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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JOSEPH CHRISTOPHER KIRKHAM, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, v. PALM DESERT GREENS ASSOCIATION, a California Corporation; and DOES 1-50, Inclusive; Defendants	Case No. CVRI2202569 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: April 3, 2024 Time: 8:30 a.m. Judge: Hon. Harold W. Hopp Dept.: 1 Reservation #: 260735365086

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I. INTRODUCTION

Plaintiff JOSEPH CHRISTOPHER KIRKHAM ("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 143 Class Members and 77 PAGA Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** means all persons who are or previously were employed by Defendant PALM DESERT GREENS ASSOCIATION ("Defendant") as a non-exempt employee in California between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier ("Class Period"). Agreement at §§ I(H)-(I).

    a. The **"Settlement Class Members"** means all Class Members who have not submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at § I(KK).

    b. The "**Class Size**" is comprised of 143 individuals who collectively worked approximately 12,777 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** shall mean all persons who are or previously were employed by Defendant in California during the PAGA Period. Agreement at § I(B). The PAGA Period means the period between April 18, 2021, through date of Preliminary Approval or April 21, 2024, whichever is earlier. Agreement at § I(Y). PAGA Class Members do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(7). At the time of mediation, there were approximately 77 PAGA Class Members who worked approximately 1,722 pay periods during the PAGA Period.

3. The "**Gross Settlement Amount**" is Three Hundred Fifty Thousand Dollars and Zero Cents ($350,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

    a. A "**Class Representative Service Award**" of not more than $10,000 to Plaintiff

[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.

in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ III(M)(9).

b. A **"Class Counsel Award"** in the amount not to exceed one third of the Gross Settlement Amount for attorney's fees, currently estimated to be $122,500.00 ***and*** litigation expenses not to exceed $15,000, to be paid to Class Counsel. Agreement at § III(M)(10);

c. A "**PAGA Payment**" of Ten Thousand Dollars ($10,000) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment ($7,500) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($2,500) will be distributed to the PAGA Class Members ("Aggrieved Employee Payment"). Agreement at §§ I(C); I(R); I(V); III(M)(11); and

d. "**Settlement Administration Expenses**" not to exceed $7,800 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Class Notice and Claims Administration Expenses. Agreement at §§ I(II), III(M)(12). Class Counsel requested bids from three (3) settlement administration companies and received the lowest bid from Apex Class Action LLC. JCL Dec., ¶ 5.

4. The "**Net Settlement Amount**" of approximately $184,700 (Gross Settlement Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA Payment, and Claims Administration Expenses) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at § III(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of ***$1,291.61***. JCL Dec., ¶ 6.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant operates a non-profit, private senior home community of manufactured and mobile homes in Riverside County, where Plaintiff worked. Plaintiff worked for Defendant in California from 2007 until June 2021. During his employment, Plaintiff claims that he was denied legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 8.

Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained facially compliant meal and rest period policies, paid their employees for all hours worked, and properly reimbursed all necessary business expenses. JCL Dec., ¶ 9.

On April 18, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10. On June 23, 2022, Plaintiff filed a class action complaint in the Riverside County Superior Court, Case No. CVRI220569 ("Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1*;* (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510; (4) Failure to Provide Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to provide Accurate Itemized Wage Statements in violation of California Labor Code § 226 (7)Failure to Provide Wages When Due in Violation of California Labor Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802; and (9). Violation of the Private Attorneys General Act in violation of California Labor Code sections 2698, et seq. JCL Dec., ¶ 10.

After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 11.

On January 22, 2024, the Parties participated in a full day mediation with retired jurist and mediator, Hon. Steven Denton (Ret.) The mediation concluded with a settlement after both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 12.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 13.

Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced several documents, including but not limited, copies of Plaintiff's hiring documents and payroll and time records, and various company policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claims that Defendant failed to, among other things, provide compliant meal and rest periods, and failed to pay for all hours worked, failed to reimburse necessary business expenses, and failure to furnish accurate itemized wage statements. JCL Dec., ¶ 14.

To prepare for mediation, Defendant produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, average shift length for Class Members, number of current Class Members, number of former Class Members who were employed during the Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents and hundreds of thousands of unique cells of time and payroll data. JCL Dec., ¶ 15.

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

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 17.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 18.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 19.

C. The Parties Settled at Mediation

On January 22, 2024, the Parties conducted a full day of mediation with Hon. Steven Denton (Ret.). Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 20-21.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Settlement Class Members</u>

The proposed Settlement Class consists of all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period during the period between June 23, 2018, through the date of Preliminary Approval or April 21, 2024, whichever is earlier. Agreement at I(H). The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 143 individuals that worked approximately 12,777 workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $350,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative Service Award of not more than $10,000 to Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $10,000; (4) Claims Administration Expenses estimated at $7,800; (5) Class Counsel Award in the amount of $131,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $116,666.67 and an estimated $15,000 for actually incurred litigation expenses. See generally Agreement at § III(M).

Subject to the Court approving the Class Representative Service Award, Class Counsel Award, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § I(Q). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within sixty (60) calendar days of the Court's entry of the order granting final approval of this Settlement. Agreement at § I(O).

4. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual

Settlement Payments. Agreement at § III(M)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(M)(1).

Given that there are approximately 143 Settlement Class Members, ***the average gross recovery is approximately $1,291.61*** (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(DD).

6. PAGA Release by Plaintiff and the State of California

Generally, as of the Funding Date, Plaintiff and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims alleged in the operative complaint in the Action and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I (EE).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $350,000.00 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 California Rules 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 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id.*)

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

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

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

Once the Parties agreed to the Mediator's proposal, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶¶ 20 - 21.

2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 13-18.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendant, 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., ¶ 19.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of $350,000.00 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*

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

v. Eastman Kodak Co. (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. <u>The Gross Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Gross Settlement Amount of $350,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Payment) ranged between $862,742.29 ("Realistic Damages") and $1,054,280.43 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 40% ("Realistic Damages") and 33% ("Maximum Damages") of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure. JCL Dec., ¶ 22.

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

Plaintiff alleges that Defendant failed to pay all minimum and overtime wages to the Class Members. Specifically, Plaintiff alleged that Defendant maintained an unlawful rounding practice. The data produced by Defendant showed 88.9% of all time entries appear in quarter-hour intervals. Defendant did not produce, and Plaintiff does not believe Defendant maintained, any record of unrounded time punches. JCL Dec., ¶ 23. Plaintiff also alleges that Plaintiff and other Class Members were, from time to time, required to work off-the-clock after their shifts ended, in order to lock up Defendant's maintenance facility, and/or because they were contacted after hours regarding maintenance emergencies, and/or because they were required to wash Defendant's rags and micro-shams at their homes. Plaintiff estimated the damages for this claim at approximately $41,709.76. JCL Dec., ¶ 24.

(2) <u>Defendant's Estimated Exposure of Facial Violation of Section 226</u>

Plaintiff also alleges that Defendant failed to furnish accurate, itemized wage statements in violation of Labor Code 226(a)(2). Specifically, Defendant furnished wage statements that inaccurately listed the number of total hours worked. In instances in which an employee used sick or vacation time, the amount of sick or vacation time used was added together with the time actually worked by the employee, and that total was listed in the wage statement as the total hours worked. JCL Dec., ¶ 25. Defendant maintains that its wage statements satisfy the requirements of Labor Code Section 226, and further contends that Plaintiff cannot show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiff estimated the statutory penalties for this claim at approximately $54,880. JCL Dec., ¶ 26.

(3) Defendant's Estimated Damages for Rest Period Claims

Plaintiff also alleges that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that he and other Class Members were required to work through rest periods in order to assist homeowners with various maintenance tasks, and also to communicate with Defendant's main office and/or a supervisor. As a result, Plaintiff alleges that rest periods were nearly always on premises and on-duty. JCL Dec., ¶ 27. Defendant denied liability and asserted that they maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). JCL Dec., ¶ 28. Accordingly, Plaintiff's Realistic Damage model applied a 20% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between approximately $275,850.96 dollars to approximately $344,813.70 dollars. JCL Dec., ¶ 29.

(4) Exposure for Unreimbursed Business Expenses

Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business expenses. Specifically, Plaintiff alleges that he and other Class Members were required to use their own personal cellular phones as a result of and in furtherance of their job duties reimbursed for the cost associated with the use of their personal cellular phones. Plaintiff alleges he and other Class Members were required to use their personal cell phones in order to, among other things, communicate with supervisors and Defendant's main office during and after their shifts, take photos of various items that needed repair, and search for supplies and tools on the internet. Defendant denies these claims, and also notes that the Class is comprised of all non-exempt employees, and even if these claims were true, they would affect only a small subset of that Class. Cal. Labor Code § 2802, provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" JCL Dec., ¶ 30. Taking into account Defendant's defenses, Plaintiff applied a 20% discount to this claim. Plaintiff estimated Defendant's exposure for this claim ranged from $18,900.00 and $23,625. JCL Dec., ¶ 31.

(5) Defendant's Estimated Exposure for Meal Break Violations

Plaintiff alleges that Defendant engaged in a practice of rounding Class Members' meal periods, as prohibited under *Donohue v. AMN Services*, LLC, 11 Cal.5th 58 (2021). The data provided by Defendant shows that 73.9% of first meal periods were exactly 30-minutes in length, suggesting an unlawful rounding practice. Defendant denies this practice, instead maintaining that this percentage reflects a high number of instances in which a Class Member failed to clock in or out, and subsequently estimated their own meal period to be 30 minute in length. Moreover, Defendant also noted that it did in fact pay meal period premiums in various instances in which a compliant meal break could not be taken. Taking into account Defendant's defenses, Plaintiff applied a 20% discount to this claim. Plaintiff estimated Defendant's exposure for this claim ranged from $281,279.20 to $351,599.00. JCL Dec., ¶ 32.

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(6) Defendant's Estimated Exposure for Waiting Time Penalties

Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor Code section 203. Defendant contends that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. As this claim is legally precarious, Plaintiff applied a 20% discount. Plaintiff estimated Defendant's exposure for these claims to be between $175,680 and $219,600. JCL Dec., ¶ 33.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure to be approximately $490,500 dollars if successful at trial. Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	**Number of employees**	**Statutory penalty**	**Number of pay periods / violations**	**Violation rate**	**Total Penalties**
351, 510, 558, 1194 and 1197 (unpaid wages)	77	$100	1,722	100% of total pay periods	$172,200
510 (unpaid overtime)	77	$100	123	7.1% of total pay periods	$12,300
512 and 226.7 (meal period violations)	77	$50	1,338	77.7% of total pay periods	$66,900
512 and 226.7 (rest period violations)	77	$50	1,338	77.7% of total pay periods	$66,900
2802 (unreimbursed business expenses)	77	$100	1,722	100% of total pay periods	$172,200
TOTAL					**$490,500**

JCL Dec., ¶ 34. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).

Courts routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $10,000 which is 2.9% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($7,500.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($2,500.00) will be distributed to the PAGA Class Members, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 35.

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 36.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 37. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $350,000.00 that is roughly between approximately 33% - 40% of Defendant's *class-wide* liability exposure for damages and statutory penalties, and between 23% and 26% of Defendant's maximum class wide liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 38.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § I(T). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 39.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.") JCL Dec., ¶ 40.

C. 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).) Service Awards "are intended to compensate class representatives for

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

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 $10,000 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 41.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Award. JCL Dec., ¶ 42.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 43.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 44.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 45.

1. <u>The Standard for Class Certification</u>

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

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

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

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

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

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 46.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 47.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 48.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 52-58, Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 49.

IV. CONCLUSION

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

Dated: March 8, 2024

JCL LAW FIRM, APC

By:________________________
Jean-Claude Lapuyade, Esq.