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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WENDY LEAL HERERRA, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MEADOWBROOK ASSISTED LIVING LLC, a
California limited liability company; SLH
AGOURA HILLS MANAGER, LLC, an Illinois
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22STCV34427

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

Date: November 20, 2023

Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff

Dept.: 7

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1 I. INTRODUCTION

2 Plaintiff WENDY LEAL HERRERA (“Plaintiff”) seeks preliminary approval of the Class
3 Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable
4 monetary relief for approximately 342 Class Members and approximately 164 Aggrieved Employees.
5 The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all current and former non-exempt California
7 employees who worked for Defendants at any time during the period from October 27, 2018 through
8 July 18, 2023 (“Class Period”). Agreement at §§ 1.7, 1.12, 1.12.

9 a. “**Participating Class Member**” means a Class Member who does not submit a
10 valid and timely Request for Exclusion from the Settlement. Agreement at § 1.36.

11 b. The “**Class Size**” is comprised of 342 individuals who collectively worked
12 approximately 13,781 Workweeks during the Class Period as estimated by Defendants at the time of
13 mediation. Agreement at § 4.1.

14 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all current and former non-
15 exempt California employees who worked for Defendants at any time during the period of August 16,
16 2021 through July 18, 2023 (“PAGA Period”). Agreement at §§ 1.4, 1.32. Aggrieved Employees do not
17 have the ability to opt-out of the PAGA portion of the settlement. Agreement at § 7.5.4. Defendants
18 estimate approximately 164 Aggrieved Employees who worked 7,196 pay periods during the PAGA
19 Period. Agreement at § 4.1.

20 3. The “**Gross Settlement Amount**” is Six Hundred Thousand Dollars and Zero Cents
21 (\$600,000.00). Agreement at § 1.23. The Gross Settlement Amount is non-reversionary and includes
22 the following:

23 a. A “**Class Representative Payment**” of not more than \$10,000 to Plaintiff in
24 recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for
25 executing a General Release. Agreement at §§ 3.2.1, 5.1.

26 b. “**Attorneys’ Fees and Litigation Costs**” in the amount not to exceed one-third
27

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

of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$200,000.00 *and* litigation expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at §§ 1.5, 3.2.2;

c. A “**PAGA Payment**” of Thirty Thousand Dollars (\$30,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment (\$22,500) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$7,500) will be distributed to the Aggrieved Employees (“Individual PAGA Payment”). Agreement at § 1.25, 1.28, and 1.35; and

d. “**Administration Expenses Payment**” not to exceed \$8,200 payable to the Settlement Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Class Notice and issuance of settlement checks. Agreement at §§ 3.2.3; 7.1

4. The “**Net Settlement Amount**” of approximately \$331,800 (Gross Settlement Amount less the requested Attorneys’ Fees and Litigation Costs, Class Representative Payment, PAGA Payment, and Administration Expenses Payment) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ 1.29, 3.2.4. The entire Net Settlement Amount will be paid to all Participating Class Members resulting in an average Individual Class Payment of ***\$970.18*** JCL 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. 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 Defendants 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 Class Payment to the Settlement Class meets 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

Defendants SLH Agoura Hills Manager, LLC and Senior Lifestyle Holding Company, LLC (“Defendants”) operate facilities that offer assisted living, memory care, short-term care, independent living and skilled nursing. Plaintiff worked for Defendants in California from October 2020 through June 2021 as a non-exempt employee, paid on an hourly basis. At all times during her employment, Plaintiff alleges that she was denied legally compliant meal and rest periods, was denied minimum wages and overtime compensation due to work performed off-the-clock, was furnished with non-compliant wage statements, and was not reimbursed for mandatory business expenses. Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, the “Team Member Handbook.” JCL Dec., ¶ 9.

Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages timely during employment and upon separation. Defendants deny liability for each of Plaintiff’s claims. Further, Defendants assert 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 policies, and that it timely paid all wages due upon separation of employment. JCL Dec., ¶ 10.

On August 16, 2022, Plaintiff served Defendants and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 11.

On October 27, 2022, Plaintiff filed a Class and Representative Action Complaint against Meadowbrook Assisted Living, LLC and SLH Agoura Hills Manager, LLC alleging nine (9) causes of

1 action against Defendants for (1) unfair competition in violation of Business & Professions Code
2 sections 17200 et seq; (2) failure to pay minimum wages in violation of California Labor Code sections
3 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections
4 510 et seq; (4) failure to provide required meal periods in violation of California Labor Code sections
5 226.7 and 512 and the applicable IWC wage order; (5) failure to provide required rest periods in
6 violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6)
7 failure to reimburse employees for required expenses in violation of California Labor Code section
8 2802; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202
9 and 203; (8) failure to provide accurate itemized wage statements in violation of California Labor Code
10 section 226; and (9) violation of California's Private Attorneys General Act [Labor Code §§ 2698 et
11 seq]. JCL Dec., ¶ 12.

12 After filing the above action, Class Counsel learned that defendant Meadowbrook Assisted
13 Living LLC was improperly named and thus dismissed this defendant from the action. On January 24,
14 2023, Plaintiff filed an Amendment to the Complaint and substituted Defendant Senior Lifestyle
15 Holding Company, LLC for Doe 1. Thus, the remaining defendants in this action are SLH Agoura
16 Hills Manager, LLC and Senior Lifestyle Holding Company, LLC. JCL Dec., ¶ 13.

17 The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to
18 informally exchange documents and information in connection with the Action. As part of this process,
19 Defendants provided time and pay records for 187 employees, 54.7 % of the total Class. Plaintiff's
20 statistician found this to be sufficient to develop a meaningful damages model. Additionally, the 54.7%
21 sample is statistically reliable, resulting in a confidence level of 95% with a margin of error of 5%. In
22 addition to the time and payroll records, Defendants produced their Employee, as well as other relevant
23 policies and agreements. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at
24 Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 14.

25 On April 24, 2023, the Parties participated in a full day mediation presided over by Steven
26 Serratore, Esq., a highly regarded wage and hour class and representative actions mediator. The
27 mediation concluded with a settlement which was subsequently memorialized in the form of a
28 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement

1 agreement, which is the subject of the instant motion. JCL Dec., ¶ 15.

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

3 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
4 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
5 part of the interview process, Plaintiff produced documents related to her employment, including her
6 payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's
7 complaints justified further inquiry. JCL Dec., ¶ 16.

8 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
9 Defendants produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's
10 hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents
11 and determined the documents appeared to substantiate Plaintiff's claim that Defendants failed to,
12 among other things, provide accurate wage statements and to provide compliant meal and rest periods.
13 JCL Dec., ¶ 17.

14 To prepare for mediation, Defendants produced statistical data, including records of Defendants
15 employees, which consisted of timekeeping records, times taken for meal breaks and the number of
16 workweeks for the Class Members. Defendants also produced records of wages earned during relevant
17 pay periods, wage statements, and written procedures and policies. In total, Class Counsel reviewed
18 nearly 700 pages of documents and more than 40 spreadsheets containing time and payroll data. JCL
19 Dec., ¶ 18.

20 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
21 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
22 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
23 credentialed and experienced experts in their fields and have provided their expertise on thousands of
24 cases. JCL Dec., ¶ 19.

25 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
26 models. Among other things, BCG determined the approximate amount of allegedly unpaid wages,
27 amount of allegedly unpaid overtime wages, number of workweeks, pay periods, average length of
28 shifts and average number of hours worked per week. BCG also estimated the number of allegedly

missed, late, or truncated meal and rest periods, the amount of allegedly unpaid wages, the amount of allegedly unpaid overtime, the amount of allegedly unreimbursed business expenses, and the amount of allegedly missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 20.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' potential liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

C. The Parties Settled at Mediation

On April 24, 2023, the Parties conducted a full day of mediation with Steven Serratore, Esq. Mediator Serratore helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Serratore's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at

1 issue. JCL Dec., ¶ 23.

2 **D. Plaintiff Has Not Entered into A Separate Individual Settlement**

3 Plaintiff has not entered into a separate, individual settlement with either Defendant. There is no
4 individual settlement separately negotiated from the class action and PAGA settlement. JCL Dec., ¶ 24.

5 **E. The Proposed Settlement Fully Resolves Plaintiff's Claims**

6 1. The Composition of the Participating Class Members

7 The proposed Settlement Class consists of all individuals who were employed by Defendants in
8 a non-exempt position in California between October 27, 2018 through July 18, 2023. The Settlement
9 Class excludes any person who submits a timely and valid request for exclusion. At the time of
10 mediation, Defendants estimated that the Settlement Class was comprised of 342 individuals that
11 worked approximately 13,781 workweeks during the Class Period. Agreement at § 4.1.

12 2. The Settlement Consideration

13 The Parties agreed to settle the underlying class and PAGA claims in exchange for the Gross
14 Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00). The Gross
15 Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) a Class
16 Representative Payment of not more than \$10,000 to Plaintiff for her services on behalf of the
17 Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the
18 amount of \$30,000; (4) Administration Expenses Payment estimated at \$8,200; (5) Attorneys' Fees and
19 Litigation Costs in the amount of \$220,000 comprised of attorneys' fees equal to one-third of the Gross
20 Settlement Amount estimated to be \$200,000 and an estimated \$20,000 for actually incurred litigation
21 expenses. See generally Agreement at § 3.

22 After deducting the amounts approved by the Court for the Class Representative Payment,
23 Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the
24 Net Settlement Amount will be distributed to each participating member of the Settlement Class
25 Member. Agreement at § 1.29. There is no reversion to Defendants and Defendants must separately
26 pay for their share of the employer payroll taxes. Agreement at § 3.1.

27 3. The Funding Date

28 Defendants will fund the Gross Settlement Amount and also fund the amounts necessary to fully

1 pay Defendants' share of payroll taxes no later than sixty (60) calendar days after: 1) the court's
2 approval of the settlement or exhaustion of any appeal, whichever is later, and 2) the date the
3 Administrator provides Defendants with wire instructions for depositing the Gross Settlement Amount
4 and verbally verifies the authenticity of those wire instructions with Defendants by a telephone call
5 prior to the transfer initiated by Defendants using the Settlement Administrator's telephone number
6 published on its known website. Agreement at § 4.3.

7 4. Formula for Calculating Individual Class Payments

8 Participating Class Members will receive an Individual Class Payment. The Individual Class
9 Payment will be proportional to the number of Workweeks each Class Member worked for Defendants
10 in California during the Class Period. Agreement at § 3.2.4. The Class Data provided by Defendants
11 to the Settlement Administrator will include, among other things, the number of Workweeks for each
12 Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement
13 at § 1.8. Each Class Member's final Individual Class Payment for purposes of payment will be
14 calculated by using a fraction, the numerator of which is the Class Member's total number of
15 Workweeks, and the denominator of which is the total number of Workweeks of all Class Members.
16 Agreement at § 3.2.4. For purposes of these calculations, a Workweek shall mean any week during
17 which a Class Member worked for Defendants in California in a non-exempt position for at least one
18 day during the Class Period. Agreement at § 1.46.

19 Given that there are approximately 342 Class Members, the average gross recovery is
20 approximately \$970.18 (Net Settlement Amount divided by Participating Class Members). JCL Dec.,
21 ¶ 7.

22 5. Release by Participating Class Members

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

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

27 Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California,
28 on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA

1 Claims that accrued during the PAGA Period. Agreement at §§ 1.41; 5.3.

2 **III. ARGUMENT**

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

4 The proposed Settlement, including a Gross Settlement Amount of \$600,000.00 meets the
5 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
6 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
7 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
8 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
9 notice of the settlement has been distributed to class members for their comments and objections.
10 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
11 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
12 inquire into the fairness of the proposed settlement”).)

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

27 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
28 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination*

1 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
2 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
3 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
4 and adequate to all concerned.” (*Id.*)

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

7 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
8 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
9 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
10 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
11 § 11.51.)

12 The Parties participated in mediation the highly respected mediator Steven Serratore, Esq.
13 Mediator Serratore managed the Parties’ expectations and provided a useful, neutral analysis of the
14 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL),
15 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
16 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
17 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
18 proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations,
19 the mediation concluded with a settlement. JCL Dec., ¶ 23.

20 Once the Parties reached a settlement, the Parties engaged in negotiations regarding the written
21 terms of the class action and PAGA settlement. The Agreement is the final product of the mediated
22 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
23 compromise of the claims at issue. JCL Dec., ¶ 25.

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

26 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
27 the factual and legal issues in dispute. In addition to informal discovery, document review, data
28 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no

two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 26.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 27.

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

The Gross Settlement Amount of \$600,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

² Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable 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

reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of \$600,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA Penalties) to be between approximately \$1,402,755 and \$2,332,146 if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 42.7% and 25.7% of Defendants’ class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants’ liability exposure. JCL Dec., ¶ 28.

(1) Exposure for Wage Statement Violations

Plaintiff alleged that Defendants furnished wage statements that failed to comply with Labor Code Section 226(a)(8), because the wage statements did not contain the name of the legal entity that is the employer. Plaintiff alleges that her legal employer was SLH Agoura Hills Manager LLC, however her wage statement listed her employer as “Meadowbrook Senior Living At Agoura Hills”. Plaintiff contends that Meadowbrook Senior Living At Agoura Hills is an unregistered, fictitious business name, which cannot be used on wage statements as the name of the legal entity that is the employer. Plaintiff further alleged that Defendants violated Labor Code Section 226(a) by failing to list the correct doubletime rate on wage statements. While Class Members appear to have been compensated at the proper rate for doubletime work, the incorrect rate is listed on wage statements.

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 Plaintiff estimated that Defendants' exposure on this claim to be approximately \$230,500 in statutory
2 penalties. JCL Dec., ¶ 29.

3 (2) Exposure for Meal Period Violations

4 Plaintiff also alleged that Defendants failed to provide compliant meal periods. Specifically,
5 Plaintiff alleges that as a result of understaffing, Plaintiff, Class Members, and Aggrieved Employees
6 were not able to take timely and duty-free meal periods. Plaintiff also alleged that Defendants' meal
7 period policy fails to inform employees that they are entitled to one additional hour of pay at the
8 employees' regular rate of pay for each workday that a compliant meal period was not provided.
9 Plaintiff alleges that Defendants failed to pay meal period premiums when compliant meal periods were
10 not offered. Consequently, Plaintiff alleges that she is owed meal period premiums for meal period
11 violations that occurred during the Class Period. An analysis of the Class Members' time and payroll
12 date revealed a meal period violation rate of over 40%. JCL Dec., ¶ 30.

13 Defendants argued, among other things, that it has a lawful policy and that it provided all their
14 employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal
15 periods and that, if they did not take compliant meal periods, it was their choice. Further, Defendants
16 argued that numerous Class Members signed short shift meal period waivers. At a minimum,
17 Defendants argued that any potential recovery for meal period violations would be drastically reduced
18 based on the number of Class Members who signed meal period waivers. Defendants also argued that
19 any claimed violations required a highly individualized inquiry not suitable to class treatment.
20 Consequently, Plaintiff applied a 50% discount to this claim and estimated Defendants' exposure for
21 this claim ranged from \$226,462 to \$452,934. JCL Dec., ¶ 31.

22 (3) Exposure for Rest Period Violations

23 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
24 Plaintiff alleged that Defendants' rest period policy improperly required employees to remain on
25 premises during their breaks. Moreover, Plaintiff alleged that rest breaks were regularly interrupted
26 and/or she and Class Members were not afforded the opportunity to take a compliant rest period during
27 their shifts due to the nature of the work and the effects of Defendants' understaffing. JCL Dec., ¶ 32.

28 Defendants denied liability and asserted that it maintained legally compliant rest period policies

1 and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens
2 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
3 Member testimony, making it a riskier claim at class certification and liability stages. Certification
4 likely would have required depositions of Class Members who provided declarations, and Defendants
5 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
6 were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
7 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
8 defendant may have an illegal, written rest break policy is insufficient for this Court to find that
9 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
10 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
11 generate uniform practices."). Accordingly, Plaintiff's Conservative Model applied a 50% discount to
12 the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between
13 approximately \$471,730 and \$754,769. JCL Dec., ¶ 33.

14 (4) Exposure for Unpaid Wages

15 Plaintiff also alleged that Defendants failed to pay its employees for all hours worked.
16 Specifically, Plaintiff alleged that she and Class Members were required to undergo mandatory pre-
17 shift COVID-19 screenings while off-the-lock wherein employee had to arrive on-site, undergo a
18 temperature check, have their oxygen levels checked, and record these metrics before clocking in.
19 Plaintiff further alleged that she and the Class were often required to work off-the-clock after their
20 shifts ended (and after they clocked out) in order to perform activities such as completing tasks and
21 checking on residents/clients. Based on Plaintiff's testimony and Class Counsel's investigation, BCG
22 estimated that Class Members performed a total of 3 minutes of unpaid work per shift. As a result,
23 Plaintiff and Class Members forfeited compensation, including overtime wages, for all the time they
24 spent working under Defendants' control. JCL Dec., ¶ 34.

25 Defendants denied liability for this claim and asserted that their written policies strictly and
26 explicitly prohibit off-the-clock work. Further, Defendants argued that the off-the-clock claim was
27 not suitable to class treatment because individualized issues predominated. For example, even
28 assuming Plaintiff performed work while off-the-clock, which Defendants dispute, the time spent

1 would vary drastically from class member to class member that it could not be established by common
2 proof. Consequently, Plaintiffs Realistic Damage model applied a 75% discount to this claim. Plaintiff
3 estimated Defendant's exposure for this claim ranged between \$12,192 and \$48,769. JCL Dec., ¶ 35.

4 (5) Exposure for Unreimbursed Business Expenses

5 Plaintiff alleged that Defendants required the Class Members to use their personal cellular
6 phones for business purposes, including but not limited to sending and receiving work-related
7 communications. Such communications were necessary for employees to carry out their duties,
8 however employees were not reimbursed or indemnified by Defendants for the cost associated with the
9 use of the personal cellular phones for Defendants' benefit. California employers who require
10 employees to incur personal business expenses for work purposes must reimburse the employee for the
11 cost incurred. (See Cal. Labor Code § 2802(a), providing that "an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
13 the discharge of his or her duties, or of his or her obedience to the directions of the employer..."). BCG
14 estimated a reasonable \$10 per pay period reimbursement rate for Class Members for the use of their
15 personal cell phones. JCL Dec., ¶ 36.

16 Again, Defendants denied any liability for this claim. Defendants argued that its written policies
17 explicitly prohibit Class Members from using their personal cell phones during working hours, except
18 during breaks. Thus, Plaintiff estimates that even if Plaintiff were successful in this claim only a small
19 number – approximately half – of the Settlement Class would be entitled to relief. Plaintiff estimated
20 Defendants' exposure for this claim to be \$74,060. JCL Dec., ¶ 37.

21 (6) Exposure for Waiting Time Penalties

22 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for
23 waiting time penalties. Although these *penalties* represented Defendants' largest dollar amount of
24 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could
25 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
26 Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying
27 claims, which had their own risks. Plaintiff estimated Defendants' exposure for this claim to be between
28 \$387,811.40 and approximately \$771,114.00. JCL Dec., ¶ 38.

1 (7) Defendants' PAGA Exposure

2 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
3 the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately \$454,700.
4 JCL Dec., ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and
5 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a
6 good faith amount" for PAGA penalties and "there is no indication that this amount was the result of
7 self-interest at the expense of class members," such amounts are generally considered reasonable.
8 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
9 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the
10 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
11 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
12 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
13 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
14 in the range of zero to two percent of the total settlement).

15 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$30,000 which is 5%
16 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments.
17 Seventy-Five percent (75%) of the PAGA Payment (\$22,500.00) will be paid to the LWDA ("LWDA
18 Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$7,500.00) distributed
19 to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and
20 should be approved. JCL Dec., ¶ 40.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

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

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

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

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
17 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
18 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
19 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
20 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
21 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
22 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
23 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
24 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
25 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
26 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
27 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
28 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 41.

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

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

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

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

27 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$600,000.00 that is
28 roughly between 42.7% and 23.7% of Defendants’ *class-wide* liability exposure for damages and

1 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
2 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
3 JCL Dec., ¶ 43.

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

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

14 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
15 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
16 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
17 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
18 procedure, and time period within which to submit requests for exclusions or objections to the
19 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
20 and the terms and scope of the Released Claims. Agreement at § 1.11; Ex. A to the Agreement. The
21 Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class
22 Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 44.

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

of the options open to dissenting class members.”.) JCL Dec., ¶ 45.

C. The Court Should Preliminarily Approve the Class Representative Payment

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

The Settlement provides for a Class Representative Payment of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendants a general release of all claims arising out of her employment. JCL Dec., ¶ 46.

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. JCL Dec., ¶ 47.

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

The purpose of a payment of 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.*

1 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
2 percentage method or the lodestar method is used, fee awards in class actions average around one-third
3 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
4 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
5 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
6 one-third fee is consistent with market rates).)

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

12 Paragraph 1.5 of the Settlement Agreement provides that the Attorneys’ Fees Payment shall be
13 divided between Class Counsel with 50% apportioned to JCL Law Firm, APC and 50% to Zakay Law
14 Group, APLC. Plaintiff reviewed and signed the Agreement, thereby agreeing to the fee split. Plaintiff
15 will file a formal motion for the negotiated Attorneys’ Fees and Litigation Costs once preliminary
16 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
17 for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 49.

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

19 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
20 of the Class is appropriate. JCL Dec., ¶ 50.

21 1. The Standard for Class Certification

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

1 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

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

19 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
20 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
21 liability can be determined by facts common to all members of the class. The wage and hour issues are
22 both numerous and substantial, and a class action is the most advantageous method of dealing with the
23 claims of the Settlement Class. JCL Dec., ¶ 52.

24 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
25 from the same factual basis and are based on the same legal theories applicable to the other Class
26 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
27 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
28 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability

1 to advocate for the interests of the Class Member by initiating this litigation, and evaluating the
2 proposed settlement to assure that it is fair. JCL Dec., ¶ 53.

3 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
4 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
5 gained state court settlement approval of the same class-wide causes of action that are at issue in this
6 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
7 represent the interests of this Class. JCL Dec., ¶¶ 55-63, Declaration of Shani Zakay, ¶¶ 1-3.

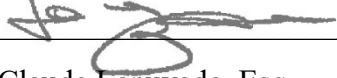
8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
11 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
12 adjudication. JCL Dec., ¶ 54.

13 IV. CONCLUSION

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

17
18 Dated: September 29, 2023

JCL LAW FIRM, APC

19 By: 
20 Jean-Claude Lapuyade, Esq.