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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

TEVIN BRANDT, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOTOR CITY SALES & SERVICE, a California
corporation; MCLB, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. BCV-22-102078

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

Date: September 6, 2023

Time: 8:30 a.m.

Location: Metropolitan Division Justice Building
1215 Truxtun Ave
Bakersfield, CA 93301

Judge: Hon. Bernard C. Barmann, Jr.

Dept.: H

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT	1
III.	CASE BACKGROUND	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	6
A.	The Role of the Court in Preliminary Approval of a Class Action Settlement	7
B.	Factors To Be Considered in Granting Preliminary Approval	8
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel	8
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of Approval	9
a.	The Gross Settlement Amount Meets the Recognized Range of Reasonableness	10
i.	Exposure for Meal Period Violations	10
ii.	Exposure for Rest Period Violations	11
iii.	Exposure for Non-Compliant Wage Statements	12
iv.	Exposure for Unreimbursed Business Expenses	12
v.	Exposure for Work Performed Off-The-Clock	12
vi.	Exposure for Failure to Properly Calculate Employees' Regular Rate of Pay	13

1	vii. Exposure for Waiting Time Penalties Under Labor Code 203	13
2	viii. Defendants' PAGA Exposure	13
3	.....	13
4	3. Inherent Risks of Continued Litigation Support Preliminary Approval.	15
5	.....	15
6	4. The Settlement Does Not Improperly Grant Preferential Treatment to the Class	
7	Representative of Segments of The Class	17
8	.....	17
9	5. The Stage Of The Proceedings Are Sufficiently Advances To Permit Preliminary Approval	
10	Of The Settlement	17
11	.....	17
12	V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	18
13	.....	18
14	A. California Code of Civil Procedure § 382	18
15	.....	18
16	B. The Proposed Class Is Ascertainable and Numerous	18
17	.....	18
18	C. Common Issues of Law and Fact Predominate	19
19	.....	19
20	D. The Claims of the Plaintiffs Are Typical of the Class Claims	19
21	.....	19
22	E. The Class Representative Fairly and Adequately Protected the Class	20
23	.....	20
24	F. The Superiority Requirement Is Met	21
25	.....	21
26	VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	21
27	.....	21
28	VII. THE COURT SHOULD PRELIMINARILY APPROVE THE CLASS REPRESENTATIVE	
	SERVICE AWARD	22
	.....	22
	VIII. THE COURT SHOULD PRELIMINARILY APPROVE CLASS COUNSEL'S CLASS	
	COUNSEL AWARD	23
	.....	23

IX. CONCLUSION24

///

TABLE OF AUTHORITIES

CASES

1		
2	<i>Acheson v. Express, LLC</i>	
3	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011).....	23
4	<i>Aguiar v. Cinguar Wireless, LLC</i>	
5	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	23
6	<i>Ali v. U.S.A. Cab Ltd.</i>	
7	(2009) 176 Cal.App.4th 1333, 1341.....	16
8	<i>Baker v. LA. Fitness Int'l, LLC</i>	
9	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	22
10	<i>Barrett v. Doyon Security Services, LLC</i>	
11	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	23
12	<i>Bejarano v. Amerisave Mortgage Corp.</i>	
13	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	23
14	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
15	No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011).....	22
16	<i>Bowles v. Superior Court</i>	
17	44 Cal.2d 574 (1955).....	18
18	<i>Boyd v. Bechtel Corp.</i>	
19	485 F.Supp. 610, 622 (N.D. Cal. 1979).....	8
20	<i>Buckmire v. Jo-Ann Stores, Inc.</i>	
21	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	22
22	<i>Brinker</i>	
23	.....	16
24	<i>Brown v. Fed Express Corp.</i>	
25	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	16
26	<i>Cacho v. Eurostar, Inc.</i>	
27	(2019) 43 Cal.App.5th 885.....	15
28	<i>Campbell v. Best Buy Stores, L.P.</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	16
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	23
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	14
	<i>Carrington v. Starbucks Corp.</i>	
	(2018) 30 Cal.App.5th 504, 517, 539.....	15
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal.App.4th 1110, 1117-18, 1380, 1393 (2010).....	6, 22
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11	23
	<i>Cho v. Seagate Tech. Holdings, Inc.</i>	
	177 Cal. App. 4th 734, 742-45 (2009).....	7
	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	3, 22
	<i>Coleman v. Estes Express Lines, Inc.</i>	
	No. BC429042 (LA. County Super. Ct. Oct. 3, 2013).....	22
	<i>Contreras v. Serco Inc.</i>	
	No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012).....	23

1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794, 1802, 1807.....	6-7
3	<i>Duran v. U.S. Bank National Association</i>	
4	(2014) 59 Cal.4th 1, 31.....	15
5	<i>Ethridge v. Universal Health Services, Inc.</i>	
6	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	22
7	<i>Fleming v. Covidien</i>	
8	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	14
9	<i>Frank v. Eastman Kodak Co.</i>	
10	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	10
11	<i>Gautreaux v. Pierce</i>	
12	690 F.2d 616, 621 n.3 (7 th Cir. 1982).....	6
13	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
14	169 Cal. App. 4th 1524, 1536 (2008).....	19
15	<i>Golba v. Dick's Sporting Goods, Inc.</i>	
16	238 Cal. App. 4th 1251 (2015).....	3
17	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
18	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	23
19	<i>Hanlon v. Chrysler Co.</i>	
20	150 F.3d 1011, 1020 (9th Cir. 1998).....	19, 20
21	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.</i>	
22	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	22
23	<i>Hill v. Sunglass Hut Int'l, Inc</i>	
24	No. BC422934 (LA. County Super. Ct. July 2, 2012).....	22
25	<i>Hopson v. Hanesbrands Inc.</i>	
26	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009).....	14
27	<i>Jack v. Hartford Fire Ins. Co.</i>	
28	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14
	<i>Kabamba v. Victoria's Secret Stores. LLC</i>	
	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	22
	<i>Kisliuk v. ADT Security Services, Inc.</i>	
	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	23
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	9
	<i>Linder v. Thrifty Oil Co.</i>	
	23 Cal. 4th 429, 439-440 (2003).....	19
	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9th Cir. 2021) 999 F.3d 668.....	15-16
	<i>Magee v. American Residential Services, LLC</i>	
	No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	22
	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	22
	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	14
	<i>Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	10
	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	15

1	<i>Moniz v. Adecco USA, Inc.</i>	
2	(2021) 72 Cal.App.5th 56, 77.....	13
3	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.</i>	
4	No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013).....	23
5	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
6	(2010) 186 Cal.App.4th 399, 409.....	10
7	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
8	(2023) 88 Cal.App.5th 927.....	13
9	<i>Nat’l Rural Telecomms. Coop v. DirecTV</i>	
10	(C.D. Cal. 2004) 221 F.R.D. 523, 526-28.....	8, 17
11	<i>Nevarez v. Trader Joe’s Co.</i>	
12	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	22
13	<i>Nordstrom Comm’n Cases</i>	
14	186 Cal. App. 4th 576, 581, 589 (2010).....	6, 14
15	<i>Nvidia Derivs. Litig.</i>	
16	(N.D. Cal. 2008) 2008 WL 5382544, at *3.).....	16
17	<i>O’Conner v. Uber Technologies, Inc.</i>	
18	(9 th Cir. 2018) 904 F.3d 1087.....	15
19	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
20	(9 th Cir. 1982) 688 F.2d 615, 624-25, 628.....	6-8
21	<i>Ordaz v. Rose Hills Mortuary, LP.</i>	
22	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	22
23	<i>Ordonez v. Radio Shack, Inc.</i>	
24	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	11
25	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i>	
26	323 F. Supp. 364, 372 (E.D. Pa. 1970).....	6
27	<i>Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson</i>	
28	390 U.S. 414, 424-25 (1968).....	7
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, opinion modified (June 18, 1990).....	16
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	22
	<i>Rose v. City of Hayward</i>	
	126 Cal.App.3d 926, 934 (1981).....	18-19
	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 334.....	19
	<i>Sayaman v. Baxter Healthcare Corp.</i>	
	2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010).....	6-7
	<i>Sheldon v. AHMC Monterey Park Hospital LP</i>	
	No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	22
	<i>Silva v. Catholic Moray Services, Inc.</i>	
	No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	22
	<i>Tableware Antitrust Litig.</i>	
	484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).....	8
	<i>Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	14
	<i>Tate v. Weyerhaeuser Co.</i>	
	723 F.2d 598, 608 (8 th Cir. 1983).....	19

1	<i>Tien v. Tenet Healthcare Corp.</i>	
2	(2012) 209 Cal.App.4th 1077, 1088.....	15
3	<i>Valentino v. Carter-Wallace, Inc.</i>	
4	97 F.3d 1227, 1234 (9th Cir. 1996).....	21
5	<i>Villa v. United Site Servs. of California, Inc.</i>	
6	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	11
7	<i>Wash. Public Power</i>	
8	720 F. Supp. at 1392.....	9
9	<i>Weinberger v. Kendrick</i>	
10	698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983).....	7
11	<i>Weisbarth v. Banc West Investment Services, Inc</i>	
12	No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	22
13	<i>Wershba v. Apple Computer, Inc.</i>	
14	91 Cal. App. 4th 224, 234-35, 239-40, 245 (2001).....	7
15	<i>Zamora v. Balboa Life & Casualty LLC</i>	
16	No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	22-23

RULES, CODES AND STATUTES

17	<i>Cal. Code of Civ. Proc. § 382</i>	18
18	<i>Cal. Code of Civ. Proc. § 386</i>	3
19	<i>Cal. Lab. Code § 203</i>	13
20	<i>Cal. Lab. Code § 226(a)</i>	12, 19
21	<i>Cal. Lab. Code §§ 2698 et seq</i>	3-4
22	<i>Cal. Lab. Code §§ 2699(i)</i>	3
23	<i>Cal. Lab. Code § 2802</i>	12
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1 **I. INTRODUCTION**

2 Plaintiff TEVIN BRANDT (“Plaintiff”) respectfully submits this memorandum in support
3 of his Motion for Preliminary Approval of the Class Action and PAGA Settlement of the action
4 *Tevin Brandt v. Motor City Sales & Service, et al.*, (Case No. BCV-22-102078, operative complaint
5 filed on or about June 22, 2023) (the “Action”), filed against Defendants Motor City Sales & Service
6 and MCLB, INC. (“Defendants”). Plaintiff seeks entry of an order: (1) preliminarily approving the
7 proposed settlement of the Action with Defendants; (2) approving the form and method for
8 providing class-wide notice; (3) directing that notice of the proposed settlement be given to the
9 class; and (4) scheduling a final approval hearing date to consider Plaintiff’s motion for final
10 approval of the settlement and entry of the Judgment, and Plaintiff’s motion for approval of
11 attorneys’ fees and litigation expenses.

12 Plaintiff and Defendants have reached a full settlement of the Action, which is embodied in
13 the settlement agreement¹ (the “Agreement”), a copy of which is attached as Exhibit #1 to the
14 Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair,
15 reasonable, and adequate, and should be preliminarily approved. Plaintiff respectfully requests that
16 this Court grant preliminary approval of the Agreement and enter the proposed order submitted
17 herewith.

18 **II. DESCRIPTION OF THE SETTLEMENT**

19 The Gross Settlement Amount to be paid by Defendants is Six Hundred Seventy-Five
20 Thousand Dollars and Zero Cents (\$675,000.00). (Agreement at III(A)(1)). The Gross Settlement
21 Amount consists of the following elements: (1) the Individual Class Payments to Participating Class
22 Members, (2) Aggrieved Employee Payments, (3) the LWDA PAGA Payment, (4) Attorneys’ Fees,
23 (5) Attorneys’ Expenses, (6) Class Representative Service Award, and (7) Administrator’s Fees.
24 (Agreement at III(A)(1)). The Gross Settlement Amount does not include Defendants’ share of
25 employer payroll taxes, which Defendants shall pay to the Administrator separately. (Agreement at
26
27

28 ¹ All citations to the Agreement incorporate by this reference a citation to the Zakay Declaration. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 III(A)(1)). The Gross Settlement Amount shall be all-in with no reversion to Defendants.
2 (Agreement at III(A)(1)).

3 After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in
4 the Agreement), Defendants will fund the Gross Settlement Amount within sixty (60) days of the
5 Court’s entry of an order granting final approval of the settlement. Within thirty (30) days after
6 Defendants fund the Gross Settlement Amount, the Administrator will mail checks for Individual
7 Settlement Payments, Aggrieved Employee Payments, the LWDA Payment, the Administration
8 Expenses Payment, the Service Award, the Class Counsel Fees Payment, and the Class Counsel
9 Litigation Expenses Payment. (Agreement at III(L)(7), (L)(9) – (12)).

10 The Net Settlement Amount shall equal the amount available for Individual Class Payments
11 after deducting the Court-approved amounts for the Aggrieved Employee Payments, the LWDA
12 PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class
13 Counsel Litigation Expenses Payment and the Administration Expenses Payment. Agreement at
14 I(Q). The submission of a claim form is not required for a Participating Class Member to be paid
15 an Individual Class Payment. (Agreement at I(JJ)). The Individual Class Payment will be calculated
16 as follows: The Settlement Administrator shall add up the total number of Workweeks for all Class
17 Members. The respective Workweeks for each Class Member will be divided by the total
18 Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each
19 Class Member’s Payment Ratio will then be multiplied by the Net Settlement Amount to calculate
20 each Class Member’s estimated Individual Settlement Payments. (Agreement at III(L)(1)).

21 Class Members will have forty-five (45) days after the mailing of the Class Notice to exclude
22 themselves or submit written objections. Agreement at I(FF); III(K)(7). The deadlines will be
23 extended an additional fifteen (15) calendar days for Class Members whose notice is re-mailed.
24 Agreement at III(K)(4). All Class Members who do not submit a valid Request for Exclusion form
25 will be deemed Participating Class Members and will be bound by the Settlement. The Notice will
26 advise the Class Members of their right to object to the Settlement. (Agreement at III(K)(7)-(8)).

27 If a check is returned to the Settlement Administrator, the Settlement Administrator will
28 make all reasonable efforts to obtain a correct address for the Settlement Class Member and re-mail

1 the check to the Settlement Class Member at his or her correct address. (Agreement at III(K)(4)). If
2 a Settlement Class Member's Individual Settlement Payment check is not cashed within 180 days
3 after the Settlement Administrator's last mailing to the Settlement Class Member, all funds
4 represented by such uncashed checks, plus any interest accrued thereon, shall be paid to the
5 Community Law Project pursuant to California Code of Civil Procedure section 386. (Agreement
6 at III(L)(8)).

7 The Parties have agreed to use APEX Class Action, LLC as the Settlement Administrator.
8 Payment of the expenses of the Settlement Administrator from the Gross Settlement Amount shall
9 be made for the expenses of effectuating and administering the Settlement. The Settlement
10 Administrator shall receive payment for services estimated at approximately Seven Thousand
11 Dollars (\$7,000). Agreement at III(L)(12); Decl. Zakay at ¶ 19. A declaration from APEX Class
12 Action, LLC outlining its qualifications and providing for the estimated administration costs is filed
13 concurrently with this Motion.

14 Subject to Court approval, the Agreement provides for Attorneys' Fees not to exceed 1/3 of
15 the Gross Settlement Amount, currently estimated to be \$225,000, and litigation costs and expenses
16 actually incurred, not to exceed \$30,000. (Agreement at I(F); III(L)(10)). Subject to Court approval,
17 the Agreement provides for payment of a Service Award to Plaintiff of no more than \$10,000, or
18 such lesser amount as may be approved by the Court at Final Approval.² (Decl. Zakay at ¶ 20.)

19 Subject to Court approval, \$75,000 of the Gross Settlement Amount will be allocated for
20 settlement of claims for civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to
21 the requirements of Labor Code §2699(i), the Settlement Administrator shall pay 75% of this
22 amount (\$56,250.00) to the California Labor and Workforce Development Agency ("LWDA") as
23 the LWDA's share of the settlement of civil penalties, and 25% (\$18,750.00) shall be distributed as
24 individual payments to the Aggrieved Employees. This \$18,750 is referred to as the Aggrieved
25 Employee Payment. Aggrieved Employee Payments will be calculated as follows: The Settlement
26

27 ² Plaintiff will address the reasonableness of this award when filing their final approval papers, including the
28 enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 Administrator shall add up the total number of PAGA Pay Periods for all Aggrieved Employees
2 during the PAGA Period. The respective PAGA Pay Periods for each Aggrieved Employees will
3 be divided by the total PAGA Pay Periods for all Aggrieved Employees, resulting in the “PAGA
4 Payment Ratio” for each Aggrieved Employee. Each Aggrieved Employee’s PAGA Payment Ratio
5 will then be multiplied by the Aggrieved Employee Payment to calculate each Aggrieved
6 Employee’s estimated share of the Aggrieved Employee Payment. (Agreement at III(L)(11)).

7 **III. CASE BACKGROUND**

8 On June 7, 2022, Plaintiff filed a Notice of Violations with the LWDA and served the same
9 on Defendants. On August 11, 2022, Plaintiff filed his representative complaint alleging a cause of
10 action for violations of the Private Attorneys General Act at Labor Code Sections 2698, et seq.
11 (Decl. Zakay at ¶ 11-12.) Plaintiff’s complaint alleged that Defendants failed to provide compliant
12 meal and rest periods, failed to allow employees to take duty-free meal and rest periods, failed to
13 pay all minimum, regular and overtime wages, failed to correctly calculate the regular rate of pay,
14 failed to pay for all hours worked, failed to maintain true and accurate records; failed to reimburse
15 employees for required business expenditures, failed to provide accurate itemized wage statements,
16 and failed to timely pay wages due during, and upon termination of employment. *Id.*

17 The Parties agreed to private mediation. Prior to mediation, the Parties agreed to informally
18 exchange documents and information in connection with the Action. As part of this process,
19 Defendants provided time and pay records for 48 employees, approximately 17% of the total Class.
20 Plaintiff’s statistician found this to be sufficient to develop a meaningful damages model.
21 Additionally, the 17% sample is statistically reliable, resulting in a confidence level of 85% with a
22 margin of error of 9%. In addition to the time and payroll records, Defendants produced their
23 Employee Handbook and various handbook addendums, as well as other relevant policies and
24 agreements. (Decl. Zakay at ¶ 13.)

25 On April 27, 2023, the Parties participated in an all-day mediation presided over by Steven
26 Rottman, Esq., a mediator of wage and hour class actions. After arms-length negotiations and
27 bargaining, the Parties reached a settlement of \$675,000, with the understanding that this settlement
28 would also include not only a release of the PAGA claims alleged, but also a release of class claims

1 for the same Labor Code violations, and within the same time period. The Parties thereafter
2 executed a binding Memorandum of Understanding, and subsequently documented the agreement
3 in the form of a Settlement Agreement, which was signed by the Parties and is now presented to
4 this Court for preliminary approval. (Decl. Zakay at ¶ 14.)

5 Following the Parties’ successful mediation, Plaintiff filed a First Amended Complaint,
6 which added class claims based on the same violations of the Labor Code as detailed in Plaintiff’s
7 original PAGA complaint. Plaintiff seeks to represent a putative class of all current and former
8 non-exempt employees of Defendants employed in California at any time during the period between
9 June 7, 2021 and April 27, 2023 (the “Class Period”). The Action seeks unpaid wages, statutory
10 and PAGA penalties, attorneys’ fees, and litigation costs³. (Decl. Zakay at ¶ 15.) Plaintiff also
11 seeks to represent a PAGA group of Aggrieved Employees which is comprised of all current and
12 former non-exempt employees of Defendants employed in California at any time during the period
13 between June 7, 2021 and April 27, 2023 (the “PAGA Period”).

14 Although a resolution has been reached, Defendants deny that they have violated any
15 applicable law, committed any wrong against Plaintiff or any other current or former employee, or
16 that they have otherwise damaged Plaintiff or any other current or former employee in any way.
17 Further, Defendants contend that class certification would be inappropriate for any reason other
18 than for settlement. Plaintiff contends that Defendants violated California wage and hour laws.
19 Plaintiff further contends that the Action is appropriate for class certification on the basis that the
20 Plaintiff’s claims meet the requisites for class certification. Without admitting that class certification
21 is proper, Defendants have stipulated that the above Class may be certified for settlement purposes
22 only. (Agreement at III(F)). The Parties agree that certification for settlement purposes is not an
23 admission that class certification would be proper if the class certification issues were litigated. *Id.*
24 Further, the Agreement is not admissible in this or any other proceeding as evidence that the Class
25 could be certified absent a settlement. *Id.*

26
27
28 ³ Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 Class Counsel has conducted a thorough investigation into the facts of the action. Class
2 Counsel has diligently evaluated the Class Members' claims against Defendants. Prior to the
3 mediation, counsel for Defendants provided Class Counsel with access to the necessary data and
4 information as noted above to evaluate the claims by the Class. Class Counsel reviewed the
5 production of documents from the Defendants and conducted an extensive review of a significant
6 sample of time records and data with the assistance of an expert, Berger Consulting Group
7 ("BCG"). Based on the foregoing and their own independent investigation, evaluation and
8 experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the
9 best interest of the Class in light of all known facts and circumstances, including the risk of
10 significant delay, defenses asserted by Defendants, and potential appellate issues. (Decl. Zakay at
11 ¶ 16.)

12 IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS 13 COURT TO GRANT PRELIMINARY APPROVAL

14 When a proposed class-wide settlement is reached, the settlement must be submitted to the
15 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
16 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
17 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
18 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
19 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*
20 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
21 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

22 The primary question presented on an application for preliminary approval of a proposed
23 class action settlement is whether the proposed settlement is "within the range of possible approval."
24 (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
25 (7th Cir. 1982).) Preliminary approval is merely the prerequisite to giving notice so that "the
26 proposed settlement... may be submitted to members of the prospective Class for their acceptance
27 or rejection." (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
28 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.

1 LEXIS 151997, *3 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed
2 settlement, which was negotiated at arm's length by counsel for the Class, is presented for court
3 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
4 224, 245 (2001) [citation omitted]; see also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
5 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and
6 adequate" where the settlement "provided valuable benefits to the class ... that were 'particularly
7 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'").)
8 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
9 is made after notice of the settlement is given to the Class Members and a final settlement hearing
10 is held by the Court.

11 **A. The Role of The Court in Preliminary Approval of a Class Action Settlement**

12 Approval of a proposed settlement of a class action suit is a matter within the broad
13 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
14 In considering a potential settlement for preliminary approval purposes, the trial court does not have
15 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
16 dispute, and need not engage in a trial on the merits. (*Wershba*, *supra*, 91 Cal. App. 4th at 239-40;
17 *Dunk*, *supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, "the very essence of a
18 settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers*
19 *for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).)
20 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
21 judgment and evaluation by the attorneys for the parties based upon a comparison of "the terms of
22 the compromise with the likely rewards of litigation." (*Weinberger v. Kendrick*, 698 F.2d 61, 73
23 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
24 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
25 settlement, the amount is "not to be judged against a hypothetical or speculative measure of what
26 might have been achieved by the negotiators." (*Officers for Justice*, 688 F.2d at 625, 628.) With
27 regard to class action settlements, the opinions of counsel should be given considerable weight both
28 because of counsel's familiarity with this litigation and previous experience with cases such as

1 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
2 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
3 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
4 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

5 **B. Factors To Be Considered in Granting Preliminary Approval**

6 In determining whether to grant preliminary approval, the court considers whether the “(1)
7 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
8 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
9 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
10 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
11 determinative. Here, the Settlement meets all of these criteria for preliminary approval.

12 **1. The Settlement is the Product of Serious, Informed and Arm’s Length**
13 **Negotiations by Experienced Counsel**

14 This Settlement is the result of extensive and hard-fought litigation and negotiations before
15 an experienced and well-respected mediator. Defendants denied and continue to deny any
16 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
17 Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the
18 Released Class Claims and Released PAGA Claims. The Released Class Claims include all claims
19 that were alleged, or which could have been alleged in the operative complaint based on the facts
20 alleged, which occurred during the Class Period. The Released Class Claims expressly exclude all
21 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
22 disability, social security, workers’ compensation, PAGA claims (which are separately released
23 pursuant to the Agreement), and class claims outside of the Class Period. (Agreement at I(CC)).

24 The Released PAGA Claims include all claims for PAGA penalties that were alleged in
25 Plaintiff’s original complaint, in Plaintiff’s First Amended Complaint, and in Plaintiff’s PAGA
26 Notice sent to the LWDA, which occurred during the PAGA Period. The Released PAGA Claims
27 expressly exclude all other claims, including claims for vested benefits, wrongful termination,
28

1 unemployment insurance, disability, social security, workers' compensation and PAGA Claims
2 outside the PAGA Period. (Agreement at I(DD)).

3 Plaintiff and Class Counsel recognize the expense and time involved in continuing to litigate
4 and ultimately trying the Action against Defendants through possible appeals which could take
5 several years. Class Counsel have also taken into account the uncertain outcome and risk of
6 litigation, especially in complex actions such as the one here. Class Counsel are also mindful of,
7 and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted
8 in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the
9 Settlement set forth in the Agreement is in the best interest of the Class Members. (Decl. Zakay at
10 ¶ 22.)

11 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
12 capable advocacy on both sides. The Parties were represented by experienced counsel who
13 zealously advocated their respective positions with the assistance of an experienced mediator.
14 Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were
15 vigorously conducted at arms' length and without any suggestion of undue influence." (*In re Wash.*
16 *Public Power*, 720 F. Supp. at 1392.)

17 **2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of** 18 **Approval**

19 The proposed Settlement here has no "obvious deficiencies" and is well within the range of
20 possible approval. All Class Members will receive an opportunity to participate in the Settlement
21 and receive payment according to the same formula if they do not opt out.

22 The Gross Settlement Amount of \$675,000.00 is within the range of reasonableness. To
23 determine whether a settlement is fair and reasonable, the court should "consider enough
24 information about the nature and magnitude of the claims being settled, as well as the impediments
25 to recovery, to make an independent assessment of the reasonableness of the terms to which the
26 parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In
27 making this determination, the court is "not to try the case" but rather "satisfy itself that the class
28 action settlement is within the 'ballpark of reasonableness.'" *Id.* For this analysis, courts do "not

1 require any such explicit statement of value; [they] require[] a record which allows an understanding
2 of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz*
3 *v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The
4 reasonableness of a settlement is not dependent upon its actual value approaching the potential
5 recovery plaintiffs might have received if they had succeeded at trial. Indeed, “[t]he determination
6 whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a
7 particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting*
8 *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

10 The Gross Settlement Amount of \$675,000.00 is fair and reasonable considering the nature
11 and magnitude of the claims being settled and the various potential impediments to recovery. Prior
12 to mediation, Class Counsel retained BCG to develop economic damage models measuring
13 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
14 various models were informed by Class Counsel’s investigation, including the analysis of a
15 significant sample of time and payroll data. Class Counsel projected Defendants’ liability exposure
16 for class claims (excluding PAGA Penalties) at \$2,565,483 if successful at trial. Thus, the Gross
17 Settlement Amount of \$675,000.00 represents over 26% of Defendants’ *class-wide* liability
18 exposure as estimated by Class Counsel at the time of mediation. Decl. Zakay at ¶ 17. Defendants’
19 estimated exposure is summarized below.

20 **i. Exposure for Meal Period Violations**

21 Plaintiff alleges that Defendants failed to provide compliant meal periods. Specifically,
22 Plaintiff alleges that due to the nature of the work, attending to customers was the priority, thus
23 Plaintiff and Class Members were often unable to take compliant meal breaks. Consequently,
24 Plaintiff alleges that Defendants owe meal period premiums for meal period violations that occurred
25 during the Class Period. Decl. Zakay at ¶ 18. Plaintiff also argued that while Defendants paid some
26 meal break premiums, it failed to pay premiums in all cases in which a compliant meal break was
27 not offered. *Id.*

28 ///

1 Conversely, Defendants argued, among other things, that they provided all of their
2 employees with the opportunity to take compliant meal periods. Defendants also argued that they
3 maintained facially compliant meal period policies. Further, Defendants argued that they had a valid
4 voluntary meal period waiver system in place in instances in which employees worked more than
5 five but less than six hours in a shift. Thus, Defendants argued that the potential liability for
6 Plaintiff's alleged meal period violations and any claimed violations required a highly
7 individualized inquiry not suitable to class treatment. Decl. Zakay at ¶ 19. Plaintiff estimated
8 Defendants' exposure for this claim at \$535,442 in unpaid meal break premiums. Decl. Zakay at ¶
9 20.

10 **ii. Exposure for Rest Period Violations**

11 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
12 Plaintiff alleged Plaintiff and Class Members were prohibited from taking duty-free rest periods.
13 Decl. Zakay at ¶ 21. Again, Defendants denied liability and asserted that they maintained legally
14 compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff
15 recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim
16 would rely, almost entirely, on Class Member testimony, making it a riskier claim at class
17 certification and liability stages. *Id.* Certification likely would have required depositions of Class
18 Members who provided declarations, and Defendants argued that they obtained opposing
19 declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g.,*
20 *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the
21 competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal,
22 written rest break policy is insufficient for this Court to find that common issues predominate.");
23 *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8
24 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform
25 practices."). Nevertheless, Plaintiff estimated Defendants' exposure for this claim at \$535,442.
26 Decl. Zakay at ¶ 22.

27
28 ///

1 **iii. Exposure for Non-Compliant Wage Statements**

2 Plaintiff alleges that Defendants’ wage statements were facially non-compliant with Cal.
3 Lab. Code § 226(a) because Plaintiff believes that his legal employer was MCLB, Inc. *dba* Motor
4 City Lexus of Bakersfield, however his wage statement listed his employer as Motor City Buick |
5 GMC. Plaintiff estimated Defendants’ exposure for this claim at \$805,850. Decl. Zakay at ¶ 23.

6 **iv. Exposure for Unreimbursed Business Expenses**

7 Plaintiff alleges that Defendants unlawfully required Class Members to purchase uniforms
8 and would only reimburse Class Members if the uniforms were returned in “good condition”.
9 Plaintiff alleges that Defendants further deducted the cost of any unreturned uniforms, or uniforms
10 returned that were “not in good condition”, from the Class Members’ final paychecks. Decl. Zakay
11 at ¶ 24. Under California Labor Code section 2802, if an employer requires that an employee wear
12 a uniform, the employer must pay the cost of that uniform. Defendants argued that most of its
13 employees were fully reimbursed for their uniforms, thus to the extent any liability exists, it would
14 be limited. Decl. Zakay at ¶ 25. Plaintiff estimated Defendants’ exposure for this claim at \$92,740.
15 Decl. Zakay at ¶ 26.

16 **v. Exposure for Work Performed Off-The-Clock**

17 Plaintiff alleges Defendants required Plaintiff and Class Members to perform work related
18 trainings and other work-related tasks “off-the-clock”. Specifically, Plaintiff alleges that he and
19 Class Members were required to complete OSHA trainings and perform work-related tasks off-the-
20 clock, and were not compensated for their time. Decl. Zakay at ¶ 27. Defendants denied liability
21 for this claim. Defendants argued, among other things, that all Class Members were properly paid
22 minimum and overtime compensation for all hours worked and that Class Members were instructed
23 not to work off-the-clock. Decl. Zakay at ¶ 28. Defendants further argued that Class Members
24 were responsible for tracking their own time. Lastly, Defendants argued that the potential liability
25 for this claim required a highly individualized inquiry that would depend in part on the personal
26 habits of each Class Members and was not suitable to class treatment. *Id.* Plaintiff estimated
27 Defendants’ exposure for this claim at \$249,516. Decl. Zakay at ¶ 29.

28 ///

1 **vi. Exposure for Failure to Properly Calculate Employees’ Regular Rate of Pay**

2 Plaintiff alleges Defendants failed to include certain non-discretionary bonuses when
3 calculating the regular rate of pay in paying overtime wages and sick pay. Defendants paid Class
4 Members non-discretionary incentive compensation in the form of various bonus payments. This
5 performance-based bonus compensation was required to be calculated into the regular rate of pay
6 for purposes of overtime, meal period premiums⁴ and sick pay. In reviewing the paystubs, it is clear
7 that the bonus compensation was not calculated into the regular rate of pay. Plaintiff estimates
8 Defendants’ exposure for the underpayment of overtime and sick pay caused by Defendants’ failure
9 to properly take into account non-discretionary bonuses when calculating employees’ regular rate
10 of pay for overtime and sick pay to be \$47,609. Decl. Zakay at ¶ 30.

11 **vii. Exposure for Waiting Time Penalties Under Labor Code 203**

12 Plaintiff alleges that Defendants’ alleged violations detailed above resulted in derivative
13 violations pursuant to Labor Code section 203. Class Counsel considered these penalties and
14 weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
15 that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under
16 Labor Code section 203. Defendants could also argue that that meal and rest period violations do
17 not entitle employees like Plaintiff and the Class Members to pursue the derivative waiting time
18 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could
19 not give the penalty claims great weight given that they depended on proving the underlying claims,
20 which had their own risks. Plaintiff estimated Defendants’ exposure for this claim at \$298,884.
21 Decl. Zakay at ¶ 31.

22 **viii. Defendants’ PAGA Exposure**

23 In total, Class Counsel projected Defendants’ liability exposure for PAGA claims at
24 \$3,303,500 if successful at trial. Decl. Zakay at ¶ 32. The proposed PAGA allocation of the Gross
25 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
26 56, 77. Where settlements “negotiate a good faith amount” for PAGA Payment and “there is no
27

28 ⁴ Plaintiff’s expert was unable to calculate the underpayment for meal period premiums as he found no examples within the sampling produced.

1 indication that this amount was the result of self-interest at the expense of class members,” such
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
3 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
4 Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
5 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942,
6 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
7 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
8 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
9 the total settlement).

10 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of
11 \$75,000 which is 11.1% of the Gross Settlement Amount. This amount falls well within the range
12 of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$56,250.00) will
13 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
14 PAGA Penalties (\$18,750.00) will be distributed to the Aggrieved Employees, which is within the
15 range of PAGA Penalties approved by courts and should be approved. Decl. Zakay at ¶ 33.

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

24 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
25 the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
26 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
27 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
28 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee

1 suffered a violation for each pay period the employee worked. Again, Defendants raised several
2 defenses that presented serious threats to the claims of the Plaintiff and the Aggrieved Employees.
3 In addition to those arguments discussed *supra*, Defendants also argued that the Court of Appeals
4 decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on
5 liability, value, and manageability as to the rest period claims. Decl. Zakay at ¶ 34.

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

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

14 **3. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

20 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
21 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
22 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and
23 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
24 overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner*
25 *v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour
26 misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31
27 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
28 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might

1 not take their breaks were predominantly individualized questions of fact not susceptible to class
2 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
3 certification because employees’ declarations attesting to having taken meal and rest breaks
4 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
5 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
6 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
7 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
10 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
11 risk factor favoring settlement. Decl. Zakay at ¶ 35.

12 “The Settlement eliminates these and other risks of continued litigation, including the very
13 real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.
14 2008) 2008 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through
15 trial is inherently perilous regardless of the strengths of merits of the claims: [N]othing is assured
16 when litigating against commercial giants with vast litigative resources, particular in such complex
17 litigation as this, which would strain the cognitive capacities of any jury. Defense judgments were
18 hardly beyond the realm of possibility. Accordingly, this factor weighs in favor of preliminary
19 approval. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June
20 18, 1990).)

21 Finally, continuing to litigate this action would require continued and extensive resources
22 coupled with significant Court time to proceed through trial and post-trial motions; which can often
23 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
24 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful
25 at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects
26 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999
27 F.3d 668, the risk of an appeal and subsequent reversal is real. Decl. Zakay at ¶ 36. “Avoiding such
28 a trial and the subsequent appeals in this complex case strongly militates in favor of settlement

1 rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV*
2 (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its
3 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
4 (*Id.* at 526.)

5 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$675,000.00 that is
6 over 26% of Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of
7 mediation. Given the amount of the settlement here, as compared to potential value of the claims,
8 offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
9 Decl. Zakay at ¶ 37.

10 **4. The Settlement Does Not Improperly Grant Preferential Treatment to the**
11 **Class Representative or Segments of The Class**

12 The relief provided in the Settlement will benefit all Class Members who do not opt out.
13 The Settlement does not improperly grant preferential treatment to Plaintiff or segments of the Class
14 in any way. Each Class Member will be entitled to a cash payment based on the plan of allocation
15 described herein. Each Participating Class Member’s Individual Settlement Payment will be
16 determined based upon the weeks worked by that employee during the prescribed Class Period.
17 (Decl. Zakay at ¶ 38.)

18 Plaintiff will apply to the Court for a Class Representative Service Award in consideration
19 of his service, and for the risks undertaken on behalf of the Class. Plaintiff performed his duties
20 admirably by working with Class Counsel. The requested Plaintiff’s Service Awards of \$10,000 is
21 within the accepted range of awards for purposes of preliminary approval. Plaintiff has not
22 negotiated individual settlement payments with Defendants. (*See* Decl. Zakay at ¶ 39.)

23 **5. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
24 **Preliminary Approval Of The Settlement**

25 The stage of the proceedings at which this Settlement was reached also militates in favor of
26 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
27 a thorough investigation into the facts of the class action. Prior to the mediation, Class Counsel
28 performed a significant review and analysis of Defendants’ documents, time records and pay

1 records. Class Counsel engaged in a thorough research and analysis of the relevant claims and data.
2 (Decl. Zakay at ¶ 40.) Class Counsel are also experienced with the claims at issue here, as Class
3 Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the
4 Settlement did not occur until Class Counsel possessed sufficient information to make an informed
5 judgment regarding the likelihood of success on the merits and results that could be obtained
6 through further litigation. (Decl. Zakay at ¶ 42.)

7 There can be no doubt that Counsel for both Parties possessed sufficient information to make
8 an informed judgment regarding the likelihood of success on the merits and the results that could
9 be obtained through further litigation.

10 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

11 Plaintiff contends that the proposed Settlement meets all the requirements for class
12 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
13 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
14 should conditionally certify the Class for settlement purposes only, defined as follows: all current
15 and former non-exempt employees for Defendants employed in California at any time during the
16 period between June 7, 2021 and April 27, 2023. Defendants estimate the Settlement Class is
17 comprised of 285 individuals who collectively worked approximately 18,000 workweeks during
18 the Class Period. (Agreement at III(A)(2)).

19 **A. California Code of Civil Procedure §382**

20 Plaintiff seeks certification of this Class for settlement purposes under California Code of
21 Civil Procedure section 382. While Defendants reserve all rights to dispute that the Plaintiffs can
22 satisfy any of these requirements, Defendants will not dispute that these requirements may be
23 satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified
24 for purposes of settlement only.

25 **B. The Proposed Class Is Ascertainable and Numerous**

26 Here, the approximately 285 current and former employees that comprise the Class are
27 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
28 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934

(1981) (class of 48 members satisfies numerosity requirement)). All of these employees are ascertainable because the Class Members can readily be determined through examination of Defendants' employment files. (Decl. Zakay at ¶ 42.) For purposes of settlement only, Defendants will not oppose a finding of numerosity.

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. (1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers.")) Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to correctly calculate the regular rate of pay for purposes of overtime, sick pay and meal period premiums, (iv) whether Defendants failed to issue wage statements that complied with Labor Code 226(a); and (v) whether Defendants are liable for attorneys' fees and costs. (Decl. Zakay at ¶ 43.) Defendants will not oppose a finding of commonality for purposes of settlement only.

D. The Claims of the Plaintiffs Are Typical of the Class Claims

The typicality requirement requires Plaintiffs to demonstrate that the members of the class have the same or similar claims as Plaintiffs. "The typicality requirement is met when the claims of the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011

1 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
2 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
3 need not be substantially identical.” (50 F.3d at 1020.)

4 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied.
5 Plaintiff, like every other member of the Class, was employed by Defendants and is a member of
6 the Class. Plaintiff was subject to the same practices affecting all other Class Members concerning
7 non-compliant meal and rest periods and Defendants’ failure to pay meal or rest period premiums,
8 unpaid wages as a result of off-the-clock work, unreimbursed business expenses, regular rate of pay
9 calculations, and received similar wage statements. Plaintiff’s claims and the Class Members’
10 claims arise from the same course of conduct by Defendants, involve the same policies, are based
11 on the same legal theories, and are subject to the same defenses. Plaintiff did not separately negotiate
12 an individual settlements with Defendants. (Decl. Zakay at ¶ 45.) For purposes of settlement only,
13 Defendants will not oppose typicality.

14 **E. The Class Representative Fairly and Adequately Protected the Class**

15 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
16 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
17 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff has been and continues
18 to be aware of his duties as the representative of the class and has actively participated in the
19 prosecution of the case to date, with the Class Members’ interests as a priority. Plaintiff understood
20 at the time he filed that as a class representative, he owed a duty to the putative Class Members to
21 faithfully prosecute this Action with their best interests at the forefront of every decision.

22 First, Plaintiff effectively communicated with Class Counsel, provided documents to them
23 and participated in the investigation and negotiations in the Action. Second, Plaintiff retained
24 competent counsel who are experienced in employment class actions. Third, there is no antagonism
25 between the interests of Plaintiff and those of the Class. Both Plaintiff and the Class Members seek
26 monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶ 44.) Defendants
27 will not dispute such a finding for purposes of this settlement only.

28 ///

1 **F. The Superiority Requirement Is Met**

2 To certify a class, the Court must determine that a class action is superior to other available
3 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
4 common issues will reduce litigation costs and promote greater efficiency, a class action may be
5 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
6 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
7 the Plaintiffs. Defendants will not dispute such a finding for purposes of this settlement only.

8 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

9 The Court has broad discretion in approving a practical notice program. The Parties have
10 agreed upon procedures by which the Class Members will be provided with written notice of the
11 Settlement similar to that approved and utilized in hundreds of class action settlements. The Notice
12 Packet, drafted jointly and agreed upon by the Parties through their respective counsel and to be
13 approved by the Court, includes all relevant information. (*See Exhibit A* to the Agreement.) The
14 Notice Packet will state that the Class Members shall have forty-five (45) days from the date that
15 the Notice Packet is mailed to them to request exclusion or to submit an objection. The Class
16 Members will be given an opportunity to object to the terms of the Agreement and/or the request
17 for attorneys’ fees and costs and to participate at the final approval hearing, in accordance with the
18 instructions set forth in the Notice Packet. Class Members will be instructed to only contact the
19 Settlement Administrator and/or Class Counsel and not the Court. Class Members who do not opt
20 out will automatically receive an Individual Settlement Payment. This notice program was designed
21 to meaningfully reach the Class Members and advises them of all pertinent information concerning
22 the Settlement. The mailing and distribution of the Notice Packet satisfies the requirements of due
23 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
24 notice to all persons entitled thereto. The Notice Packet provides information on the terms and
25 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
26 time, and place of the final settlement approval hearing; and the procedure and deadline for
27 submitting comments, objections, and requests for exclusion. The Notice Packet complies with
28 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶ 46.)

**VII. THE COURT SHOULD PRELIMINARILY APPROVE THE CLASS
REPRESENTATIVE SERVICE AWARD**

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 Service Award of \$10,000⁵ for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing

⁵ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable in wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores. LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County

1 the action, assisting Class Counsel with the litigation and settlement, regularly conferring with
2 Class Counsel on the status of his case and the strategies for prosecuting the claims, responding
3 to Defendant's written discovery, reviewing the proposed Settlement to ensure that its terms are
4 fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant a
5 general release of all claims arising out of his employment. (Decl. Zakay at ¶ 47.)

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
8 respectfully submits that the above showing is sufficient for preliminary approval of the
9 negotiated Class Representative Service Award. (Decl. Zakay at ¶ 48.)

10 **VIII. THE COURT SHOULD PRELIMINARILY APPROVE CLASS** 11 **COUNSEL'S CLASS COUNSEL AWARD**

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

20
21 Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*,
22 No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar*
23 *v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement
24 payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010)
25 (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
26 Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v.*
27 *Serco Inc.*, No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment);
28 *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct July 16, 2013) (awarding \$10,000
enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011)
(awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings, Inc.*, No. JCCP 4582 (Orange
County Super. Ct Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services,*
LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement
payment).

1 *Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation
2 nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

3 Class Counsel took this matter on a contingency fee basis and invested significant time and
4 expense successfully prosecuting Plaintiff's claims. Considering the positive outcome for the
5 Class Members, and in light of the supporting authority, the proposed award of Class Counsel
6 Award is fair and reasonable. (Decl. Zakay at ¶ 49.)

7 Plaintiff will file a formal motion for the negotiated award of the Class Counsel Award
8 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
9 above showing is sufficient for preliminary approval of the negotiated attorneys' fees. (Decl.
10 Zakay at ¶ 50.)

11 **IX. CONCLUSION**

12 Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement
13 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
14 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
15 Preliminary Approval.

16
17 DATED: August 7, 2023

ZAKAY LAW GROUP, APLC

18 By: 
19 Shani O. Zakay
20 Attorney for Plaintiff
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