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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

REBECCA RIVERA, an individual, on behalf of herself, and on behalf of all persons similarly situated, Plaintiff, vs. EUREKA CENTER EMPLOYEES, LLC, a Delaware limited liability company; EUREKA REALTY PARTNERS, INC., a California corporation; CRAIG REALTY GROUP – CABAZON, LLC, a California limited liability company; CRAIG REALTY GROUP – TULARE, LLC, a California limited liability company; CRAIG REALTY GROUP – CABAZON PHASE II, LLC, a California limited liability company; CRAIG REALTY GROUP CITADEL, LLC, a Delaware limited liability company; CRAIG REALTY GROUP-SAN CLEMENTE, LLC, a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. CIVSB2308152 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: January 27, 2025 Time: 1:30 p.m. Judge: Hon. Joseph T. Ortiz Dept.: S-17

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I. INTRODUCTION

Plaintiff REBECCA RIVERA ("Plaintiff") seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 640 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class Members"** and **"Class Period"** shall mean all persons who are or previously were employed by Defendants in California and classified as non-exempt employees at any time during the Class Period ("Class Members") of April 7, 2019, to March 15, 2024 ("Class Period"). Agreement at §§ I(E); I(I). At the time of mediation there were approximately 640 Class Members who worked approximately 44,000 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The **"Settlement Class Member"** refers to all Class Members who have not submitted a timely and valid request for exclusion. Agreement at § I(MM).

3. The **"Aggrieved Employees"** and **"PAGA Period"** means "all persons who are or previously were employed by Defendants in California and classified as non-exempt employees at any time during the PAGA Period ("Aggrieved Employees"). Agreement at § I(C). The "PAGA Period" refers to the period between April 7, 2022, to March 15, 2024. Agreement at § I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ III(L)(2)(a). At the time of mediation there were approximately 354 Aggrieved Employees who worked approximately 11,000 pay periods during the PAGA Period. Zakay Dec., ¶ 9.

4. The "**Gross Settlement Amount**" is Eight Hundred and Fifty Thousand Dollars and Zero Cents ($850,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

   a. An "**Enhancement Award**" in the amount of $10,000.00, or in an amount that the Court authorizes to be paid to the Class Representative, in addition to her Individual Settlement Payment and her Aggrieved Employee Payment, in recognition of her efforts and risks in assisting with the prosecution of the Action. Agreement at §§ I(II);

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

b. "**Class Counsel Award**" means the award of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff, the Class Members, and the Aggrieved Employees in the Action, consisting of attorneys' fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be $283,333.33 plus costs of up to $25,000. Attorneys' fees will be divided between Class Counsel in the following percentages: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement at §§ I(G);

c. "**PAGA Payment**" in the amount of Twenty-Five Thousand, Five Hundred Dollars and Zero Cents ($25,500) to be allocated from the Gross Settlement Amount for settlement of the Released PAGA Claims asserted in the Action. The Settlement Administrator shall pay $19,125 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute $6,375.00 representing 25% of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ I(Z); III(M)(11); and

d. "**Settlement Administration Costs**" paid to the Settlement Administrator from the Gross Settlement Amount for administering the Settlement pursuant to this Agreement currently estimated not to exceed $10,550.00. Agreement at §§ I(KK); III(M)(12).

3. The "**Net Settlement Amount**" means the Gross Settlement Amount, less Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs. Agreement at § I(S). The Net Settlement Amount is approximately $495,616.67, 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 ***$774.40***. Declaration of Shani O. Zakay ("Zakay Dec."), ¶ 8.

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. Zakay Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. Zakay Dec., ¶ 10

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants own, operate, and/or manage shopping centers throughout the state of California, including in the county of San Bernardino, where Plaintiff worked. This action asserts claims on behalf of all current and former non-exempt employees who worked for Defendants during the Class Period. Plaintiff worked for Defendant as a non-exempt employee in California from October 2021 to April 2022. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Policies Regarding Timekeeping, Overtime, Meal and Rest Periods" Zakay Dec., ¶ 11; Declaration of Rebecca Rivera ("RR Dec.") at ¶¶ 1-9.

Generally, Plaintiff claims that Defendants failed to furnish accurate itemized wage statements, failed to provide compliant meal and rest periods, failed to pay for all time worked, and failed to pay all wages upon separation. Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that it issued compliant wage statements, maintained facially compliant meal and rest period policies, paid for all hours worked, and timely paid all wages due upon separation of employment. Zakay Dec., ¶ 12.

On April 7, 2023, Plaintiff served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* ("PAGA"). Zakay Dec., ¶ 13.

On April 7, 2023, Plaintiff filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB2308152 ("Action"). The Action alleged nine causes of action against Defendants for: (1) Violation of California Business & Professions Code § 17200, *et seq;* (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Vode §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and The Applicable IWC Wage Order; (5) Violation of California Labor Code §§ 226.7 and 512 (Unpaid Rest Period Premiums); (6) Failure to Provide Accurate Itemized Statements in Violation of California Labor Code § 226; (7) Failure to Provide Wages When Due in Violation of California Labor Code §§ 201, 202, 203; (8) Failure to Reimburse Employees For Required Expenses in Violation of California Labor Code § 2802; and (9) Failure to Provide Sick Pay and Failure California Labor Code § 246, *et seq*. Zakay Dec., ¶ 14.

On August 15, 2023. Plaintiff Filed a First Amended Complaint to add a tenth cause of action for Violation of the Private Attorneys General Action (California Labor Code § 2698, *et seq*). Zakay Dec., ¶ 15.

The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members' time data, and certain payroll data points. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. Zakay Dec., ¶ 16.

On August 22, 2024, the Parties participated in a full day mediation with mediator Lynn Frank, Esq. Mediation concluded without a settlement, but Mediator Frank made a mediator's proposal, which was accepted by both parties. Mediator Frank's settlement proposal was memorialized in the form of 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. Zakay Dec., ¶ 17.

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B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her wage statements. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. Zakay Dec., ¶ 18.

Class Counsel also requested Plaintiff's employee file from Defendants. In response, Defendants produced various documents, including but not limited to, copies of Plaintiff's employment agreements, payroll and time records, and separation documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, issue accurate itemized wage statements, provide compliant meal and rest periods, and pay for all time worked. Zakay Dec., ¶ 19.

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 Plaintiff's claims, Defendants' liability exposure to the Class Members, and Defendants' ability to pay any settlement. 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, Defendants produced in excess of six hundred thousand unique data cells of time and payroll data and several hundred pages of wage and hour policies for Class Counsel to analyze. Zakay Dec., ¶ 20.

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. Zakay Dec., ¶ 21.

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, and the amount of unpaid overtime, meal period premiums and redeemed sick as a result of Defendants' failure to properly calculate the regular rate of pay. Zakay Dec., ¶ 22.

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. Zakay Dec., ¶ 23.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing 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 Plaintiff's 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 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Zakay Dec., ¶ 24.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their 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 Defendants, 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. Zakay Dec., ¶ 25.

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C. The Parties Settled at Mediation

On August 22, 2024, the Parties conducted a full day of mediation with Lynn Frank, Esq., a mediator of wage and hour class and representative actions. Mediator Frank 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 Frank's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded without a settlement, but Mediator Frank made a mediator's proposal, which was accepted by both parties. The proposal's complete and final terms 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. Zakay Dec., ¶ 26.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The proposed Settlement Class consists of all Class Members who have not submitted a timely and valid request for exclusion. Agreement at § I(MM). At the time of mediation, Defendants estimated that there were approximately 640 Class Members who worked approximately 44,000 Workweeks during the Class Period. Agreement at § III(A)(2).

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

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $850,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of $10,000.00 to Plaintiff for her services on behalf of the Settlement Class; (3) PAGA Payment in the amount of $25,500.00; (4) Settlement Administration Costs estimated at $10,550.00; (5) Class Counsel Award in the amount of $308,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $283,333.33 and an estimated $25,000.00 for actually incurred litigation expenses. *See generally* Agreement at § I(O).

Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § III(A)(3). The Gross Settlement Amount is all-in with no reversion and exclusive of the employer's share of payroll tax, if any, triggered by any payment under this

Settlement. Agreement at §§ I(O); III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the $850,000.00 Gross Settlement Amount to the Settlement Administrator thirty (30) business days of the Effective Date. Agreement at § I(N).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data provided by Defendants to the Settlement Administrator will include the start and end date for each Class Member. The Individual Settlement Payments will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each individual Settlement Class Member's Workweeks that occurred during the Class Period. Agreement at § III(M)(1). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.).

Given that there are approximately 640 Settlement Class Members, ***the average gross recovery is approximately $774.40*** (Net Settlement Amount divided by Settlement Class Members). Zakay Dec., ¶ 8.

5. Release by Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period. The Released Class Claims means all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the Operative Complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(EE); III(B).

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

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims means all PAGA claims based on the facts alleged in the

Operative Complaint which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I(FF); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $850,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal.App.4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with the highly respected Lynn Frank, Esq. Mediator Frank 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.").) Prior to and during the mediation and settlement discussions, the Parties exchanged information and engaged in a detailed discussion regarding their evaluate of the case and various aspects of the matter. At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. Zakay Dec., ¶ 27.

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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 the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. Zakay Dec., ¶ 28.

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 Defendants, 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. Zakay Dec., ¶ 29.

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

The Gross Settlement Amount of $850,000.00 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 have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $850,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) at a range between $993,882.90 and $3,445,196.70. Thus, the Gross Settlement Amount of $850,000 represents approximately between 24.67% and 85.52% of Defendants' *class-wide* liability exposure for damages as estimated by Class Counsel at the time of mediation. The following summarizes Defendants' estimated exposure. Zakay Dec., ¶ 30.

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

Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members for all hours worked. Specifically, Plaintiff and Class Members were required to arrive before their shift's scheduled start time and stay clocked out while they collected and donned their keys, radio, phone, and cart, all while off-the-clock. Additionally, Defendants' electronic time clocks regularly malfunctioned, forcing Plaintiff and Class Members to wait minutes on end for the electronic time clock to work again before

[2] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436, 460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for Justice v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness").

they could clock in. Based on Plaintiff's testimony and Class Counsel's investigation, BCG estimated that Class Members and Aggrieved Employees spent a total of 3 minutes of unpaid work every shift completing work-related tasks such as, among other things, donning and doffing. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. Zakay Dec., ¶ 31.

Defendants vigorously denied liability for this claim. Defendants argued, among other things, that all Class Members were properly paid minimum and overtime compensation for all hours worked, and that it maintained legally compliant timekeeping policies and instructed its employees to accurately record all hours worked. Defendant argued that it had in place compliant written policies that prohibited off the clock work, and provided that if employees were to work off the clock, it was to be reported and compensated. Accounting for the defenses asserted, Plaintiff applied a 50% discount to this claim. Plaintiff estimated Defendants' exposure for this claim ranged from $92,525.55 and approximately $185,051.10. Zakay Dec., ¶ 32.

(2) Exposure for Meal Period Violations.

Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that she is owed meal period premiums for meal period violations that occurred during the Class Period. Additionally, an analysis of the Class Members' time and payroll date revealed that 57% of all meal periods were rounded to exactly 30 minutes. Zakay Dec., ¶ 33.

Conversely, Defendants argued, among other things, that they did not engage in meal rounding. Defendants' vigorously refuted Plaintiff's meal period rounding analysis. In support, Defendants argued that Plaintiff's own analysis showed that no rounding occurred in at least 43% of all recorded meal periods. Defendants argued that absence of uniform rounding evidenced a statistical anomaly rather than a common practice or policy of rounding meal periods. Further, Defendants contended that they maintained facially compliant meal period policies throughout the Class Period which provided all Class Members and Aggrieved Employees with the opportunity to take compliant meal periods. Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. In light of Defendants' compliant policies, Plaintiff applied a 25% discount to this claim and estimated Defendants' exposure for this claim ranged from $53,609.85 and approximately $71,479.80. Zakay Dec., ¶ 34.

(3) Exposure for Rest Period Violations

Plaintiff alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that Defendants' supervisors instructed Plaintiff and other Class Members that they were not allowed to leave the premises during their rest periods, resulting in on-premises rest periods. The California Supreme Court's decision in *Augustus v. ABM Security Services, Inc.*, held that "employers . . . must relinquish control over how employees spend their time" during rest periods. 2 Cal. 5th 257, 259 (2016). Moreover, Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Zakay Dec., ¶ 35.

Defendants denied liability and asserted that the workload is not such that it prevented employees from taking a compliant break. Defendants argued that they maintained legally compliant written policies and actual practices concerning rest periods throughout the Class Period which permitted employees to leave the premises. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing liability likely would have entailed competing testimony 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"). Additionally, Defendants argued that any contrary practice was limited to a small number of supervisors, and, thus, claim that each potential violation was highly individualized and not well suited for class treatment. In light of these defenses, and the fact that Plaintiff's claim is testimonial driven, Plaintiff discounted these claims by 25% and estimated that

Defendants' exposure for this claim ranged from approximately $53,609.85 to approximately $71,479.80. Zakay Dec., ¶ 36.

(4) <u>Exposure for Regular Rate Violations</u>

Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation in the form of "REF-EMPLOYEE REF", "BON-BONUS", "SCB-SCBONUS" and "STA-STAFFPOOL" payments, and had in place the non-discretionary incentive programs, which were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858. Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave. Zakay Dec., ¶ 37.

Conversely, Defendants denied liability and asserted it paid the correct rate of pay for purposes of overtime wages and sick pay. Defendants also argued that these bonuses were discretionary and did not need to be included in the regular rate calculation for payment of overtime wages and sick pay. Plaintiff applied a 50% discount to this claim and estimated Defendants' exposure for this claim to range between $20,278.50 and $40,557.00. Zakay Dec., ¶ 38.

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(5) <u>Exposure for Wage Statement Violations</u>

Plaintiff also alleged that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code, Plaintiff 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, Defendants 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 Defendants' exposure on this claim ranged between $523,500.00 and $1,047,000.00. Zakay Dec., ¶ 39.

(6) <u>Exposure for Waiting Time Penalties</u>

Plaintiff 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 Plaintiff's most uncertain claim. Specifically, Defendants 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 discounted the waiting time penalty claim by 90% and estimated Defendants' exposure for these claims ranged between $171,365.40 and $1,713,654.00. Zakay Dec., ¶ 40.

(7) <u>Exposure for Unreimbursed Business Expenses</u>

Plaintiff alleged that Defendants required Class Members and Aggrieved Employees to use their personal cellular phones, and purchase their own uniforms, as a result of and in furtherance of their job duties but were not reimbursed by Defendants. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code § 2802(a), providing that "An 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…"). Specifically, Plaintiff, Class Members, and Aggrieved Employees were required to use their cell phone to send and receive work-related communications. Zakay Dec., ¶ 41.

Again, Defendants denied any liability for this claim. Defendants argued that its written policies provide for reimbursement to employees for necessary business expenses incurred in the discharge of the employees' duties or at Defendants' direction. Thus, Defendants argued that even if Plaintiff was successful in this claim only a small number – approximately half – of the Settlement Class Members would be entitled to relief. Additionally, when Plaintiff filed her complaint, she alleged that Plaintiff, Class Members, and Aggrieved Employees were required to purchase their own uniforms. However, through later investigation, Plaintiff's Counsel found that uniforms were provided by Defendant. In light of this discovery that only Plaintiff, Class Members, and Aggrieved Employees' cell phones were used in furtherance of their job duties and not reimbursed, Plaintiff discounted this claim by 85%. Plaintiff estimated Defendants' exposure for this claim ranged between approximately $78,993.75 and approximately $315,975.00. Zakay Dec., ¶ 42.

(8) Defendants' PAGA Exposure

In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranges between approximately $52,980.00 and approximately $1,860,350.00 if successful at trial. 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). Zakay Dec., ¶ 43.

Here, the Parties negotiated a good faith payment for PAGA Payment in the amount of $25,500.00 which is 3% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment ($19,125.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment

($6,375.00) being distributed to the Aggrieved Employees, which is within the range of PAGA Payments approved by courts and should be approved. Zakay Dec., ¶ 44.

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

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendants raised several defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. Zakay Dec., ¶ 45.

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. Zakay Dec., ¶ 46. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $850,000.00 that is approximately 85.52% of Defendants' *class-wide* liability exposure for damages, and approximately 24.67% of Defendants' maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. Zakay Dec., ¶ 47.

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. Agreement at § III(L)(2)(a). 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. Zakay Dec., ¶ 48.

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

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[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.

(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.").)

C. The Court Should Preliminarily Approve the Service Award

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

The Settlement provides for a Service Award of $10,000 for Plaintiff. The Service Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. Zakay Dec., ¶ 49.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Enhancement Award. Zakay Dec., ¶ 50.

D. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a Class Counsel Award payment in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.*

(2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. Zakay Dec., ¶ 51.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. Zakay Dec., ¶ 52.

E. Provisional Certification for Settlement Purposes is Appropriate

For Settlement, Plaintiff contends, and Defendants do not dispute for settlement purposes only, that provisional certification of the Class is appropriate. Zakay Dec., ¶ 53.

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

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. Zakay Dec., ¶ 54.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. Zakay Dec., ¶ 55.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. Zakay Dec., ¶ 56.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. Zakay Dec., ¶ 57, Declaration of Jean-Claude Lapuyade, ¶¶ 1-11.

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. Zakay Dec., ¶ 58.

IV. CONCLUSION

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

Dated: December 31, 2024

ZAKAY LAW GROUP, APLC

By: ______________________
Shani O. Zakay, Esq.
Attorney for Plaintiff