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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

RICHARD WINN, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

CITY ELECTRIC SUPPLY COMPANY, a Florida
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2023-00040231-CU-OE-CTL

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

Date: October 11, 2024

Time: 9:00 a.m.

Judge: Hon. James A. Mangione

Dept.: C-75

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20

1 I. INTRODUCTION

2 Plaintiff Richard Winn (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement
3 of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for approximately 166 Class Members and 104 Aggrieved Employees.
5 The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who worked for
7 City Electric Supply (“Defendant”) in California (“Class”) during the period beginning July 13, 2019,
8 through June 30, 2024 (“Class Period”). Agreement at §§ I(I), I(J).

9 a. The “**Settlement Class Members**” means a Class Member who does not submit
10 a timely and valid Request for Exclusion from the Settlement. Agreement at § I(OO).

11 b. The “**Class Size**” is comprised of 166 individuals who collectively worked
12 approximately 12,171 Workweeks during the Class Period as estimated by Defendant at the time of
13 mediation. If the actual number of Workweeks worked by Class Members during the Class Period
14 increases by more than 10%, then Defendant shall increase its contribution to the Gross Settlement
15 Amount of \$675,000 proportionally. Agreement at § III(A)(2).

16 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees
17 who are or previously were employed by Defendant in California (“Aggrieved Employees”) during the
18 period beginning July 13, 2022, through June 30, 2024 (“PAGA Period”). Agreement at §§ I(C), I(BB).
19 Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.
20 Agreement at § III(M)(7). At the time of mediation, there were approximately 104 Aggrieved
21 Employees.

22 3. The “**Gross Settlement Amount**” is Six Hundred Seventy-Five Thousand Dollars and
23 Zero Cents (\$675,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary
24 and includes the following:

25 a. A “**Class Representative Service Award**” of not more than \$7,500.00 to
26 Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action.

27
28 ¹ The Agreement is attached as Ex “1” 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.

1 Agreement at § I(L).

2 b. “**Class Counsel Award**” in the amount not of not more than \$225,000.00,
3 comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be
4 \$675,000.00 **and** litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement
5 at § I(G);

6 c. A “**PAGA Payment**” of Thirty Thousand Dollars and Zero Cents (\$30,000.00)
7 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under
8 the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall
9 pay seventy-five (75%) of the PAGA Payment (\$22,500.00) to the Labor and Workforce Development
10 Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$7,500.00) will be
11 distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(C);
12 I(S); and I(Y); and

13 d. “**Settlement Administration Expenses**” not to exceed \$5,200.00 payable to the
14 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice of
15 Pendency of Class and PAGA Representative Action Settlement and Final Hearing Date (“Notice
16 Packet”) and costs associated with administration of the settlement. Agreement at §§ I(NN), III(N)(12).

17 4. The “**Net Settlement Amount**” of approximately \$382,300.00 (Gross Settlement
18 Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA
19 Payment, and Settlement Administration Expenses) which will be allocated to all Settlement Class
20 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
21 worked during the Class Period. Agreement at §§ III(P)(1). The entire Net Settlement Amount will be
22 paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average
23 Individual Settlement Payment of **\$2,303.01**. JCL Dec., ¶ 6.

24 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
25 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
26 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
27 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
28 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will

1 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
2 denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

3 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
4 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
5 the Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the
6 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully request
7 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

8 **II. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 Defendant operates an electrical wholesale business throughout California, including San Diego
11 county, where Plaintiff worked. Plaintiff was employed by Defendant from 2007 to approximately
12 January 2023, as a non-exempt employee. Declaration of Richard Winn (“Winn Dec.”) at ¶ 4. Plaintiff
13 alleges that he was denied legally compliant meal and rest periods, and minimum wages and overtime
14 compensation at all times during his employment. Throughout his employment, Plaintiff was subject
15 to Defendant’s written policies and procedures contained in, among other documents, the “Employee
16 Handbook.” JCL Dec., ¶ 8.

17 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
18 failed to pay for all time worked, including time spent performing opening and closing duties, failed to
19 pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate
20 itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all
21 wages upon separation. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant
22 asserts that it fully complied with all applicable employment laws and raised several other significant
23 defenses to Plaintiff’s claims, including but not limited to, asserting that it maintained facially
24 compliant meal and rest period policies, issued compliant wage statements, properly reimbursed all
25 necessary business expenses, paid its employees for all hours worked, and timely paid all wages due
26 upon separation of employment. JCL Dec., ¶ 9.

27 On July 13, 2023, Plaintiff Winn served Defendant and the Labor and Workforce Development
28 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth

1 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
2 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
3 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
4 2698, *et seq* (“PAGA”). JCL Dec., ¶ 10.

5 On July 13, 2023, Plaintiff filed a class action complaint in the San Diego County Superior Court,
6 Case No. 37-2023-00029456-CU-OE-CTL (“Class Action”). The Class Action alleged eight causes of
7 action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200,
8 *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
9 Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide
10 Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
11 Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and
12 the Applicable IWC Wage Order; (6) Failure to Pay Wages When Due in violation of Cal. Lab. Code
13 §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Wages Statements in violation of Cal.
14 Lab. Code § 226; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
15 § 2802. JCL Dec., ¶ 11.

16 On September 18, 2023, Plaintiff filed a separate representative action complaint in the San
17 Diego County Superior Court, Case No. 37-2023-00040231-CU-OE-CTL (“PAGA Action”) alleging
18 a single cause of action for violations of PAGA. JCL Dec., ¶ 12.

19 On August 28, 2023, Defendant filed a notice of removal in the Class Action removing the case
20 to the United States District Court, Southern District of California, Case No. 3:23-cv-01577-RBM-
21 BLM asserting jurisdiction pursuant to 28 U.S.C. sections 1332, 1441, and 1446. JCL Dec., ¶ 13.

22 The Parties subsequently agreed to mediate the case. To prepare for mediation, the Parties agreed
23 to informally exchange additional documents and data points subject to the mediation privilege,
24 including but not limited to, the Class Members’ time data and certain payroll data points. As discussed
25 *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
26 analyze Defendant’s time and payroll data. JCL Dec., ¶ 14.

27 On April 29, 2024, the Parties participated in a full day mediation with wage and hour and PAGA
28 mediator Steven Rottman, Esq. The mediation concluded with a settlement after both sides agreed to

1 a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of
2 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
3 is the subject of the instant motion. JCL Dec., ¶ 15.

4 The Parties subsequently stipulated to remand the Class Action to the San Diego County Superior
5 Court and to consolidate the Class Action and PAGA Action for settlement approval purposes. JCL
6 Dec., ¶ 16.

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

8 Months before filing the Action, Class Counsel began its pre-filing investigation into the
9 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
10 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
11 including portions of his time and payroll records. At the conclusion of the interviews, Class Counsel
12 determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 17.

13 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
14 Defendant produced dozens of pages of documents, including but not limited to, Plaintiff's hiring
15 documents, compensation plans, wage and hour policies, and payroll and time records. Class Counsel
16 reviewed and analyzed the documents and determined the documents appeared to substantiate
17 Plaintiff's claims that Defendant's failed to, among other things, provide compliant meal and rest
18 periods, to provide accurate wage statements, to pay for all hours worked, to compensate overtime
19 wages and meal period penalties at the correct regular rate of pay, and to reimburse for mandatory
20 business expenses. JCL Dec., ¶ 18.

21 To prepare for mediation, Defendant produced the time and payroll records for the Class
22 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
23 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
24 handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents
25 and over sixty thousand unique cells of time and payroll data. JCL Dec., ¶ 19.

26 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
27 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
28 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are

1 credentialed and experienced experts in their fields and have provided their expertise on thousands of
2 cases. JCL Dec., ¶ 20.

3 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
4 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
5 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
6 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
7 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of
8 unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during
9 the Class Period. JCL Dec., ¶ 21.

10 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
11 Plaintiff's suitability as a putative class representative through interviews, background investigations,
12 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
13 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
14 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's
15 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
16 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
17 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
18 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
19 claims being settled, as well as the impediments to recovery, such as to make an independent
20 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 22.

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

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

28 On April 29, 2024, the Parties conducted a full day of mediation with Steven 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 submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all persons who are or previously were employed by Defendant in California and classified as non-exempt employees during the period beginning July 13, 2019, through June 30, 2024. Agreement at § I(I); I(J). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(OO). At the time of mediation, Defendant estimated that the Class was comprised of 166 individuals that worked approximately 12,171 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$675,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Class Representative Service Award of not more than \$7,500.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of \$30,000.00; (4) Settlement Administration Expenses estimated at \$5,200.00; (5) Class Counsel Award in the amount of \$250,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$225,000.00 and an estimated \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § III(Q).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Payment, and the Settlement Administration Expenses, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § I(T). There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement at §

III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within fifteen (15) calendar days of the Effective Date. Agreement at § I(P).

4. Formula for Calculating Individual Settlement Payments

Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. Agreement at § III(N)(1). The Class Data provided by Defendant to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § I(H). The Settlement Administrator will calculate each Class Member's final Individual Settlement Payment by dividing a particular Class Member's total number of Workweeks by the total number of Workweeks for all Class Members, resulting in a Class Payment Ratio for each Class Member. Agreement at § III(N)(1). Each Class Member's Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.* Individual Settlement Payments for members of the Settlement Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § *Id.*

Given that there are approximately 12,171 Class Members, *the average gross recovery is approximately \$2,303.01* (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

¶ 6.

5. Release by Settlement Class Members

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

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

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$675,000.00 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

1 action litigation”).)

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

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

10 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
11 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
12 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
13 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
14 § 11.51.)

15 The Parties participated in mediation the mediator Steven Rottman, Esq. Mediator Rottman
16 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
17 sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
18 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
19 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
20 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
21 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties reached an
22 agreement and the mediation session concluded with a settlement. JCL Dec., ¶ 25.

23 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
24 the written terms of the class action settlement. The Agreement is the final product of the mediated
25 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
26 compromise of the claims at issue. JCL Dec., ¶ 26.

27
28 ///

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

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

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly 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., ¶ 28.

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

The Gross Settlement Amount of \$675,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

1 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
3 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
4 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

5 a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

6 The Gross Settlement Amount of \$675,000.00 is fair and reasonable considering the nature and
7 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s
9 liability exposure while accounting for the uncertainties of continued litigation. The various models
10 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
11 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
12 PAGA Penalties) ranged between \$1,389,054.68 (“Realistic Damages”) and \$2,291,951.94
13 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of
14 the claims. Thus, the Gross Settlement Amount represents a recovery of between 29.45% (“Realistic
15 Damages”) and 48.59% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the
16 recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL
17 Dec., ¶ 29.

18 (1) Defendant’s Estimated Exposure for Regular Rate Violations

19 Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses and
20 commissions when calculating the regular rate of pay when paying overtime wages and meal period
21 premiums. Specifically, Defendant paid Class Members non-discretionary incentive compensation in
22 the form of “Incentive (Monthly),” “Commission (Monthly),” “Quarterly Bonus (Quarterly),” and

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 “Annual Bonus (Annual)” payments, which were not properly calculated into the regular rate of pay
2 for purposes of overtime and meal period premiums. JCL Dec., ¶ 30. The regular rate of pay, which
3 can change from pay period to pay period, includes adjustments to the straight time rate, reflecting,
4 among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of
5 any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California*
6 (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a 50 percent premium
7 on top of his or her regular rate of pay[.]” *Id.* at 553. California law also requires meal period premiums
8 and rest period premiums to be paid at an employee’s regular rate of pay. See *Ferra v. Lowes Hollywood*
9 *Hotel, LLC* (2021) 11 Cal.5th 858.)

10 Conversely, Defendant denied liability and asserted it paid retro payments to Class Members
11 that trued up the correct rate of pay for purposes of overtime wages and meal period premiums so as to
12 remedy any underpayment. As a result, Plaintiff discounted this claim by 50% to account for this
13 defense and possible offset resulting therefrom. Plaintiff estimated the range of damages for this claim
14 was between \$90,101.50 and \$180,203.00. JCL Dec., ¶ 31.

15 (2) Estimated Damages for Meal Period Violations

16 Plaintiff’s alleges that Defendant failed to provide compliant meal periods. In analyzing this
17 claim, Plaintiff’s expert found that on average, approximately 50.7% of first meal periods were late.
18 Plaintiff’s expert further found that 99.9% of shifts between ten (10) and twelve (12) hours were without
19 a recorded second meal period. Consequently, Plaintiff alleged that he and the Class Members are
20 owed meal period premiums for meal period violations that occurred during the Class Period. JCL
21 Dec., ¶ 32.

22 Conversely, Defendant argued, among other things, that it provided all its employees, i.e., Class
23 Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendant
24 further argued that it adopted and implemented a program whereby employees entered enforceable
25 meal period waivers, and that it provided second meal periods for shifts longer than ten (10) hours.
26 Plaintiff’s expert confirmed this to be true and found that 75.2% of meal period violations for shifts
27 between 5 and 6 hours were subject to meal period waivers. Although there appears to be a high
28 violation rate for second meal periods, the damages were minimal considering that less than 13.7% of

shifts qualified for a second meal period. Defendant also argued that it paid more than \$146,730 in meal period premiums throughout the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff’s alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 33.

Consequently, Plaintiff applied a 25% discount to this claim to account for the high violation rate, facially compliant policies, and payment of meal period premiums. Plaintiff estimated that the damages for this claim ranged from approximately \$605,093.76 to approximately \$806,791.68. JCL Dec., ¶ 34.

(3) Defendant’s Estimated Exposure of Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods. Because rest breaks are not recorded and the exact exposure for this claim could not be calculated, BCG assumed a 76.7% violation rate for rest periods, so as to match the violation rate identified for meal periods and based on Plaintiff’s testimony and investigation. JCL Dec., ¶ 35.

Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff’s rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, Plaintiff’s Realistic Damage model applied a 25% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between

1 approximately \$605,093.76 to approximately \$806,791.68. JCL Dec., ¶ 36.

2 (4) Defendant's Estimated Exposure for Unlawful Rounding Policies

3 Plaintiff also alleged that Defendant failed to pay for all hours worked. Specifically, Plaintiff
4 alleged that Defendant had an unlawful rounding policy that resulted in a significant underpayment of
5 wages to Plaintiff and other Class Members. The Court in *Camp v. Home Depot U.S.A., Inc.* (2022) 84
6 Cal. App. 5th 638, review granted, held that any rounding that results in underpayment, even minimal
7 underpayment, and even if facially and as applied neutral, is unlawful. Defendant denied liability and
8 asserted that its employees were paid for all time worked. Defendant argued that it corrected any
9 conceivable rounding issue in 2024 and Plaintiff's expert confirmed this to be true. Furthermore,
10 Defendant argued that, even if successful, this claim resulted in minimal actual damage to the Class
11 members. Thus, Plaintiff applied a 25% discount for this claim and estimated Defendant's exposure for
12 this claim ranged between approximately \$8,787.00 and approximately \$11,716.00. JCL Dec., ¶ 37.

13 (5) Defendant's Estimated Exposure for Unpaid Wages

14 Plaintiff also alleged that Defendant failed to pay its employees for all hours worked.
15 Specifically, Plaintiff asserted that Defendant failed to pay employees for time spent preparing the store
16 for openings and closings before and after the start and end of their shifts. Additionally, Plaintiff
17 asserted that Defendant required employees to assist customers both before and after employees
18 clocked in and out for their shifts. Based on Plaintiff's testimony and Class Counsel's investigation,
19 BCG estimated that Class Members performed approximately ten (10) minutes of unpaid work assisting
20 customers in addition to performing opening and closing duties before and after every shift. As a result,
21 Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime
22 wages, for all the time they spent working under Defendant's control. JCL Dec., ¶ 38.

23 Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in
24 place a written policy requiring its employees to accurately record all their time worked daily and
25 argued that such written policies and procedures directed its employees not to work while off the
26 clock. Further, Defendant argued that the off-the-clock claim was not suitable to class treatment
27 because individualized issues predominated. For example, even assuming Plaintiff performed work
28 while off-the-clock, which Defendant disputes, Defendant argued that the time spent would vary

1 drastically from class member to class member that it could not be established by common proof. JCL
2 Dec., ¶ 39.

3 Plaintiff recognizes the risks and uncertainties of certifying this claim. Consequently, Plaintiff's
4 Realistic Damage model applied a 75% discount to this claim. Plaintiff estimated Defendant's
5 exposure for this claim ranged between \$13,521.31 and \$54,085.25. JCL Dec., ¶ 40.

6 (6) Defendant's Estimated Exposure for Unreimbursed Business Expenses

7 Plaintiff alleged that Defendant required Class Members and Aggrieved Employees to use their
8 personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by
9 Defendant. California employers who require employees to incur personal business expenses for work
10 purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code § 2802(a), providing
11 that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred
12 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
13 to the directions of the employer..."). Specifically, Plaintiff, Class Members, and Aggrieved
14 Employees were required to use their cell phone to send and receive work-related communications.
15 BCG estimated a reasonable \$5 monthly reimbursement rate for Class Members for the use of their
16 personal cell phones. JCL Dec., ¶ 41.

17 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
18 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
19 the employees' duties or at Defendant's direction. Thus, Defendant argued that even if Plaintiff was
20 successful in pursuing this claim, only a small number – approximately half – of the Settlement Class
21 Members would be entitled to relief. This claim was therefore heavily discounted by 85% based on
22 Defendant's defenses. Plaintiff estimated Defendant's exposure for this claim ranged between
23 approximately \$317.75 and approximately \$2,118.33. JCL Dec., ¶ 42.

24 (7) Defendant's Estimated Exposure for Wage Statement Violations

25 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
26 statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal and rest
27 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
28 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 by 50% to account for this defense. Plaintiff estimated that Defendant’s exposure for this claim ranged between \$38,525.00 and \$154,100.00. JCL Dec., ¶ 43.

(8) Defendant’s Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendant’s labor code violations resulted in derivative liability for waiting time penalties. This is Plaintiff’s most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel’s Realistic Model discounted the waiting time penalty claim by 90% and estimated Defendant’s exposure for these claims ranged between \$27,614.60 and \$276,146.00. JCL Dec., ¶ 44.

(9) Defendant’s PAGA Exposure

Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant’s PAGA exposure ranged between \$12,705.00 and \$744,400.00. JCL Dec., ¶ 45. 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 penalties 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 penalties 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 \$30,000.00 which is 4.4% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA

1 Payment. Seventy-Five percent (75%) of the PAGA Payment (\$22,500.00) will be paid to the LWDA
2 (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$7,500.00)
3 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the
4 range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 46.

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

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

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

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

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

27 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
28 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
2 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. JCL Dec., ¶ 47.

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

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

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

28 Finally, continuing to litigate this action would require continued and extensive resources

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

11 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$675,000.00 that is
12 roughly between approximately 29.45% of Defendant’s *class-wide* liability exposure for damages, and
13 approximately 48.59% of Defendant’s maximum class wide liability exposure for damages and
14 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
15 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
16 JCL Dec., ¶ 49.

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

18 The Settlement Class Members are entitled to the best practical notice under the circumstances.
19 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
20 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
21 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
22 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
23 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
24 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
25 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
26 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

27
28 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

1 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
2 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
3 mail the proposed Notice Packet to all Class Members. The Notice will include information regarding
4 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
5 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
6 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
7 and scope of the Released Claims. Agreement at § III(M)(2). The Parties negotiated this method to
8 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
9 effective administration of the Settlement. JCL Dec., ¶ 50.

10 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
11 Packet satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
12 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed
13 compromise and of the options open to dissenting class members.")) JCL Dec., ¶ 51.

14 **C. The Court Should Preliminarily Approve the Class Representative Service Award**

15 Service awards "are fairly typical in class action cases." (*Cellphone Termination Fee Cases*
16 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
17 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
19 UCLA L. Rev. 1303 (2006).) Service awards "are intended to compensate class representatives for
20 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Class Representative Service Award of \$7,500.00 to Plaintiff. The

27
28 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 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement
4 to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and
5 agreeing to provide Defendant a general release of all claims arising out of his employment. JCL Dec.,
6 ¶ 52.

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

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

12 The purpose of a payment of a Class Counsel Award in class action litigation is to reward counsel
13 who took the risk of non-payment and invested in a case that achieved a substantial positive result for
14 the class. California courts routinely award attorneys' fees equaling one-third or more of the potential
15 value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.*
16 (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage
17 method or the lodestar method is used, fee awards in class actions average around one-third of the
18 recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An*
19 *Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent
20 studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is
21 consistent with market rates).)

22 Class Counsel took this matter on a contingency fee basis and invested significant time and
23 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
24 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
25 Members. Considering the positive outcome for the Class Members, and in light of the supporting
26 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 54.

27 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
28 approval of the Settlement is granted. Plaintiff respectfully submit that the above showing is sufficient

for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 55.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 56.

1. The Standard for Class Certification

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

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

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

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

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

1 Because all Class Members are Defendant's current and former employees, the class is readily
2 ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 57.

3 The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire
4 Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be
5 determined by facts common to all members of the class. The wage and hour issues are both numerous
6 and substantial, and a class action is the most advantageous method of dealing with the claims of the
7 Settlement Class Members. JCL Dec., ¶ 58.

8 Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the
9 same factual basis and are based on the same legal theories applicable to the other Class Members.
10 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff allege
11 that she was injured by the same company-wide practices to which the proposed Class Members were
12 subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the
13 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
14 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 59.

15 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
16 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
17 gained state court settlement approval of the same class-wide causes of action that are at issue in this
18 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
19 represent the interests of this Class. JCL Dec., ¶¶ 61-66, Declaration of Shani Zakay, ¶¶ 1-3.

20 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
21 each individual claim, the Class Members likely have little incentive to litigate their claims on an
22 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
23 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
24 adjudication. JCL Dec., ¶ 60.

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Dated: September 17, 2024

By: Jean-Claude Lapuyade, Esq.
Attorney for Plaintiff