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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

WALADIN SNOW, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

LEE'S SANDWICHES INTERNATIONAL, INC.,
a California corporation; CBET CORPORATION,
a California corporation, previously identified as
fictitious DOES 1; LEE'S SANDWICHES, an
unknown business entity, previously identified as
fictitious DOES 2; and DOES 3-50, Inclusive,

Defendants.

Case No. 23CV410621

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

Date: March 12, 2025

Time: 1:30 PM

Judge: Hon. Theodore C. Zayner
Dept.: D19

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3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
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5	<i>Apple Computer, Inc. Derivative Litig.</i>	
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7	<i>A.S.A Cal Ltd.</i>	
8	(2009) 176 Cal.App.4th 1333, 1341.....	16
9	<i>Brinker</i>	
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11	<i>Brown v. Fed Express Corp.</i>	
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13	<i>Bufile v. Dollar Financial Group, Inc.</i>	
14	(2008) 162 Cal.App.4th 1193, 1207.....	21
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16	(2019) 45 Cal.App.5th 885.....	15
17	<i>Campbell v. Best Buy Stores, L.P.</i>	
18	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
19	<i>Carrington v. Starbucks Corp.</i>	
20	30 Cal. App. 5th 504, 517, 539 (2018).....	15
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22	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	15
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2	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
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4	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14-15
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15	<i>Michael Milken and Assoc. Sec. Litig.</i>	
16	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	11-12
17	<i>Misra v. Decision One Mortg. Co.</i>	
18	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
19	<i>Moniz v. Adecco USA, Inc.</i>	
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21	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
22	(2010) 186 Cal.App.4th 399, 409.....	11
23	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
24	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	11, 17
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27	<i>Newman v. Stein</i>	
28	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	15
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	<i>Nvidia Derivs. Litig.</i>	
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	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
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	<i>Ordonez v. Radio Shack, Inc.</i>	
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	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	17
	<i>Rodriguez v. West Publishing Corp.</i>	
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1	<i>Stambaugh v. Super. Ct</i>	
2	(1976) 62 Cal.App.3d 231, 236.....	9
3	<i>State v. Levi Strauss & Co.</i>	
4	(1986) 41 Cal.3d 460, 482, 485.....	10, 19
5	<i>Taco Bell Wage & Hour Actions</i>	
6	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	15
7	<i>Tien v. Tenet Healthcare Corp.</i>	
8	(2012) 209 Cal.App.4th 1077, 1088.....	16
9	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
10	(1975) 48 Cal. App. 3d 143, 151-52.....	18
11	<i>Villa v. United Site Servs. of California, Inc.</i>	
12	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	13

STATUTES, RULES AND CODES

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15	<i>Bus. and Prof. Code</i> § 17200.....	3
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28	Cal. Rules of Court, rule 3.769(c)-(g).....	9
29	Cal. Rules of Court, rule 3.776(e)-(f).....	19

SECONDARY SOURCES

30	Conte & Newberg, <i>Newberg on Class Actions</i> , § 1 1:38, §§ 11.26, 11.51 (4th ed. 2002)	
31		9-10, 19
32	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
33	53 UCLA L. Rev. 1303 (2006)	
34		19
35	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
36	<i>Study, J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
37		20
38	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
39		18

1 I. INTRODUCTION

2 Plaintiff Waladin Snow ("Plaintiff") seeks preliminary approval of the Stipulation of Settlement
3 of Class and PAGA Action Claims and Release of Claims ("Agreement")¹, which if approved, would
4 provide valuable monetary relief for approximately 191 Class Members and 142 Aggrieved Employees.
5 The basic terms of the Agreement provide for the following:

6 1. The "**Class**" and "**Class Period**" means all non-exempt employees who are or previously
7 were employed by Defendant CBET CORPORATION ("Defendant") and performed work in California
8 ("Class" or "Class Members") during the period between January 31, 2019 through October 20, 2023
9 ("Class Period"). Agreement at §§ I(G), I(J).

10 a. The "**Settlement Class Members**" means all Class Members who have not
11 submitted a timely and valid request for exclusion from the Settlement. Agreement at § I(KK).

12 b. The "**Class Size**" is comprised of 191 individuals who collectively worked
13 approximately 1,639 Workweeks during the Class Period as estimated by Defendant at the time of
14 mediation. Agreement at § III(A)(2).

15 2. The "**Aggrieved Employees**" and "**PAGA Period**" means all non-exempt employees
16 who are or previously were employed by Defendant and performed work in California ("Aggrieved
17 Employees") during the period between January 31, 2022 to October 20, 2023 ("PAGA Period").
18 Agreement at §§ I(C), I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA
19 portion of the settlement. Agreement at § III(K)(2)(a). At the time of mediation, there were
20 approximately 142 Aggrieved Employees during the PAGA Period. JCL Dec., ¶ 6.

21 3. The "**Gross Settlement Amount**" is Eighty-Two Thousand Dollars and Zero Cents
22 (\$82,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the
23 following:

24 a. An "**Enhancement Award**" means an award of not more than \$10,000 for
25 Plaintiff in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement
26 at §§ I(O), III(L)(9);

27
28 ¹ The Agreement is attached as Ex "1" to the Declaration of Jean-Claude Lapuyade ("JCL Dec.") at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

b. **“Attorneys’ Fees and Attorneys’ Expenses”** in the amount not of not more than \$42,333.33, comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$27,333.33 **and** litigation expenses not to exceed \$15,000.00, to be paid to Class Counsel. Agreement at §§ I(E), I(F), III(L)(10);

c. **“PAGA Penalties”** in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment (\$3,750.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$1,250.00) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payments”). Agreement at §§ I(Z), III(L)(11); and

d. **“Settlement Administration Costs”** not to exceed \$7,500.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Costs. Agreement at §§ I(B), III(L)(12).

4. The **“Net Settlement Amount”** of approximately \$17,166.67 (Gross Settlement Amount less the requested Attorneys’ Fees and Expenses, Enhancement Award, PAGA Penalties Payment and Settlement Administration Costs 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. Agreement at §§ I(S), III(L)(1)-(12). 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 **\$89.87**. 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 Settlement Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant operates a Vietnamese fast-food deli shop located in downtown San Jose, where
9 Plaintiff worked. Plaintiff was employed by Defendant from December of 2021 to March of 2022 as a
10 non-exempt employee. Declaration of Waladin Snow (“WS Dec.”) at ¶ 5. Plaintiff alleges that he was
11 denied legally compliant meal and rest periods, and minimum wages and overtime compensation at all
12 times during her employment. Throughout his employment, Plaintiff was subject to Defendant’s written
13 policies and procedures contained in, among other documents, Defendant’s Employee Handbook. JCL
14 Dec., ¶ 8.

15 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
16 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
17 accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies
18 liability for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied with all
19 applicable employment laws and raised several other significant defenses to Plaintiff’s claims,
20 including but not limited to, facially compliant meal and rest period policies, compliant wage
21 statements, compliant reimbursement practices, and timely payment of all wages due upon separation
22 of employment. JCL Dec., ¶ 9.

23 On January 31, 2023, Plaintiff filed a Notice of Violations with the Labor and Workforce
24 Development Agency (“LWDA”). JCL Dec., ¶ 10.

25 On January 31, 2023, Plaintiff filed a class action complaint in the Santa Clara County Superior
26 Court, Case No. 23CV410621 (“Action”), alleging eight causes of action against Defendant for: (1)
27 Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay
28 Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime

1 Wages in violation of Cal. Lab. Code §§ 510, *et seq.* (4) Failure to Provide Required Meal Periods in
2 violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide
3 Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
4 Order; (6) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (7)
5 Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code § 226; and (8)
6 Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 11.

7 On February 14, 2023, Plaintiff filed an amended Notice of Violations with the LWDA and
8 served the same on Defendant. Plaintiff's PAGA Notice set forth the facts and theories supporting
9 Defendant's alleged violations of various provisions of the California Labor Code and applicable
10 Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under
11 California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* ("PAGA").
12 JCL Dec., ¶ 12.

13 On February 15, 2023, Plaintiff filed a Doe Amendment, adding Defendant to the action. On
14 March 23, 2023, Defendants Lee's Sandwich Corporation and Lee's Sandwiches NCA, Inc. were
15 dismissed from the action without prejudice. On July 20, 2023, Defendants Lee's Sandwiches
16 International, Inc. and Lee's Sandwiches were dismissed from the action without prejudice, leaving
17 Defendant CBET Corporation as the remaining defendant in the action. JCL Dec., ¶ 13.

18 On April 10, 2023, Plaintiff filed the operative First Amended Complaint in this Action, adding
19 a ninth cause of action for Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et*
20 *seq.*). JCL Dec., ¶ 14.

21 To prepare for mediation, Defendant agreed to informally produce additional documents and
22 data points subject to the mediation privilege, including but not limited to, the Class Members' time
23 data and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained Berger Consulting
24 Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 15.

25 On October 20, 2023, the Parties participated in a full day mediation presided over by the
26 Honorable Brian C. Walsh (Ret.), an experienced jurist and wage and hour mediator. The mediation
27 concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of
28 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which

1 is the subject of the instant motion. JCL Dec., ¶ 16.

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

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

8 Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response,
9 Defendant produced documents, including but not limited, copies of Plaintiff's payroll records, portions
10 of Defendant's wage and hour policies, and Plaintiff's onboarding documents. Class Counsel reviewed
11 and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim
12 that Defendant failed to, among other things, provide accurate wage statements and to provide
13 compliant meal and rest periods. JCL Dec., ¶ 18.

14 To prepare for mediation, Defendant produced the time and payroll records for the Class
15 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
16 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
17 handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents
18 and time and payroll data. JCL Dec., ¶ 19.

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

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

unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 21.

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 their employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 22.

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

C. The Parties Settled at Mediation

On October 20, 2023, the Parties conducted a full day of mediation with the Honorable Brian C. Walsh (Ret.). Judge Walsh 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 Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period (the period of January 31, 2019 through October 20, 2023). Agreement at §§ I(G), I(J). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(KK). At the time of mediation, Defendant estimated that the Class was comprised of 191 individuals who worked approximately 1,639 workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$82,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) an Enhancement Award of not more than \$10,000.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Penalties Payment in the amount of \$5,000.00; (4) Settlement Administration Costs estimated at \$7,500.00; (5) Attorneys' Fees and Expenses in the amount of \$42,333.33, comprised of one-third of the Gross Settlement Amount for attorney's fees, currently estimated to be \$27,333.33 and litigation expenses not to exceed \$15,000.00 for actually incurred litigation expenses. See generally Agreement at § III(L).

Subject to the Court approving the Enhancement Award, Attorneys' Fees and Expenses, PAGA Penalties Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § I(S). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within thirty (30) calendar days of the Court's entry of the order granting final approval of this Settlement, but in no case shall payment be required earlier than December 20, 2024. Agreement at § I(P).

4. Formula for Calculating Individual Settlement Payments

Settlement Class Members will receive an Individual Settlement Payment. The Individual

Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. Agreement at § III(L)(1). The Class Data provided by Defendant to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § I(I). Each Class Member's final Individual Settlement Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Class Members. Agreement at § III(L)(1). For purposes of these calculations, a Workweek shall mean the number of weeks of employment during the Class Period that each Class Member was employed by Defendant in California. Agreement at § I(LL). 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 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(L)(1).

Given that there are approximately 191 Class Members, the average gross recovery is approximately \$89.87 (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 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 that accrued during 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 \$82,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored

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

8 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
9 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
10 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
11 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
12 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
13 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
14 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
15 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
16 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
17 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
18 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
19 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
20 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
21 action litigation”).)

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

28 ///

1 1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by
2 Experienced Counsel.

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

8 The Parties participated in mediation with the mediator Hon. Brian C. Walsh (Ret.). Judge Walsh
9 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
10 sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
11 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
12 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
13 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
14 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties reached an
15 agreement and the mediation session concluded with a settlement. JCL Dec., ¶ 24.

16 Once the Parties finalized and executed the terms of the Memorandum of Understanding, the
17 Parties engaged in negotiations regarding the written terms of the class action settlement. The
18 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
19 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

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

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

¶¶ 17-23.

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

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

The Gross Settlement Amount of \$82,000.00 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.*

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").

(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 \$82,000.00 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 an economic damage model measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The damage model was informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding penalties) was approximately \$159,051.40 if successful at trial. Thus, the Gross Settlement Amount of \$82,000.00 represents approximately 51.5% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 25.

(1) Exposure for Meal Period Violations.

Plaintiff alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiff allege that as a result of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleged that he is owed meal period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 26.

Conversely, Defendant argued, among other things, that they provided all of their employees with the opportunity to take compliant meal periods. Defendant also argued that they maintained facially compliant meal period policies. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Plaintiff estimated Defendant's exposure for this claim at \$38,522. JCL Dec., ¶ 27.

(2) Exposure for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free rest periods. JCL Dec., ¶ 28.

Again, Defendant denied liability and asserted that they maintained legally compliant rest period

1 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
2 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
3 on Class Member testimony, making it a riskier claim at class certification and liability stages.
4 Certification likely would have required depositions of Class Members who provided declarations, and
5 Defendant argued that they obtained opposing declarations stating either rest breaks were taken, or rest
6 breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013
7 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
8 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
9 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
10 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
11 generate uniform practices."). Notwithstanding the credible defenses, Plaintiff assumed an 80%
12 violation rate and estimated Defendant's exposure for this claim at \$77,278.40. JCL Dec., ¶ 29.

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

14 Plaintiff alleges that Defendant required its employees to perform work-related tasks, including
15 but not limited to, cleaning and taking out garbage, before and after their scheduled shifts, in violation
16 of California law requiring employees to be compensated for all time spent under an employer's
17 control. BCG estimated that Defendant's failure to compensate Plaintiff and the Class Members for
18 off-the-clock work resulted in \$28,376 in unpaid wages. Defendant denied liability and asserted that
19 employees were paid all wages and that all work performed by Plaintiff and the Class Members was
20 performed on-the-clock. JCL Dec., ¶ 30.

21 (4) Exposure for Unreimbursed Business Expenses

22 Plaintiff alleged that Defendant required Class Members to incur personal expenses for the use
23 of their own personal cellular phones and purchase of work uniforms. California employers who
24 require employees to incur personal business expenses for work purposes must reimburse the employee
25 for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his
26 or her employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer....").
28 However, Defendant failed to fully reimburse Plaintiff and Class Members for the costs incurred for

1 the use of their personal cellular phones and purchase of work uniforms. JCL Dec., ¶ 31.

2 Again, Defendant denied any liability for this claim. Defendant argued that most of their
3 employees did not use cellphones as a part of the performance of their duties and that it provided its
4 employees with all required work uniforms. As such, Defendant argued that on the rare occasion where
5 employees did incur business expenses, these expenses were fully reimbursed. Plaintiff estimated
6 Defendant's exposure for this claim at \$14,875. JCL Dec., ¶ 32.

7 (5) Exposure for Wage Statement Violations and Waiting Time Penalties

8 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
9 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
10 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue
11 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor
12 Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class
13 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
14 226. Defendant could also argue that that meal and rest period violations do not entitle employees like
15 Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement
16 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not
17 give the penalty claims great weight given that they depended on proving the underlying claims, which
18 had their own risks. Plaintiff estimated Defendant's exposure for these claims at \$374,181.00. JCL
19 Dec., ¶ 33.

20 (6) Defendant's PAGA Exposure

21 In all, Class Counsel projected Defendant's liability exposure for PAGA claims at \$218,100 if
22 successful at trial. JCL Dec., ¶ 34. The proposed PAGA allocation of the Gross Settlement Amount is
23 fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
24 "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the
25 result of self-interest at the expense of class members," such amounts are generally considered
26 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
27 Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two
28 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*

1 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
2 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
3 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
4 in the range of zero to two percent of the total settlement).

5 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of \$5,000
6 which is 6.1% of the Gross Settlement Amount. This amount falls well within the range of approved
7 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$3,750.00) will be paid to the
8 LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties
9 (\$1,250.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA
10 Penalties approved by courts and should be approved. JCL Dec., ¶ 35.

11 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
12 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
13 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
14 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
15 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
16 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
17 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
18 6, 2016) (PAGA penalties denied after trial).

19 To recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
20 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
21 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
22 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
23 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
24 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
25 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
26 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
27 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
28 rest period claims. JCL Dec., ¶ 36.

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

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

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

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

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

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 37.

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

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

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

16 Further, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. But even if Plaintiff are successful
20 at trial, Plaintiff are acutely aware that a judgment does not end the litigation. Plaintiff fully expects
21 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
22 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and
23 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
24 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
25 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
26 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

27 Finally, Defendant argued that they have financial limitations that restrict their ability to pay a
28 class settlement. Defendant produced its financial records in order to allow Class Counsel to assess

1 Defendant's financial limitations. Ultimately, the Parties believe the Gross Settlement Amount is fair
2 and would not destroy Defendant's business, especially here, where Defendant merely operates small
3 sandwich shops.

4 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$82,000.00 that is
5 approximately 51.5% of Defendant's *class-wide* liability exposure for damages, and approximately
6 15.37% of Defendant's maximum class wide liability exposure for damages and statutory penalties.
7 Given the amount of the settlement here, as compared to potential value of the claims, offset by the
8 various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 39.

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

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

19 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
20 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
21 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
22 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
23 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
24 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
25 and scope of the Released Claims. Agreement at § III(K). The Parties negotiated this method to ensure

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
2 administration of the Settlement. JCL Dec., ¶ 40.

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

7 **C. The Court Should Preliminarily Approve the Enhancement Award**

8 Enhancement Awards “are fairly typical in class action cases.” (*Cellphone Termination Fee*
9 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
10 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
11 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
12 *UCLA L. Rev.* 1303 (2006).) Enhancement Awards “are intended to compensate class representatives
13 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
14 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
15 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
16 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
17 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
18 (2009) 175 Cal.App.4th 785.)

19 The Settlement provides for an Enhancement Award of \$10,000.00 to Plaintiff. The
20 Enhancement Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
21 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
22 the status of her case and the strategies for prosecuting the claims, and reviewing the proposed
23 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class
24 Members. JCL Dec., ¶ 42.

25 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement
26 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
27 above showing is sufficient for preliminary approval of the negotiated Enhancement Award. JCL Dec.,
28 ¶ 43.

1 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Expenses**

2 The purpose of a payment of Attorneys’ Fees and Expenses in class action litigation is to reward
3 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
4 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
5 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix,*
6 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
7 percentage method or the lodestar method is used, fee awards in class actions average around one-third
8 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
9 *Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
10 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
11 one-third fee is consistent with market rates).)

12 Class Counsel took this matter on a contingency fee basis and invested significant time and
13 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
14 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
15 Members. Considering the positive outcome for the Class Members, and in light of the supporting
16 authority, the proposed Attorneys’ Fees and Expenses are fair and reasonable. JCL Dec., ¶ 44.

17 Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Expenses once
18 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
19 is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 45.

20 **E. Provisional Certification for Settlement Purposes Is Appropriate**

21 For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that
22 provisional certification of the Class is appropriate. JCL Dec., ¶ 46.

23 1. The Standard for Class Certification

24 Class actions are statutorily authorized “when the question is one of common or general interest,
25 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
27 certification is appropriate when there is an “ascertainable class and a well-defined community of
28 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment

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

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

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

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

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

19 Because all Class Members are Defendant’s current and former employees, the class is readily
20 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 47.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
23 determined by facts common to all members of the class. The wage and hour issues are both numerous
24 and substantial, and a class action is the most advantageous method of dealing with the claims of the
25 Settlement Class Members. JCL Dec., ¶ 48.

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

1 that she was injured by the same company-wide practices to which the proposed Class Members were
2 subject to and seek the same relief. Plaintiff has already demonstrated their ability to advocate for the
3 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
4 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 49.

5 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
6 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
7 gained state court settlement approval of the same class-wide causes of action that are at issue in this
8 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
9 represent the interests of this Class. JCL Dec., ¶¶ 51-55, Declaration of Shani Zakay, ¶¶ 1-3.

10 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
11 each individual claim, the Class Members likely have little incentive to litigate their claims on an
12 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
13 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
14 adjudication. JCL Dec., ¶ 50.

15 IV. CONCLUSION

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

19
20 Dated: September 5, 2024

ZAKAY LAW GROUP, APLC

21 By: 

22 Shani O. Zakay, Esq.