

JCL LAW FIRM, APC

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

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff PRISCILLA ESTRADA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PRISCILLA ESTRADA an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

MANPOWER TEMPORARY SERVICES f.k.a.
CPM, LTD. which will be doing business
in California as MANPOWER TEMPORARY
SERVICES, a Nevada corporation; CPM, LTD., a
Nevada corporation; C.L.M.P., LTD., a California
corporation; EQUUS WORKFORCE
SOLUTIONS, a Kentucky
limited liability company; and DOES 1-50,
Inclusive,
Defendants.

Case No. 37-2022-00030943-CU-OE-CTL

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

Date: January 12, 2024
Time: 9:00 a.m.

Judge: Hon. James A. Mangione
Department: C-75

Trial Date: N/A
Action Filed: August 4, 2022

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsels' Investigation	4
	C. The Parties Settled at Mediation	4
III.	ARGUMENT	5
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	5
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	6
	2. Class Counsel's Investigation Provided an Objective Measurement of the Settlement's Reasonableness	6
	3. The Settlement Falls Within the Recognized Range of Reasonableness	7
	(a) Estimated Damages for Meal and Rest Period Violations	8
	(b) Estimated Damages for Failure to Pay for All Hours Worked	8
	(c) Exposure for Wage Statement Violations and Waiting Time Penalties	9
	(d) Defendants' PAGA Exposure	9
	4. Inherent Risks of Continued Litigation Support Preliminary Approval	10

1 B. The Proposed Notice Packet Informs the Class about the Case and Settlement12

2

3 C. The Court Should Preliminarily Approve the Service Award13

4

5 D. The Court Should Preliminarily Approve the Attorneys’ Fees and Attorneys’ Expenses13

6

7 E. Provisional Certification for Settlement Purposes Is Appropriate13

8 1. The Standard for Class Certification13

9 2. The Proposed Class is Ascertainable and there is a Well-Defined Community of

10 Interest Among the Class Members14

11

12 IV. CONCLUSION15

28 ///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	5
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	11
7	<i>Berry v. Urban Outfitters</i>	
8	(N.D. Cal. Lead Case No. 13-cv-02628-JSW).....	10
9	<i>Brinker v. Superior Court</i>	
10	53 Cal. 4th 1004, 1021-22 (2012).....	14
11	<i>Bufile v. Dollar Financial Group, Inc.</i>	
12	(2008) 162 Cal.App.4th 1193, 1207.....	14
13	<i>Cardenas v. McLane Foodservice, Inc.</i>	
14	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	9
15	<i>Carrington v. Starbucks Corp.,</i>	
16	30 Cal. App. 5th 504, 517, 539 (2018).....	10
17	<i>Cart v. Super. Ct.</i>	
18	(1975) 50 Cal.App.3d 960, 972.....	12
19	<i>Cellphone Termination Fee Cases</i>	
20	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	5, 13
21	<i>Chance v. Super. Ct.</i>	
22	(1962) 58 Cal.2d 275, 290.....	12
23	<i>Chavez v. Netflix, Inc.</i>	
24	(2008) 162 Cal.App.4th 43, 66 n.11.....	13
25	<i>D'Amato v. Deutsche Bank</i>	
26	(2d. Cir. 2001) 236 F.3d 78, 85.....	6
27	<i>Dunk v. Ford Motor Co.</i>	
28	48 Cal. App. 4th 1794, 1802 (1996).....	5
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	10
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	9
	<i>Fontana v. Elrod</i>	
	(7th Cir. 1987) 826 F.2d 729, 732.....	12
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	7
	<i>Hopson v. Hanesbrands, Inc</i>	
	(N.D. Cal. 2009) 2009 WL 928133 * 9.....	10
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	6
	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	7
	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	9-10
	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	11
	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	9

<i>Jack v. Hartford Fire Ins. Co.</i> (S.D. Cal. 2011) 2011 WL 4899942 * 6.....	10
<i>Kass v. Young</i> (1977) 67 Cal.App.3d 100, 106.....	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 133.....	7
<i>Lee v. Dynamex, Inc.</i> (2008) 166 Cal.App.4th 1325, 1332, 1334.....	14
<i>Magadia v. Wal-Mart Associates, Inc.</i> (9th Cir. 2021) 999 F.3d 668.....	10-11
<i>Moniz v. Adecco</i> (2021) 72 Cal.App.5th 56.....	10
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> (2010) 186 Cal.App.4th 399, 409.....	7
<i>Naranjo v. Spectrum Security Services, Inc.</i> (2023) 88 Cal.App.5th 927.....	9
<i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i> (C.D. Cal. 2004) 221 F.R.D. 523, 526, 527.....	11
<i>Newman v. Stein</i> (2d. Cir. 2002) 464 F.2d 689, 693.....	7
<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i> (1994) 27 Cal.App.4th 1085, 1089-90.....	5
<i>O’Conner v. Uber Technologies, Inc.</i> (9th Cir. 2018) 904 F.3d 1087.....	10
<i>Officers for Justice v. Civil Serv. Comm’n</i> (9th Cir. 1982) 688 F.2d 615, 625.....	5
<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	11
<i>Rodriguez v. West Publishing Corp.</i> (9th Cir. 2009) 563 F.3d 958-59.....	13
<i>Sav-On Drug Stores, Inc.</i> (2014) 34 Cal. 4th 319, 326, 333.....	14
<i>Singer v. Becton Dickinson & Co.</i> (S.D. Cal. 2010) 2010 WL 2196104 *2.....	10
<i>Stambaugh v. Super. Ct</i> (1976) 62 Cal.App.3d 231, 236.....	5
<i>State v. Levi Strauss & Co.</i> (1986) 41 Cal.3d 460, 482, 485.....	6, 12
<i>Tien v. Tenet Healthcare Corp.</i> (2012) 209 Cal.App.4th 1077, 1088.....	10
<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i> (1975) 48 Cal.App.3d 143, 151-52.....	12
RULES, CODES, AND STATUTES	
<i>Bus. & Prof. Code</i> § 17200 et seq.....	4
<i>Cal. Civ. Proc. Code</i> § 382.....	14
<i>Cal. Lab. Code</i> § 201.....	4
<i>Cal. Lab. Code</i> § 202.....	4
<i>Cal. Lab. Code</i> § 203.....	4, 9

1	<i>Cal. Lab. Code</i> § 226.....	4, 9
2	<i>Cal. Lab. Code</i> § 226.7.....	4
3	<i>Cal. Lab. Code</i> § 510 et seq.....	4
4	<i>Cal. Lab. Code</i> § 512.....	4
5	<i>Cal. Lab. Code</i> § 1194.....	4
6	<i>Cal. Lab. Code</i> § 1197.....	4
7	<i>Cal. Lab. Code</i> § 1197.1.....	4
8	<i>Cal. Lab. Code</i> § 2802.....	4
9	<i>Cal. Lab. Code</i> § 6310.....	4
10	<i>Cal. Lab. Code</i> § 1102.5.....	4
11	<i>Cal. Lab. Code</i> § 2698 et seq.....	4
12	<i>C.R.C.</i> 3.769(c)-(g).....	5
13	<i>C.R.C.</i> 3.776(e)-(f).....	12

SECONDARY SOURCES

14	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 11.26, 11.51 (4th ed. 2002)	5-6
15	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiff PRISCILLA ESTRADA (“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 127 Class Members. The basic terms of the Agreement provide for the following:

1. The **“Class Members,” “Class,”** and **“Class Period”** shall mean all persons who are or previously were employed by Defendant CPM LTD., INC dba MANPOWER OF SAN DIEGO and assigned to work at the COVID hotels operated by Defendant RES-CARE INC. dba EQUUS WORKFORCE SOLUTIONS (collectively “Defendants”) in California and classified as non-exempt employees during the period between August 4, 2018 and November 27, 2023 (“Class Period”). Agreement at §§ I(F), (I). The Class is comprised of approximately 127 individuals who collectively worked approximately 2,089 Workweeks during the Class Period. Agreement at §§III(A)(2).

2. The **“Settlement Class Members”** and **“Settlement Class”** means all Class Members who have not submitted a timely and valid request for exclusion by the Response Deadline. Agreement at § I(JJ).

3. The **“Aggrieved Employees”** and **“PAGA Period”** shall mean all persons who are previously were employed by Defendant CPM Ltd. Inc. dba Manpower of San Diego and assigned to work at the COVID hotels operated by Defendant Res-Care Inc. dba Equus Workforce Solutions in California and classified as non-exempt employees during the period between May 31, 2021 and November 27, 2023 (“PAGA Period”). Agreement at §§ I(B), (W). At the time of mediation, there were approximately 74 Aggrieved Employees during the PAGA Period. (JCL Dec., ¶ 6).

4. The **“Gross Settlement Amount”** is Two Hundred Twenty-Five Thousand Dollars (\$225,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Service Award”** in the amount of Ten Thousand Dollars (\$10,000.00) to Plaintiff in recognition of her effort and risk assumed in assisting with the prosecution of the Action.

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

1 Agreement at §§ I(II); III(N)(9);

2 b. An award of “**Attorneys’ Fees and Attorneys’ Expenses**” consisting of
3 attorneys’ fees not to exceed one-third of the Gross Settlement Amount, currently estimated to be
4 Seventy-Five Thousand Dollars (\$75,000.00) paid to Class Counsel and attorneys’ expenses not to
5 exceed Fifteen Thousand Dollars (\$15,000.00). Agreement at §§ I(D) and III(N)(10);

6 c. A “**PAGA Payment**” of Twelve Thousand Dollars (\$12,000.00) to be allocated
7 from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved Employees
8 (“Aggrieved Employee Payment”) and 75% of the payment going to the Labor and Workforce
9 Development Agency (“LWDA Payment”). Agreement at § III(N)(11); and

10 d. “**Claims Administration Expenses**” not to exceed \$7,000.00 payable to the
11 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice
12 Packet and Individual Settlement Payments. Agreement at § III(N)(12).

13 5. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount less
14 Attorneys’ Fees and Attorneys’ Expenses, Service Award, Claim Administration Expenses and PAGA
15 Payment. Agreement at § I(Q). The Net Settlement Amount is approximately \$106,000.00 which will
16 be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks
17 each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount
18 will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an
19 average Individual Settlement Payment of approximately **\$834.65**. JCL Dec., ¶ 6.

20 6. The “**Released Class Claims**” means the release from the Class Members of all class
21 claims alleged in the operative complaint and/or Plaintiff’s PAGA notice to the LWDA which occurred
22 during the Class Period, and expressly excluding all other claims, including claims for vested benefits,
23 wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and
24 class claims outside of the Class Period; provided however that Defendants shall also be entitled to a
25 full and complete release of all claims from Plaintiff pursuant to Section 1542 for her individual claims.
26 Agreement at §§I(CC) and III(B).

27 7. The “**Released PAGA Claims**” means the release from the Aggrieved Employees of all
28 PAGA claims alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA which

1 occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested
2 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
3 compensation, and PAGA claims outside of the PAGA Period. Agreement §§ I(DD) and III(C).

4 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
5 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
6 The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is
7 particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
8 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
9 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
10 denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

11 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
12 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
13 the Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed
14 Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court
15 grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

16 II. FACTS AND PROCEDURE

17 A. Overview of the Litigation

18 Defendant CPM Ltd. Inc., dba Manpower of San Diego operated a staffing service company in
19 San Diego. Defendant CPM Ltd. Inc., dba Manpower of San Diego assigned Plaintiff to work at
20 COVID hotels operated by Defendant Res-Care Inc. dba Equus Workforce Solutions. Plaintiff worked
21 for or on behalf of Defendants as a non-exempt employee from approximately November 2021 to
22 March 2022. Throughout her employment, Plaintiff was subject to Defendants' written policies and
23 procedures. JCL Dec., ¶ 8; Declaration of Priscilla Estrada ("PE Dec.") at ¶¶ 1-7.

24 Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert
25 that they fully complied with all applicable employment laws and raised several other significant
26 defenses to Plaintiff's claims, including but not limited to, compliant compensation policies and plans,
27 compliant meal and rest practices, compliant wage statements, and timely payment of all wages due
28 upon separation of employment. JCL Dec., ¶ 9.

1 On May 31, 2022, Plaintiff served Defendants and the Labor and Workforce Development
2 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). JCL Dec., ¶ 10.

3 On August 4, 2022, Plaintiff filed this class action complaint in the San Diego Superior Court
4 (“the Action”). The Action alleged eleven causes of action against Defendants for: (1) Unfair
5 competition in violation of Business and Professions Code sections 17200 *et seq*; (2) Failure to pay
6 minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1; (3) Failure to
7 pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide
8 required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable
9 IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code
10 sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized
11 wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when
12 due in violation of Cal. Lab. Code sections 201, 202 and 203; (8) Failure to reimburse employees for
13 required expenses in violation of California Labor Code section 2802; (9) Wrongful termination in
14 violation of public policy; (10) Retaliation in violation of California Labor Code sections 6310 and
15 1102.5; and (11) Violation of the Private Attorneys General Act [Labor Code section 2698, *et seq.*].
16 Prior to commencing written discovery, the Parties agreed to mediation. JCL Dec., ¶ 11.

17 **B. Class Counsels’ Investigation**

18 Class Counsel thoroughly investigated the claims and damages. The investigation included,
19 among other things, time and payroll records for a sample of Class Members, aggregate workweek and
20 pay period data, and copies of applicable handbooks, policies, and procedures. JCL Dec., ¶¶ 12-14.

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

22 On July 18, 2023, the Parties participated in a full day mediation with Hon. Judge Steven Denton
23 (Ret.) a respected jurist and mediator. The mediation concluded without a settlement, but Judge Denton
24 issued a mediator’s proposal, which was accepted by all parties and was subsequently memorialized
25 in the form of a Memorandum of Understanding (“MOU”). JCL Dec., ¶ 15. Class Counsel submits
26 that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL
27 Dec., ¶ 16.
28

1
2
3
4
5
6
7
8
9
1
1
1
1
1
1
1
1
1
1
2
2
2
2
2
2
2
2
2
2
2

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

The proposed Settlement, including a Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00), meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

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

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

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

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

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

11 The Parties participated in mediation with highly respected jurist and mediator Hon. Judge
12 Steven Denton (Ret.). Judge Denton managed the Parties’ expectations and provided a useful, neutral
13 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-
14 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
15 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.
16 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
17 to ensure that the proceedings were free of collusion and undue pressure.”).) The mediation concluded
18 with a settlement, which was subsequently memorialized in a Memorandum of Understanding
19 (“MOU”). At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive.
20 After reaching an agreement in the principle, the Parties drafted and negotiated a long-form settlement
21 which is the subject of the instant motion. Objectively, the Settlement terms are fair, adequate and
22 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 16.

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

25 Class Counsel conducted a very thorough investigation into the factual and legal issues in
26 dispute. The investigation allowed Class Counsel to fully assess the nature and magnitude of the claims
27 being settled, as well as the impediments to recovery, such as to make an independent assessment of
28 the reasonableness of the terms to which the Parties have agreed. Based on this investigation of the

facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶¶ 12-14.

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

The Gross Settlement Amount of \$225,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is 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).)

The Gross Settlement Amount of \$225,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger Consulting Group ("BCG") to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis

² 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.

1 of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure
2 for *class claims* (excluding PAGA penalties) at \$565,335.00 and Defendants' *maximum* exposure
3 (including waiting time and wage statement penalties) at \$1,472,913.00. Thus, the Gross Settlement
4 Amount of \$225,000.00 represents approximately 39.80% of Defendants' *class-wide* liability exposure
5 and 15.27% of Defendants' *maximum* exposure. The following summarizes Defendants' estimated
6 exposure. JCL Dec., ¶ 17.

7 **(a) Estimated Damages for Meal and Rest Period Violations**

8 Plaintiff's primary claim in this action is that Defendants consistently violated the law by
9 completely failing to provide meal periods. Even when Defendants did provide meal breaks, they
10 regularly violated the law by providing late, short, and interrupted meal periods. Defendants' time and
11 payroll data evidenced a 97.4% meal period violation rate. Further, it was Plaintiff's own experience
12 that due to understaffing, she never took rest periods. In total, Class Counsel estimated Defendants'
13 exposure for the meal and rest claims at \$520,711.00. JCL Dec., ¶ 18.

14 Defendants argued, *inter alia*, that it provided the Class Members with compliant meal and rest
15 periods and maintained facially compliant meal and rest period policies, such that any missed meal and
16 rest periods were by choice of each individual Class Member. Thus, Defendants argued that there was
17 no potential liability for Plaintiff's alleged meal and rest period violations and any claimed violations
18 required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 19.

19 **(b) Estimated Damages for Failure to Pay for All Hours Worked**

20 Plaintiff also alleged Defendants failed to pay its employees for all hours worked. Specifically,
21 Plaintiff asserted Defendants employed an unlawful rounding policy pursuant to which Defendants
22 rounded Plaintiffs' and Class Members' time sheets to exact, quarter-rounded total hours worked. As
23 a result, Defendants' rounding policy systematically undercompensated Plaintiff and Class Members
24 for minimum and overtime wages owed. Additionally, Defendants failed to include non-discretionary
25 bonuses into the regular rate of pay for overtime compensation. JCL Dec., ¶ 20.

26 Defendants vigorously denied liability for this claim. Defendants argued that all Class Members
27 were properly paid minimum and overtime compensation for all hours worked and that their rounding
28 policy is facially neutral and in practice, favors neither overpayment nor underpayment. Plaintiff

1 estimated Defendants' exposure for this claim at \$32,844.00. JCL Dec., ¶ 21.

2 **(c) Exposure for Wage Statement Violations and Waiting Time Penalties**

3 Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for
4 wage statement violations and waiting time penalties. Class Counsel considered the arguable presence
5 of various penalties and weighed the potential recoveries against probable defenses. Specifically,
6 Defendants argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time
7 penalties under Labor Code section 203. Additionally, Defendants argued that Plaintiff could not show
8 that Class Members suffered an "injury" because of wage statement violations, as required by Labor
9 Code section 226. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927.)
10 Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendants' exposure for these
11 penalties to be approximately \$907,578.00 (\$814,778.00 for Labor Code section 203 penalties and
12 \$92,800.00 for Labor Code section 226 penalties). JCL Dec., ¶ 22.

13 **(d) Defendants' PAGA Exposure**

14 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
15 the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately
16 \$611,100.00. JCL Dec., ¶ 23. Under PAGA, Courts have considerable discretion to reduce the penalty
17 award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced
18 PAGA 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 Com.*
21 *Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and
22 hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
23 Cal. Apr. 6, 2016) (PAGA penalties denied after trial).)

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

1 for each pay period the employee worked. Again, Defendants raised several defenses that presented
2 serious threats to the claims of Plaintiff and the Aggrieved Employees. JCL Dec., ¶ 24.

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

9 The proposed Settlement allocates \$12,000.00 to satisfy the PAGA claims. This amount
10 represents approximately 5.3% of the Gross Settlement Amount. This achieves a fair, reasonable, and
11 adequate resolution of Plaintiff's PAGA claim. (See *Moniz v. Adecco* (2021) 72 Cal.App.5th 56.)
12 Further, the amount allocated to the satisfaction of Plaintiff's PAGA claim, is well within the range of
13 reasonableness. (See, e.g., *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0%
14 PAGA allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving
15 1% PAGA allocation in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL
16 4899942 * 6 (approving \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson &*
17 *Co.* (S.D. Cal. 2010) 2010 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement);
18 and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA
19 allocation in \$1.026M settlement.)) JCL Dec., ¶ 25.

20 4. Inherent Risks of Continued Litigation Support Preliminary Approval.

21 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
22 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
23 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
24 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
25 trial court to enter judgement in favor of the employer. (See also *O'Conner v. Uber Technologies, Inc.*
26 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also
27 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
28 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th

1 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
2 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
3 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
4 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
5 harm). Consequently, the uncertainty of obtaining certification through a contested motion is a
6 significant risk factor favoring settlement. JCL Dec., ¶¶ 26-27.

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

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

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

17 Finally, continuing to litigate this action would require continued and extensive resources
18 coupled with significant Court time to proceed through trial and post-trial motions, which can often
19 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
20 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
21 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
22 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
23 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶¶ 26-28. “Avoiding such a trial and
24 the subsequent appeal in this complex case strongly militates in favor of settlement rather than further
25 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
26 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
27 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

28 Given the amount of the settlement here, as compared to potential value of the claims, offset by

1 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 29.

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

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

12 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
13 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
14 mail the proposed Notice Packet to all Class Members. The Notice Packet will include information
15 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure,
16 and time within which to requests for exclusions or objections to the Settlement, the date for the final
17 approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
18 Released Class Claims. Agreement at § III(M). The Parties negotiated this method to ensure delivering
19 the most reasonable method of notice to the Class Members while ensuring cost effective administration
20 of the Settlement. JCL Dec., ¶¶ 30-31.

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

25
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 **C. The Court Should Preliminarily Approve the Service Award**

2 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
3 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000).) Enhancement
4 payments “are intended to compensate class representatives for work done on behalf of the class, to
5 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
6 recognize their willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.)

7 The Settlement provides for a Service Award of \$10,000.00 for Plaintiff. JCL Dec., ¶¶ 32-33.
8 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once
9 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
10 is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 34.

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

12 The purpose of the attorneys’ fees in class action litigation is to reward counsel who took the
13 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
14 California courts routinely award attorneys’ fees equaling one-third or more of the potential value of
15 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
16 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method or the
17 lodestar method is used, fee awards in class actions average around one-third of the recovery.”).)

18 Class Counsel took this matter on a contingency fee basis and invested significant time and
19 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
20 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
21 Considering the positive outcome, and considering the supporting authority, the proposed Attorneys’
22 Fees and reimbursement of Attorneys’ Expenses are fair and reasonable. JCL Dec., ¶ 35.

23 Plaintiff will file a formal motion for the Attorneys’ Fees and Attorneys’ Expenses once
24 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
25 is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 36.

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

27 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
28 of the Class is appropriate. JCL Dec., ¶ 37.

1 1. The Standard for Class Certification

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

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

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

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

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

25 Because all Class Members are Defendants’ current and former non-exempt employees, the class
26 is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 38.

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

1 can be determined by facts common to all members of the class. The wage and hour issues are both
2 numerous and substantial, and a class action is the most advantageous method of dealing with the claims
3 of the Class. JCL Dec., ¶ 39.

4 Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the
5 same factual basis and are based on the same legal theories applicable to the other Class Members.
6 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges
7 that she was injured by the same company-wide practices to which the proposed Class Members were
8 subject to and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the
9 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
10 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 40.

11 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
12 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
13 gained state court settlement approval of the same class-wide causes of action that are at issue in this
14 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
15 represent the interests of this Class. JCL Dec., ¶¶ 5, 42-49; Declaration of Shani Zakay, ¶¶ 3, 8.

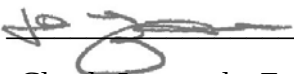
16 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
17 each individual claim, the Class Members likely have little incentive to litigate their claims on an
18 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
19 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
20 adjudication. JCL Dec., ¶ 41.

21 IV. CONCLUSION

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

25 Dated: December 18, 2023

JCL LAW FIRM, APC

27 By: 
28 Jean-Claude Lapuyade, Esq.