

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya Silva (State Bar #348080)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for Plaintiffs

(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LYNDON MILLER and ADAM LOR,
individually, and on behalf of other members of
the general public similarly situated;

Plaintiffs,

v.

FOOD SAFETY NET SERVICES, LTD., an
unknown business entity; FOOD SAFETY NET
SERVICES-CALIFORNIA, LP., a Nevada
limited partnership; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 22STCV15337

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

Date: August 6, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

LAWYERS FOR JUSTICE, PC

Edwin Aiwazian, Esq.

Vartan Madoyan, Esq.

410 West Arden Avenue, Suite 203

Glendale, California 91203

Telephone: (818) 265-1020

Facsimile: (818) 265-1021

edwin@calljustice.com

vartan@calljustice.com

Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled at Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiff's Claims	7
	1. The Composition of the Participating Class Members	7
	2. The Settlement Consideration	8
	3. The Funding Date	8
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Participating Class Members	9
	6. PAGA Release by the Aggrieved Employees	9
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	10

2.	Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	11
3.	The Settlement Falls Within the Recognized Range of Reasonableness	11
a.	The Gross Settlement Amount Meets the Recognized Range of Reasonableness	12
(1)	Estimated Exposure for Unpaid Overtime Wages – Alternative Workweek Schedule	13
(2)	Estimated Exposure for Miscalculating the Regular Rate of Pay for Purposes of Overtime, Premiums and Sick Pay	13
(3)	Estimated Exposure for Meal Period Violations	13
(4)	Estimated Exposure for Rest Period Violations	14
(5)	Estimated Exposure for Wage Statement Violations and Waiting Time Penalties	15
(6)	Exposure for Unreimbursed Business Expenses	15
b.	Defendants’ PAGA Exposure	16
c.	Inherent Risks of Continued Litigation Support Preliminary Approval	17
B.	The Proposed Notice Informs the Class about the Case and Settlement	19
C.	The Court Should Preliminarily Approve the Class Representative Payments	20
D.	The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs	21

1 E. Provisional Certification for Settlement Purposes Is Appropriate22

2
3 1. The Standard for Class Certification22

4
5 2. The Proposed Class is Ascertainable and there is a Well-Defined Community of
6 Interest Among the Participating Class Members22

7
8 IV. CONCLUSION23

TABLE OF AUTHORITIES
CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.	
(2000) 85 Cal.App.4th 1135, 1150-1151.....	10
Ali v. U.S.A. Cab Ltd.	
(2009) 176 Cal.App.4th 1333, 1341.....	17
Brinker	
.....	18, 22
Brown v. Fed Express Corp.	
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	18
Campbell v. Best Buy Stores, L.P.,	
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	18
Dunk v. Ford Motor Co.	
(1996) 48 Cal.App.4th 1794, 1801.....	10
Duran v. U.S. Bank National Association	
(2014) 59 Cal.4th 1, 31.....	17
Hanlon v. Chrysler Corp.	
(9th Cir. 1998) 150 F.3d 1011, 1026.....	14
Hopson v. Hanesbrands Inc.	
No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9.....	16
Jack v. Hartford Fire Ins. Co.	
No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	16
Kullar v. Foot Locker Retail, Inc.	
(2008) 168 Cal.App.4th 116, 128-29.....	12
Magadia v. Wal-Mart Associates, Inc.	
(9 th Cir. 2021) 999 F.3d 668.....	17, 19
McKenzie v. Fed. Express Corp.	
No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	16
Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles	
(2010) 186 Cal.App.4th 399, 408.....	12
O'Conner v. Uber Technologies, Inc.	
(9 th Cir. 2018) 904 F.3d 1087, 1133.....	17
Officers for Justice v. Civil Serv. Comm'n	
(9th Cir. 1982) 688 F. 2d 615, 625.....	9, 12
Rebney v. Wells Fargo Bank	
(1990) 220 Cal.App.3d 1117, 1138.....	18
Tien v. Tenet Healthcare Corp.	
(2012) 209 Cal.App.4th 1077, 1088.....	17

RULES, CODES, AND STATUTES

1	<i>Cal. Bus. & Prof. Code</i> §§ 17200 <i>et seq.</i>	4
2	<i>Cal. Lab. Code</i> § 201.....	4
3	<i>Cal. Lab. Code</i> § 202.....	3
4	<i>Cal. Lab. Code</i> § 203.....	15
5	<i>Cal. Lab. Code</i> § 204.....	4
6	<i>Cal. Lab. Code</i> § 226.....	4
7	<i>Cal. Lab. Code</i> § 226.7.....	4
8	<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	4
9	<i>Cal. Lab. Code</i> § 512.....	4
10	<i>Cal. Lab. Code</i> § 1174.....	4
11	<i>Cal. Lab. Code</i> § 1194.....	4
12	<i>Cal. Lab. Code</i> § 1197.....	4
13	<i>Cal. Lab. Code</i> § 1197.1.....	4
14	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	4
15	<i>Cal. Lab. Code</i> § 2800.....	4
16	<i>Cal. Lab. Code</i> § 2802.....	4, 15

SECONDARY SOURCES

17	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
18	§11.41, pp. 11-91.....	10, 20

I. INTRODUCTION

Plaintiffs LYNDON MILLER and ADAM LOR (“Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 245 Class Members and 185 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by Food Safety Net Services, LTD., and/or Food Safety Net Services-California, LP., and performed work in California during the Class Period and did not sign an Arbitration Agreement (effective date of November 6, 2020) before May 9, 2022. The Class Period is defined as the period from May 9, 2018, to January 12, 2024 (“Class Period”). Agreement at §§ 1.7, 1.12. As of the date of the Agreement, Defendant estimated that there were approximately 231 Class Members who worked approximately 19,945 Workweeks during the Class Period.”² Agreement at § 4.1, 8.

2. The “**Participating Class Member**” refers to all Class Members who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.36.

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all non-exempt employees who are or previously were employed by Food Safety Net Services, LTD., and/or Food Safety Net Services-California, LP., (“Aggrieved Employee”) and performed work in California during the PAGA Period. The PAGA Period is defined as the period from January 25, 2022, to January 12, 2024 (“PAGA Period”). Agreement at §§ 1.4, 1.32. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 7.5.4; 5.1. As of the date of the Agreement, Defendants estimated that there were approximately 171 Aggrieved Employees who worked approximately 3,942 pay periods during the PAGA Period.”³ Agreement at § 4.1, 8.

4. The “**Gross Settlement Amount**” is \$997,250.00. Agreement at §§ 1.23, 3.1. The Gross

¹ All references to the Agreement refer to the Original Agreement and Amendment No. 1 to Class Action and PAGA Settlement Agreement (hereinafter “Agreement”). The Agreement is attached as Ex “1” to the Declaration of Andrea A. Amaya Silva, Esq. (“AAA Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the AAA Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² Defendant has since confirmed that there were a total of 245 Class Members who worked a total of 20,903 workweeks during the Class Period.

³ Defendant has since confirmed that there were a total of 185 Aggrieved Employees who worked a total of 4,444 pay periods during the PAGA Period.

Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Payment”** in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at §§ 1.14, 3.2.1;

b. A payment of **“Attorneys’ Fees and Litigation Costs”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$332,416.66 *and* litigation costs and expenses not to exceed \$35,000.00, to be paid to Class Counsel. Agreement at §§ 1.5, 3.2.2. The Attorneys’ Fees shall be divided between Class Counsel as follows: 32.5% to JCL Law Firm, APC, 32.5% to Zakay Law Group, APLC, and 35% to Lawyer’s for Justice, PC. Agreement at § 1.5. Plaintiffs have reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Lyndon Miller (“Miller Dec.”) at ¶ 10; Declaration of Adam Lor (“Lor Dec.”) at ¶ 10.

c. A **“PAGA Payment”** in the amount of \$40,000.00 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. Agreement at § 1.35. The Administrator, Apex Class Action, LLC (“Administrator”) shall pay \$30,000.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA Payment”). Agreement at §§ 1.28, 1.35. The Administrator shall distribute \$10,000.00 representing 25% of the PAGA Payment to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at §§ 1.25, 1.35; and

d. **“Administration Expenses Payment”** not to exceed \$7,340.00 payable to the Administrator for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement at § 1.3, 3.2.3.

3. The **“Net Settlement Amount”** means the Gross Settlement Amount less the PAGA Payment, Class Representative Payment Attorneys’ Fees and Litigation Costs, and the Administration Expenses Payment. Agreement at § 1.29. The Net Settlement Amount is approximately \$562,493.34 which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at § 1.24, 3.2.4. The entire Net Settlement Amount will be paid to all Participating Class Members who do not

opt out of the Settlement resulting in an average Individual Class Payment of approximately **\$2,295.89**.
Declaration of Andrea A. Amaya Silva (“AAA Dec.”), ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Class 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, Participating 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 Defendants prevailing at trial. AAA Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants are the largest microbial food safety testing network in North America and provide microbiological and chemical analyses of all food matrices and environmental samples throughout California, including Los Angeles and Fresno, where Plaintiffs worked. This action asserts claims on behalf of all of Defendants’ current and former non-exempt employees employed in California at any time during the Class Period. Plaintiff Miller was employed by Defendants as a non-exempt employee in California from September 2018 to September 2019. Plaintiff Lor was employed by Defendants as a non-exempt employee in California from July 2021 to December 2022. At all times during their employments, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendants’ policies and procedures. AAA Dec., ¶ 9; Miller Dec. ¶¶ 3-6; Lor Dec. ¶¶ 3-6.

1 Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide
2 compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to
3 reimburse them for business expenses, and failed to pay all wages upon separation. Defendants
4 forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully
5 complied with all applicable employment laws and raised several other significant defenses to
6 Plaintiffs' claims, including but not limited to, asserting that it paid employees for all hours worked,
7 maintained facially compliant meal and rest period policies, issued compliant wage statements, and
8 timely paid all wages due upon separation of employment. AAA Dec., ¶ 10.

9 On May 9, 2022, Plaintiff Miller filed a class action complaint in the Los Angeles Superior
10 Court, Case Number 22STCV15337 ("Action"). The Action alleged ten causes of action against
11 Defendants Food Safety Net Services, LTD., and/or Food Safety Net Services-California, LP., for: (1)
12 Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (2) Failure to Provide
13 Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
14 Order; (3) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and
15 the Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code
16 §§ 1194, 1197 & 1197.1; (5) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201,
17 and 202; (6) Failure to Timely Pay Wages During Employment in Violation of Cal. Lab. Code § 204;
18 (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (8) Failure
19 to Keep Requisite Payroll Records in violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse
20 Required Business Expenses in violation of Cal. Lab. Code §§ 2800 and 2802; (10) Unfair Competition
21 in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* AAA Dec., ¶ 11.

22 On January 25, 2023, Plaintiff Lor served Defendants Food Safety Net Services, LTD., and/or
23 Food Safety Net Services-California, LP., and the Labor and Workforce Development Agency
24 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Lor's PAGA Notice set forth the
25 facts and theories supporting Defendants' alleged violations of various provisions of the California
26 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
27 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
28

2698 *et seq.* (“PAGA”). AAA Dec., ¶ 12.

On May 10, 2023, Plaintiff Miller filed the First Amended Complaint, which added an eleventh cause of action for Violation of the PAGA as well as adding Plaintiff Lor as an additional named Plaintiff. AAA Dec., ¶ 13.

Plaintiffs’ counsel investigated the facts relevant to the Action, including conducting an independent investigation as to the allegations, reviewing documents and information exchanged through formal discovery. After meeting and conferring, the Parties agreed to attend private mediation. In preparation for mediation, Defendants produced documents and employment data for Plaintiff’s counsel to review and analyze, including all relevant policies in effect during the Class Period and a sample of payroll and time records for the Class Members. AAA Dec., ¶ 14. On January 12, 2024, the Parties participated in mediation presided by Honorable Brian C. Walsh (Ret.) a respected jurist and mediator of wage and hour class actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. AAA Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff Miller’s complaint. Class Counsels’ investigation started with several lengthy interviews with each Plaintiff. As part of the interview process, Plaintiffs produced documents related to their employment, including wage statements and paystubs. At the conclusion of the interviews and review of documents, Class Counsel determined that Plaintiffs’ complaints justified further inquiry. AAA Dec., ¶ 16.

Class Counsel subsequently requested Plaintiffs’ employee file from Defendants. In response, Defendants produced various documents, including but not limited to, copies of Plaintiffs’ time and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs’ claims that Defendants failed to, among other things, pay for all time worked, issue accurate itemized wage statements, and provide compliant meal and rest periods. AAA Dec., ¶ 17.

1 Upon filing the complaint, the Parties engaged in significant written discovery, including
2 obtaining the class list and conducted numerous telephonic interviews with Settlement Class Members.
3 JCL Dec., ¶ 18. Considering the many anticipated factual disputes, the Parties agreed that it would be
4 in the best interest of both Parties to mediate the matter. To prepare for mediation, Defendants agreed
5 to produce a sample of time and payroll records. Class Counsel requested a sample that would provide
6 between 85% and 90% confidence factor with a margin of error equal to or less than 10%. Based on
7 this criterion, Class Counsel ultimately accepted a sample of time and payroll records of 40% of the
8 Class Members for purposes of determining Defendants' liability at the time of mediation. In arriving
9 at these statistical parameters, Class Counsel prioritized fairness to the Class Members by balancing
10 the need for a statistically meaningful sample to evaluate Defendants' liability at this early stage of
11 litigation against preserving the settlement funds for distribution to the Class Members. Pursuant to the
12 Parties agreement, Defendants produced, among other things, hundreds of pages of time and payroll
13 data, applicable handbooks, policies and agreements for Class Counsel to analyze. AAA Dec., ¶ 18.

14 Class Counsel then retained the statisticians and economists at Berger Consulting Group
15 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
16 damage modeling consulting services, specializing in wage and hour class actions. BCG's team of
17 financial and data analysts are credentialed and experienced experts in their fields and have provided
18 their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze
19 Defendants' time and payroll data. AAA Dec., ¶ 19.

20 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
21 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
22 pay periods, average length of shift, and average number of hours worked per workweek and pay
23 periods during the Class Period. BCG also estimated the number of meal and rest period violations,
24 the amount of unpaid wages, and the amount of off-the-clock work performed by the Class Members
25 during the Class Period. AAA Dec., ¶ 20.

26 In advance of mediation, Class Counsel created several damage models predicated on the BCG
27 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting
28

1 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
2 during the mediated settlement discussions. AAA Dec., ¶ 21.

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

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

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

22 On June 12, 2024, the Parties conducted a full day of mediation with Hon. Brian C. Walsh
23 (Ret.), a respected jurist and mediator of wage and hour class and representative actions. Judge Walsh
24 helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
25 to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties
26 exchanged information regarding their respective claims and defenses, including their respective
27 evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of
28

which 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. AAA Dec., ¶ 24.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The Participating Class Members consist of all non-exempt employees who are or previously were employed by Defendants Food Safety Net Services, LTD., and/or Food Safety Net Services-California, LP., and performed work in California during the Class Period and did not sign an Arbitration Agreement (effective date of November 6, 2020) before May 9, 2022, and who do not file a timely and valid Request for Exclusion. Agreement at §§ 1.7, 1.12, 1.36.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$997,250.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Class Representative Payment of \$10,000.00 to each Plaintiff for their services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of \$40,000.00; (4) Administration Expenses Payment estimated at \$7,340.00; (5) Attorneys' Fees and Litigation Costs in the amount of \$367,416.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$332,416.66 and an estimated \$35,000.00 for actually incurred litigation expenses. *See generally* Agreement at § 3.2.2.

Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Participating Class Member. Agreement at § 1.29. There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$997,250.00 Gross Settlement Amount within 60 calendar days of the Court's entry of the order granting final approval of this Settlement provided no notice of appeal or petition for review is filed by any Class

Member or intervenor. Agreement at § 4.3.

4. Formula for Calculating Individual Class Payments

Each Participating Class Member will receive an Individual Class Payment. The Class Data provided by Defendants to the Administrator will include the number of eligible Workweeks for each Participating Class Member. The Individual Class Payments will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

Given that there are approximately 245 Class Members, *the average gross recovery is approximately \$2,295.89* (Net Settlement Amount divided by Participating Class Members). AAA Dec., ¶ 6.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.40; 5.2.

6. PAGA Release by the Aggrieved Employees

Generally, as of the Funding Date, Plaintiffs, acting as the representatives 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 §§ 1.41; 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$997,250.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after

notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
2 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
3 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
4 § 11.51.)

5 The Parties participated in mediation with the highly respected mediator and retired judge Hon.
6 Brian C. Walsh (Ret.). Judge Walsh managed the Parties' expectations and provided a useful, neutral
7 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-
8 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation
9 weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d.
10 Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps
11 to ensure that the proceedings were free of collusion and undue pressure.")). At all times, the Parties'
12 negotiations were at an arm's length, adversarial, and non-collusive. The Parties subsequently executed
13 a binding and enforceable Memorandum of Understanding and thereafter drafted and negotiated a long-
14 form settlement which is the subject of the instant motion. The Agreement is the final product of these
15 mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
16 compromise of the claims at issue. AAA Dec., ¶ 25.

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

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

26 Class Counsel only agreed to enter the Settlement following their thorough investigation and
27 evaluation of Plaintiffs' claims. Based on an investigation of the facts, applicable law, and marketplace
28

1 for similar settlements, and considering the risk of significant delay, uncertainty associated with
2 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
3 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
4 reasonable, and adequate, the Court should preliminarily approve the Settlement. AAA Dec., ¶ 27.

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

6 The Gross Settlement Amount of \$997,250.00 is within the range of reasonableness. To
7 determine whether a settlement is fair and reasonable, the court should "consider enough information
8 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
9 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
10 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
11 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
12 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
13 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
14 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
15 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
16 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
17 have received if they had succeeded at trial.⁴ Indeed, "[t]he determination whether a settlement is
18 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' "
19 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
20 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

21 **a. The Gross Settlement Amount Meets the Recognized Range of**

23 ⁴ Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a
24 settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery"); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 ("settlement amount's ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness"); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 ("the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims"); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is "the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness").

1 **Reasonableness.**

2 The Gross Settlement Amount of \$997,250.00 is fair and reasonable considering the nature and
3 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
4 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’
5 liability exposure while accounting for the uncertainties of continued litigation. The various models
6 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
7 and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding
8 PAGA penalties) at \$2,982,552. Thus, the Gross Settlement Amount of \$997,250.00 represents 33.4%
9 of Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
10 The following summarizes Defendants’ estimated exposure. AAA Dec., ¶ 28.

11 ///

12 (1) Estimated Exposure for Unpaid Overtime Wages – Alternative
13 Workweek Schedule

14 Plaintiffs alleged that Defendants failed to pay its employees for all hours worked. Specifically,
15 Plaintiffs assert that Defendants adopted an alternative workweek schedule (“AWS”) without following
16 the proper procedures set forth in Labor Code section 511. As a result, Plaintiffs and other Class
17 Members worked shifts greater than eight (8) hours in a workday or more than forty (40) hours in a
18 workweek without the payment of overtime compensation or more than twelve (12) hours in a work
19 shift without payment of overtime compensation at double their regular rate of pay. AAA Dec., ¶ 29.

20 Defendants vigorously denied liability for this claim. Defendant argued that the AWS was
21 properly implemented, all Class Members were properly paid overtime and double-time compensation
22 when applicable. Plaintiffs estimated Defendant’s exposure for this claim at \$112,391.00. AAA Dec.,
23 ¶ 30.

24 (2) Estimated Exposure for Miscalculating the Regular Rate of Pay for Purposes
25 of Overtime, Premiums and Sick Pay

26 Plaintiffs alleged that Defendants failed to include incentive compensation payments in the
27 regular rate of pay for purposes of overtime, meal period premiums, and sick pay. Plaintiffs also argued
28

1 that when Plaintiffs missed a meal period, Defendants did not pay any meal period premiums. It is
2 Plaintiffs' position that Defendants failed to pay overtime, premiums, and sick pay at the regular rate
3 of pay, accounting for bonuses and other remuneration. AAA Dec., ¶ 31.

4 Defendants vigorously denied liability for this claim. Defendants argued, among other things,
5 that all Class Members were properly paid minimum and overtime compensation for all hours worked.
6 Further, Defendants argued that all non-discretionary incentive compensation was properly included
7 into the regular rate of pay. Plaintiffs estimated Defendants' exposure for this claim at \$11,743.00.
8 AAA Dec., ¶ 32.

9 (3) Estimated Exposure for Meal Period Violations

10 Plaintiffs also alleged that Defendants failed to provide compliant meal periods. Specifically,
11 Plaintiffs allege that as a result of the job demands, Plaintiffs, Class Members, and Aggrieved
12 Employees were not able to take timely meal periods. AAA Dec., ¶ 33.

13 Conversely, Defendants argued that it provided Class Members and Aggrieved Employees with
14 the opportunity to take compliant meal periods and it implemented meal break waivers for shifts
15 between 10 and 12 hours. Defendant also argued that they paid some meal premiums. Plaintiffs
16 estimated Defendants' exposure for this claim at \$641,223.00, after offsetting meal premiums paid by
17 Defendants. AAA Dec., ¶ 34.

18 (4) Estimated Exposure for Rest Period Violations

19 Plaintiffs also alleged that Defendants failed to provide compliant rest periods and failed to pay
20 the required premiums. Defendants written rest break policy also required employees to remain on
21 facility premises, which failed to comply with California law. Due to the press of the business and their
22 work duties, Plaintiffs were often not permitted to take compliant rest breaks. Again, Defendants denied
23 liability and asserted that they maintained legally compliant rest period practices throughout the Class
24 Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing
25 Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier
26 claim at class certification and liability stages. Certification likely would have required depositions of
27 Class Members who provided declarations, and Defendants argued that they obtained opposing
28

1 declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g.,*
2 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the
3 competing testimony before the Court, plaintiff’s evidence that Defendants may have an illegal, written
4 rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United*
5 *Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s
6 own evidence confirms that the written policy does not generate uniform practices.”). Because
7 Defendants did not record rest breaks, Plaintiffs assumed that rest break violations were similar in
8 frequency to meal break violations, and estimated Defendants’ exposure for this claim at \$641,223.00.
9 AAA Dec., ¶ 35.

10
11
12
13 ///

14 (5) Estimated Exposure for Wage Statement Violations and Waiting Time
15 Penalties

16 Plaintiffs alleged that Defendants’ alleged violations resulted in derivative violations of Labor
17 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
18 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
19 that Plaintiffs could not prove the “willful” prong needed to obtain waiting time penalties under Labor
20 Code section 203. Additionally, Defendants could argue that Plaintiffs could not show that Class
21 Members suffered an “injury” because of wage statement violations, as required by Labor Code section
22 226. Defendants could also argue that that meal and rest period violations do not entitle employees
23 like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement
24 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiffs could
25 not give the penalty claims great weight given that they depended on proving the underlying claims,
26 which had their own risks. Plaintiff estimated Defendants’ exposure for these claims at \$1,167,374.00,
27
28

1 which is comprised of \$721,624.00 for waiting time penalties and \$445,750.00 for wage statement
2 penalties. AAA Dec., ¶ 36.

3 (6) Exposure for Unreimbursed Business Expenses

4 Plaintiffs alleged that Defendants required Class Members to incur personal expenses for the use
5 of their own personal cellular phones, specifically for clocking in, taking work related calls and for
6 purposes of using the GPS when performing deliveries. However, Defendants failed to fully reimburse
7 Plaintiffs and Class Members for the costs incurred for the use of their personal cellular phones in
8 violation of California Labor Code section 2802. AAA Dec., ¶ 37.

9 Again, Defendant denied any liability for this claim. Defendant argued that most of its
10 employees did not use cellphones as a part of the performance of their duties and on the rare occasion
11 where employees did incur business expenses for the use of their cellphones, these expenses were fully
12 reimbursed. Plaintiff estimated Defendant's exposure for this claim at \$148,225.00, assuming \$25 per
13 month per employee. AAA Dec., ¶ 38.

14
15 ///

16 **b. Defendants' PAGA Exposure**

17 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
18 the time of mediation, Plaintiffs estimated Defendants' PAGA exposure to be approximately
19 \$2,009,100.00 if successful at trial. AAA Dec., ¶ 39. The proposed PAGA allocation of the Gross
20 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
21 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication
22 that this amount was the result of self-interest at the expense of class members," such amounts are
23 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
24 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the
25 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
26 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
27 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
28

1 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
2 PAGA claim settlements in the range of zero to two percent of the total settlement).

3 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$40,000.00 which is
4 4.01% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
5 Payment. Seventy-Five percent (75%) of the PAGA Payment (\$30,000.00) will be paid to the LWDA
6 (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment
7 (\$10,000.00) will be distributed to the PAGA Class Members, which is within the range of PAGA
8 Payment approved by courts and should be approved. AAA Dec., ¶ 40.

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

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

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

25 **c. Inherent Risks of Continued Litigation Support Preliminary**
26 **Approval.**

27 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
28

1 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
2 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
3 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
4 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

5 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
6 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
7 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
8 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
9 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
10 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
13 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
14 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
17 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
20 certification of driver meal and rest period claims based on the predominance of individual issues).
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
23 settlement. AAA Dec., ¶ 41.

24 “The Settlement eliminates these and other risks of continued litigation, including the very real
25 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
26 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
27 inherently perilous regardless of the strengths of merits of the claims:
28

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. AAA Dec., ¶ 42. “Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of \$997,250.00 that is 36.4% of Defendants’ maximum class wide liability exposure for damages and statutory penalties (excluding PAGA penalties). Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. AAA Dec., ¶ 43.

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

The Class Members are entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48

Cal.App.3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁵

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Administrator will first verify addresses, then mail the proposed Class Notice in English to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within which to submit requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. AAA Dec., ¶¶ 44-45.

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

C. The Court Should Preliminarily Approve the Class Representative Payments

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives

⁵ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod* (7th Cir. 1987) 826 F.2d 729, 732.

1 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
2 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
3 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
4 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
5 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
6 (2009) 175 Cal.App.4th 785.)

7 The Settlement provides for a Class Representative Payment of \$10,000.00 for each Plaintiff.
8 The service awards are fair and reasonable compensation for the Plaintiffs’ efforts bringing the action,
9 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
10 the status of their case, facts surrounding their employment as it relates to wage and hour practices and
11 claims and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure
12 that its terms are fair and provide adequate relief for the Class Members. AAA Dec., ¶ 46; Miller Dec.,
13 ¶ 6-10. Lor Dec., ¶ 6-10.

14 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
15 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully
16 submits that the above showing is sufficient for preliminary approval of the negotiated Class
17 Representative Payment. AAA Dec., ¶ 47.

18 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs**

19 The purpose of a payment to Class Counsel for Attorneys’ Fees and Litigation Costs in class
20 action litigation is to reward counsel who took the risk of non-payment and invested in a case that
21 achieved a substantial positive result for the class. California courts routinely award attorneys’ fees
22 equaling one-third or more of the potential value of the common fund, the amount requested under this
23 settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show
24 that regardless whether the percentage method or the lodestar method is used, fee awards in class
25 actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller,
26 *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1,
27 Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come
28

1 to a similar conclusion that a one-third fee is consistent with market rates).)

2 Class Counsel took this matter on a contingency fee basis and invested significant time and
3 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
4 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
5 Members. Considering the positive outcome for the Class Members, and in light of the supporting
6 authority, the proposed Attorneys' Fees and Litigation Costs payment is fair and reasonable. AAA
7 Dec., ¶ 48.

8 Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs,
9 including arguments and lodestar information in support of the request, once preliminary approval of
10 the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for
11 preliminary approval of the negotiated attorneys' fees. AAA Dec., ¶ 49.

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

13 For Settlement purposes, Plaintiffs contend, and Defendants do not dispute, that provisional
14 certification of the Class is appropriate. AAA Dec., ¶ 50.

15 1. The Standard for Class Certification

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

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

26 Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is
27 "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available
28

1 for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable
2 where they may be readily identified without unreasonable expense or time by reference to official
3 records. (*Id.*)

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

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

12 Because all Class Members are Defendants’ current and former employees, the class is readily
13 ascertainable from Defendants’ regular business records, i.e., payroll records. AAA Dec., ¶ 51.

14 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
15 Class. Factually, Defendants’ policies and practices apply class-wide, and Defendants’ liability can be
16 determined by facts common to all members of the class. The wage and hour issues are both numerous
17 and substantial, and a class action is the most advantageous method of dealing with the claims of the
18 Class Members. AAA Dec., ¶ 52.

19 Plaintiffs’ wage and hour claims are typical of the proposed Class because they arise from the
20 same factual basis and are based on the same legal theories applicable to the other Class Members.
21 Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class Members.
22 Plaintiffs allege that they were injured by the same company-wide practices to which the proposed
23 Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their
24 ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
25 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. AAA Dec., ¶
26 53.

27 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
28

1 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
2 certified, and gained state court settlement approval of the same class-wide causes of action that are at
3 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
4 qualified to represent the interests of this Class. Declaration of Jean-Claude Lapuyade ("JCL Dec.") ¶¶
5 1-8; Declaration of Shani Zakay ("SOZ Dec."), ¶¶ 1-3. Declaration of Vartan Madoyan ("VM Dec."),
6 ¶¶ 6-7.

7 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
8 each individual claim, the Class Members likely have little incentive to litigate their claims on an
9 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
10 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
11 adjudication. JCL Dec., ¶ 4.

12 IV. CONCLUSION

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

16 Dated: July 10, 2024

JCL LAW FIRM, APC

17 By: 
18 Andrea A. Amaya Silva, Esq.
19 Attorneys for Plaintiffs