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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

JOHN KNEISLY, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

S R MACHINING, INC., a California  
Corporation; S R MACHINING-PROPERTIES,  
LLC, a California Limited Liability Company;  
and DOES 1-50, Inclusive;

Defendants.

Case No. CVRI2201491

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

Date: May 25, 2023

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 10

Reservation #: 561354723159

**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                            | 4  |
|      | C. The Parties Settled at Mediation                                                              | 6  |
|      | D. The Proposed Settlement Fully Resolves Plaintiffs' Claims                                     | 6  |
|      | 1. The Composition of the Settlement Class Members                                               | 6  |
|      | 2. The Settlement Consideration                                                                  | 7  |
|      | 3. The Funding Date                                                                              | 7  |
|      | 4. Formula for Calculating Individual Settlement Payments                                        | 7  |
|      | 5. Release by Settlement Class Members                                                           | 8  |
|      | 6. PAGA Release by the State of California on behalf of the PAGA Class Members                   | 8  |
| III. | ARGUMENT                                                                                         | 8  |
|      | A. The Court Should Preliminarily Approve the Proposed Class Action Settlement                   | 8  |
|      | 1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel | 10 |

|    |                                                                                                                   |    |
|----|-------------------------------------------------------------------------------------------------------------------|----|
| 1  | 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of<br>the Settlement’s Reasonableness | 10 |
| 2  | .....                                                                                                             |    |
| 3  | 3. The Settlement Falls Within the Recognized Range of Reasonableness                                             | 11 |
| 4  | .....                                                                                                             |    |
| 5  | a. The Gross Settlement Amount Meets the Recognized Range of<br>Reasonableness                                    | 12 |
| 6  | .....                                                                                                             |    |
| 7  | (1) Estimated Damages for Meal Period Violations                                                                  | 12 |
| 8  | .....                                                                                                             |    |
| 9  | (2) Defendants’ Estimated Exposure of Rest Period Violations                                                      | 13 |
| 10 | .....                                                                                                             |    |
| 11 | (3) Defendants’ Estimated Exposure for Off-the-Clock Work                                                         | 13 |
| 12 | .....                                                                                                             |    |
| 13 | (4) Defendants’ Exposure for Unpaid Vacation Wages                                                                | 14 |
| 14 | .....                                                                                                             |    |
| 15 | (5) Exposure for Unreimbursed Business Expenses                                                                   | 14 |
| 16 | .....                                                                                                             |    |
| 17 | (6) Defendants’ Estimated Exposure for Unpaid Wages due to<br>Rounding                                            | 15 |
| 18 | .....                                                                                                             |    |
| 19 | (7) Defendants’ Estimated Exposure for Off-the-Clock Work                                                         | 15 |
| 20 | .....                                                                                                             |    |
| 21 | (8) Defendants’ Estimated Exposure for Wage Statement<br>Violations                                               | 15 |
| 22 | .....                                                                                                             |    |
| 23 | (9) Defendants’ Estimated Exposure for Waiting Time Penalties                                                     | 16 |
| 24 | .....                                                                                                             |    |
| 25 | (10) Defendants’ PAGA Exposure                                                                                    | 16 |
| 26 | .....                                                                                                             |    |
| 27 | b. Inherent Risks of Continued Litigation Support Preliminary Approval                                            | 17 |
| 28 | .....                                                                                                             |    |

///

1 B. The Proposed Notice Informs the Class about the Case and Settlement .....19

2 C. The Court Should Preliminarily Approve the Class Representative Service Award .....20

3

4 D. The Court Should Preliminarily Approve the Class Counsel Award .....21

5

6 E. Provisional Certification for Settlement Purposes Is Appropriate .....21

7

8 1. The Standard for Class Certification .....22

9

10 2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined

11 Community of Interest Among the Settlement Class Members .....22

12 IV. CONCLUSION .....23

27 ///

TABLE OF AUTHORITIES  
CASES

|    |                                                                                    |        |
|----|------------------------------------------------------------------------------------|--------|
| 1  |                                                                                    |        |
| 2  |                                                                                    |        |
| 3  | <i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>                     |        |
| 4  | (2000) 85 Cal.App.4th 1135, 1151.....                                              | 9      |
| 5  | <i>A.S.A. Cab Ltd.</i>                                                             |        |
| 6  | (2009) 176 Cal.App.4th 1333, 1341.....                                             | 18     |
| 7  | <i>Brinker</i>                                                                     |        |
| 8  | 53 Cal. 4th at 1021-1022.....                                                      | 18, 22 |
| 9  | <i>Brown v. Fed Express Corp.</i>                                                  |        |
| 10 | (C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....                                       | 18     |
| 11 | <i>Bufile v. Dollar Financial Group, Inc.</i>                                      |        |
| 12 | (2008) 162 Cal.App.4th 1193, 1207.....                                             | 22     |
| 13 | <i>Campbell v. Best Buy Stores, L.P.</i>                                           |        |
| 14 | (C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....                                    | 18     |
| 15 | <i>Carrington v. Starbucks Corp.</i>                                               |        |
| 16 | (2018) 30 Cal.App.5th 504.....                                                     | 17     |
| 17 | <i>Cart v. Super. Ct.</i>                                                          |        |
| 18 | (1975) 50 Cal.App.3d 960, 972.....                                                 | 19     |
| 19 | <i>Cellphone Termination Fee Cases</i>                                             |        |
| 20 | 180 Cal.App.4th 1110, 1118, 1380, 1389, 1393 (2010).....                           | 9, 20  |
| 21 | <i>Chance v. Super. Ct.</i>                                                        |        |
| 22 | (1962) 58 Cal.2d 275, 290.....                                                     | 19     |
| 23 | <i>Chavez v. Netflix, Inc.</i>                                                     |        |
| 24 | (2008) 162 Cal.App.4th 43, 66 n.11.....                                            | 21     |
| 25 | <i>Clark v. American Residential Services, LLC</i>                                 |        |
| 26 | 175 Cal.App.4th 785 (2009).....                                                    | 20     |
| 27 | <i>D'Amato v. Deutsche Bank</i>                                                    |        |
| 28 | (2d. Cir. 2001) 236 F.3d 78, 85.....                                               | 10     |
|    | <i>Dunk v. Ford Motor Co.</i>                                                      |        |
|    | (1996) 48 Cal.App.4th 1794, 1802.....                                              | 9      |
|    | <i>Duran v. U.S. Bank National Association</i>                                     |        |
|    | (2014) 59 Cal.4th 1, 31.....                                                       | 18     |
|    | <i>Fleming v. Covidien</i>                                                         |        |
|    | 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....                                 | 17     |
|    | <i>Fontana v. Elrod</i>                                                            |        |
|    | (7th Cir. 1987) 826 F.2d 729, 732.....                                             | 19     |
|    | <i>Frank v. Eastman Kodak Co.</i>                                                  |        |
|    | (W.D.N.Y. 2005) 228 FRD. 174, 186.....                                             | 12     |
|    | <i>Hopson v. Hanesbrands Inc.</i>                                                  |        |
|    | No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....            | 16     |
|    | <i>In re Apple Computer, Inc. Derivative Litig.</i>                                |        |
|    | No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)..... | 10     |
|    | <i>In re Global Crossing Sec. and ERISA Litig.</i>                                 |        |
|    | (S.D.N.Y 2004) 225 F.R.D. 436, 460.....                                            | 11     |
|    | <i>In re IKON Office Solutions, Inc Sec Litig.</i>                                 |        |
|    | (E.D. Pa. 2000) 194 F.R.D. 166, 184.....                                           | 11     |

|    |                                                                                    |        |
|----|------------------------------------------------------------------------------------|--------|
| 1  | <i>In re Michael Milken and Assoc. Sec. Litig.</i>                                 |        |
|    | (S.D.N.Y. 1993) 150 F.R.D. 57, 66.....                                             | 12     |
| 2  | <i>In re Nordstrom Com. Cases</i>                                                  |        |
|    | 186 Cal.App.4th 576, 589 (2010).....                                               | 17     |
| 3  | <i>In re Nvidia Derivs. Litig.</i>                                                 |        |
|    | (N.D. Cal. 2008) 2008 WL 5382544, at *3.....                                       | 18     |
| 4  | <i>In re Omnivision Tech, Inc.</i>                                                 |        |
|    | (N.D. Cal. 2008) 559 F.Supp.2d 1036.....                                           | 11     |
| 5  | <i>In re Taco Bell Wage &amp; Hour Actions</i>                                     |        |
|    | 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....                  | 17     |
| 6  | <i>Jack v. Hartford Fire Ins. Co.</i>                                              |        |
|    | No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....      | 16     |
| 7  | <i>Kass v. Young</i>                                                               |        |
|    | (1977) 67 Cal.App.3d 100, 106.....                                                 | 19     |
| 8  | <i>Kullar v. Foot Locker Retail, Inc.</i>                                          |        |
|    | (2008) 168 Cal.App.4th 116, 133.....                                               | 11     |
| 9  | <i>Lee v. Dynamex, Inc.</i>                                                        |        |
|    | (2008) 166 Cal.App.4th 1325, 1332, 1334.....                                       | 22     |
| 10 | <i>Magadia v. Wal-Mart Associates, Inc.</i>                                        |        |
|    | (9th Cir. 2021) 999 F.3d 668.....                                                  | 17, 19 |
| 11 | <i>McKenzie v. Fed. Express Corp.</i>                                              |        |
|    | No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)..... | 16     |
| 12 | <i>Misra v. Decision One Mortg. Co.</i>                                            |        |
|    | (C.D. Cal. 2009) 2009 WL 4581276, at *7.....                                       | 17     |
| 13 | <i>Moniz v. Adecco USA, Inc.</i>                                                   |        |
|    | (2021) 72 Cal.App.5th 56, 77.....                                                  | 16     |
| 14 | <i>Munoz v. BCI Coca-Cola Bottling Co.</i>                                         |        |
|    | (2010) 186 Cal.App.4th 399, 409.....                                               | 11     |
| 15 | <i>Naranjo v. Spectrum Security Services, Inc.</i>                                 |        |
|    | (2023) 88 Cal.App.5th 927.....                                                     | 15     |
| 16 | <i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>                                |        |
|    | (C.D. Cal. 2004) 221 F.R.D. 523, 527.....                                          | 11, 19 |
| 17 | <i>Newman v. Stein</i>                                                             |        |
|    | (2d. Cir. 2002) 464 F.2d 689, 693.....                                             | 11     |
| 18 | <i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>           |        |
|    | (1994) 27 Cal.App.4th 1085, 1089-90.....                                           | 9      |
| 19 | <i>O'Conner v. Uber Technologies, Inc.</i>                                         |        |
|    | (9th Cir. 2018) 904 F.3d 1087.....                                                 | 18     |
| 20 | <i>Officers for Justice v. Civil Serv. Comm'n</i>                                  |        |
|    | (9th Cir. 1982) 688 F.2d 615, 625, 628.....                                        | 9, 11  |
| 21 | <i>Ordonez v. Radio Shack, Inc.</i>                                                |        |
|    | (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....                              | 13     |
| 22 | <i>Rebney v. Wells Fargo Bank</i>                                                  |        |
|    | (1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....     | 18     |
| 23 | <i>Rodriguez v. West Publishing Corp.</i>                                          |        |
|    | (9th Cir. 2009) 563 F.3d 948, 958-59.....                                          | 20     |
| 24 | <i>Sav-On Drug Stores, Inc.</i>                                                    |        |

|    |                                                            |        |
|----|------------------------------------------------------------|--------|
| 1  | (2014) 34 Cal.4th 319, 326, 333.....                       | 22     |
| 2  | <i>Stambaugh v. Super. Ct</i>                              |        |
| 3  | (1976) 62 Cal.App.3d 231, 236.....                         | 9      |
| 4  | <i>State v. Levi Strauss &amp; Co.</i>                     |        |
| 5  | (1986) 41 Cal.3d 460, 482, 485.....                        | 10, 20 |
| 6  | <i>Suastez v. Plastic Dress-Up Co.</i>                     |        |
| 7  | (1982) 21 Cal.3d 774, 784.....                             | 14     |
| 8  | <i>Tien v. Tenet Healthcare Corp.</i>                      |        |
| 9  | (2012) 209 Cal.App.4th 1077, 1088.....                     | 18     |
| 10 | <i>Trotsky v. Los Angeles Fed Savings &amp; Loan Assn.</i> |        |
| 11 | (1975) 48 Cal.App.3d 143, 151-52.....                      | 19     |
| 12 | <i>Villa v. United Site Servs. of California, Inc.</i>     |        |
| 13 | (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....      | 13     |

## RULES, CODES, AND STATUTES

|    |                                                        |       |
|----|--------------------------------------------------------|-------|
| 14 | <i>Cal. Bus. &amp; Prof. Code</i> §§ 17200 et seq..... | 3     |
| 15 | <i>Cal. Civ. Proc. Code</i> § 382.....                 | 22    |
| 16 | <i>Cal. Lab. Code</i> § 201.....                       | 4     |
| 17 | <i>Cal. Lab. Code</i> § 202.....                       | 4     |
| 18 | <i>Cal. Lab. Code</i> § 203.....                       | 4, 16 |
| 19 | <i>Cal. Lab. Code</i> § 226.7.....                     | 3     |
| 20 | <i>Cal. Lab. Code</i> §§ 510.....                      | 3     |
| 21 | <i>Cal. Lab. Code</i> § 512.....                       | 3     |
| 22 | <i>Cal. Lab. Code</i> § 1194.....                      | 3     |
| 23 | <i>Cal. Lab. Code</i> § 1197.....                      | 3     |
| 24 | <i>Cal. Lab. Code</i> § 1197.1.....                    | 3     |
| 25 | <i>Cal. Lab. Code</i> § 2802.....                      | 4, 14 |
| 26 | <i>Cal. Lab. Code</i> §§ 2698 et seq.....              | 4     |
| 27 | <i>Rule of Court Rule 3.769(c)-(g)</i> .....           | 9     |
| 28 | <i>Rule of Court Rule 3.776(e)-(f)</i> .....           | 20    |

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|    |                                                                                                                                                                                                  |          |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
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| 36 | .....                                                                                                                                                                                            | 19       |

1 I. INTRODUCTION

2 Plaintiff JOHN KNEISLY (“Plaintiff”) seeks preliminary approval of the Stipulation of  
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for approximately 41 Class Members and 22 PAGA  
5 Class Members. The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or  
7 previously were directly employed by Defendants and performed work in California (“Class”) during  
8 the period from April 14, 2018, to October 10, 2022 (“Class Period”). Agreement at §§ I(F)-(G).

9 a. The “**Settlement Class Members**” means all Class Members who have not  
10 submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at § I(JJ).

11 b. The “**Class Size**” is comprised of 41 individuals who collectively worked  
12 approximately 4,914 Workweeks during the Class Period as estimated by Defendants at the time of  
13 mediation. Agreement at § III(A)(2).

14 2. The “**PAGA Class Members**” and “**PAGA Period**” means all non-exempt employees  
15 who are or previously were directly employed by Defendants and performed work in California (“PAGA  
16 Class Members”) during the period of October 10, 2021, to October 10, 2022 (“PAGA Period”).  
17 Agreement at § I(T). PAGA Class Members do not have the ability to opt-out of the PAGA portion of  
18 the settlement. Agreement at § III(K)(8). At the time of mediation, there were approximately 22 PAGA  
19 Class Members who worked approximately 1,045 pay periods during the PAGA Period. Agreement at  
20 § III(A)(2).

21 3. The “**Gross Settlement Amount**” is Two Hundred Twenty Thousand Dollars and Zero  
22 Cents (\$220,000.00). Agreement at § I(N). The Gross Settlement Amount is non-reversionary and  
23 includes the following:

24 a. A “**Class Representative Service Award**” of not more than \$10,000 to Plaintiff  
25 in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange  
26 for executing a General Release. Agreement at §§ III(L)(9).

27  
28 <sup>1</sup> The Agreement is attached as Ex “A” 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           b.       A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross  
2 Settlement Amount for attorney’s fees, currently estimated to be \$73,333.33 **and** litigation expenses  
3 not to exceed \$15,000, to be paid to Class Counsel. Agreement at § III(L)(10);

4           c.       A **“PAGA Payment”** of Ten Thousand Dollars (\$10,000) shall be allocated from  
5 the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys  
6 General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA  
7 Payment (\$3,750) to the Labor and Workforce Development Agency (“LWDA PAGA Payment”).  
8 Twenty-five percent (25%) of the PAGA Payment (\$1,250) will be distributed to the PAGA Class  
9 Members (“Individual PAGA Payment”). Agreement at § I(P); I(U); I(Y); III(L)(11) ; and

10          d.       **“Claims Administration Expenses”** not to exceed \$9,000 payable to the  
11 Settlement Administrator, Atticus Administration, LLC, for, *inter alia*, the administration of the Class  
12 Notice and Claims Administration Expenses. Agreement at § III(L)(12). Class Counsel requested bids  
13 from three (3) settlement administration companies and received the lowest bid from Atticus  
14 Administration, LLC. JCL Dec., ¶ 5.

15          4.       The **“Net Settlement Amount”** of approximately \$102,667 (Gross Settlement Amount  
16 less the requested Class Counsel Award, Class Representative Service Award, PAGA Payment, and  
17 Claims Administration Expenses) which will be allocated to all Settlement Class Members on a pro-  
18 rata basis according to the number of Workweeks each Settlement Class Member worked during the  
19 Class Period. Agreement at § III(L)(1). The entire Net Settlement Amount will be paid to all Settlement  
20 Class Members who do not opt out of the Settlement resulting in an average Individual Settlement  
21 Payment of **\$2,504.07**. JCL Dec., ¶ 6.

22          An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the  
23 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.  
24 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement  
25 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage  
26 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will  
27 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being  
28 denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

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

## 6 II. FACTS AND PROCEDURE

### 7 A. Overview of the Litigation

8 Defendants manufacture and produce CNC machining of plastics, alloys and metals for the  
9 aerospace, industrial, commercial, medical and automotive industries/sectors in Riverside, where  
10 Plaintiff worked. Plaintiff worked for Defendants in California from May 15, 2008, to May 14, 2020.  
11 At all times during his employment, Plaintiff was denied legally compliant meal and rest periods, and  
12 minimum wages and overtime compensation. Throughout his employment, Plaintiff was subject to  
13 Defendants' written policies and procedures contained in, among other documents, the "SR  
14 Machining, Inc. Employee Handbook." JCL Dec., ¶ 8.

15 Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods,  
16 failed to pay for all time worked, and failed to pay all wages upon separation. Defendants deny liability  
17 for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable  
18 employment laws and raised several other significant defenses to Plaintiff's claims, including but not  
19 limited to, asserting that they maintained facially compliant meal and rest period policies, paid their  
20 employees for all hours worked, and timely paid all wages due upon separation of employment. JCL  
21 Dec., ¶ 9.

22 On April 14, 2022, Plaintiff filed a class action complaint in the Riverside County Superior  
23 Court, Case No. CVRI2201491 ("Action"). The Action alleged seven causes of action against  
24 Defendants for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to  
25 Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1.; (3) Failure to  
26 Pay Overtime Wages in Violation of California Labor Code §§ 510; (4) Failure to Provide Required  
27 Meal Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required  
28 Rest Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Provide Wages

When Due in Violation of California Labor Code §§ 201, 202, and 203; and (7) Failure to Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802. JCL Dec., ¶ 10.

On January 24, 2023, Plaintiff served Defendants and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 11.

On January 27, 2023, Plaintiff filed a First Amended Complaint adding an eighth cause of action for Violation of the Private Attorneys General Action [Labor Code §§ 2698, *et. seq.*] JCL Dec., ¶ 12.

After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, 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 October 10, 2022, the Parties participated in a full day mediation with retired jurist and mediator, Hon. Steven Denton (Ret.) The mediation concluded with 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 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 his employment, including wage statements, portions of Defendants’ handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 15.

Class Counsel subsequently requested Plaintiff’s employee files from Defendants. In response,

1 Defendants produced several documents, including but not limited, copies of Plaintiff's hiring  
2 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and  
3 determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among  
4 other things, provide compliant meal and rest periods, failed to pay all wages due to rounding, and  
5 failed to pay for all hours worked. JCL Dec., ¶ 16.

6 To prepare for mediation, Defendants produced time and payroll records for the Class Members,  
7 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the  
8 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,  
9 policies, and agreements. In total, Class Counsel reviewed more than 1,100 pages of documents and  
10 more than 100,000 unique cells of time and payroll data. JCL Dec., ¶ 17.

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

16 BCG analyzed Defendants' time and payroll data to assist in the development of various damage  
17 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of  
18 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average  
19 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal  
20 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of unpaid  
21 sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period premiums  
22 paid during the Class Period. JCL Dec., ¶ 18.

23 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining  
24 Plaintiff's suitability as a putative class representative through interviews, background investigations,  
25 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching  
26 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type  
27 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'  
28 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues

1 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'  
2 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the  
3 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the  
4 claims being settled, as well as the impediments to recovery, such as to make an independent  
5 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 19.

6 Class Counsel only agreed to enter the Settlement following this thorough investigation and  
7 evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and  
8 marketplace for similar settlements, and considering the risk of significant delay and uncertainty  
9 associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly  
10 believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms  
11 are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶  
12 20.

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

14 On October 10, 2022, the Parties conducted a full day of mediation with Hon. Steven Denton  
15 (Ret.). Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis  
16 of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's  
17 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,  
18 including their respective evaluation of the damages. The mediation concluded with a settlement, after  
19 both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are  
20 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,  
21 and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 20-21.

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

#### 23 1. The Composition of the Settlement Class Members

24 The proposed Settlement Class consists of all non-exempt employees who are or previously were  
25 directly employed by Defendants and performed work in California during the period of April 14, 2018  
26 to October 10, 2022. Agreement at I(F). The Settlement Class excludes any person who submits a  
27 timely and valid request for exclusion. At the time of mediation, Defendants estimated that the  
28 Settlement Class was comprised of 41 individuals that worked approximately 4,914 workweeks during

1 the Class Period. Agreement at § III(A)(2).

2 2. The Settlement Consideration

3 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement  
4 Amount of \$220,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to  
5 the Settlement Class; (2) a Class Representative Service Award of not more than \$10,000 to Plaintiff  
6 for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$10,000; (4)  
7 Claims Administration Expenses estimated at \$9,000; (5) Class Counsel Award in the amount of  
8 \$88,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated  
9 to be \$73,333.33 and an estimated \$15,000 for actually incurred litigation expenses. See generally  
10 Agreement at § III(L).

11 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,  
12 PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be  
13 distributed to each participating member of the Settlement Class Member. Agreement at § I(Q). There  
14 is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll  
15 taxes. Agreement at § III(A)(1).

16 3. The Funding Date

17 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross  
18 Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final approval  
19 of this Settlement. Agreement at § I(M).

20 4. Formula for Calculating Individual Settlement Payments

21 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual  
22 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member  
23 worked for Defendants in California during the Class Period. Using the Class Data, the Settlement  
24 Administrator shall add up the total number of Workweeks for all Class Members. The respective  
25 Workweeks for each Class Member will be divided by the total Workweeks for all Class Members,  
26 resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then  
27 be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual  
28 Settlement Payments. Agreement at § III(L)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(L)(1).

Given that there are approximately 41 Settlement Class Members, *the average gross recovery is approximately \$2,504.07* (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

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

6. PAGA Release by the State of California on behalf of the PAGA Class Members

Generally, as of the Funding Date, Plaintiff, the PAGA Class Members, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims which are alleged in the operative complaint and Plaintiff's PAGA Notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § (EE).

### III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$220,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored

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

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

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

28 ///

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

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

8           The Parties participated in mediation retired jurist and highly respected mediator Hon. Steven  
9 Denton (Ret.). Judge Denton managed the Parties’ expectations and provided a useful, neutral analysis  
10 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF  
11 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs  
12 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.  
13 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to  
14 ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated  
15 negotiations, the Parties reached an agreement and the mediation session concluded with a settlement.  
16 JCL Dec., ¶ 20.

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., ¶ 21.

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 ¶ 17-19.

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 interests of the Class Members. Because the Settlement's terms are fair,  
8 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20-21.

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

10 The Gross Settlement Amount of \$220,000.00 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 \$220,000.00 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 Berger 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 Payment) ranged between \$651,062.25 ("Realistic Damages") and \$1,193,275 ("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 33.79% ("Realistic Damages") and 18.44% ("Maximum Damages") of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. JCL Dec., ¶ 22.

(1) Estimated Damages for Meal Period Violations

Plaintiff's primary claim in this Action alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and PAGA Class Members were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that he is owed meal period premiums for meal period violations that occurred during the Class Period. An analysis of the Class Members' time and payroll data revealed a 64.2% meal period violation rate. JCL Dec., ¶ 23.

Conversely, Defendants argued, among other things, that they provided all their employees, i.e., Class Members and PAGA Class Members, with the opportunity to take compliant meal periods. Defendants also argued that they maintained facially compliant meal period policies and began paying missed meal period premiums in 2022. Thus, Defendant argued that any missed meal periods were voluntarily and did not trigger liability for premium payments. JCL Dec., ¶ 24.

Consequently, Plaintiff applied a 50% discount to the Realistic Damages model to account for Defendants' facially compliant policies and payment of meal period premiums. Plaintiff estimated that

1 the damages for this claim ranged from approximately \$179,375.50 dollars to approximately \$358,751  
2 dollars. JCL Dec., ¶ 25.

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

4 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,  
5 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not  
6 able to take timely and duty-free rest periods. Like the meal period violations, BCG assumed an  
7 identical 64.2% violation rate for rest periods based on Plaintiff's testimony and investigation.  
8 However, unlike the meal period premium payments, there was no evidence Defendants ever paid a  
9 premium for missed rest periods. JCL Dec., ¶ 26.

10 Again, Defendants denied liability and asserted that they maintained legally compliant rest  
11 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the  
12 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,  
13 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability  
14 stages. Certification likely would have required depositions of Class Members who provided  
15 declarations, and Defendants surely would have obtained opposing declarations stating either rest  
16 breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D.  
17 Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 ("Because of the competing testimony before the Court,  
18 plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this  
19 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.  
20 Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 ("Indeed, Plaintiff's own evidence confirms that the  
21 written policy does not generate uniform practices."). Accordingly, Plaintiff's Realistic Damage model  
22 applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for  
23 this claim was between approximately \$214,136.00 dollars to approximately \$428,272 dollars. JCL  
24 Dec., ¶ 27.

25 (3) Defendants' Estimated Exposure for Off-the-Clock Work

26 Additionally, Plaintiff's alleged that Defendant failed to pay their employees for all hours  
27 worked. Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent  
28 responding to COVID-19 questionnaires. Defendants vigorously denied liability for this claim.

1 Defendants argued that all Class Members were properly paid minimum and overtime compensation  
2 for all hours worked and that Class Members were instructed not to work off-the-clock. Plaintiff  
3 applied a 25% discount to the Realistic Damages model and estimated Defendants' exposure for this  
4 claim ranged from \$110,373 dollars to approximately \$147,165 dollars. JCL Dec., ¶ 28.

5 (4) Defendant's Exposure for Unpaid Vacation Wages

6 Plaintiff also alleged that Defendant failed to pay vacation wages. Throughout the Class Period,  
7 Defendant had in place a "use-it-or-lose-it" type vacation period policy that required forfeiture of  
8 vested, but unused vacation time accrued at the end of each calendar year. The California Supreme  
9 Court in *Suastez v. Plastic Dress-Up Co.*, concluded that "[t]he right to a paid vacation, when offered  
10 in an employer's policy or contract of employment, **constitutes deferred wages for services rendered.**  
11 **. . . Once vested, the right is protected from forfeiture by section 227.3**" (*Suastez v. Plastic Dress-Up*  
12 *Co.* (1982) 21 Cal.3d 774, 784) (emphasis added.) Accordingly, section 227.3 and *Suastez* prohibit any  
13 forfeiture of a private employee's vested vacation time. Defendants' payroll records showed that  
14 employees forfeited earned vacation wages at the end of each calendar year. In light of the unlawful  
15 written policy and the forfeiture of wages evidenced by Defendants' payroll records, Plaintiff did not  
16 apply a discount to this claim. Plaintiff estimated that Defendants' exposure ranged from approximately  
17 \$25,816 dollars, assuming one unused vacation day per employee, per calendar year, to approximately  
18 \$51,632, assuming two unused vacation days. JCL Dec., ¶ 29.

19 (5) Exposure for Unreimbursed Business Expenses

20 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business  
21 expenses. Specifically, Plaintiff and Class Members were required to use their own personal cellular  
22 phones as a result of and in furtherance of their job duties reimbursed for the cost associated with the  
23 use of their personal cellular phones. Cal. Labor Code § 2802, provides that "[a]n employer shall  
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in  
25 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of  
26 the employer..." JCL Dec., ¶ 30.

27 Again, Defendants denied any liability for this claim. Defendants argued that its written policies  
28 provide for reimbursement to employees for necessary business expenses incurred in the discharge of

1 the employees' duties or at Defendants' direction. This claim was heavily discounted by 75% based  
2 on Defendants' defenses. Plaintiff estimated Defendants' exposure for this claim ranged from  
3 \$5,151.25, to approximately \$20,605. JCL Dec., ¶ 31.

4 (6) Defendants' Estimated Exposure for Unpaid Wages due to Rounding

5 Plaintiff alleged that because of Defendants' unlawful rounding policy, it failed to pay Plaintiff  
6 and the Settlement Class Members all wages due for purposes of straight pay, overtime pay, and  
7 double-time pay. Defendants denied liability and asserted that their employees were paid for all time  
8 worked. Defendants argued that employees use an electronic timekeeping system to record their hours  
9 of work, and were paid according to their own reported time. Furthermore, Defendants argued that,  
10 even if successful, this claim resulted in minimal actual damage to the Class Members—and Plaintiff's  
11 expert confirmed this to be true. Thus, Plaintiff's applied a 75% discount to the Realistic Damages  
12 model for this claim and estimated Defendants' exposure for this claim ranged from approximately  
13 \$3,031.25 dollars to approximately \$12,125 dollars. JCL Dec., ¶ 32.

14 (7) Defendants' Estimated Exposure for Off-the-Clock Work

15 Additionally, Plaintiff's alleged that Defendant failed to pay their employees for all hours  
16 worked. Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent  
17 responding to COVID-19 questionnaires. Defendants vigorously denied liability for this claim.  
18 Defendants argued that all Class Members were properly paid minimum and overtime compensation  
19 for all hours worked and that Class Members were instructed not to work off-the-clock. Plaintiff  
20 applied a 25% discount to the Realistic Damages model and estimated Defendants' exposure for this  
21 claim ranged from \$110,373 dollars to approximately \$147,165 dollars. JCL Dec., ¶ 33.

22 (8) Defendants' Estimated Exposure for Wage Statement Violations

23 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage  
24 statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest  
25 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to  
26 derivative wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88  
27 Cal.App.5th 927 (concluding that meal premiums are "wages" entitling employees to derivative wage  
28 statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage

1 statements, Plaintiffs could not establish the injury requirement on a class-wide basis. As a result,  
2 Plaintiff discounted this claim 50% to account for this risk. Plaintiff estimated that Defendants'  
3 exposure on this claim ranged between \$34,925 dollars and \$69,850 dollars. JCL Dec., ¶ 34.

4 (9) Defendants' Estimated Exposure for Waiting Time Penalties

5 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for  
6 waiting time penalties. Although these *penalties* represented one of Defendants' largest dollar amount  
7 of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could  
8 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.  
9 Notwithstanding the uncertain nature of the claims, Class Counsel's Realistic Damages model  
10 discounted this claim by 50% and estimated Defendants' exposure for these claims ranged between  
11 \$52,422.50 dollars and \$104,845 dollars. JCL Dec., ¶ 35.

12 (10) Defendants' PAGA Exposure

13 Class Counsel's damage models also estimated Defendants' exposure for PAGA Payment. At  
14 the time of mediation, Plaintiff estimated Defendants' PAGA exposure ranged between \$35,600.00  
15 dollars and \$144,300.00 dollars if successful at trial. JCL Dec., ¶ 36. The proposed PAGA allocation of  
16 the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72  
17 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there  
18 is no indication that this amount was the result of self-interest at the expense of class members," such  
19 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009  
20 WL 928133, at \*9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment  
21 in the range of zero to two percent of the settlement. *See id.* at \*1, 9 (approving a PAGA payment of  
22 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal.  
23 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-  
24 02420 GAF (PLAx), 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts  
25 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

26 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000 which is 4.5%  
27 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.  
28 Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA ("LWDA

PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will be distributed to the PAGA Class Members, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 37.

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

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

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

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

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110

1 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the  
2 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*  
3 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
4 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
5 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th  
6 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly  
7 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176  
8 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to  
9 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
10 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
11 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
12 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
13 certification of driver meal and rest period claims based on the predominance of individual issues).  
14 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,  
15 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
16 settlement. JCL Dec., ¶ 38.

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

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

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

27 Finally, continuing to litigate this action would require continued and extensive resources  
28 coupled with significant Court time to proceed through trial and post-trial motions; which can often

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates  
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at  
3 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that  
4 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,  
5 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. “Avoiding such a trial and the  
6 subsequent appeals in this complex case strongly militates in favor of settlement rather than further  
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221  
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are  
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$220,000.00 that is  
11 roughly between approximately 18.44%-33.79% of Defendants’ *class-wide* liability exposure for  
12 damages and statutory penalties, and approximately 15.03% of Defendants’ maximum class wide  
13 liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the  
14 settlement here, as compared to potential value of the claims, offset by the various inherent risks to  
15 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 40.

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

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

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.

1 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class  
2 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then  
3 mail the proposed Class Notice to all Class Members. The Notice will include information regarding  
4 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the  
5 procedure, and time period within which to requests for exclusions or objections to the Settlement, the  
6 date for the final approval hearing, the formula used to calculate settlement payments, and the terms  
7 and scope of the Released Claims. Agreement at § I(R). The Parties negotiated this method to ensure  
8 delivering the most reasonable method of notice to the Class Members while ensuring cost effective  
9 administration of the Settlement. JCL Dec., ¶ 41.

10 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice  
11 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485  
12 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and  
13 of the options open to dissenting class members.") JCL Dec., ¶ 42.

14 **C. The Court Should Preliminarily Approve the Class Representative Service Award**

15 Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee*  
16 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*  
17 *Publishing Corp.* (9<sup>th</sup> Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)  
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53  
19 UCLA L. Rev. 1303 (2006).) Enhancement payments "are intended to compensate class representatives  
20 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing  
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."  
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to  
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in  
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*  
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The  
27 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,  
28 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on

1 the status of his case and the strategies for prosecuting the claims, and reviewing the proposed  
2 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL  
3 Dec., ¶ 43.

4 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class  
5 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff  
6 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated  
7 Class Representative Service Award. JCL Dec., ¶ 44.

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

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

19 Class Counsel took this matter on a contingency fee basis and invested significant time and  
20 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average  
21 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class  
22 Members. Considering the positive outcome for the Class Members, and in light of the supporting  
23 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 45.

24 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary  
25 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient  
26 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

#### 27 **E. Provisional Certification for Settlement Purposes Is Appropriate**

28 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification

1 of the Class is appropriate. JCL Dec., ¶ 47.

2 1. The Standard for Class Certification

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

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

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

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

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

26 Because all Class Members are Defendants’ current and former employees, the class is readily  
27 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 48.

28 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire

1 Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants'  
2 liability can be determined by facts common to all members of the class. The wage and hour issues are  
3 both numerous and substantial, and a class action is the most advantageous method of dealing with the  
4 claims of the Settlement Class. JCL Dec., ¶ 49.

5 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise  
6 from the same factual basis and are based on the same legal theories applicable to the other Class  
7 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement  
8 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed  
9 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability  
10 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive  
11 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 50.

12 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience  
13 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and  
14 gained state court settlement approval of the same class-wide causes of action that are at issue in this  
15 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to  
16 represent the interests of this Class. JCL Dec., ¶¶ 52-60, Declaration of Shani Zakay, ¶¶ 1-3.

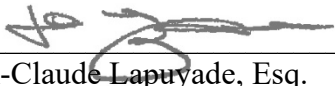
17 A class action is superior to a multitude of individual lawsuits. Given the size and amount of  
18 each individual claim, the Class Members likely have little incentive to litigate their claims on an  
19 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each  
20 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case  
21 adjudication. JCL Dec., ¶ 51.

#### 22 IV. CONCLUSION

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

26 Dated: May 2, 2023

JCL LAW FIRM, APC

27 By:   
28 Jean-Claude Lapuyade, Esq.