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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TATIANA BOVE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

S&B RESTAURANT GROUP LLC dba
CHICK-FIL-A, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No. 23STCV02528

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

Date: July 26, 2024

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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1 I. INTRODUCTION

2 Plaintiff TATIANA BOVE (“Plaintiff”) seeks preliminary approval of the Class Action
3 and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable
4 monetary relief for approximately 381 Class Members and 278 Aggrieved Employees. The basic terms
5 of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all persons who are or previously were
7 employed by S&B Restaurant Group, LLC (“Defendant”) in California and classified as non-exempt
8 employees (“Class”) at any time during the period commencing February 6, 2019, through January 9,
9 2024 (“Class Period”). Agreement at §§ 1.7, 1.12. As of the date of the Agreement, there were
10 approximately 381 Class Members who worked approximately 18,425 Workweeks during the Class
11 Period. Agreement at § 4.1.

12 2. The “**Participating Class Member**” refers to all Class Members who do not submit a
13 valid and timely Request for Exclusion from the Settlement. Agreement at § 1.45.

14 3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all employees who worked
15 for Defendant in California (“Aggrieved Employee”) during the period between December 1, 2021,
16 through January 9, 2024. Agreement at §§ 1.4, 1.32. Aggrieved employees do not have the ability to
17 opt-out of the PAGA portion of the settlement. Agreement at §§ 5.3; 7.5. As of the date of the
18 Agreement, there were approximately 278 Aggrieved Employees who worked approximately 8,515 pay
19 periods during the PAGA Period. Agreement at § 4.1.

20 4. The “**Gross Settlement Amount**” is Three Hundred Thousand Dollars and Zero Cents
21 (\$300,000.00). Agreement at §§ 1.23, 3.1. The Gross Settlement Amount is non-reversionary and
22 includes the following:

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

25 b. A payment of “**Attorneys’ Fees and Litigation Costs**” in the amount not to exceed one-
26 third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$100,000.00 *and*

27
28 ¹ The Agreement is attached as Ex “A” to the Declaration of Perssia Razma (“PPR Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the PPR Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

litigation costs and expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at §§ 1.5, 3.2.2. The Attorneys' Fees shall be divided between Class Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement at § 1.5. Plaintiff has reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Tatiana Bove ("Bove Dec.") at ¶ 10;

c. A "**PAGA Payment**" in the amount of \$20,000.00 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 \$15,000.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA Payment"). Agreement at §§ 1.28, 1.35, 3.2.5. The Administrator shall distribute \$5,000.00 representing 25% of the PAGA Payment to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at §§ 1.25, 1.35, 3.2.5.

d. "**Administration Expenses Payment**" not to exceed \$9,000.00 payable to the Administrator for, *inter alia*, the administration of the Class Notice and Individual Class Payments. Agreement at § 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, in the amounts approved by the Court. Agreement at § 1.29. The Net Settlement Amount is approximately \$136,000.00 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 **\$356.96**. PPR Dec., ¶ 7.

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 of Defendants prevailing at trial. Finally, the Settlement considers Defendant's financial condition and ability to satisfy a larger settlement. PPR Dec., ¶ 7.

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, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. PPR Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant owns, operates, and manages a Chick-fil-A restaurant franchise in the county of Los Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendant's current and former non-exempt employees employed in California at any time during the Class Period. Plaintiff worked for Defendant as a non-exempt employee in California from April of 2022 to August of 2022. At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendant's policies and procedures. PPR Dec., ¶ 9; Bove Dec. at ¶ 4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for required business expenses, unlawfully deducted required uniform expenses from wages, failed to furnish accurate itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that it paid employees for all hours worked, maintained facially compliant meal and rest period policies, did not engage in unlawful payroll deductions, issued compliant wage statements, and timely paid all wages when due. PPR Dec., ¶ 10.

On December 1, 2022, Plaintiff served Defendant 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 Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). PPR Dec., ¶ 11.

On February 6, 2023, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case Number 23STCV02528 (“Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203; (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (8) Failure Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. PPR Dec., ¶ 12.

The Parties agreed relatively early to mediate the Action. On January 9, 2024, the Parties participated in a full day mediation with retired jurist and mediator Hon. Brian C. Walsh (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. PPR Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including her wage statements. At the conclusion of the interviews and review of documents, Class Counsel determined that each Plaintiff’s complaints justified further inquiry. PPR Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff’s employee file from Defendant. In response,

1 Defendant produced various documents, including but not limited to, copies of Plaintiff's payroll
2 records. Class Counsel reviewed and analyzed the documents and determined the documents appeared
3 to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked
4 and issue accurate itemized wage statements. PPR Dec., ¶ 15.

5 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
6 interest of both Parties to mediate the matter. Once the parties decided to attend mediation, they met and
7 conferred with respect to a sampling of Class Members' time and payroll records. During the Initial
8 Status Conference, Class Counsel and Defense Counsel requested the Court's guidance on a sample size
9 needed for purposes of preliminary approval. The Court indicated to Counsel that that a 25% sample of
10 time and payroll records would be sufficient for preliminary approval. Based on the Court's guidance,
11 The Parties agreed to a 25% sample. Pursuant to the Parties agreement, Defendant produced time and
12 payroll records for the Class Members, aggregate workweek and pay period data for the Class Members,
13 average hourly rate for the Class Members, and copies of applicable handbooks, policies, and
14 agreements. PPR Dec., ¶ 16.

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

21 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
22 models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay
23 periods, average length of shift, and average number of hours worked per workweek and pay periods
24 during the Class Period. BCG also estimated the number of meal and rest period violations, the amount
25 of unpaid wages, the amount of unlawful deductions, and the amount of off-the-clock work performed
26 by the Class Members during the Class Period. PPR Dec., ¶ 18.

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

1 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
2 during the mediated settlement discussions. PPR Dec., ¶ 19.

3 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
4 Plaintiff's suitability as a putative class representative through interviews, background investigations,
5 and analysis of her employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching
6 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of
7 employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendant's labor
8 policies and practices; (6) researching settlements in similar cases as well as outstanding issues which
9 could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability
10 for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This
11 investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled,
12 as well as the impediments to recovery, such as to make an independent assessment of the reasonableness
13 of the terms to which the Parties have agreed. PPR Dec., ¶ 20.

14 Class Counsel only agreed to enter the Settlement following this thorough investigation,
15 evaluation of Plaintiff's claims, and evaluation of Defendant's financial condition. Based on their
16 investigation of the facts, applicable law, and marketplace for similar settlements, and considering the
17 risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by
18 Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members.
19 Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily
20 approve the Settlement. PPR Dec., ¶ 21.

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

22 On January 9, 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 defense, 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 submit that the Settlement constitutes a fair,

adequate, and reasonable compromise of the claims at issue. PPR Dec., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The Participating Class Members consist of all persons who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the period commencing February 6, 2019, through January 9, 2024, who do not file a timely and valid Request for Exclusion from the Settlement. Agreement at §§ 1.7, 1.12, 1.45. At the time the Agreement was executed, there were approximately 381 Class Members that worked approximately 18,425 Workweeks. Agreement at § 4.1.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$300,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Class Representative Payment of \$10,000.00 to Plaintiff for her services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of \$20,000.00; (4) Administration Expenses Payment estimated at \$9,000.00; (5) Attorneys' Fees and Litigation Costs in the amount of up to \$125,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$100,000.00 and up to \$25,000.00 for actually incurred litigation expenses. *See generally* Agreement at § 3.2.

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 Class Member as Individual Class Payments. Agreement at § 1.29. There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement at § 3.1.

3. The Funding Date and Installment Plan

Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$300,000.00 Gross Settlement Amount in two (2) installments. Defendant will make the first payment in the amount of \$195,000.00 by April 11, 2025, or 60 days after the Court grants final approval of the settlement, whichever is later ("First Installment"). Defendant will make the second payment in the amount of

1 \$105,000.00 by February 11, 2026 ("Second Installment"). Agreement at § 4.3.

2 4. Formula for Calculating Individual Class Payments

3 Each Participating Class Member will receive an Individual Class Payment. The Class Data
4 provided by Defendant to the Administrator will include the number of eligible Workweeks for each
5 Participating Class Member. The Individual Class Payments will be calculated by dividing the Net
6 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
7 during the Class Period and multiplying the result by each Participating Class Member's Workweeks.
8 Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated
9 employee tax withholdings (*e.g.*, employee payroll taxes, etc.). Agreement at § 3.2.4.1.

10 Given that there are approximately 381 Class Members, *the average gross recovery is*
11 *approximately \$356.96.* (Net Settlement Amount divided by Participating Class Members). PPR Dec.,
12 ¶ 7.

13 5. Release by Participating Class Members

14 Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to
15 release the Released Parties from the Released Class Claims that accrued during the Class Period.
16 Agreement at §§ 1.39; 5.2.

17 6. PAGA Release by the Aggrieved Employees

18 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
19 on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA
20 Claims that accrued during the PAGA Period. Agreement at §§ 1.40; 5.3.

21 **III. ARGUMENT**

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

23 The proposed Settlement, including a Gross Settlement Amount of \$300,000.00, meets the
24 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
25 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary
26 conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement
27 approval requires an early "preliminary" review by the trial court and a subsequent "final" review after
28 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 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

1 The Parties participated in mediation with the highly respected mediator and retired judge Hon.
2 Brian C. Walsh (Ret.). Judge Walsh managed the Parties' expectations and provided a useful, neutral
3 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-
4 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation
5 weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d.
6 Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps
7 to ensure that the proceedings were free of collusion and undue pressure.")) At all times, the Parties'
8 negotiations were at an arm's length, adversarial, and non-collusive. After a full day of mediated
9 negotiations, the mediation concluded with a settlement. PPR Dec., ¶ 23.

10 Once the Parties reached a settlement, the Parties engaged in negotiations regarding the written
11 terms of the class action and PAGA settlement. The Agreement is the final product of the mediated
12 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise
13 of the claims at issue. PPR Dec., ¶ 24.

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

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

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

1 approve the Settlement. PPR Dec., ¶ 26.

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

3 The Gross Settlement Amount of \$300,000.00 is within the range of reasonableness. To
4 determine whether a settlement is fair and reasonable, the court should “consider enough information
5 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
6 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
7 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the
8 court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark
9 of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit
10 statement of value; [they] require[] a record which allows an understanding of the amount that is in
11 controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling*
12 *Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is
13 not dependent upon its actual value approaching the potential recovery plaintiffs might have received if
14 they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not
15 involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak*
16 *Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y.
17 1993) 150 F.R.D. 57, 66).)

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

19 The Gross Settlement Amount of \$300,000.00 is fair and reasonable considering the nature and
20 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
21 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
22 liability exposure while accounting for the uncertainties of continued litigation. The various models

23 ² 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 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
2 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
3 PAGA penalties) ranged between \$754,907.62 (“Conservative Model”) and \$2,232,347.22 (“Aggressive
4 Model”) if successful at trial. This range reflects the uncertainty regarding several of the claims, together
5 with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time
6 penalties. Thus, the Gross Settlement Amount of \$300,000.00 represents approximately between
7 13.44% (“Aggressive Model”) and 39.74% (“Conservative Model”) of Defendant’s *class-wide* liability
8 exposure as estimated by Class Counsel at the time of mediation. The following summarizes
9 Defendant’s estimated exposure. PPR Dec., ¶ 27.

10 (1) Estimated Exposure for Meal Period Violations

11 Plaintiff alleged that Defendant failed to provide compliant meal periods and failed to provide
12 meal period premiums. Specifically, Plaintiff alleged that because of rigorous work schedules and
13 Defendant’s understaffing, Plaintiff and Class Members were unable to take timely and duty-free meal
14 periods. An analysis of the Class Members’ time and payroll data revealed a modest 18.6% meal period
15 violation rate. A majority of these violations were seen in shifts between 5 and 6 hours, resulting in a
16 violation rate of 40.7%. Defendant had in place a meal period waiver that was signed by a majority of
17 the Class Members. However, Plaintiff alleged that a majority of these signed meal period waivers were
18 unenforceable. PPR Dec., ¶ 28.

19 Defendant argued, *inter alia*, that it provided the Class Members with compliant meal periods
20 and maintained facially compliant meal period policies, such that any missed meal periods were by
21 choice of each individual Class Member. Further, Defendant argued that its meal period waiver was
22 enforceable. Thus, Defendant argued that there was no potential liability for Plaintiff’s alleged meal
23 period violations and any claimed violations required a highly individualized inquiry not suitable to
24 class treatment. PPR Dec., ¶ 29.

25 Consequently, Plaintiff applied a 90% discount to this claim and estimated that the damages for
26 this claim ranged from approximately \$21,102.94 to approximately \$211,029.36. PPR Dec., ¶ 30.

27 (2) Estimated Exposure for Unlawful Payroll Deductions

28 Plaintiff also alleged that Defendant made unlawful deductions from Plaintiff and Class

Members’ pay in violation of California Labor Code section 221. Specifically, Plaintiff and Class Members were required to wear a uniform. However, Plaintiff alleged that Defendant unlawfully deducted the uniform expenses from Plaintiff and Class Members’ wages. Conversely, Defendant argued that it did not make unlawful deductions from Plaintiff and Class Members’ wages. Plaintiff estimated Defendant’s exposure for this claim to be approximately \$34,715.00. PPR Dec., ¶ 31.

(3) Estimated Exposure for Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of rigorous work schedules and Defendant’s understaffing, Plaintiff and Class Members were unable to take timely and duty-free meal periods. Again, Defendant denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff’s rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Consequently, Plaintiff applied a 50% discount to this claim and estimated that the damages for this claim ranged from approximately \$105,514.68 to approximately \$211,029.36. PPR Dec., ¶ 32.

(4) Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendant’s labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendant’s largest dollar amount of exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. As a result, Plaintiff discounted this claim 90%. Plaintiff estimated Defendant’s exposure for these claims

1 ranged between \$84,766.50 and \$847,665.00. PPR Dec., ¶ 33.

2 (5) Estimated Exposure for Wage Statement Violations

3 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
4 statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to pay all meal and rest
5 premiums owed, Plaintiff and other Class Members are entitled to derivative wage statement penalties.
6 (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are
7 "wages" entitling employees to derivative wage statement penalties). Defendant argued that this claim
8 would fail because the underlying claims would fail and that, even if it failed to furnish accurate wage
9 statements, Plaintiff could not establish the injury requirement on a class-wide basis. As a result,
10 Plaintiff discounted this claim 50% to account for this risk. Plaintiff estimated that Defendant's
11 exposure on this claim ranged between \$419,100.00 and \$838,200.00. PPR Dec., ¶ 34.

12 (6) Estimated Exposure for Failure to Reimburse for Business
13 Expenses

14 Plaintiff alleged that Defendant required Plaintiff and Class Members to maintain their own
15 uniforms as a result of and in furtherance of their job duties but were not reimbursed by Defendant.
16 California employers who require employees to incur personal business expenses for work purposes
17 must reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n
18 employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the
19 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the
20 directions of the employer...."). Again, Defendant denied any liability for this claim. Defendant argued
21 that Class Members were not required to maintain their own uniforms and that its written policies
22 provide for the reimbursement of required business expenses. Plaintiff estimated Defendant's exposure
23 for this claim to be approximately \$24,387.50. PPR Dec., ¶ 35.

24 (7) Estimated Exposure for Off-the-Clock Work Resulting in
25 Minimum Wage and Overtime Violations

26 Plaintiff further alleged that Defendant failed pay for time spent working while off-the-clock,
27 resulting in Defendant's failure to pay all minimum and overtime wages. Specifically, Plaintiff alleged
28 that Plaintiff and Class Members were required to work while clocked out during what was supposed to

1 be their off-duty meal breaks. As a result, Defendant failed to pay for Class Members minimum wage
2 and overtime compensation. Defendant denied any liability for this claim. Defendant argued that it
3 maintained legally compliant meal period policies and practices throughout the Class Period, that Class
4 Members were required to accurately record their hours worked, and that Class Members were instructed
5 not to perform any work-related tasks off-the-clock. Plaintiff estimated Defendant's exposure for this
6 claim to be approximately \$65,321.00. PPR Dec., ¶ 36.

7 (8) Defendants' PAGA Exposure

8 In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between
9 \$42,575.00 ("Conservative Model") and \$2,376,150.00 ("Aggressive Model") if successful at trial. PPR
10 Dec., ¶ 37. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.
11 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith
12 amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest
13 at the expense of class members," such amounts are generally considered reasonable. *Hopson v.*
14 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts
15 routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement.
16 *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683
17 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of
18 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5
19 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of
20 zero to two percent of the total settlement).

21 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$20,000 which is
22 6.67% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
23 Payment. The LWDA Payment of \$15,000.00 represents seventy-five percent (75%) of the PAGA
24 Payment and will be paid to the LWDA. The Aggrieved Employee Payment of \$5,000.00 represents
25 the remaining twenty-five percent (25%) of the PAGA Payment, which shall be distributed to the
26 Aggrieved Employees and is within the range of PAGA Payment approved by courts and should be
27 approved. PPR Dec., ¶ 38.

28 ///

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
2 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
3 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
4 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
5 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
7 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
8 6, 2016) (PAGA penalties denied after trial).

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
10 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
14 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
15 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
16 discussed, *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
17 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
18 rest period claims. PPR Dec., ¶ 39.

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

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

27
28 ///

1 **b. Inherent Risks of Continued Litigation and Defendant’s Financial Condition**
2 **Support Preliminary Approval.**

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

8 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
9 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
10 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
11 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
12 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
13 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
14 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
15 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
16 reason, if any, that employees might not take their breaks were predominantly individualized questions
17 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
18 (affirming denial of certification because employees’ declarations attesting to having taken meal and
19 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
20 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
21 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
22 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
23 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
24 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
25 certification through a contested motion is a significant risk factor favoring settlement. PPR Dec., ¶ 40.

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

1 perilous regardless of the strengths of merits of the claims:

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

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

8 Finally, continuing to litigate this action would require continued and extensive resources
9 coupled with significant Court time to proceed through trial and post-trial motions; which can often take
10 years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive
11 expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial,
12 Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
13 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
14 the risk of an appeal and subsequent reversal is real. PPR Dec., ¶ 41. “Avoiding such a trial and the
15 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
16 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
17 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
18 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

19 Further, Defendant’s poor financial condition supports preliminary approval of the settlement.
20 During the litigation, Defendant raised the possibility that it would be unable to satisfy a class-wide
21 settlement due to its financial condition. Not accepting Defendant’s representation, Class Counsel
22 requested supporting financial documents from Defendant. Additionally, Class Counsel retained
23 Certified Public Accountant, Kenneth L. Creal, to analyze Defendant’s financial condition and assess
24 Defendant’s ability to satisfy a class-wide settlement. Mr. Creal analyzed Defendant’s publicly available
25 financial information, and a number of Defendant’s financial documents that it produced to Class
26 Counsel, including Defendant’s tax returns for 2021 and 2022, and Defendant’s balance sheet and
27 income and expense figures for Defendants’ business. Based on a review of Defendant’s financial
28 documents, Mr. Creal determined that Defendant could not afford a settlement larger than the one

1 contemplated here. Moreover, the payment plan contemplated by the Agreement is appropriate here
2 because it allows for Defendant to work toward accumulating the settlement funds. PPR Dec., at ¶ 42;
3 Declaration of Kenneth L. Creal (“Creal Dec.”) at ¶¶ 1-9.

4 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$300,000.00 that is
5 roughly between 13.44% (“Aggressive Model”) and 39.74% (“Conservative Model”) of Defendant’s
6 maximum class wide liability exposure for damages and statutory penalties. Given the amount of the
7 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
8 continued litigation, the settlement is fair and reasonable. Notably, as discussed above, Defendant raised
9 the possibility that it would be unable to satisfy a class-wide settlement due to its financial condition.
10 Accordingly, the Gross Settlement Amount accounts for the risk that Defendant would be unable to
11 satisfy a larger settlement than the one contemplated here. PPR Dec., ¶ 43.

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

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

22 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
23 Members of their rights and remedies. The Administrator will first verify addresses, then mail the
24 proposed Class Notice in English and Spanish to all Class Members. The Notice will include information
25 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure,

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

1 and time period within which to requests for exclusions or objections to the Settlement, the date for the
2 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
3 the Released Class Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering
4 the most reasonable method of notice to the Class Members while ensuring cost effective administration
5 of the Settlement. PPR Dec., ¶¶ 44-45.

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

10 **C. The Court Should Preliminarily Approve the Class Representative Payment**

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

22 The Settlement provides for a Class Representative Payment of \$10,000.00 for Plaintiff. The
23 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting
24 Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status
25 of her case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure
26 that its terms are fair and provide adequate relief for the Class Members. PPR Dec., ¶ 46; Bove Dec., ¶
27 5-10.

28 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class

Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. PPR Dec., ¶ 47.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs

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

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

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

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. PPR Dec., ¶ 50.

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1 1. The Standard for Class Certification

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

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

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

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

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

25 Because all Class Members are Defendant’s current and former employees, the class is readily
26 ascertainable from Defendant’s regular business records, i.e., payroll records. PPR Dec., ¶ 51.

27 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
28 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be

1 determined by facts common to all members of the class. The wage and hour issues are both numerous
2 and substantial, and a class action is the most advantageous method of dealing with the claims of the
3 Class Members. PPR Dec., ¶ 52.

4 Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the
5 same factual basis and are based on the same legal theories applicable to the other Class Members.
6 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class Members. Plaintiff
7 alleges that she was injured by the same company-wide practices to which the proposed Class Members
8 were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for
9 the interests of the Class Members by initiating this litigation, undertaking extensive class discovery,
10 and evaluating the proposed settlement to assure that it is fair. PPR Dec., ¶ 53.

11 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
12 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
13 gained state court settlement approval of the same class-wide causes of action that are at issue in this
14 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
15 represent the interests of this Class. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 3-9;
16 Declaration of Shani Zakay ("SOZ Dec."), ¶¶ 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., ¶ 54. Finally, Class Counsel is not aware of any other pending matters or actions
22 asserting claims that will be extinguished or adversely affected by the Settlement. JCL Dec., ¶ 10; SOZ
23 Dec., ¶ 4.

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Dated: July 2, 2024

By: Perssia Razma
Perssia Razma, Esq.