

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 892-7095
Facsimile: (858) 404-9203
shani@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JULIO C. HERNANDEZ, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

BREAKFAST CLUB LLC, a California limited
liability company, and DOES 1-50, Inclusive,

Defendants.

Case No. CVRI2203757

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

Date: December 5, 2023

Time: 8:30 a.m.

Dept.: 1

Reservation ID 256835660622

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I. INTRODUCTION

Plaintiff Julio C. Hernandez (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 62 members of the Class who collectively worked approximately 5,892 Workweeks. The basic terms of the Agreement provide for the following:

1. The **“Class Members,” “Settlement Class Members” and “Class Period”** shall mean all non-exempt employees who are or previously were employed by Breakfast Club LLC (“Defendant”) and performed work in California (“Class” or “Class Members”) between September 2, 2018 to July 28, 2023 (“Class Period”). Agreement at §§ I(H) and (I). The “Settlement Class Members” exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(II).

2. The **“Aggrieved Employees” and “PAGA Period”** means all non-exempt employees who are or previously were employed by Defendant and performed work in California (“Aggrieved Employees”) between June 29, 2021 until July 28, 2023 (“PAGA Period”). Agreement at §§ I(B) and (W). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The **“Gross Settlement Amount”** is Two Hundred Twenty-Five Thousand Dollars (\$225,000). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Class Representative Service Award”** in the amount of \$10,000 to Plaintiff for his services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §III(M)(9);

b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$75,000 **and** litigation costs and expenses not to exceed \$12,000, to be paid to Class Counsel. Agreement at §III(M)(10);

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

c. A “**PAGA Settlement**” of \$10,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of the PAGA Settlement to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §III(M)(11); and

d. “**Settlement Administration Costs**” not to exceed \$4,500 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §III(M)(12).

3. The “**Net Settlement Fund**” of approximately \$113,500 (Gross Settlement Amount minus the requested Class Representative Service Award, Class Counsel Award, PAGA Settlement and Settlement Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members. Assuming a 100% participation rate, the average Individual Settlement Payment to each Settlement Class Member is estimated to be **\$1,830.65**. Agreement at §III(M)(1); JCL Dec., ¶ 7.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class Members 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, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover,

the proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant owns and operates a restaurant in Riverside, California. This action asserts claims on behalf of Defendant’s non-exempt employees. Plaintiff worked for Defendant as a non-exempt employee in California during 2022. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant’s written policies and procedures. JCL Dec., ¶ 9; Declaration of Julio C. Hernandez (“Hernandez Dec.”) at ¶¶ 1-5.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse employees for required expenses, 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 it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and timely payment of all wages. JCL Dec., ¶ 10.

On June 29, 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 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 September 2, 2022, Plaintiff filed a class action lawsuit in the Riverside Superior Court, Case Number CVRI2203757 (“Action”). The Action alleged ten causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§

1 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code
2 §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§
3 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§
4 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal.
5 Lab. Code § 2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§
6 201, 202 and 203; (8) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal.
7 Lab. Code §§ 226 and 226.2; (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code §
8 351 and (10) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. JCL
9 Dec., ¶ 12.

10 The Parties agreed to mediate the Action with Judge Carl West (Ret.), an experienced
11 mediator of wage and hour class actions. To prepare for mediation, the Parties agreed to
12 informally exchange documents and data points subject to the mediation privilege, including but
13 not limited to, the Class Members' time data and certain payroll data points. As discussed *infra*,
14 Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to
15 analyze Defendant's time and payroll data. JCL Dec., ¶ 13.

16 On June 28, 2023, the Parties participated in a full day mediation with Judge West. After
17 arms-length negotiations and bargaining, the mediation concluded in a settlement which was
18 subsequently memorialized in the form of a Memorandum of Understanding. The Parties drafted
19 and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL
20 Dec., ¶ 14.

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

22 Months before filing the Action, Class Counsel began its pre-filing investigation into the
23 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
24 Plaintiff. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
25 justified further inquiry. JCL Dec., ¶ 15.

26 Considering the many anticipated factual disputes, the Parties agreed, relatively early in
27 the litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare
28 for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's

1 claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's
2 request, Defendant produced time records and pay data for the Class Members, which allowed
3 Plaintiff's expert to determine the average shift length, average hourly rate for the Class Members,
4 and total number of workweeks and pay periods in the Class Period and PAGA Period,
5 respectively, before beginning its analysis related to Plaintiff's allegations. Defendant also
6 produced copies of applicable handbooks, policies, and agreements containing, *inter alia*,
7 compensation, timekeeping and meal and rest period policies. JCL Dec., ¶ 16.

8 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
9 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
10 services specializing in wage and hour class actions. BCG's team of financial and data analysts
11 are credentialed and experienced experts in their fields and have provided their expertise on
12 thousands of cases. Stated differently, the BCG is uniquely qualified to analyze Defendant's time
13 and payroll data. JCL Dec., ¶ 17.

14 BCG analyzed Defendant's time and payroll data to assist in the development of various
15 damage models. Among other things, BCG determined the approximate number of work shifts,
16 pay periods, and average number of hours worked per shift during the Class Period. BCG also
17 estimated the number of unpaid overtime hours, unpaid reporting time pay, the number of meal
18 and rest break violations, as well as the total damages due to unreimbursed business expenses
19 during the Class Period. JCL Dec., ¶ 18.

20 In advance of mediation, Class Counsel created several damage models predicated on the
21 BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while
22 accounting for the uncertainties of continued litigation. These damage models informed and
23 guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 19.

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

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

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

9 On June 28, 2023, the Parties conducted a full day of mediation with by Judge Carl West
10 (Ret.), an experienced wage and hour mediator. Judge West helped manage the Parties'
11 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
12 Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged
13 information regarding their respective claims and defense, including their respective evaluation
14 of the damages. After a day of arm's length and adversarial negotiations, the mediation concluded
15 with a settlement. The complete and final terms of the Parties' settlement are now set forth in the
16 Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable
17 compromise of the claims at issue. JCL Dec., ¶ 21.

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

19 1. The Composition of the Class

20 The proposed Class consists of all non-exempt employees who are or previously were
21 employed by Defendant and performed work in California between September 2, 2018 to July 28,
22 2023. The Settlement Class excludes any person who submits a timely and valid request for
23 exclusion. Through the conclusion of the Class Period, there are approximately 62 Class Members
24 that worked an estimated 5,892 Workweeks during the Class Period. Agreement at §III(A)(4).

25 2. The Settlement Consideration

26 The Parties agreed to settle the underlying class claims in exchange for the Gross
27 Settlement Amount of \$225,000. The Gross Settlement Amount includes: (1) Individual
28 Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of

1 \$10,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for
2 a general release of claims; (3) a PAGA Settlement in the amount of \$10,000; (4) Settlement
3 Administration Costs estimated at \$4,500; (5) Class Counsel Award in the amount of \$87,000,
4 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be
5 \$75,000 and an estimated \$12,000 for actually incurred litigation expenses. See generally
6 Agreement at §III(M).

7 Subject to the Court approving the Class Representative Service Award, Class Counsel
8 Award, PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount
9 will be distributed to each member of the Settlement Class. Agreement at §III(M)(1). There is no
10 reversion to Defendant and Defendant must separately pay for its share of the employer payroll
11 taxes. Agreement at §III(A)(1).

12 3. The Funding Date

13 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$225,000
14 Gross Settlement Amount, plus any employer's share of payroll taxes, within sixty (60) calendar
15 days of the Court's entry of the order granting final approval of this Settlement. Agreement at
16 §I(N-O).

17 4. Formula for Calculating Individual Settlement Payments

18 Each Settlement Class Member will receive an Individual Settlement Payment. The
19 Individual Settlement Payment will be proportional to the number of Workweeks each Settlement
20 Class Member worked for Defendant in California during the Class Period. The Class Data
21 provided by Defendant to the Settlement Administrator will include the information required to
22 calculate the number of Workweeks for each Class Member and the number of PAGA Pay Periods
23 worked during the PAGA Period. Agreement at §I(G). Each Settlement Class Member's final
24 Individual Settlement Payment will be calculated by using a fraction, the numerator of which is
25 the Settlement Class Member's total number of Workweeks, and the denominator of which is the
26 total number of Workweeks of all Settlement Class Members. Each Individual Settlement
27 Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee
28 payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who

submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(M)(1).

Given that there are approximately 62 Settlement Class Members, the average gross recovery is approximately \$1,830.65 (Net Settlement Amount divided by Settlement Class Members). The range of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. JCL Dec., ¶ 7.

For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 20% as wages (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at §III(M)(3). In calculating Defendant’s total damages exposure, BCG determined that the vast majority of damages are for meal and rest premiums, which can be classified as penalties and not wages. Therefore, with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that an allocation of 20% as wages and 80% as penalties and interest is far and reasonable.

5. Formula for Calculating Individual Payments to the Aggrieved Employees

Each Aggrieved Employee will receive an Aggrieved Employee Settlement Payment. Using the Class Data, each Aggrieved Employee’s final Aggrieved Employee Settlement Payment will be calculated by using a fraction, the numerator of which is the Aggrieved Employee’s total number of PAGA Pay Periods, and the denominator of which is the total number of PAGA Pay Periods of all Aggrieved Employees. Agreement at §III(M)(2). For tax purposes, Aggrieved Employee Settlement Payments shall be allocated and treated as 100% penalties and shall be reported on IRS Form 1099. Agreement at §III(M)(4).

6. Mailing of Individual Settlement Payments and Aggrieved Employee Payments

The Settlement Administrator will mail the Individual Settlement Payments and Aggrieved Employee Payments by regular First-Class U.S. Mail to Settlement Class Members’ and/or Aggrieved Employees’ last known mailing address no later than fifteen (15) calendar days after

1 the Funding Date. Agreement at § III(M)(7). Any checks issued to Settlement Class Members and
2 Aggrieved Employees shall remain valid and negotiable for one hundred and eighty (180) days
3 from the date of their issuance. If a Settlement Class Member and/or Aggrieved Employee does
4 not cash his or her settlement check within 90 days, the Settlement Administrator will send a letter
5 to such persons, advising that the check will expire after the 180th day, and invite that Settlement
6 Class Member and/or Aggrieved Employee to request reissuance in the event the check was
7 destroyed, lost or misplaced. Agreement at § III(M)(8). In the event an Individual Settlement
8 Payment and/or Aggrieved Employee's individual share of the PAGA Settlement check has not
9 been cashed within one hundred and eighty (180) days, the check will be voided and the
10 Settlement Class Member and/or Aggrieved Employee will remain bound by the Settlement. The
11 funds from any such uncashed checks will be directed to the State Controller's Office Unclaimed
12 Property Division in the name of the Class Member or Aggrieved Employee. Agreement at §
13 III(M)(8).

14 7. Release by Participating Settlement Class Members

15 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree
16 to release Defendant and the Released Parties from the Released Claims (those that were alleged
17 in the operative complaint, or could have been alleged based upon the facts in the operative
18 complaint) that accrued during the Class Period. Agreement at §§I(CC) and III(B).

19 8. PAGA Release by Plaintiff and the State of California

20 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of
21 California, will release the Released Parties from all claims for statutory penalties that could have
22 been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter
23 to the LWDA; Plaintiff does not release any aggrieved employee's claim for wages or damages.
24 Agreement at §§I(DD) and III(C).

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III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$225,000 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the

1 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
2 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
3 whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

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

11 The Parties participated in mediation with Judge Carl West (Ret.). Judge West managed
12 the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
13 sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist.
14 LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against
15 any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78,
16 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
17 proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations
18 were at an arm’s length, adversarial and non-collusive. The matter resolved after a full day of
19 mediated negotiations. JCL Dec., ¶¶ 13-14; 21.

20 Once the Parties reached a settlement, they engaged in protracted negotiations regarding
21 the written terms of the class action settlement. The Parties maintained the arm’s length, non-
22 collusive and adversarial negotiations while arriving at the final terms of the Settlement. The
23 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms
24 are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶¶ 13-
25 14; 21.

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

27 The Gross Settlement Amount of \$225,000 is within the range of reasonableness. To
28 determine whether a settlement is fair and reasonable, the court should “consider enough

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

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

17 The Gross Settlement Amount of \$225,000 is fair and reasonable considering the nature
18 and magnitude of the claims being settled and the various potential impediments to recovery. Prior
19 to mediation, Class Counsel retained BCG to develop economic damage models measuring
20 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The
21 various models were informed by Class Counsel’s investigation, including the analysis of a
22

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

significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) at \$1,303,598 if successful at trial. Thus, the Gross Settlement Amount of \$225,000 represents approximately 33.5% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 22.

(1) Estimated Damages for Defendant's Failure to Pay Minimum and Overtime Wages

Plaintiff alleges Defendant failed to pay its employees a minimum wage pursuant to California law. Specifically, Plaintiff alleges that based on the time and wage data provided by Defendant, Defendant paid its employees less than the state-mandated minimum wage (for example, less than \$14 per hour in 2021). Similarly, Plaintiff alleges that Defendant failed to properly pay overtime wages for hours worked in excess of eight hours per day. Specifically, Defendant paid overtime hours at the employee's regular hourly rate rather than at the overtime rate of one-and-one-half times the regular rate of pay. Plaintiff's expert estimated the damages for this claim at approximately \$12,339. JCL Dec., ¶ 23.

(2) Estimated Damages for Defendant's Unlawful Reporting Time Pay Policy

Plaintiff alleges Defendant required its employees to report for work, but failed to put them to work and/or failed to furnish them with work for at least half of their scheduled shift. More specifically, Plaintiff alleges Defendant required Plaintiff and Class Members to arrive to work at the start of their scheduled shifts, but would then send them home before the end of their shift if there was not a need for them. On these occasions, Defendant failed to compensate its employees with Reporting Time pay, as required by the applicable Wage Order, in that they were not paid a minimum of two hours or for half of their scheduled day's work. Based on the time and wage data provided by Defendants, Plaintiff's expert estimated the damages for this claim at approximately \$9,284. JCL Dec., ¶ 24.

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1 (3) Estimated Damages for Defendant's Meal Period Violations

2 Plaintiff alleges Defendant regularly: (a) failed to provide meal periods; (b) provided late
3 meal periods; (c) provided short meal periods; and/or (d) required employees to work through
4 their meal periods. Plaintiff's expert made the following notable findings with respect to
5 Defendant's meal break violations: (1) 46.9% of shifts greater than 6 hours did not record a meal
6 break; (2) 28.2% of shifts greater than 5 hours included a meal break that was less than 30 minutes
7 (*i.e.* a "short" meal break); and (3) 12.1% of shifts included a first meal break that was taken after
8 the end of the 5th hour of work. Defendant raised a number of defenses, including that in shifts
9 exceeding 5 hours but less than 6 hours, employees voluntarily waived their meal periods, and
10 that in shifts exceeding 10 hours but less than 12 hours, employees voluntarily waived their second
11 meal periods. Defendants also argued, among other things, that they provided all their employees,
12 *i.e.*, Class Members and PAGA Class Members, with the opportunity to take compliant meal
13 periods, and that they maintained facially compliant meal period policies. Thus, Defendant argued
14 that any missed meal periods were voluntarily and did not trigger liability for premium payments.
15 Taking Defendant's defenses into account, Plaintiff discounted Defendant's liability for meal
16 period violations by 15%. Plaintiff estimated the damages for this claim at approximately
17 \$153,981 in damages for unpaid meal period premiums. JCL Dec., ¶ 25.

18 (4) Estimated Damages for Rest Period Violations

19 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
20 Plaintiff alleged that Class Members were often not afforded the opportunity to take a complaint
21 rest period due to their rigorous work load requirements and understaffing. Defendants denied
22 liability and asserted that it maintained legally compliant rest period policies and practices
23 throughout the Class Period. Moreover, Plaintiff recognized the evidentiary burdens establishing
24 this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member
25 testimony, making it a riskier claim at class certification and liability stages. Certification likely
26 would have required depositions of Class Members who provided declarations, and Defendant
27 surely would have obtained opposing declarations stating either rest breaks were taken, or rest
28 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.”). Accordingly, Plaintiff’s Damages model mirrored the 15% discount as applied to Class Members’ meal periods. Plaintiff estimated Defendants’ exposure for this claim to be \$268,400. JCL Dec., ¶ 26

(5) Exposure for Failure to Reimburse for Mandatory Business Expenses

Plaintiff alleged that Defendant required that Plaintiff and other Class Members use their personal cell phones in furtherance of their job duties, as well as maintain their uniform at their personal expense. Specifically, Plaintiff alleges that he was required to use his personal cell phone to call customers when their tables were ready if the landlines were already in use. California employers who require employees to use a personal cellular device for work purposes must reimburse the employee for the cost incurred in furnishing the device, including voice and data service. *See* Cal. Labor Code § 2802(a), providing that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” JCL Dec., ¶ 27

Additionally, Plaintiff was required to wear a uniform, which included a Breakfast Club T-shirt. Plaintiff and Class Members were provided a single T-shirt, which they were required to wear during each shift and maintain in good condition. If Plaintiff or Class Members wanted additional T-shirts or other approved apparel, they were required to pay for those items. In order to maintain clean uniforms, Plaintiff and Class Members were required to incur additional personal expenses for which they were not reimbursed. Plaintiff estimated Defendants’ exposure for this claim to be \$30,240. JCL Dec., ¶ 28

(6) Exposure for Waiting Time and Wage Statement Penalties

Plaintiff alleges that Defendant’s alleged violations resulted in derivative violations of Labor Code section 203 and 226. Although these *penalties* collectively represented Defendant’s

largest dollar amount of exposure, Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant contends that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant contends that Plaintiff cannot show that Class Members suffered an “injury” because of wage statement violations, as required by Labor Code section 226. Plaintiff would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). These claims represented Plaintiff’s most legally precarious and uncertain claims, thus Plaintiff applied a 25% discount to these claims and estimated Defendant’s exposure for these claims to be approximately \$198,360. JCL Dec., ¶ 29.

(7) Defendant’s PAGA Exposure

"Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf of herself and other current or former employees and may seek civil penalties for Labor Code violations." *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest periods, and unreimbursed business expenses. The PAGA Period is the period between June 29, 2021 until July 28, 2023 and there are approximately 56 Aggrieved Employees who worked a total of 1,176 pay periods. JCL Dec., ¶ 30.

Plaintiff’s claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
351, 510, 558, 1194 and 1197 (unpaid wages)	56	\$100	1,176	100% of total pay periods	\$117,600
510 (unpaid overtime)	56	\$100	249	21.2% of total pay periods	\$24,900
512 and 226.7 (meal period	53	\$50	1,109	94% of total pay periods	\$55,450

violations)					
512 and 226.7 (rest period violations)	56	\$50	1,176	100% of total pay periods	\$58,800
2802 (unreimbursed business expenses)	56	\$100	1,176	100% of total pay periods	\$117,600
TOTAL					\$374,350

JCL Dec., ¶ 31.

California Labor Code section 2699(e)(1) permits a court to award a lesser amount than the maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation, Defendant argued, among other things, that it was unlikely that any judge would award more than the actual amounts owed on the claims, let alone the full \$50, \$100 or \$200 per violation authorized under PAGA. In *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 204 (2018), the Court of Appeal affirmed a judgement after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff’s calculation even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of pay periods (1,176) by \$5 results in a total potential liability of \$5,880. Therefore, even assuming Plaintiff would have prevailed on all of her claims at trial, the result obtained by Plaintiff in the Settlement exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. JCL Dec., ¶ 32.

As discussed above, Defendant asserted a number of defenses to both the PAGA claim and the underlying Labor Code violations, not only as to liability but also as to the amount of penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one court has ruled. These defenses present a risk to the PAGA claim and a serious risk that some or all of the PAGA penalties Plaintiff sought would not be awarded.

Based on the defenses outlined above, Defendant has argued, and continues to argue, that any violation was not knowing or intentional, and that any penalty awarded beyond the benchmark set in *Carrington* would be unjust, arbitrary and oppressive or confiscatory. Plaintiff concedes that,

at least some of the alleged violations, were arguably not intentional. The Parties ultimately allocated \$10,000 to PAGA, agreeing on a \$8.50 per pay-period violation, which is in between \$5 and \$10 per pay period, and takes into account the significant defenses Defendant raised. JCL Dec., ¶ 33.

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

1 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
2 risk factor favoring settlement.

3 “The Settlement eliminates these and other risks of continued litigation, including the very
4 real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.
5 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through
6 trial is inherently perilous regardless of the strengths of merits of the claims:

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

12 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18,
13 1990).)

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

26 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$225,000 that is
27 roughly 33.5% Defendant’s estimated class wide liability exposure. Given the amount of the
28

1 settlement here, as compared to potential value of the claims, offset by the various inherent risks
2 to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 35.

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

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

13 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
14 Members of their rights and remedies. The Settlement Administrator will first verify addresses,
15 then mail the proposed Class Notice to all Class Members. The Class Notice will include
16 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s
17 terms, the class definition, the procedure and time period within which the form Request for
18 Exclusion or form Objection must be submitted, the date for the final approval hearing, the
19 formula used to calculate settlement payments, and the terms and scope of the Released Claims.
20 Agreement at §III(L). This method was negotiated by the Parties to ensure delivering the most
21 reasonable method of notice to the Class Members while ensuring cost effective administration
22 of the Settlement. JCL Dec., ¶ 36.

23 The Class Notice includes an exclusion form that Class Members can fill out in order to
24 exclude themselves from the Settlement, and an Objection Form that Class Members can fill out
25 in order to object to the terms of the Settlement. The Class Notice informs Class Members of
26

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

1 where they can find the full text of the settlement agreement, the court address, and court website
2 address. See Ex. A to the Agreement.

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

7 **C. The Court Should Preliminarily Approve the Class Representative Enhancement** 8 **Award**

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

20 The Settlement provides for a Class Representative Service Award of \$10,000⁴ for
21 Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing

22 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California
23 courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See*
24 *Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000
25 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No.
26 BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
27 *Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the
28 named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (LA. County Super. Ct. Oct. 3, 2013) (awarding
\$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct.
May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*,
No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass*
Hut Int’l, Inc., No. BC422934 (LA. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Kabamba v. Victoria’s Secret Stores. LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011)

1 the action, assisting Class Counsel with the litigation and settlement, regularly conferring with
2 Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing
3 the proposed Settlement to ensure that its terms are fair and provide adequate relief for the
4 Settlement Class, and agreeing to provide Defendant a general release of all claims arising out of
5 his employment. JCL Dec., ¶ 37.

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Such
8 motion will be accompanied by a declaration from Plaintiff that describes the services he
9 performed to prosecute this action, includes an estimate of time incurred by Plaintiff in performing
10 these services, the risks he assumed or benefits he received in prosecuting this action, and identify
11 any adverse consequences he suffered in prosecuting this action. Hernandez Decl., ¶ 10; JCL Dec.
12 ¶ 37.

13 Plaintiff has **not** negotiated any settlement of individual claims with Defendant separate
14 from the settlement at bar. Hernandez Decl., ¶ 10; JCL Dec. ¶ 37.

15 (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their
16 general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct Apr.
17 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No.
18 BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs);
19 *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement
20 payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000
21 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A.
22 County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*,
23 No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named
24 plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013)
25 (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County
26 Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*,
27 No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar*
28 *v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement
payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010)
(awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v.*
Serco Inc., No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment);
Guerrero v. R.R. Donnelley & Sons Co., No. RIC 10005196 (Riverside Super. Ct July 16, 2013) (awarding \$10,000
enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011)
(awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange
County Super. Ct Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services,*
LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement
payment).

1 Plaintiff respectfully submits that the above showing is sufficient for preliminary approval
2 of the negotiated Class Representative Service Award. JCL Dec., ¶ 37.

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

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

14 Class Counsel took this matter on a contingency fee basis and invested significant time and
15 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
16 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement
17 Class Members. Considering the positive outcome for the Settlement Class Members, and in light
18 of the supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec.,
19 ¶ 38.

20 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
21 approval of the Settlement is granted. Such motion will be accompanied by a declaration that
22 provides evidence of the total amount of time spent by Class Counsel, a description of the work
23 performed, and the reasonableness of the fees charged. Such declaration will also include a
24 detailed description of the costs actually incurred. Such declaration will include details related to
25 fee splitting between Class Counsel, and Plaintiff's written notice of such. Plaintiff respectfully
26 submits that the above showing is sufficient for preliminary approval of the negotiated attorneys'
27 fees. JCL Dec., ¶ 39.

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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. JCL Dec., ¶ 40.

1. The Standard for Class Certification

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

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

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

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

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

1 Because all Class Members are Defendant's current and former employees, the class is
2 readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec.,
3 ¶ 41.

4 The statutes relating to each of Plaintiff's claims apply with equal force and effect to the
5 entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and
6 Defendant's liability can be determined by facts common to all members of the class. The wage
7 and hour issues are both numerous and substantial, and a class action is the most advantageous
8 method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 42.

9 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they
10 arise from the same factual basis and are based on the same legal theories applicable to the other
11 Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the
12 Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to
13 which the proposed Class Members were subject to and seek the same relief. Plaintiff has already
14 demonstrated her ability to advocate for the interests of the Class Member by initiating this
15 litigation, undertaking discovery in order to meaningfully mediate, and evaluating the proposed
16 settlement to assure that it is fair. JCL Dec., ¶ 43.

17 Additionally, Plaintiff is represented by competent Class Counsel who have extensive
18 experience in litigating wage and hour class action cases. Class Counsel successfully briefed,
19 argued, certified, and gained state court settlement approval of the same class-wide causes of
20 action that are at issue in this case. Class Counsel's wage and hour class action experience
21 establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 45-52,
22 Declaration of Shani Zakay, ¶ 3.

23 A class action is superior to a multitude of individual lawsuits. Given the size and amount
24 of each individual claim, the Class Members likely have little incentive to litigate their claims on
25 an individual basis because the out-of-pocket expense and personal commitment necessary to
26 litigate each claim outweighs any potential recovery. In sum, class treatment is superior to
27 individual, case-by-case adjudication. JCL Dec., ¶ 44.

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IV. CONCLUSION

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

Dated: November 8, 2023

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.