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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

LAGERALD WEBB, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

SERVICE FIRST OF NORTHERN
CALIFORNIA, a California corporation, and
DOES 1-50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0007604

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

Date: February 7, 2024
Time: 9:30 a.m.

Judge: Hon. Barbara A. Kronlund
Dept.: 10D

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I. INTRODUCTION

Plaintiff LAGERALD WEBB (“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 343 Class Members and approximately 304 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or previously were employed by Service First of Northern California (“Defendant”) and performed work in California (“Class”) during the period beginning August 30, 2018 to December 22, 2023 (“Class Period”). Agreement at §§ I(H), I(J).

a. “**Settlement Class Member**” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § I(MM).

b. The “**Class Size**” is comprised of 343 individuals who collectively worked approximately 20,370 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § III(A)(2).

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”) during the period of June 22, 2021, through December 22, 2023 (“PAGA Period”). Agreement at §§ I(C), I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(7). Defendant estimates approximately 304 Aggrieved Employees who worked 4,213 pay periods during the PAGA Period. JCL Dec., ¶ 7.

3. The “**Gross Settlement Amount**” is Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the following:

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

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.

b. **“Attorneys’ Expenses”** in an amount not to exceed \$25,000 for expenses Class Counsel has incurred. Agreement at § I(D).

c. **“Attorneys’ Fees”** in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$66,666.67 to be paid to Class Counsel. Agreement at § I(E);

d. A **“PAGA Penalties”** of Sixty Thousand Dollars (\$20,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties (\$15,000) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Penalties (\$5,000) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(Z), III(M)(11); and

e. **“Claims Administration Expenses”** not to exceed \$10,000 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 §§ I(G), III(M)(12).

4. The **“Net Settlement Amount”** of approximately \$68,333.33 (Gross Settlement Amount less the requested Attorneys’ Fees, Attorneys’ Expenses, Service Award, PAGA Penalties, and Claims Administration Expenses) which 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. Agreement at § III(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members resulting in an average Individual Settlement Payment of **\$199.22**. 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 Settlement 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 Defendant prevailing at trial. Finally, the Settlement considers Defendant’s financial condition and ability to satisfy a larger settlement. JCL Dec., ¶ 7.

1 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
2 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
3 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
4 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
5 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant operates community-based programs that provide supportive services to individuals
9 in need throughout California, including San Joaquin County where Plaintiff worked. Plaintiff worked
10 for Defendant in California from May 2017 to August 2021 as a non-exempt employee, paid on an
11 hourly basis. At all times during his employment, Plaintiff alleges that he was denied legally compliant
12 meal and rest periods, and minimum wages and overtime compensation. Throughout his employment,
13 Plaintiff was subject to Defendant's written policies and procedures contained in, among other
14 documents, the "Employee Packet." JCL Dec., ¶ 9.

15 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
16 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
17 accurate itemized wage statements, and failed to pay all wages timely during employment and upon
18 separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it
19 fully complied with all applicable employment laws and raised several other significant defenses to
20 Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,
21 compliant wage statements, and that it timely paid all wages due upon separation of employment. JCL
22 Dec., ¶ 10.

23 On June 22, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce
24 Development Agency (LWDA) and served the same on Defendant. Plaintiff's PAGA Notice set forth
25 the facts and theories supporting Defendant's alleged violations of various provisions of the California
26 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
27 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
28 2698 *et seq* ("PAGA"). JCL Dec., ¶ 11.

1 On August 30, 2022, Plaintiff filed a class action complaint in the San Joaquin County Superior
2 Court, Case No. STK-CV-UOE-2022-0007604 (“Action”). The Action alleged nine causes of action
3 against Defendant for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2) Failure to Pay
4 Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor
5 Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the
6 applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 516 and
7 the applicable wage order); (6) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204);
8 (7) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 *et seq.*); (8) Failure
9 to Reimburse for Required Expenses (Labor Code § 2802); and (9) Violation of the Private Attorneys
10 General Act (Labor Code §§ 2698, *et seq.*). JCL Dec., ¶ 12.

11 Plaintiff propounded written discovery in January of 2023. After responding to discovery, the
12 Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce
13 additional documents and data points subject to the mediation privilege, including but not limited to, a
14 sample of the Class Members’ time and payroll data and certain payroll data points. As discussed *infra*,
15 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
16 Defendant’s time and payroll data. JCL Dec., ¶ 13.

17 On October 5, 2023, the Parties participated in mediation presided over by Honorable Brian C.
18 Walsh (Ret.), a retired judge and experienced mediator of wage and hour class and PAGA actions. The
19 mediation concluded with a settlement which was subsequently memorialized in the form of a
20 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
21 agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

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

23 Months before filing the Action, Class Counsel began its pre-filing investigation into the
24 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
25 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
26 including portions of Defendant’s written policies, compensation policies, and time and payroll records.
27 At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified
28 further inquiry. JCL Dec., ¶ 15.

1 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
2 Defendant produced dozens of pages of documents, including but not limited to, copies of Plaintiff's
3 hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents
4 and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to,
5 among other things, provide accurate wage statements, reimburse for business expenses, pay for all
6 hours worked, and to provide compliant meal and rest periods. JCL Dec., ¶ 16.

7 To prepare for mediation, Defendant produced a sample of the time and payroll records for the
8 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal
9 premiums paid to the Class Members, and average hourly rate for the Class Members. In total, Class
10 Counsel reviewed thousands of documents and time data, and more than 450,000 unique cells of payroll
11 data. JCL Dec., ¶ 17.

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

17 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
18 models. Among other things, BCG determined the approximate amount of allegedly unpaid wages,
19 number of workweeks, pay periods, average length of shifts and average number of hours worked per
20 week. BCG also estimated the number of allegedly missed, late, or truncated meal and rest periods,
21 the amount of allegedly unpaid wages, the amount of allegedly unreimbursed business expenses, and
22 the amount of allegedly missed meal and rest period premiums paid during the Class Period. JCL Dec.,
23 ¶ 19.

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

labor policies and practices; (6) reviewing and analyzing Defendant's publicly available financial records and financial audit; (7) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (8) evaluating Plaintiff's claims and estimating Defendant's potential liability for purposes of settlement; (9) drafting the mediation brief; and (10) 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., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation, evaluation of Plaintiff's claims, and evaluation of Defendant's financial condition. 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., ¶ 21.

C. The Parties Settled at Mediation

On October 5, 2023, the Parties participated in mediation presided over by Hon. Brian C. Walsh (Ret.), a retired judge and experienced mediator of wage and hour class and PAGA actions. Judge Walsh 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 Judge Walsh'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, after both sides agreed to a Mediator's proposal. 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 issue. JCL Dec., ¶¶ 22-23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of non-exempt employees who are or previously were employed by Defendant and performed work in California between August 30, 2018 to December 22,

2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 343 individuals that worked approximately 20,370 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class and PAGA claims in exchange for the Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of not more than \$10,000 to Plaintiff for his services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Penalties in the amount of \$20,000; (4) Claims Administration Expenses estimated at \$10,000; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$91,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$66,666.67 and an estimated \$25,000 for actually incurred litigation expenses. See generally Agreement at §§ III(M)(9)-(12).

After deducting the amounts approved by the Court for the Service Award, Attorneys' Fees, Attorneys' Expenses, PAGA Penalties, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § III(M)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § I(Q).

3. The Funding Date and Installment Plan

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount in two (2) installments. The First Installment shall be paid on or before January 23, 2025, and the Second Installment shall be paid on or before February 23, 2026. Agreement at § III(A)(3).

During the litigation, Defendant raised the possibility that it would be unable to satisfy a larger class-wide settlement due to its financial condition. Class Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze Defendant's publicly available financial information and Defendant's 2022 financial audit. Based on Mr. Creal's review, he determined that Defendant could not afford a larger settlement than the one contemplated here. Moreover, the

installment plan contemplated by the Agreement is appropriate because it allows Defendant to work toward accumulating the settlement funds. JCL Dec., ¶ 24; Declaration of Kenneth L. Creal, ¶¶ 2-6.

4. Formula for Calculating Individual Settlement Payments

Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. The Class Data provided by Defendant to the Settlement Administrator will include each Class Member's full name, last known address, Social Security Number, start dates and end dates of employment. Agreement at § I(I). Each Class Member's final Individual Settlement Payment for purposes of payment will be calculated by dividing the number of Workweeks worked by each Class Member by the total Workweeks worked by all Class Members, resulting in a Payment Ratio. The Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at § III(M)(1). For purposes of these calculations, a Workweek shall mean any seven (7) consecutive days beginning on Sunday and ending on Saturday, in which a Class Member is employed and received any form of compensation from Defendant. Agreement at § I(OO). Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee 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 343 Settlement Class Members, *the average gross recovery is approximately \$199.22* (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 7.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period as defined in the Agreement. Agreement at §§ I(FF), I(HH), III(B).

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

Generally, as of the Funding Date, the Plaintiff, the LWDA and the State of California release

1 the Released Parties from the Released PAGA Claims for the PAGA Period. As a result of this release,
2 the Aggrieved Employees shall be precluded from bringing claims against Defendant for the Released
3 PAGA Claims. Agreement at §§ I(GG), I(HH), III(C).

4 III. ARGUMENT

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

6 The proposed Settlement, including a Gross Settlement Amount of \$200,000.00 meets the
7 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
8 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
9 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
10 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
11 notice of the settlement has been distributed to class members for their comments and objections.
12 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
13 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
14 inquire into the fairness of the proposed settlement”).)

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

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

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

9 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
10 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
11 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
12 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
13 § 11.51.)

14 The Parties participated in mediation with retired jurist and respected mediator Hon. Judge
15 Walsh (Ret.). Judge Walsh managed the Parties’ expectations and provided a useful, neutral analysis
16 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF
17 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
18 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
19 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
20 ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated
21 negotiations, negotiations continued and the mediation concluded with a settlement. JCL Dec., ¶ 25.

22 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
23 the written terms of the class action settlement. The Agreement is the final product of the mediated
24 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
25 compromise of the claims at issue. JCL Dec., ¶ 26.

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

28 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into

1 the factual and legal issues in dispute. In addition to informal discovery, document review, data
2 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
3 two cases are identical, this research provided Class Counsel with a marker to inform settlement
4 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
5 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
6 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
7 ¶ 27.

8 Class Counsel only agreed to enter the Settlement following their thorough investigation and
9 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace
10 for similar settlements, and considering the risk of significant delay, uncertainty associated with
11 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
12 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
13 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 28.

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

15 The Gross Settlement Amount of \$200,000.00 is within the range of reasonableness. To
16 determine whether a settlement is fair and reasonable, the court should "consider enough information
17 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
18 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
19 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
20 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
21 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
22 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
23 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
24 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
25 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
26 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is

27
28 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*

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 \$200,000.00 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 BCG to develop economic damage models measuring Defendant’s 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 Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$580,188.42 (“Realistic Damages”) and \$1,995,142.91 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 34.47% (“Realistic Damages”) and 10.02% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 29.

(1) Exposure for Unpaid Wages

Plaintiff’s primary claim in this Action alleges that Defendant failed to pay its employees for all hours worked. Specifically, throughout the Class Period, Defendant failed to utilize a timekeeping system. Instead, Defendant kept handwritten and rounded time records that artificially reflected employees’ schedules rather than the time they actually spent working. Based on Plaintiff’s testimony and Class Counsel’s investigation, BCG estimated that Class Members and Aggrieved Employees spent a total of 15 minutes of unpaid work every shift completing work-related tasks such as, among other things, supervising and assisting Defendant’s clients. As a result, Plaintiff, Class Members, and

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 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 Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent
2 working under Defendant's control. JCL Dec., ¶ 30.

3 Defendant vigorously denied liability for this claim. Defendant argued, among other things, that
4 employees filled in their timesheets themselves and recorded their time in line with their actual work.
5 Based on these arguments, Plaintiff discounted this claim 75% and estimated Defendant's exposure for
6 this claim ranged from \$27,580.31 and approximately \$110,321.25. JCL Dec., ¶ 31.

7 (2) Exposure for Meal Period Violations

8 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
9 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
10 Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff
11 alleges that he is owed meal period premiums for meal period violations that occurred during the Class
12 Period. An analysis of the Class Members' time and payroll data revealed that 100% of meal periods
13 were rounded to exactly thirty (30) minutes. JCL Dec., ¶ 32.

14 Defendant argued, among other things, that it has a lawful policy and that it provided all their
15 employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal
16 periods. Defendant also argued that employees were responsible for managing their own time and
17 complying with company meal period policies. Thus, Defendant argued that there was no potential
18 liability for Plaintiff's alleged meal period violations. JCL Dec., ¶ 33.

19 Consequently, Plaintiff applied a 50% discount to this claim and estimated that the damages for
20 this claim ranged from approximately \$188,855.04 to approximately \$377,710.08. JCL Dec., ¶ 34.

21 (3) Exposure for Rest Period Violations

22 Plaintiff also alleged that Defendant failed to provide compliant rest periods. On many
23 occasions, Plaintiff was required to remain on-call, take late or interrupted rest periods, or forfeit rest
24 periods altogether. Again, Defendant denied liability and asserted that it maintained legally compliant
25 rest period policies and practices throughout the Class Period. Defendant also argued that, for a portion
26 of the Class Period, employees were required to record rest periods on their timesheets to ensure rest
27 periods were taken. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim.
28 Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony,

1 making it a riskier claim at class certification and liability stages. Certification likely would have
2 required depositions of Class Members who provided declarations, and Defendant surely would have
3 obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily
4 waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11
5 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have
6 an illegal, written rest break policy is insufficient for this Court to find that common issues
7 predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL
8 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate
9 uniform practices.”). Accordingly, Plaintiff’s Realistic Damage model applied a 75% discount to the
10 rest break claim and estimated the range of potential outcomes for this claim was between
11 approximately \$188,855.04 to approximately \$377,710.08. JCL Dec., ¶ 35.

12 (4) Exposure for Unreimbursed Business Expenses

13 Plaintiff alleged that Defendant required the Class Members to use their personal cellular phones
14 and personal vehicles as a result of and in furtherance of their job duties but were not reimbursed by
15 Defendant. California employers who require employees to incur personal business expenses for work
16 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing
17 that “an employer shall indemnify his or her employee for all necessary expenditures or losses incurred
18 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
19 to the directions of the employer...”). BCG estimated a reasonable \$15 monthly reimbursement rate
20 for Class Members for the use of their personal cell phones and vehicles. JCL Dec., ¶ 36.

21 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
22 provide for the issuance of cell phones to Class Members and Aggrieved Employees. Further,
23 Defendant argued that it did in fact reimburse employees for use of their vehicles as evidenced by the
24 Mileage Report showing that mileage was recorded and reimbursed. This claim was also heavily
25 discounted by 85% based on Defendant’s defenses. Plaintiff estimated Defendant’s exposure for this
26 claim ranged between approximately \$9,013.13 and approximately \$36,052.50. JCL Dec., ¶ 37.

27 (5) Exposure for Wage Statement Violations

28 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage

statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal and rest periods as required by the California Labor Code and pay for all wages, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Defendant argued that this claim would fail because the underlying claims would fail and that, even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this claim 25% to account for this risk. Plaintiff estimated that Defendant's exposure on this claim ranged between \$94,250 and \$377,000. JCL Dec., ¶ 38.

(6) Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for these claims ranged between \$71,634.90 and \$716,349. JCL Dec., ¶ 39.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between \$421,300 and \$900,000. JCL Dec., ¶ 40. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL

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

3 Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$20,000 which is 10%
4 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments.
5 Seventy-Five percent (75%) of the PAGA Penalties (\$15,000.00) will be paid to the LWDA (“LWDA
6 Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties (\$5,000.00) distributed
7 to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the range of PAGA
8 penalties approved by courts and should be approved. JCL Dec., ¶ 41.

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

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

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

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

26 “It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot
27 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
28 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a

1 relatively weak case or a sell-out of an extraordinary strong case.” (*Misra v. Decision One Mortg. Co.*
2 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
5 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
6 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
7 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
8 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
9 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
10 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
11 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
12 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
13 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
14 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
15 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
16 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
17 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
18 certification of driver meal and rest period claims based on the predominance of individual issues).
19 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
20 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
21 settlement. JCL Dec., ¶ 42.

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

26 [N]othing is assured when litigating against commercial giants with vast
27 litigative resources, particular in such complex litigation as this, which
28 would strain the cognitive capacities of any jury. Defense judgments were

1 hardly beyond the realm of possibility. Accordingly, this factor weighs in
2 favor of preliminary approval.

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

4 Finally, continuing to litigate this action would require continued and extensive resources
5 coupled with significant Court time to proceed through trial and post-trial motions; which can often
6 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
7 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
8 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
9 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
10 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 43. “Avoiding such a trial and the
11 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
12 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
13 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
14 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

15 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$200,000.00 that is
16 roughly between approximately 34.47% of Defendant’s *class-wide* liability exposure for damages, and
17 approximately 10.02% of Defendant’s maximum class wide liability exposure for damages and
18 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
19 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
20 Notably, as discussed above, Defendant raised the possibility that it would be unable to satisfy a class-
21 wide settlement due to its financial condition. Based on Defendant’s financial condition, Judge Walsh
22 proposed an installment plan to allow Defendant time to work toward accumulating the settlement
23 funds. Accordingly, the Gross Settlement Amount accounts for the risk that Defendant would be unable
24 to satisfy a larger settlement than the one contemplated here. JCL Dec., ¶ 44.

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

26 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
27 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
28 information to decide whether they should accept the benefits offered, opt out and pursue their own

1 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
2 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
3 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
4 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
5 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
6 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

7 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
8 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
9 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
10 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
11 procedure, and time period within which to submit requests for exclusions or objections to the
12 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
13 and the terms and scope of the Released Claims. Agreement at § III(L)(2)(a). The Parties negotiated
14 this method to ensure delivering the most reasonable method of notice to the Class Members while
15 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 45.

16 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
17 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
18 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
19 of the options open to dissenting class members.”).) JCL Dec., ¶ 46.

20 **C. The Court Should Preliminarily Approve the Service Award**

21 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
22 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
23 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
24 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
25 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
26

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

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

7 The Settlement provides for a Service Award of \$10,000 for Plaintiff. The service award is fair
8 and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with
9 the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the
10 strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair
11 and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a general
12 release of all claims arising out of his employment. JCL Dec., ¶ 47.

13 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
14 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
15 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 48.

16 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Attorneys’ Expenses**

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

27 Class Counsel took this matter on a contingency fee basis and invested significant time and
28 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average

Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys' Expenses are fair and reasonable. JCL Dec., ¶ 49.

The Agreement provides that the Attorneys' Fees shall be divided between Class Counsel with 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement at § I(E). Plaintiff reviewed and signed the Agreement and has an executed fee agreement with Class Counsel, thereby agreeing to the fee split. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 50.

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., ¶ 51.

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

1 they may be readily identified without unreasonable expense or time by reference to official records.
2 (*Id.*)

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

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

11 Because all Class Members are Defendant’s current and former employees, the class is readily
12 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 52.

13 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
14 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
15 liability can be determined by facts common to all members of the class. The wage and hour issues are
16 both numerous and substantial, and a class action is the most advantageous method of dealing with the
17 claims of the Settlement Class. JCL Dec., ¶ 53.

18 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
19 from the same factual basis and are based on the same legal theories applicable to the other Class
20 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
21 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
22 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
23 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
24 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 54.

25 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
26 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
27 gained state court settlement approval of the same class-wide causes of action that are at issue in this
28 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to

1 represent the interests of this Class. JCL Dec., ¶¶ 56-64, Declaration of Shani Zakay, ¶¶ 1-3.

2 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
3 each individual claim, the Class Members likely have little incentive to litigate their claims on an
4 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
5 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
6 adjudication. JCL Dec., ¶ 55.

7 IV. CONCLUSION

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

11 Dated: January 12, 2024

JCL LAW FIRM, APC

13 By: 

14 Jean-Claude Lapuyade, Esq.