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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ADRIAN CASTRO and RODOLFO GARCIA,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

CONVERGEONE, INC., a Minnesota
corporation; AAA NETWORK SOLUTIONS,
INC, a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. CIVSB2305464

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

Date: February 10, 2025

Time: 8:30 a.m.

Judge: Hon. Charlie L. Hill, Jr.

Dept.: S-30

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I. INTRODUCTION

Plaintiffs ADRIAN CASTRO and RODOLFO GARCIA (hereinafter collectively “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 250 Class Members and 153 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all non-exempt employees employed by defendants ConvergeOne, Inc and defendant AAA Network Solutions, Inc. (“Defendants”) in California at any time during the period beginning July 17, 2019, to July 11, 2024 (“Class Period”). Agreement at §§ I(F). At the time of mediation there were approximately 250 Class Members who worked approximately 31,473 Workweeks during the Class Period. Agreement at § III(A)(5).

2. The “**Settlement Class Member**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § I(LL).

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all non-exempt employees employed by Defendants in California (“Aggrieved Employees”) at any time during the period July 17, 2022, to July 11, 2024 (“PAGA Period”). Agreement at § I(C). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ III(H)(7). At the time of mediation there were approximately 153 Aggrieved Employees who worked approximately 5,425 pay periods during the PAGA Period. JCL Dec., ¶ 40.

4. The “**Gross Settlement Amount**” is Nine Hundred and Fifty Thousand Dollars and Zero Cents (\$950,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. “**Service Awards**” in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at § I(II);

b. A payment of “**Class Counsel Award**” in the amount not to exceed one-third of

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.

the Gross Settlement Amount for attorney’s fees, currently estimated to be \$316,666.66 **and** litigation costs and expenses in the amount of up to \$30,000, to be paid to Class Counsel. Agreement at § I(H);

c. A payment of “**PAGA Payment**” in the amount of \$50,000.00 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay \$37,500.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute \$12,500.00 representing 25% of the PAGA Payment to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § I(X); and

d. “**Claims Administration Expenses**” not to exceed \$6,500.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Individual Settlement Payments. Agreement at § I(E).

3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount that remains after accounting for any Aggrieved Employee Payments, the LWDA Payment, Service Awards, Class Counsel Award, and the Claims Administration Expenses. Agreement at § I(S). The Net Settlement Amount is approximately \$526,833.34 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately **\$2,107.33**. 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 Defendants prevailing at trial. JCL Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement

1 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
2 the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
3 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs
4 respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

5 II. FACTS AND PROCEDURE

6 A. Overview of the Litigation and Mediated Settlement

7 Defendants provide IT services and technology solutions in the state of California, including in
8 San Bernardino County where Plaintiff Castro worked. This action asserts claims on behalf of all non-
9 exempt employees employed by Defendants in California at any time during the Class Period. Plaintiff
10 Castro worked for Defendants as a non-exempt employee in California from June 2019 to August 2022.
11 Declaration of Adrian Castro (“AC Dec.”) at ¶ 4. Plaintiff Garcia worked for Defendants as a non-
12 exempt employee in California from June 2017 to September 2022. Declaration of Rodolfo Garcia
13 (“RG Dec.”) at ¶ 4. At all times during their employment, Plaintiffs earned an hourly wage and were
14 entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for
15 all hours worked. Throughout their employment, Plaintiffs were subject to Defendants’ written policies
16 and procedures contained in, among other documents, the “Team Member Handbook – California
17 Supplement.” JCL Dec., ¶ 9; AC Dec., ¶ 4; RG Dec. ¶ 4.

18 Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide
19 compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish
20 accurate itemized wage statements, and failed to pay all wages upon separation. Defendants forcefully
21 deny liability for each of Plaintiffs’ claims. Further, Defendants assert that it fully complied with all
22 applicable employment laws and raised several other significant defenses to Plaintiffs’ claims,
23 including but not limited to, asserting that it maintained compliant timekeeping policies and practices,
24 compliant meal and rest period policies, compliant reimbursement policies, maintained issued
25 compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec.,
26 ¶ 10.

27 On October 13, 2022, Plaintiff Castro served the Labor and Workforce Development Agency
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1 (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Castro’s PAGA Notice set forth
2 the facts and theories supporting Defendants’ alleged violations of various provisions of the California
3 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
4 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
5 2698 *et seq.* (“PAGA”). On March 1, 2023, Plaintiff Castro filed a representative action for violations
6 of PAGA in the San Bernardino Superior Court (“Action”). JCL Dec., ¶ 11.

7 On July 17, 2023, Plaintiff Garcia served Defendants and the LWDA with his PAGA Notice. On
8 July 17, 2023, Plaintiff Garcia filed a class action complaint in the Orange Superior Court, Case
9 Number 30-2023-01336727-CU-OE-CXC (“*Garcia* Action”). The *Garcia* Action alleged eight causes
10 of action against Defendants for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§
11 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197, &
12 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure
13 to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
14 IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7
15 & 512 and the Applicable IWC Wage Order; (6) Failure to Pay Wages When Due in Violation Of Cal.
16 Labor Code §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Statements in Violation Of
17 Cal. Lab. Code § 226; and (8) Failure to Reimburse Employees for Required Business Expenses in
18 Violation Of Cal. Lab. Code § 2802. JCL Dec., ¶ 12.

19 On October 2, 2023, Plaintiff Garcia filed a First Amended Complaint in the *Garcia* Action
20 alleging an additional cause of action for alleged violations of PAGA. JCL Dec., ¶ 13.

21 On October 5, 2023, Plaintiff Garcia propounded formal written discovery. Prior to responding
22 to discovery, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
23 informally exchange additional documents and data points subject to the mediation privilege, including
24 but not limited to, employee handbooks, the Class Members’ time data, and certain payroll data points.
25 As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group
26 (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 14.

27 On July 11, 2024, the Parties participated in a full day mediation with mediator Steve Rottman,
28

Esq. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 15.

On December 4, 2024, Plaintiff Castro filed a First Amended Complaint (“Operative Complaint”) in the Action for purposes of adding Plaintiff Garcia as a named Plaintiff and incorporating the claims from the *Garcia* Action into the instant Action. JCL Dec., ¶ 16.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their 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 copies of their wage statements. At the conclusion of the interviews, Class Counsel determined that Plaintiffs’ complaints justified further inquiry. JCL Dec., ¶ 17.

Class Counsel subsequently requested Plaintiffs’ employee files from Defendants. In response, Defendants produced various documents, including but not limited to, copies of Plaintiffs’ employment agreements, payroll and time records, and separation documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs’ claim that Defendants failed to, among other things, pay for all time worked, reimburse for mandatory business expenses, issue accurate itemized wage statements, and provide compliant meal and rest periods. JCL Dec., ¶ 18.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs’ claims and Defendants’ liability exposure to the Class Members. In response to Class Counsel’s request, Defendants produced time records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. In total, Class Counsel reviewed approximately 3,987 pages and over

367,000 unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 19.

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, the BCG is well-qualified to analyze Defendants' time and payroll data. JCL Dec., ¶ 20.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of missed meal period premiums paid during the Class Period, the amount of unpaid wages due to rounding, the amount of unreimbursed business expenses, and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 21.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 22.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representative through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' 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 Members' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' 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

1 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
2 independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec.,
3 ¶ 23.

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

10 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

11 1. The Composition of the Settlement Class Members

12 The proposed Settlement Class consists of all non-exempt employees employed by Defendants
13 in California at any time during the period beginning July 17, 2019, to July 11, 2024, who do not file a
14 timely and valid Request for Exclusion. Agreement at §§ I(F); I(LL). In the data exchanged at the time
15 the Agreement was executed, there were approximately 250 Class Members that worked approximately
16 31,473 workweeks. Agreement at § III(A)(5).

17 2. The Settlement Consideration

18 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
19 Amount of \$950,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments
20 to the Settlement Class; (2) Service Awards of \$10,000.00 to each Plaintiff for their services on behalf
21 of the Settlement Class; (3) PAGA Payment in the amount of \$50,000.00; (4) Claims Administration
22 Expenses estimated at \$6,500.00; (5) Class Counsel Award in the amount of \$346,666.66, comprised
23 of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$316,666.66 and
24 an estimated \$30,000.00 for actually incurred litigation expenses. *See generally* Agreement at §
25 III(I)(9)-(12).

26 Subject to the Court approving the Service Awards, Class Counsel Award, PAGA Payment, and
27 the Claims Administration Expenses, the Net Settlement Amount will be distributed to each
28

participating member of the Settlement Class Member. Agreement at § I(1). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. *Id.*

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$950,000.00 Gross Settlement Amount within ninety (90) days after the Court enters an order of final approval of the settlement, or October 15, 2025, whichever date is later. Agreement at § III(I).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payments. The Class Data provided by Defendants to the Settlement Administrator will include the number of eligible Workweeks for each Settlement Class Member. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at § I(I). Each Individual Settlement Payments will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

Given that there are approximately 250 Settlement Class Members, *the average gross recovery is approximately \$2,107.33* (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 7.

5. Release by Settlement 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. The Released Class Claims are defined as all claims alleged or that could have reasonably been alleged based upon the facts alleged in the Operative Complaint in the Action which arose during the Class Period. Class Members do not release any claims that cannot be released by law, including, without limitation, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class

Period. Agreement at § I (EE).

6. Release by the Aggrieved Employees

Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, the LWDA, the State of California, the Plaintiffs and the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all claims for PAGA penalties alleged or could have reasonably been alleged based on the facts alleged in the Operative Complaint and Plaintiffs' notice to the LWDA, which arose during the PAGA Period. Agreement at § I(EE).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$950,000.00, 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 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

The Parties participated in mediation with the mediator Steve Rottman, Esq. Mediator Rottman managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive. Mediator Rottman only arrived at his proposal after hearing arguments,

1 reviewing evidence, and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 25.

2 Once the Parties agreed to the Mediator's proposal, the parties subsequently executed a binding
3 and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated
4 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
5 compromise of the claims at issue. JCL Dec., ¶ 26.

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

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

15 Class Counsel only agreed to enter the Settlement following their thorough investigation and
16 evaluation of Plaintiffs' claims. Based on his investigation of the facts, applicable law, and marketplace
17 for similar settlements, and considering the risk of significant delay, uncertainty associated with
18 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this
19 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
20 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 28.

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

22 The Gross Settlement Amount of \$950,000.00 is within the range of reasonableness. To
23 determine whether a settlement is fair and reasonable, the court should "consider enough information
24 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
25 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
26 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
27 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
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1 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
2 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
3 is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*
4 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
5 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
6 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
7 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
8 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
9 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

10 **a. The Gross Settlement Amount Meets the Recognized Range of**
11 **Reasonableness.**

12 The Gross Settlement Amount of \$950,000.00 is fair and reasonable considering the nature and
13 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
14 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’
15 liability exposure while accounting for the uncertainties of continued litigation. The various models
16 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
17 and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding
18 PAGA penalties) ranged between \$1,089,813.24 (“Conservative Model”) and \$3,923,424.32
19 (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several of the
20 claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements
21 and waiting time penalties. Thus, the Gross Settlement Amount of \$950,000.00 represents
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23 ² 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. (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 approximately between 24.21% (“Aggressive Model”) and 87.17% (“Conservative Model”) of
2 Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The
3 following summarizes Defendants’ estimated exposure. JCL Dec., ¶ 29.

4 (1) Exposure for Failure to Pay for All Hours Worked

5 Plaintiffs’ primary claim in the Action alleged that Defendants failed to pay its employees for all
6 hours worked under two separate theories. First, Plaintiffs allege that Defendants employed a rounding
7 practice which resulted in an underpayment of wages to Plaintiffs and other Class Members.
8 Specifically, Plaintiff’s expert found that approximately 15,003 shifts (12.1% of shifts) were underpaid
9 compared to 7,607 (6.1% of shifts) overpaid shifts. Second, Plaintiff alleges that Defendants failed to
10 pay for all hours worked due to off-the-clock pre-shift work performed by Plaintiffs and the Class
11 Members. Specifically, Plaintiffs and other Class Members were expected and required to arrive early
12 for their shifts in order to receive daily tasks and assignments all while off-the-clock. JCL Dec., ¶ 30.

13 Defendant denied liability and asserted that its employees were paid for all time worked. Further,
14 Defendant argued that this claim resulted in minimal actual damage to the Class Members and that its
15 rounding policies complied with *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th
16 889. Thus, Plaintiff’s applied a 25% discount to the Conservative Model for this claim and estimated
17 Defendant’s exposure for this claim ranged between \$417,527.79 and \$556,703.72. JCL Dec., ¶ 31.

18 (2) Exposure for Meal Period Violations.

19 Plaintiffs also allege that Defendants failed to provide compliant meal periods. Specifically,
20 Plaintiffs alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
21 able to take timely and duty-free meal periods. Consequently, Plaintiffs allege that they are owed meal
22 period premiums for meal period violations that occurred during the Class Period. Additionally, an
23 analysis of the Class Members’ time and payroll data revealed that 48.8% of all meal period were
24 rounded to exactly thirty (30) minutes. JCL Dec., ¶ 32.

25 Conversely, Defendants argued, among other things, that they did not engage in meal rounding
26 and provided all their employees with the opportunity to take compliant meal periods. Defendants also
27 argued that they maintained facially complaint meal period policies, including valid meal period
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1 waivers, and paid meal period premiums during shifts when violations occurred. Thus, Defendants
2 argued that there was no potential liability for Plaintiffs' alleged meal period violations and any claimed
3 violations required a highly individualized inquiry not suitable to class treatment. In light of
4 Defendants' meal period waivers and meal premium payments, Plaintiffs applied a 75% discount to
5 this claim and estimated Defendants' exposure for this claim ranged from \$200,047.20 to
6 approximately \$800,188.80. JCL Dec., ¶ 33.

7 (3) Exposure for Rest Period Violations

8 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
9 Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs and Class Members were not
10 able to take timely and duty-free rest periods. Again, Defendants denied liability and asserted that they
11 maintained legally compliant rest period policies and practices throughout the Class Period. Moreover,
12 Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period
13 claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class
14 certification and liability stages. Certification likely would have required depositions of Class Members
15 who provided declarations, and Defendants argued that they obtained opposing declarations stating
16 either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack,*
17 *Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before
18 the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is
19 insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of*
20 *California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiffs' own evidence
21 confirms that the written policy does not generate uniform practices."). Accordingly, Plaintiffs'
22 Conservative Model applied a 75% discount to the rest break claim. Plaintiffs estimated the range of
23 potential outcomes for this claim ranged from \$200,047.20 to approximately \$800,188.80. JCL Dec.,
24 ¶ 34.

25 (4) Exposure for Unreimbursed Business Expenses

26 Plaintiff alleged that Defendant required the Class Members to use their personal tools, cell
27 phones, and vehicles as a result of and in furtherance of their job duties but were not reimbursed by
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Defendants. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....”). Plaintiffs’ expert estimated a reasonable \$15 monthly reimbursement rate for Class Members for the use of their personal tools, cell phones, and vehicles. JCL Dec., ¶ 35.

Again, Defendants denied any liability for this claim. Defendants argued, among other things, that on the rare occasion where employees did incur business expenses, these expenses were fully reimbursed. Defendants further argued that Class Members who provided their own tools were paid at least twice minimum wage. This claim was heavily discounted based on Defendants’ defenses. Plaintiffs estimated Defendants’ exposure for this claim ranged from \$25,548.75 to approximately \$534,850. JCL Dec., ¶ 36.

(5) Exposure for Wage Statement Violations

Plaintiffs also alleged that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiffs allege that as a result of Defendants’ failure to provide meal and rest periods as required by the California Labor Code, Plaintiffs and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are “wages” entitling employees to derivative wage statement penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this claim 50% to account for this risk. Plaintiff estimated that Defendant’s exposure on this claim ranged between \$133,712.50 and \$534,850.00. JCL Dec., ¶ 37.

(6) Exposure for Waiting Time Penalties

Plaintiffs also alleged that the Defendants’ labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendants’ largest dollar amount of exposure, this is Plaintiffs’ most uncertain claim. Specifically, Defendants argued that Plaintiffs could

not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel’s Conservative Model discounted the waiting time penalty claim by 90% and estimated Defendants’ exposure for these claims ranged between \$112,929.80 and \$1,129,298.00. JCL Dec., ¶ 38.

(7) Defendants’ PAGA Exposure

In all, Class Counsel projected Defendants’ liability exposure for PAGA claims ranged between \$27,125 (“Conservative Model”) and \$1,639,700 (“Aggressive Model”) if successful at trial. JCL Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements “negotiate a good faith amount” for PAGA Payment and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of \$50,000 which is 5.26% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$37,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$12,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 41.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties

1 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
2 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
3 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
4 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
5 6, 2016) (PAGA penalties denied after trial).

6 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
7 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
8 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
9 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
10 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation
11 for each pay period the employee worked. Again, Defendants raised several defenses that presented
12 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. In addition to those
13 arguments discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v.*
14 *Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and
15 manageability as to the rest period claims. JCL Dec., ¶ 42.

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

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

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
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1 a relatively weak case or a sell-out of an extraordinary strong case.” (*Misra v. Decision One Mortg.*
2 *Co.* (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
5 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
6 certification because employees’ declarations attesting to having taken meal and rest breaks
7 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
8 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
9 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
10 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
11 period claims based on the predominance of individual issues). JCL Dec., ¶ 43.

12 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
13 Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
14 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
15 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077,
16 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
17 individualized questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 44.

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

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

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

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

11 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18,
12 1990).)

13 Finally, continuing to litigate this action would require continued and extensive resources
14 coupled with significant Court time to proceed through trial and post-trial motions; which can often
15 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
16 extensive expert testimony, particularly with regard to damages. But even if Plaintiffs are successful
17 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
18 that Defendants would appeal any favorable judgment. JCL Dec., ¶ 47. As demonstrated by *Magadia*,
19 *supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “Avoiding such a trial and
20 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
21 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
22 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
23 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

24 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$950,000.00 that is
25 roughly between 24.21% (“Aggressive Model”) and 87.17% (“Conservative Model”) of Defendants’
26 maximum class wide liability exposure for damages and statutory penalties. Given the settlement
27 amount here, as compared to potential value of the claims, offset by the various inherent risks to
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continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 48.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 49.

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

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

1 **C. The Court Should Preliminarily Approve the Service Awards**

2 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
3 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
4 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
5 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
6 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
7 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
8 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
9 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
10 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
11 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
12 (2009) 175 Cal.App.4th 785.)

13 The Settlement provides for a Service Awards of \$10,000.00 to each Plaintiff. The Service
14 Awards are fair and reasonable compensation for the Plaintiffs’ efforts bringing the action, assisting
15 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
16 of their case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to
17 ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 50.

18 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards
19 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
20 showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶ 51.

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

22 The purpose of a payment to Class Counsel for Class Counsel Award in class action litigation is
23 to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
24 positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more
25 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
26 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
27 percentage method or the lodestar method is used, fee awards in class actions average around one-third
28

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 Plaintiffs’ claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award payment is fair and reasonable. JCL Dec., ¶ 52.

Plaintiffs will file a formal motion for the negotiated Class Counsel Award 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. JCL Dec., ¶ 53.

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. JCL Dec., ¶ 54.

1. The Standard for Class Certification

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

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

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is

1 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
2 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable
3 where they may be readily identified without unreasonable expense or time by reference to official
4 records. (*Id.*)

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

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

13 Because all Class Members are Defendants’ current and former employees, the class is readily
14 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 55.

15 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
16 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
17 liability can be determined by facts common to all members of the class. The wage and hour issues are
18 both numerous and substantial, and a class action is the most advantageous method of dealing with the
19 claims of the Settlement Class. JCL Dec., ¶ 56.

20 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
21 from the same factual basis and are based on the same legal theories applicable to the other Class
22 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
23 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
24 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
25 their ability to advocate for the interests of the Class Member by initiating this litigation, undertaking
26 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
27 57.

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. JCL Dec., ¶¶ 58, 60-65, Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Michael Gould ¶¶ 3-6.

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

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: January 16, 2025

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.