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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN DIEGO**

JUNE GARCIA, an individual, on behalf of herself  
and on behalf of all persons similarly situated,

Plaintiff,

v.

HILTON RESORTS CORPORATION, a  
Delaware corporation; HILTON GRAND  
VACATIONS COMPANY, LLC, a Delaware  
limited liability company; HILTON GRAND  
VACATIONS MANAGEMENT, LLC, a Nevada  
limited liability company; and DOES 1-50,  
Inclusive,

Defendants.

Case No: 37-2023-00024664-CU-OE-CTL

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

Date: February 21, 2025

Time: 10:30 a.m.

Judge: Hon. Loren Freestone

Dept.: C-64

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1 I. INTRODUCTION

2 Plaintiff June Garcia (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of  
3 Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if approved, would  
4 provide valuable monetary relief for approximately 216 Class Members and 106 Aggrieved Employees.  
5 The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all current and former employees of Hilton  
7 Resorts Corporation, Hilton Grand Vacations Company, LLC, and/or Hilton Grand Vacations  
8 Management, LLC (collectively “Defendants”) who worked at Defendants’ Marbrisa location during  
9 the period beginning June 13, 2019 through June 13, 2024 (“Class Period”). Agreement at §§ I(C); I(H);  
10 I(K); I(N); I(V).

11 a. The “**Participating Class Members**” means all Class Members who have not  
12 submitted a timely and valid Request for Exclusion from the Settlement. Agreement at § I(GG).

13 b. The “**Class Size**” is comprised of 216 individuals, 194 of whom were classified  
14 as non-exempt and collectively worked approximately 17,500 Workweeks during the Class Period and  
15 22 of whom were classified as exempt and collectively worked approximately 3,122 Workweeks during  
16 the Class Period. Agreement at § III(A)(2).

17 2. The “**PAGA Members**” and “**PAGA Period**” means all current and former employees  
18 of Defendants who worked for Defendants at Defendants’ Marbrisa location (“Aggrieved Employees”)  
19 during the period beginning June 13, 2022 through June 13, 2024 (“PAGA Period”). Agreement at §§  
20 I(Z), I(DD). PAGA Members do not have the ability to opt-out of the PAGA portion of the settlement.  
21 Agreement at § III(N)(7). At the time of mediation, there were approximately 106 PAGA Members  
22 during the PAGA Period.

23 3. The “**Gross Settlement Amount**” is Four Hundred Thirty-Five Thousand and Zero Cents  
24 (\$435,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes  
25 the following:

26 a. An “**Enhancement Award**” of not more than \$10,000.00 to Plaintiff in  
27

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

1 recognition of her efforts and risks in assisting with the prosecution of the Action. Agreement at §  
2 III(O)(9).

3 b. **“Class Counsel Award”** in the amount not of not more than \$175,000.00,  
4 comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be  
5 \$145,000.00 *and* litigation expenses not to exceed \$30,000.00, to be paid to Class Counsel. Agreement  
6 at §§ I(E); III(O)(10);

7 c. A **“PAGA Payment”** of Thirty Thousand Dollars and Zero Cents (\$25,000.00)  
8 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under  
9 the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall  
10 pay seventy-five (75%) of the PAGA Payment (\$18,750.00) to the Labor and Workforce Development  
11 Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$6,250.00) will be  
12 distributed to the PAGA Members (“PAGA Member Payment”). Agreement at §§ III(O)(11); and

13 d. **“Settlement Administration Costs”** not to exceed \$7,950.00 payable to the  
14 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice of  
15 Pendency of Class and PAGA Representative Action Settlement and Final Hearing Date (“Notice  
16 Packet”) and costs associated with administration of the settlement. Agreement at §§ I(OO), I(PP);  
17 III(O)(12).

18 4. The **“Net Settlement Amount”** of approximately \$217,050.00 (Gross Settlement  
19 Amount less the requested Class Counsel Award, Enhancement Award, PAGA Payment, and  
20 Settlement Administration Costs) will be allocated to all Participating Class Members as follows:  
21 85.6% of the Net Settlement Amount (calculated to be \$185,794.80) shall be allocated to the Non-  
22 Exempt Class Members and 14.4% of the Net Settlement Amount (calculated to be \$31,255.20) shall  
23 be allocated to the Exempt Class Members. The amount each Participating Class Member receives will  
24 depend on the number of Workweeks they worked within the Class Period. Agreement at §§ III(O)(1).  
25 JCL Dec., ¶ 6.

26 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the  
27 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.  
28 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement

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

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

## 10 II. FACTS AND PROCEDURE

### 11 A. Overview of the Litigation

12 Defendants develop, manage, market and operate vacation property ownership resorts in  
13 California, including San Diego County, where Plaintiff worked. Plaintiff was employed by  
14 Defendants from 2012 to June of 2022. Plaintiff alleges that the Class was denied legally compliant  
15 meal and rest periods, overtime compensation and was not reimbursed for necessary business  
16 expenses. Throughout her employment, Plaintiff was subject to Defendants' written policies and  
17 procedures contained in, among other documents, the "Team Member Handbook." JCL Dec., ¶ 8.

18 Generally, this Action alleges that Defendants failed to provide compliant meal and rest periods,  
19 failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish  
20 accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to  
21 pay all wages upon separation. Defendants denies liability for each of Plaintiff's claims. Further,  
22 Defendants asserts that they fully complied with all applicable employment laws and raised several  
23 other significant defenses to Plaintiff's claims, as detailed below. JCL Dec., ¶ 9.

24 On June 13, 2023, Plaintiff served Defendants and the Labor and Workforce Development  
25 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth  
26 the facts and theories supporting Defendants' alleged violations of various provisions of the California  
27 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to  
28 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections

2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

Also on June 13, 2023, Plaintiff filed the above titled class action complaint in the San Diego County Superior Court, Case No. 37-2023-00024664-CU-OE-CTL (the “Action”). The Action alleged eight causes of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 11. On October 3, 2023, Plaintiff filed a First Amended Complaint to add a ninth cause of action for civil penalties under the PAGA. JCL Dec., ¶ 12.

The Parties agreed early to mediate the Action. The Parties also agreed to continue discovery, but on an informal basis, to prepare for mediation. Such discovery included production of documents and data points subject to the mediation privilege, including but not limited to, a sampling of the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 13.

On June 13, 2024, the Parties participated in a full day mediation with respected jurist and experienced wage and hour and PAGA mediator Hon. Brian C. Walsh (Ret.). The Parties reached a settlement after both sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. 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 the Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment,

1 including various written policies and portions of her payroll records. At the conclusion of the  
2 interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec.,  
3 ¶15.

4 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,  
5 Defendants produced hundreds of pages of documents, including but not limited to, copies of  
6 Defendants' written policies and Plaintiff's payroll records and compensation plan. Class Counsel  
7 reviewed and analyzed the documents and determined the documents appeared to substantiate  
8 Plaintiff's claims. JCL Dec., ¶ 16.

9 To prepare for mediation, Defendants produced the time and payroll records for the Class  
10 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums  
11 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable  
12 handbooks, policies, and agreements. In total, Class Counsel reviewed more than 500 pages of  
13 documents and more than two-hundred thousand unique cells of time and payroll data. JCL Dec., ¶ 17.

14 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class  
15 Members' payroll and time data. BCG provides data analysis and damage modeling consulting  
16 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are  
17 credentialed and experienced experts in their fields and have provided their expertise on thousands of  
18 cases. JCL Dec., ¶ 18.

19 BCG analyzed Defendants' time and payroll data to assist in the development of various damage  
20 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of  
21 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average  
22 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal  
23 and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of  
24 unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and  
25 rest period premiums paid during the Class Period. JCL Dec., ¶ 19.

26 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining  
27 Plaintiff's suitability as a putative class representative through interviews, background investigations,  
28 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching

1 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type  
2 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants'  
3 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues  
4 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'  
5 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the  
6 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the  
7 claims being settled, as well as the impediments to recovery, such as to make an independent  
8 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20.

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

#### 15 **C. The Parties Settled at Mediation**

16 On June 13, 2024, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.).  
17 Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the  
18 issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance.  
19 Namely, the Parties exchanged information regarding their respective claims and defenses, including  
20 their respective evaluation of the damages. The mediation concluded with a settlement, after both sides  
21 agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are now set  
22 forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and  
23 reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

#### 24 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

##### 25 1. The Composition of the Participating Class Members

26 The proposed Class consists of all individuals currently or formerly employed by Defendants  
27 that worked at Defendants' Marbrisa location during the Class Period. Agreement at § I(C). The  
28 Participating Class Members exclude any person who submits a timely and valid request for exclusion.

1 Agreement at § I(GG). At the time of mediation, Defendants estimated that the Non-Exempt Class was  
2 comprised of 194 individuals who worked approximately 17,500 Workweeks during the Class Period,  
3 and 22 individuals who collectively worked approximately 3,122 Workweeks during the Class Period.  
4 Agreement at § III(A)(2).

5 2. The Settlement Consideration

6 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement  
7 Amount of \$435,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments  
8 to the Participating Class Members; (2) a Enhancement Award of not more than \$10,000.00 to Plaintiff  
9 for her services on behalf of the Class; (3) a PAGA Payment in the amount of \$25,000; (4) Settlement  
10 Administration Costs estimated at \$7,950.00; (5) Class Counsel Award in the amount of \$175,000.00,  
11 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be  
12 \$145,000.00 and an estimated \$30,000.00 for actually incurred litigation expenses. See generally  
13 Agreement at § III(O).

14 Subject to the Court approving the Enhancement Award, Class Counsel Award, PAGA Payment,  
15 and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each  
16 Participating Class Member. Agreement at §§ I(GG), I(PP). There is no reversion to Defendants and  
17 Defendants must separately pay for their share of the employer payroll taxes. Agreement at § III(A)(1).

18 3. The Funding Date

19 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross  
20 Settlement Amount within twenty (20) business days of the Effective Date. Agreement at § I(P).

21 4. Formula for Calculating Individual Settlement Payments

22 Participating Class Members will receive an Individual Settlement Payment. The Individual  
23 Settlement Payment will be proportional to the number of Workweeks each non-exempt and each  
24 exempt Class Member worked for Defendants during the Class Period. Agreement at § III(O)(1). The  
25 Class List provided by Defendants to the Settlement Administrator will include the number of  
26 Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant  
27 periods. Agreement at § I(F). Using the Class List, the Settlement Administrator shall add up the total  
28 number of Workweeks for all Non-Exempt Class Members. The respective Workweeks for each Non-

Exempt Class Member will be divided by the total Workweeks for all Non-Exempt Class Members, resulting in the Payment Ratio for each Non-Exempt Class Member. Each Non-Exempt Class Member's Payment Ratio will then be multiplied by 85.6% of the Net Settlement Amount to calculate each Non-Exempt Class Member's estimated Individual Settlement Payments. The same formula will be used to calculate the Exempt Class Member's estimated Individual Settlement Payments. Agreement at III(O)(1). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.* Individual Settlement Payments for Class Members who submit valid and timely requests for exclusion will be redistributed to Participating Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. *Id.*

Given that there are approximately 194 non-exempt Class Members and 22 exempt Class Members, Plaintiff estimates the average Individual Settlement Payment of \$957.71 will be paid to the non-exempt Participating Class Members and \$1,420.69 will be paid to the exempt Participating Class Members.

5. Release by Participating Class Members

Generally, as of the Funding Date, the Non-Exempt Class Members will release the Released Parties from the Non-Exempt Class Members' Released Claims for the Class Period. Agreement at § III(B). Likewise, as of the Funding Date, the Exempt Class Members will release the Released Parties from the Exempt Class Members' Released Claims for the Class Period. Agreement at § III(C).

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

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

### III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$435,000.00 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

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

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

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

27  
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 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 via a mediator’s proposal and the mediation session concluded with a settlement. JCL Dec.,  
16 ¶ 23.

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

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

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

1 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,  
2 ¶ 25.

3 Class Counsel only agreed to enter the Settlement following their thorough investigation and  
4 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and  
5 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated  
6 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this  
7 Agreement to be in the best interest of the Class Members. Because the Settlement's terms are fair,  
8 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

10 The Gross Settlement Amount of \$435,000.00 is within the range of reasonableness. To  
11 determine whether a settlement is fair and reasonable, the court should "consider enough information  
12 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to  
13 make an independent assessment of the reasonableness of the terms to which the parties have agreed."  
14 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,  
15 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the  
16 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such  
17 explicit statement of value; [they] require[] a record which allows an understanding of the amount that  
18 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*  
19 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a  
20 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might  
21 have received if they had succeeded at trial.<sup>2</sup> Indeed, "[t]he determination whether a settlement is  
22 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' "

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

(*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$435,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$1,469,510.92 ("Realistic Damages") and \$3,351,601.30 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 29% ("Realistic Damages") and 13% ("Maximum Damages") of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. JCL Dec., ¶ 27.

(1) Defendants' Estimated Exposure for Regular Rate Violations

Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages and meal period premiums. Specifically, Plaintiff alleges that Class Members received a number of non-discretionary bonuses and commissions but failed to consider these payments when calculating Class Members' overtime rate and meal period premiums. 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.) Conversely, Defendants denied liability and argued that it audited its own

1 records prior to this lawsuit and preemptively paid employees that may have been underpaid wages due  
2 to a regular rate error. Taking into account Defendants' defenses, Plaintiff estimates Defendants'  
3 exposure for this claim to be between \$190,371.60 and \$475,929.00. JCL Dec., ¶ 28.

4 (2) Defendants' Estimated Exposure of Rest Period Violations

5 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,  
6 Plaintiff alleged that Defendants' required Class Member to stay on premises and on-call during rest  
7 periods, which, Plaintiff alleges, runs afoul of the California Supreme Court's ruling in *Augustus v.*  
8 *ABM Security Services, Inc.*, 5 Cal.5th 257, 269 (2016). Plaintiff also alleges that rest breaks were often  
9 missed or were not duty-free due to Defendants' rigorous workload requirements and understaffing.  
10 Defendants deny Plaintiff's claim and contend that Defendants maintained California-specific meal and rest  
11 break policies, which did not require employees to remain on premises. Moreover, Defendants contends  
12 that establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony,  
13 making it a riskier claim at class certification and liability stages. Certification likely would have  
14 required depositions of Class Members who provided declarations, and Defendants surely would have  
15 obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily  
16 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11  
17 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have  
18 an illegal, written rest break policy is insufficient for this Court to find that common issues  
19 predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2 WL 5503550,  
20 at \*8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform  
21 practices. Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this  
22 claim to be between \$412,565.66 and \$1,031,414.15. JCL Dec., ¶ 29.

23 (3) Estimated Damages for Meal Period Violations

24 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,  
25 Plaintiff alleges that because of Defendants' understaffing and rigorous workload requirements,  
26 Defendants regularly failed to provide meal periods, or provided meal periods that were late, short  
27 and/or interrupted. Based on a review of Defendants' data, Plaintiff's expert found that over half of  
28 shifts between 5 and 6 ours did not have a recorded meal break, and Plaintiff does not believe that meal

break waivers were provided to or signed by the Class. Defendant argued that it has paid thousands of meal period premiums throughout the Class Period, maintains compliant written meal periods and moreover, that determining why various employees may not have taken a meal break would require an individualized determination that is not amenable to class certification. Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this claim to be approximate \$412,565.66 and \$1,031,414.15. JCL Dec., ¶ 30.

(4) Defendants' Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendants required Class Members to use personal cell phones for work-related communications, including but not limited to, communicating with co-workers, supervisors, and clients. Additionally, Plaintiff and other Class Members were required to use their personal cell phone to utilize the video chat feature during team meetings and other trainings. Without using her personal cell phone, Plaintiff could not carry out her essential job duties. Defendants maintain that there is no company policy requiring employees to use their personal cell phones or even permitting personal cell phone to conduct business. Accordingly, to the extent any employee chose to use their personal cell phone for a business purpose, this was a personal choice, and one that Defendants were unaware of. Taking into account Defendants' defenses, Plaintiff estimates Defendants' exposure for this claim to be between \$163,087.50 and \$217,450.00. JCL Dec., ¶ 31.

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

Plaintiff contends that Defendants' alleged violations resulted in derivative violations of Labor Code section 203 and 226. Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants contend that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code Section 203. Additionally, Defendants contend that Plaintiff cannot show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class were entitled to these penalties. See, e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp.2d 1122, 1134-1137 (C.D. Cal.

2011) (finding insufficient evidence of bad faith or actual injury). These claims represented Plaintiff's most legally precarious and uncertain claims. Taking this into account, Plaintiff estimated Defendants' exposure for waiting time penalties to be between \$213,108.00 and \$284,144.00, and its exposure for wage statement statutory penalties to be between \$77,812.50 and 311,250.00. JCL Dec., ¶ 32.

(6) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately \$963,750. JCL Dec., ¶ 33. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of \$25,000 which is 5.7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$18,750.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$6,250.00) will be distributed to the PAGA Members ("PAGA Member Payment"), which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 34.

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

1 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186  
2 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class  
3 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, \*40-43 (E.D. Cal. Apr.  
4 6, 2016) (PAGA penalties denied after trial).

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

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

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

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

19 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the  
20 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*  
21 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110  
22 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the  
23 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*  
24 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
25 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
26 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th  
27 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly  
28 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176

1 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to  
2 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
3 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
4 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
5 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
6 certification of driver meal and rest period claims based on the predominance of individual issues).  
7 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
8 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
9 settlement. JCL Dec., ¶ 35.

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

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

17 Accordingly, this factor weighs in favor of preliminary approval.

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

19 Finally, continuing to litigate this action would require continued and extensive resources  
20 coupled with significant Court time to proceed through trial and post-trial motions; which can often  
21 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
22 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
23 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
24 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,  
25 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 36. “Avoiding such a trial and the  
26 subsequent appeals in this complex case strongly militates in favor of settlement rather than further  
27 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221  
28 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are

1 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

2 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$435,000.00 that is  
3 roughly between approximately 29% of Defendants’ realistic *class-wide* liability exposure for damages,  
4 and approximately 13% of Defendants’ maximum class wide liability exposure for damages and  
5 statutory penalties. Given the amount of the settlement here, as compared to potential value of the  
6 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.  
7 JCL Dec., ¶ 37.

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

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

18 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class  
19 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then  
20 mail the proposed Notice Packet to all Class Members. The Notice will include information regarding  
21 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the  
22 procedure, and time period within which to requests for exclusions or objections to the Settlement, the  
23 date for the final approval hearing, the formula used to calculate settlement payments, and the terms  
24 and scope of the Released Claims. Agreement at § III(N)(2). The Parties negotiated this method to  
25 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost

26  
27 <sup>3</sup> 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* (7<sup>th</sup> Cir. 1987) 826 F.2d 729, 732.

effective administration of the Settlement. JCL Dec., ¶ 38.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet 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., ¶ 39.

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

Enhancement 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.* (9<sup>th</sup> 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).) Enhancement 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 an Enhancement Award of not more than \$10,000.00 to Plaintiff. The Enhancement Award is fair and reasonable compensation for Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendants a general release of all claims arising out of her employment. JCL Dec., ¶ 40.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Enhancement Award. JCL Dec., ¶ 41.

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

2             The purpose of a payment of a Class Counsel Award in class action litigation is to reward counsel  
3 who took the risk of non-payment and invested in a case that achieved a substantial positive result for  
4 the class. California courts routinely award attorneys’ fees equaling one-third or more of the potential  
5 value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.*  
6 (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage  
7 method or the lodestar method is used, fee awards in class actions average around one-third of the  
8 recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An*  
9 *Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent  
10 studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is  
11 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 Class Members.  
15 Considering the positive outcome for the Class Members, and in light of the supporting authority, the  
16 proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 42.

17             Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary  
18 approval of the Settlement is granted. Plaintiff respectfully submit that the above showing is sufficient  
19 for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 43.

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

21             For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional  
22 certification of the Class is appropriate. JCL Dec., ¶ 44.

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 Participating Class is Ascertainable and there is a Well-Defined  
5 Community of Interest Among the 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 Defendants’ current and former employees, the class is readily  
20 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 45.  
21 Factually, Defendants’ liability can be determined by facts common to all members of the class. The  
22 wage and hour issues are both numerous and substantial, and a class action is the most advantageous  
23 method of dealing with the claims of the Class Members. JCL Dec., ¶ 46.

24 Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff  
25 has already demonstrated her ability to advocate for the interests of the Class Members by initiating  
26 this litigation, reviewing documents received via informal discovery, and evaluating the proposed  
27 settlement to assure that it is fair. JCL Dec., ¶ 47.

28 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience

1 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and  
2 gained state court settlement approval of the same class-wide causes of action that are at issue in this  
3 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to  
4 represent the interests of this Class. JCL Dec., ¶¶ 48-55, Declaration of Shani Zakay, ¶¶ 1-3.

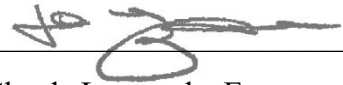
5 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
6 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
7 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each  
8 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case  
9 adjudication. JCL Dec., ¶ 56.

#### 10 IV. CONCLUSION

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

14 Dated: January 27, 2025

JCL LAW FIRM, APC

16 By:   
17 Jean-Claude Lapuyade, Esq.