll data points. As discussed *infra*,
9 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
10 Defendant’s time and payroll data. JCL Dec., ¶ 12.

11 On April 28, 2023, the Parties participated in a full day mediation with wage and hour and PAGA
12 mediator Steve Rottman, Esq. The mediation concluded with a settlement after both sides agreed to a
13 Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of
14 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
15 is the subject of the instant motion. JCL Dec., ¶ 13.

16 On July 19, 2022, and August 14, 2023, for purposes of effectuating the settlement, Plaintiff
17 served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of
18 Violations and Amended Notice (collectively referred to as “PAGA Notice”). Plaintiff’s PAGA Notice
19 set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the
20 California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of
21 her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code
22 Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

23 On August 23, 2023, the Parties filed a stipulation for leave to amend the complaint to allow
24 Plaintiff to file a First Amended Complaint adding the following claims/legal theories: (1) failure to
25 pay paid sick time at the correct rate of pay; (2) failure to properly pay reporting time pay; and (3) an
26 additional cause of action for violation of PAGA based on the same violations alleged in the Complaint
27 and First Amended Complaint.² JCL Dec., ¶ 15.

28

² Plaintiff intends on filing the First Amended Complaint upon receipt of the signed Order granting Plaintiff’s request for

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

2 Months before filing the Action, Class Counsel began its pre-filing investigation into the
3 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
4 Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,
5 including portions of Defendant's handbooks, compensation policies and time and payroll records. At
6 the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
7 inquiry. JCL Dec., ¶ 16.

8 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
9 Defendant produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's
10 hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents
11 and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to,
12 among other things, provide accurate wage statements and to provide compliant meal and rest periods.
13 JCL Dec., ¶ 17.

14 To prepare for mediation, Defendant produced a sample of the time and payroll records for the
15 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal
16 premiums paid to the Class Members, average hourly rate for the Class Members, and copies of
17 applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of
18 documents and more than 2 million unique cells of time and payroll data. JCL Dec., ¶ 18.

19 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
20 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
21 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
22 credentialed and experienced experts in their fields and have provided their expertise on thousands of
23 cases. JCL Dec., ¶ 19.

24 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
25 models. Among other things, BCG determined the approximate amount of allegedly unpaid wages,
26 amount of allegedly unpaid overtime wages, number of workweeks, pay periods, average length of
27 shifts and average number of hours worked per week. BCG also estimated the number of allegedly

28 _____
leave to amend the complaint.

missed, late, or truncated meal and rest periods, the amount of allegedly unpaid wages, the amount of allegedly unpaid overtime, the amount of allegedly unpaid sick time, the amount of allegedly unreimbursed business expenses, and the amount of allegedly missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 20.

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 her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's 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 potential 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. JCL Dec., ¶ 21.

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

C. The Parties Settled at Mediation

On April 28, 2023, the Parties conducted a full day of mediation with Steve Rottman, Esq. Mediator Rottman 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 Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are

now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 23-24.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The proposed Settlement Class consists of all individuals who were employed by Defendant in a non-exempt position in California between May 9, 2018 and July 31, 2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 4,615 individuals that worked approximately 174,622 workweeks during the Class Period. Agreement at § 4.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00). The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) a Class Representative Payment of not more than \$10,000 to Plaintiff for her services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of \$60,000; (4) Administration Expenses Payment estimated at \$33,000; (5) Attorneys' Fees and Litigation Costs in the amount of \$706,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$666,666.67 and an estimated \$40,000 for actually incurred litigation expenses. See generally Agreement at § 3.

After deducting the amounts approved by the Court for the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § 1.29. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount on May 16, 2024, or within fourteen (14) days of the Court's entry of the order granting final approval of this Settlement, whichever is later. Agreement at § 4.3.

1 4. Formula for Calculating Individual Class Payments

2 Participating Class Members will receive an Individual Class Payment. The Individual Class
3 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
4 in California during the Class Period. Any Participating Class Member who is no longer employed by
5 Defendant will have four Workweeks added to his/her/their total Workweeks. Agreement at § 3.2.4.
6 The Class Data provided by Defendant to the Settlement Administrator will include, among other
7 things, the number of Workweeks for each Class Member and the number of PAGA Pay Periods
8 worked during the relevant periods. Agreement at § 1.8. Each Class Member's final Individual Class
9 Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the
10 Class Member's total number of Workweeks, and the denominator of which is the total number of
11 Workweeks of all Class Members. Agreement at § 3.2.4. For purposes of these calculations, a
12 Workweek shall mean any week during which a Class Member worked for Defendant in California in
13 a non-exempt position for at least one day during the Class Period. Agreement at § 1.46. Each
14 Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
15 employee payroll taxes, etc.). Individual Class Payments for members of the Settlement Class who
16 submit valid and timely requests for exclusion will be redistributed to Participating Class Members
17 who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.4.2.

18 Given that there are approximately 4,615 Participating Class Members, the average gross
19 recovery is approximately \$257.93 (Net Settlement Amount divided by Participating Class Members).
20 JCL Dec., ¶ 7.

21 5. Release by Participating Class Members

22 Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to
23 release the Released Parties from the Released Class Claims that accrued during the Class Period.
24 Agreement at §§ 1.40; 5.2.

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

26 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
27 on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA
28 Claims that accrued during the PAGA Period. Agreement at §§ 1.41; 5.3.

1 **III. ARGUMENT**

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

3 The proposed Settlement, including a Gross Settlement Amount of \$2,000,000.00 meets the
4 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
5 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
6 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
7 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
8 notice of the settlement has been distributed to class members for their comments and objections.
9 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
10 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
11 inquire into the fairness of the proposed settlement”).)

12 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
13 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
14 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
15 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
16 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
17 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
18 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
19 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
20 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
21 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
22 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
23 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
24 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
25 action litigation”).)

26 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
27 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
28 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

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

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation the highly respected mediator Steve Rottman, Esq.
12 Mediator Rottman managed the Parties’ expectations and provided a useful, neutral analysis of the
13 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL),
14 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
15 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
16 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
17 proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations,
18 negotiations continued and the mediation concluded with a settlement. JCL Dec., ¶ 23.

19 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
20 the written terms of the class action settlement. The Agreement is the final product of the mediated
21 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
22 compromise of the claims at issue. JCL Dec., ¶ 24.

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

25 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
26 the factual and legal issues in dispute. In addition to informal discovery, document review, data
27 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
28 two cases are identical, this research provided Class Counsel with a marker to inform settlement

1 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
2 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
3 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
4 ¶ 25.

5 Class Counsel only agreed to enter the Settlement following their thorough investigation and
6 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
7 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
8 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
9 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
10 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

12 The Gross Settlement Amount of \$2,000,000.00 is within the range of reasonableness. To
13 determine whether a settlement is fair and reasonable, the court should "consider enough information
14 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
15 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
16 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
17 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
18 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such
19 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
20 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*
21 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
22 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
23 have received if they had succeeded at trial.³ Indeed, "[t]he determination whether a settlement is

24 ³ Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
25 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
26 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
27 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
28 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*

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 \$2,000,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery, including Defendant’s contention that approximately 40% of Class Members have signed arbitration agreements with a class action waiver. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$4,753,484.05 (“Realistic Damages”) and \$16,498,849.80 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 42.07% (“Realistic Damages”) and 12.12% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 27.

(1) Exposure for Regular Rate Violations

Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed sick pay. Specifically, Defendant paid Class Members non-discretionary incentive compensation in the form of “BNS-BONUS Pay” and “LD Bonus (Supplemental Tax Rate) Pay” payments, and had in place the non-discretionary incentive programs, which were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. 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

Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 differentials and the per-hour value of any non-hourly compensation the employee has earned.
2 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an
3 employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553.
4 California law also requires meal period premiums and rest period premiums to be paid at an
5 employee’s regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)
6 Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt
7 employees be based on either “the regular rate of pay for the workweek in which the employee uses
8 paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick leave. JCL Dec.,
9 ¶ 28.

10 Conversely, Defendant denied liability and asserted it paid the correct rate of pay for purposes
11 of overtime wages and sick pay. Defendant also argued that these bonuses were discretionary and did
12 not need to be included in the regular rate calculation for payment of overtime wages and sick pay.
13 Plaintiff estimated the range of outcomes for this claim was between \$8,036.50 and \$16,073.00. JCL
14 Dec., ¶ 29.

15 (2) Exposure for Meal Period Violations

16 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
17 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
18 Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff
19 alleges that she is owed meal period premiums for meal period violations that occurred during the Class
20 Period. An analysis of the Class Members’ time and payroll data revealed a modest 13.1% meal period
21 violation rate. JCL Dec., ¶ 30.

22 Defendant argued, among other things, that it has a lawful policy and that it provided all their
23 employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal
24 periods and that, if they did not take compliant meal periods, it was their choice. Defendant also argued
25 that a large portion of its workforce was subject to Wage Order 15, exempting employees from the
26 meal period requirements. Thus, Defendant argued that there was no potential liability for Plaintiff’s
27 alleged meal period violations. Further, payroll data evidenced that several Class Members signed
28 short shift meal period waivers. At a minimum, Defendant argued that any potential recovery for meal

1 period violations would be drastically reduced based on the number of Class Members who signed meal
2 period waivers. JCL Dec., ¶ 31.

3 Consequently, Plaintiff applied a 75% discount to this claim to account for the modest violation
4 rate, facially compliant policies, and meal period waivers. Plaintiff estimated that the damages for this
5 claim ranged from approximately \$165,132.90 to approximately \$660,531.60. JCL Dec., ¶ 32.

6 (3) Exposure for Rest Period Violations

7 Plaintiff also alleged that Defendant failed to provide compliant rest periods. On many
8 occasions, Plaintiff was the only employee scheduled to work during a particular shift. As a result,
9 Plaintiff's rest periods were often on-premises, on-duty, and/or on call, and often interrupted. Again,
10 Defendant denied liability and asserted that it maintained legally compliant rest period policies and
11 practices throughout the Class Period. Defendant also argued that because Wage Order 15 applied,
12 employees were exempt from rest period requirements, which would completely eliminate liability for
13 Plaintiff's rest period violations. Moreover, Plaintiff recognizes the evidentiary burdens establishing
14 this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member
15 testimony, making it a riskier claim at class certification and liability stages. Certification likely would
16 have required depositions of Class Members who provided declarations, and Defendant surely would
17 have obtained opposing declarations stating either rest breaks were taken, or rest breaks were
18 voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223,
19 at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may
20 have an illegal, written rest break policy is insufficient for this Court to find that common issues
21 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL
22 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate
23 uniform practices."). Accordingly, Plaintiff's Realistic Damage model applied a 75% discount to the
24 rest break claim and assumed an identical rest period violation rate of 13.1% as seen with meal period
25 violations. Plaintiff estimated the range of potential outcomes for this claim was between
26 approximately \$165,132.90 to approximately \$660,531.60. JCL Dec., ¶ 33.

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1 (4) Exposure for Unpaid Wages

2 Plaintiff also alleged that Defendant failed to pay its employees for all hours worked.
3 Specifically, throughout Plaintiff's employment, she alleges she was not able to clock in and out for
4 her shift. Instead, Defendant paid employees based on their scheduled hours, rather than the number
5 of hours they actually worked. The time records produced by Defendant showed that 99.98% of all
6 time entries were rounded to quarter-hour intervals. Based on Plaintiff's testimony and Class Counsel's
7 investigation, BCG estimated that Class Members performed a total of 5 minutes of unpaid work every
8 shift. As a result, Plaintiff and Class Members forfeited compensation, including overtime wages, for
9 all the time they spent working under Defendant's control. JCL Dec., ¶ 34.

10 Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in
11 place a written policy required its employees to accurately record all their time worked daily and
12 argued that such written policies and procedures directed its employees not to work while off the
13 clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment
14 because individualized issues predominated. For example, even assuming Plaintiff performed work
15 while off-the-clock, which Defendant disputes, the time spent would vary drastically from class
16 member to class member that it could not be established by common proof. Consequently, Plaintiff's
17 Realistic Damage model applied a 75% discount to this claim. Plaintiff estimated Defendant's
18 exposure for this claim ranged between \$930,591.90 and \$3,722,367.60. JCL Dec., ¶ 35.

19 (5) Exposure for Unreimbursed Business Expenses

20 Plaintiff alleged that Defendant required the Class Members to use their personal cellular phones
21 and personal vehicles as a result of and in furtherance of their job duties but were not reimbursed by
22 Defendant. California employers who require employees to incur personal business expenses for work
23 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing
24 that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred
25 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
26 to the directions of the employer..."). BCG estimated a reasonable \$15 monthly reimbursement rate
27 for Class Members for the use of their personal cell phones and vehicles. JCL Dec., ¶ 36.
28

1 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
2 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
3 the employees' duties or at Defendant's direction. Further, Defendant argued that it did in fact
4 reimburse employees for use of their personal cell phones and vehicles. Thus, Plaintiff estimates that
5 even if Plaintiff were successful in this claim only a small number – approximately half – of the
6 Settlement Class would be entitled to relief. This claim was also heavily discounted by 85% based on
7 Defendant's defenses. Plaintiff estimated Defendant's exposure for this claim ranged between
8 approximately \$169,496.25 and approximately \$677,985.00. JCL Dec., ¶ 37.

9 (6) Exposure for Wage Statement Violations

10 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
11 statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal and rest
12 periods as required by the California Labor Code and pay for all wages, Plaintiff and other Class
13 Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security*
14 *Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to
15 derivative wage statement penalties). Defendant argued that this claim would fail because the
16 underlying claims would fail and that, even if it failed to furnish accurate wage statements, Plaintiff could
17 not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this claim
18 25% to account for this risk. Plaintiff estimated that Defendant's exposure on this claim ranged between
19 \$2,583,412.50 and \$3,444,550.00. JCL Dec., ¶ 38.

20 (7) Exposure for Waiting Time Penalties

21 Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for
22 waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
23 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could
24 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
25 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for these
26 claims ranged between \$731,681.10 and \$7,316,811.00 million. JCL Dec., ¶ 39.

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1 (8) Defendant's PAGA Exposure

2 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
3 the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between \$179,055.00
4 and \$6,644,250.00. JCL Dec., ¶ 40. The proposed PAGA allocation of the Gross Settlement Amount is
5 fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
6 "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was
7 the result of self-interest at the expense of class members," such amounts are generally considered
8 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
9 Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two
10 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
11 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
12 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
13 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
14 in the range of zero to two percent of the total settlement).

15 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$60,000 which is 3%
16 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments.
17 Seventy-Five percent (75%) of the PAGA Payment (\$45,000.00) will be paid to the LWDA ("LWDA
18 Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$15,000.00)
19 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
20 courts and should be approved. JCL Dec., ¶ 41.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

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

7 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just
8 and reasonable.

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

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
17 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
18 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
19 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
20 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
21 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
22 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
23 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
24 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
25 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
26 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
27 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
28 *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). 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. JCL Dec., ¶ 42.

“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. JCL Dec., ¶ 43. “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 \$2,000,000.00 that is roughly between approximately 29.72% of Defendant’s *class-wide* liability exposure for damages, and

1 approximately 8.2% of Defendant’s maximum class wide liability exposure for damages and statutory
2 penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset
3 by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶
4 44.

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

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

15 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
16 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
17 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
18 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
19 procedure, and time period within which to submit requests for exclusions or objections to the
20 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
21 and the terms and scope of the Released Claims. Agreement at § 1.1. The Parties negotiated this
22 method to ensure delivering the most reasonable method of notice to the Class Members while ensuring
23 cost effective administration of the Settlement. JCL Dec., ¶ 45.

24 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
25 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485

26
27 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

(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.”.) JCL Dec., ¶ 46.

C. The Court Should Preliminarily Approve the Class Representative Payment

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

The Settlement provides for a Class Representative Payment of \$10,000 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 her 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, and agreeing to provide Defendant a general release of all claims arising out of her employment. JCL Dec., ¶ 47.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. JCL Dec., ¶ 48.

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

The purpose of a payment of Attorneys’ Fees and Litigation Costs in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more

of the potential value of the common fund, 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 Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Litigation Costs are fair and reasonable. JCL Dec., ¶ 49.

Paragraph 1.5 of the Settlement Agreement provides that the Attorneys’ Fees Payment shall be divided between Class Counsel with 32.5% apportioned to JCL Law Firm, APC, 32.5% to Zakay Law Group, APLC, and 35% to Lawyers for Justice, APC. Plaintiff reviewed and signed the Agreement, thereby agreeing to the fee split. Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Litigation Costs 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. JCL Dec., ¶ 50.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 51.

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

1 is appropriate even if class members at some point may be required to make an individual showing as
2 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
3 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

19 Because all Class Members are Defendant’s current and former employees, the class is readily
20 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 52.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
23 liability can be determined by facts common to all members of the class. The wage and hour issues are
24 both numerous and substantial, and a class action is the most advantageous method of dealing with the
25 claims of the Settlement Class. JCL Dec., ¶ 53.

26 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
27 from the same factual basis and are based on the same legal theories applicable to the other Class
28 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement

1 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
2 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
3 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
4 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 54.

5 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
6 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
7 gained state court settlement approval of the same class-wide causes of action that are at issue in this
8 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
9 represent the interests of this Class. JCL Dec., ¶¶ 56-64, Declaration of Shani Zakay, ¶¶ 1-3.

10 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
11 each individual claim, the Class Members likely have little incentive to litigate their claims on an
12 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
13 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
14 adjudication. JCL Dec., ¶ 55.

15 IV. CONCLUSION

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

19
20 Dated: August 31, 2023

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.