JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
Perssia Razma (State Bar #351398)
prazma@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Eden Zakay (State Bar #339536)
eden@zakaylaw.com
Jaclyn Joyce (State Bar #285124)
jaclyn@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARINA GONZALEZ and KATHERINE HALLUM, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, SPEECH PATHOLOGY, INC., a California corporation; ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, INC., a California corporation; EMPOWERME WELLNESS, LLC, a Missouri limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. 23CV033481 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: June 24, 2025 Time: 10:00 a.m. Reservation ID: A-33481-001 Judge: Hon. Michael Markman Dept.: 23

TABLE OF CONTENTS

/ / /

TABLE OF AUTHORITIES
CASES

/ / /

RULES, CODES, AND STATUTES

/ / /

SECONDARY SOURCES

I. INTRODUCTION

Plaintiff MARINA GONZALEZ and Plaintiff KATHERINE HALLUM (collectively, "Plaintiffs") seek 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 2,095 Class Members and 1,375 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class Members," "Settlement Class Members," and "Class Period"** shall mean all current and former non-exempt employees who worked for Orthopaedic and Neurological Rehabilitation, Speech Pathology, Inc. (Defendant "ONRSP"), and/or Defendant Orthopaedic and Neurological Rehabilitation, Inc. ("Defendant "ONR"), and/or Defendant EmpowerMe Wellness, LLC (Defendant "EmpowerMe") in California at any time from May 17, 2019 through the earlier of (1) February 1, 2025; or (2) the date on which the Class Members' Workweek count reaches 174,000 Workweeks ("Class Period"). Agreement at § I(I). The Settlement Class Members exclude any Class Member that submits a valid and timely request for exclusion. Agreement at § I(MM).

2. The **"Aggrieved Employees"** and **"PAGA Period"** mean all current and former non-exempt employees who worked for Defendant ONRSP and/or Defendant ONR and/or Defendant EmpowerMe in California at any time during the PAGA Period. Agreement at § I(C). The PAGA Period is defined as the period from May 17, 2022, through the earlier of (1) February 1, 2025; or (2) the date on which the Class Members' Workweek count reaches 174,000 Workweeks. Agreement at § I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(M)(7).

3. The "**Gross Settlement Amount**" is One Million Eight Hundred Eighty-Five Thousand Dollars and Zero Cents ($1,885,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Service Award**" of no more than $10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at § I(II);

[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.

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be $628,333.33, ***and*** attorneys’ expenses not to exceed $40,000.00, to be paid to Class Counsel. Agreement at § I(G);

c. A “**PAGA Payment**” of $80,000.00 allocated for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”). The Settlement Administrator shall pay 75% of the PAGA Payment ($60,000.00) to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Payment ($20,000.00) proportionately to all Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § III(N)(11).

d. “**Claims Administration Expenses**” not to exceed $18,000.00 payable to the Settlement Administrator, Apex Class Action, LLC, for, *inter alia,* the administration of the Notice Packet and Individual Settlement Payments. Agreement at § III(N)(12).

4. The “**Net Settlement Amount**” of approximately $1,098,666.67 (Gross Settlement Amount minus the requested Service Award, Class Counsel Award, PAGA Payment, and Claims Administration Expenses) 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 Class resulting in an average Individual Settlement Payment of ***$524.42***. Agreement at § III(A)(2); JCL Dec., ¶ 6.

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 Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

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 Members meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation and Mediated Settlement

Defendants provide orthopedic, neurological, speech pathology rehabilitation and therapy services throughout California, including the County of Alameda where Plaintiffs worked. This action asserts claims on behalf of Defendants' current and former non-exempt employees employed in California during the Class Period. Plaintiff Gonzalez worked for Defendants as a non-exempt employee in California between approximately February of 2023 to approximately May of 2023. Plaintiff Hallum worked for Defendants as a non-exempt employee in California since approximately September of 2023. At all times during their employment, Plaintiffs were paid an hourly wage and were entitled to legally compliant meal and rest periods. Throughout their employment, Plaintiffs were subject to Defendants' written policies and procedures contained in, among other documents, Defendants' Employee Handbook. JCL Dec., ¶ 8; Declaration of Marina Gonzalez ("Gonzalez Dec.") at ¶¶ 1-4; Declaration of Katherine Hallum ("Hallum Dec.") at ¶¶ 1-4.

Generally, Plaintiffs claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime and sick pay at the correct regular rate of pay, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages when due. Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage statements, and timely payment all wages due upon separation of employment. JCL Dec., ¶ 9.

On May 17, 2023, Plaintiff Gonzalez filed a class action complaint in Alameda County Superior Court (Case No. 23CV033481) against Defendants, alleging nine causes of action for: (1) Violation of California Business & Professions Code §§ 17200, et seq. (Unfair Competition); (2) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (3) Violation of

California Labor Code §§ 510 and 1198 (Unpaid Overtime); (4) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (5) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (9) Violation of California Labor Code § 246 (Unpaid Sick Pay). JCL Dec., ¶ 10.

Also on May 17, 2023, Plaintiff Gonzalez served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Gonzalez'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 PAGA. On July 24, 2024, Plaintiff Gonzalez filed a First Amended Complaint to the Class Action, adding a cause of action for violations of PAGA (the "Action"). JCL Dec., ¶ 11.

On June 24, 2024, Plaintiff Hallum filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. JCL Dec., ¶ 12.

On December 3, 2024, the Parties attended mediation with Steven J. Serratore, Esq., a mediator of wage and hour class actions. The mediation concluded without settlement, but Mr. Serratore made a mediator's proposal, which was accepted by Parties shortly after the mediation and was subsequently memorialized in the form of a Memorandum of Understanding. JCL Dec., ¶ 13.

On April 3, 2025, Plaintiff Gonzalez amended the Complaint to name Plaintiff Hallum as an additional Class Representative in the Action. JCL Dec., ¶ 14.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff Gonzalez. As part of the interview process, Plaintiff Gonzalez produced documents related to her employment, including payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff Gonzalez's complaints justified further inquiry. JCL Dec., ¶ 15.

Class Counsel subsequently requested Plaintiff Gonzalez's employee file from Defendants. In response, Defendants produced several documents, including but not limited to, copies of Plaintiff Gonzalez's hiring documents, payroll records, Defendants' written policies, and termination documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff Gonzalez's claim that Defendants failed to, among other things, pay for all time worked, issue accurate itemized wage statements, reimburse for mandatory business expenses, and provide compliant meal and rest periods. JCL Dec., ¶ 16.

Likewise, months before joining the Action, Class Counsel commenced a thorough investigation into Plaintiff Hallum's complaints. Class Counsel conducted several in-depth interviews with Plaintiff Hallum to gather information regarding her experiences and employment conditions. During these interviews, Plaintiff Hallum provided documents including pay records and policy documents. Based on the information provided, Class Counsel determined that Plaintiff Hallum's allegations warranted further investigation. JCL Dec., ¶ 17.

Following these interviews, Class Counsel requested Plaintiff Hallum's personnel file and related employment documents from Defendant. In response, Defendants produced several documents, including but not limited to, copies of Plaintiffs' hiring documents, payroll records, performance reviews, Defendants' handbook, and termination documents. Class Counsel reviewed and analyzed the documents and determined the documents appeared to further substantiate Plaintiffs' claims that Defendants failed to, among other things, pay for all time worked, issue accurate itemized wage statements, reimburse for mandatory business expenses, and provide compliant meal and rest periods. JCL Dec., ¶ 18.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims and Defendants' liability exposure to the Class Members. In response to Class Counsel's request, Defendants produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia,* compensation, timekeeping and meal and rest period policies. In total, Class Counsel reviewed approximately over 50,000 pages and over 5 million unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 19.

Class Counsel then retained the statisticians and economists at Berger Consulting Group ("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 uniquely qualified to analyze Defendants' time and payroll data. JCL Dec., ¶ 20.

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

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

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) conducting interviews of the Class Members (9) drafting the mediation brief; and (10) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 23.

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

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

The proposed Settlement Class consists of all current and former hourly-paid or non-exempt employees who were employed by any of the Defendants and performed work in California from the period beginning May 17, 2019, and the earlier of (1) February 1, 2025 or (2) the date in which the total workweeks worked by the Class Members reaches 174,000. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendants estimated that the Class was comprised of 2,095 Class Members that worked approximately 174,000 workweeks during the Class Period. Agreement at § III(A)(2).

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

The Parties agreed to settle the underlying claims in exchange for the Gross Settlement Amount of $1,885,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of $10,000.00 to each Plaintiff for their services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $80,000.00; (4) Claims Administration Expenses estimated at $18,000.00; and (5) Class Counsel Award in the amount of up to $668,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $628,333.33 and up to $40,000 for actually incurred litigation expenses. See generally Agreement at § III(N)(9)-(12).

Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. Agreement at § III(N)(1). There is no reversion to Defendants, and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § III(A)(1), (4).

3. <u>The Funding Date</u>

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross

Settlement Amount no later than sixty (65) days of the Court's entry of the order granting final approval of this Settlement. Agreement at §§ I(M) – I(N).

4. Formula for Calculating Individual Settlement Payments

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

Given that there are approximately 2,095 Class Members, ***the average gross recovery is approximately $524.42*** (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class Members release the Released Parties (as defined in the Agreement) from all the claims alleged or that could have reasonably been alleged arising out of the facts and allegations in the Operative Complaint in the Action 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 ("Released Class Claims"). Agreement at §§ I(EE), III(B).

/ / /

6. PAGA Release by Plaintiffs and the LWDA

Generally, upon the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiffs, on behalf of the LWDA, and the State of California release the Released Parties from the all PAGA claims alleged in the Operative Complaint in the Action and Plaintiffs' PAGA Notices to the LWDA 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. ("Released PAGA Claims"). 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 $1,885,000.00 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 Steven J. Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediator managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The matter was resolved only after a full day of mediated negotiations, followed by a mediator's proposal, managed by the mediator who heard arguments, reviewed evidence and evaluated the Parties' respective claims and defenses. JCL Dec., ¶ 24.

Once the Parties reached a settlement, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

2. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of $1,885,000.00 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).)

[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").

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

The Gross Settlement Amount of $1,885,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery, including Defendants' financial condition. 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) ranged between $7,573,567.60 ("Conservative Model") and $20,782,065.40 ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for waiting time penalties. JCL Dec., ¶ 26.

Thus, the Gross Settlement Amount of $1,8850,000.00 represents approximately between 9.1% ("Aggressive Model") and 24.9% ("Conservative Model") of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Class Counsel's estimation of Defendants' exposure. JCL Dec., ¶ 27.

(1) <u>Estimated Exposure for Meal Period Violations</u>

Plaintiffs allege that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs allege that Defendants instructed Class Members to enter synthetic meal breaks consisting of exactly 30-minutes into their timesheets, regardless of whether or when they took a meal break. This allegation is supported by the data, which shows that 74.2% of first meal breaks for shifts greater than 6 hours were reported as exactly 30 minutes in length. This is contradicted by the accounts of Plaintiffs, who allege that meal periods were frequently late, short, or missed altogether and suggests a practice of time manipulation or auto-deduction of meal periods. JCL Dec., ¶ 28. Defendants argued that they provided Class Members with the opportunity to take compliant meal periods, that Class Members were tasked with reporting their own time, and that there were no instructions to record synthetic breaks. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $611,284.50 and $1,222,569.00. JCL Dec., ¶ 29.

(2) Estimated Exposure for Rest Period Violations

Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiffs alleged that rest periods were often missed due to pressure on Class Members to meet specific productivity goals, and when rest breaks were taken, Class Members were not permitted to leave the premises. Again, Defendants denied liability and asserted that they maintained legally compliant rest period practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens in establishing this claim. Establishing Plaintiffs' rest period claim would depend, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendants likely would have argued that only a small number of Class Members missed their rest breaks. Certification likely would have required depositions of Class Members who provided declarations, and Defendants 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 Defendants 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. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $611,284.50 and $1,222,569.00. JCL Dec., ¶ 30.

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

Plaintiffs further allege that Defendants failed to pay their employees for all hours worked. Specifically, Plaintiffs asserts that they and other Class Members worked off-the-clock in order to comply with COVID-19 testing protocols, serve clients, and sell services, before and after clocking in for their shift. As a result, Plaintiffs, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. Defendants vigorously denied liability for this claim. Defendants argued, among other things, that employees filled in their time sheets themselves and recorded their time in line with their actual work. Defendants also had in place compliant timekeeping policies that required employees to accurately record their hours worked. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $1,905,717.20 and approximately $3,811,434.40. JCL Dec., ¶ 31.

(4) Estimated Exposure for Failure to Reimburse for Mandatory Business Expenses

Plaintiffs further alleged that Defendants failed to reimburse their employees for mandatory business expenses. Specifically, Plaintiffs allege that they and other Class Members were required to use their own personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed for the cost associated with the use of their personal cellular phones. JCL Dec., ¶ 32. Cal. Labor Code § 2802, provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" Plaintiffs allege they and other Class Members were required to use their personal cell phones in order to, among other things, communicate with supervisors, other employees, and patients. Defendants deny these claims and note that even if these claims were true, they would affect only a small subset of that Class. Defendants also argued this claim is highly individualized making it unsuitable for class treatment. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $188,042.50 to $752,170.00. JCL Dec., ¶ 33.

(5) Estimated Exposure for Regular Rate Violations

Plaintiffs also allege that Defendants miscalculated the regular rate of pay for purposes of overtime and redeemed sick pay. Specifically, Plaintiffs allege that Class Members received non-discretionary incentive compensation labeled on wage statements as "B BONUS," "CD CD INCENTIVES," "SB SIGN ON BONUS," and "SPT SPOT BONUS," payments, which were not properly calculated into the regular rate of pay for purposes of overtime and redeemed sick pay. JCL Dec., ¶ 34. 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.) Defendants, for their part, asserted that the incentive payments identified by Plaintiffs were discretionary in nature and otherwise not required to be included in the regular rate of pay for purposes of calculating overtime, meal period premiums, or redeemed sick pay. Defendants contend that these payments fell outside the scope of compensation subject to regular rate calculations under applicable California law and dispute that any miscalculation occurred. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $10,226.40 and $12,833.00. JCL Dec., ¶ 35.

(6) <u>Estimated Exposure for Wage Statement Violations</u>

Plaintiffs also alleged that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiffs allege facial violations of Labor Code section 226(a) in that Defendants failed to identify the complete and correct legal entity that employed Plaintiffs and the Class Members. Moreover, Plaintiffs allege that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code and pay for all wages, Plaintiffs and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). JCL Dec., ¶ 36. Defendants argued that the wage statements they furnished sufficiently identified the legal entity that employed Plaintiffs and the Class Members. Moreover, Defendants argued that Plaintiffs' derivative claim would fail because the underlying claims would fail and that, even if Defendants failed to furnish accurate wage statements, Plaintiffs could not establish the injury requirement on a class-wide basis. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $1,613,700 and $3,3226,400. JCL Dec., ¶ 37.

(7) <u>Estimated Exposure for Waiting Time Penalties</u>

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

Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo, supra,* 15 Cal. 5th 1056, creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Moreover, it is unclear at best whether Plaintiffs could establish the actual harm component necessary for class-certification on the facial claim under Labor Code Section 226(a), even if liability is established. In light of the above, and taking Defendants' defenses into account, Plaintiffs estimate Defendants' exposure on this claim ranged between $2,633,272.50 to $10,533,090.00. JCL Dec., ¶ 38.

(8) <u>Defendants' PAGA Exposure</u>

Class Counsel's damage model also estimated Defendants' exposure for PAGA violations. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure ranged from $398,600 to $4,565,600. JCL Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Settlement 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 Settlement 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 $80,000.00 which is approximately 4.24% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment ($60,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($20,000) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payments approved by courts and should be approved. JCL Dec., ¶ 40.

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, Plaintiffs 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, Plaintiffs 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 Plaintiffs 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 Plaintiffs' claims on liability, value, and manageability as to the rest period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested. JCL Dec., ¶ 41.

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), 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 the plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

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.)

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). JCL Dec., ¶ 42.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."). JCL Dec., ¶ 43.

Finally, even if a class is certified and Defendants are found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL Dec., ¶ 44.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 45.

"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).)

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 regard to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. JCL Dec., ¶ 46. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. "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.)

Finally, at mediation, Defendants represented that their ability to fund a class-wide settlement was constrained by their financial condition. In response, Class Counsel retained Kenneth L. Creal, CPA, an experienced financial accounting and forensics expert, to independently assess Defendants' financial capacity. Mr. Creal conducted a thorough review of Defendants' financial records covering the period from 2022 through September 2024. Based on that analysis, Mr. Creal concluded that the proposed Gross Settlement Amount is fair and reasonable in light of the company's financial position and projected financial trajectory.

In this matter, Class Counsel negotiated a Gross Settlement Amount of $1,885,000.00 that is between 9.1% and 24.9% of Defendants' *class-wide* liability exposure for damages and statutory penalties. Given the amount of settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, and in light of Defendants' financial condition, the settlement is fair and reasonable. JCL 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 class definition, the procedure and time period within which to request for exclusion or to object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 48.

[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.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members."). JCL Dec., ¶ 49.

C. The Court Should Preliminarily Approve the Service Awards

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[4] for each Plaintiff. The service awards

[4] The amount of the requested Service Award-$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC,* No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding $10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.,* No. BC417335 (L.A. County Super. Ct Mar. 21, 2011) (awarding $10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.,* No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding $10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.,* No. BC429042 (LA. County Super. Ct. Oct. 3, 2013) (awarding $10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.,* No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding $10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.,* No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding $10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc,* No. BC422934 (LA. County Super. Ct. July 2, 2012) (awarding $10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores. LLC,* No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of $ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC,* No. BC423798 (LA. County Super. Ct Apr. 21, 2011) (awarding $15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC,* No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding $15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.,* No. BC373910 (LA. County Super. Ct. Jan. 29, 2010) (awarding $10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.,* No. BC386500 (LA. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP,* No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding $10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.,* No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding $10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc,* No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding $10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC,* No. BC360026 (LA. County Super. Ct. Mar. 7, 2013) (awarding $25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC, No.* 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding $10,000 enhancement payment); *Aguiar v. Cinguar Wireless. LLC,* No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding $14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.,* No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding $10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC,* No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding $10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.,* No. 10-cv-04526-CAS-JEMx (CD.

are fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their 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. JCL Dec., ¶ 50.

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

D. The Court Should Preliminarily Approve the Class Counsel Award

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

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

---

Cal. Sep. 10, 2012) (awarding $10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.,* No. RIC 10005196 (Riverside Super. Ct July 16, 2013) (awarding $10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.,* No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding $10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.,* No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013) (awarding $10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC,* Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding $10,000 enhancement payment).

for preliminary approval of the negotiated Class Counsel Award. JCL Dec., ¶ 53.

E. Plaintiff Gonzalez's Settlement of Her Individual Claims Alleged Against Defendants

On October 7, 2024, Plaintiff Gonzalez submitted a complaint to the Civil Rights Department of the State of California alleging violations of FEHA against Defendants. On the same day, the Civil Rights Department issued Plaintiff a Right to Sue letter allowing Plaintiff to proceed with a lawsuit against Defendants. (CRD Matter Number: 202304-20222208). Separate from the Class Action and PAGA settlement, Plaintiff Gonzalez entered into an individual settlement with Defendants in which she granted Defendants a broad release of all claims, including the claims outlined in her CRD complaint. Plaintiff will file this settlement agreement under seal for the Court to review in camera, at the Court's request. JCL Dec., ¶ 54.

F. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 55.

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. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

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

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "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. JCL Dec., ¶ 56.

The statutes relating to each of Plaintiffs' 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. JCL Dec., ¶ 57.

Plaintiffs' 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, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, participating in mediation, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 58.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 59; 61-68; Declaration of Shani Zakay,

¶¶ 1-3.

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

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: May 30, 2025

ZAKAY LAW GROUP, APLC

By: ______________________
Eden Zakay, Esq.
Attorney for PLAINTIFF