JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
jlapuyade@jcl-lawfirm.com
Perssia Razma (State Bar #351398)
prazma@jcl-lawfirm.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
shani@zakaylaw.com
Jackland K. Hom (State Bar #327243)
jackland@zakaylaw.com
Jaclyn Joyce (State Bar #285124)
jaclyn@zakaylaw.com
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

JESUS GARCIA, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, v. THE BEACH CHALET, L.P., a California Limited Partnership; and DOES 1-50, Inclusive, Defendants.	Case No. CGC-22-600090 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: October 23, 2025 Time: 9:00am Dept.: 302

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I. INTRODUCTION

Plaintiff Jesus Garcia ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 669 Class Members and 359 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** or the **"Class Members"** means all current and former non-exempt employees who worked for Defendant The Beach Chalet, L.P., in California at any time beginning on June 9, 2018, through February 2, 2025. Agreement at § I(G).

a. The **"Class Period"** means the period from June 9, 2018, to February 2, 2025. Agreement at § I(J).

b. The **"Class Representative"** shall mean Jesus Garcia. Agreement at § I(K).

c. The **"Class Data"** means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class Member's full name; last known address; Social Security Number; start dates and end dates of employment, and any other information the Settlement Administrator deems necessary to accurately calculate the number of Workweeks and Pay Period worked by each Class Member and Aggrieved Employee during the Class and PAGA Periods. Agreement at § I(I).

2. The **"Aggrieved Employees"** means all current and former non-exempt employees who worked for Defendant The Beach Chalet, L.P., in California at any time during the period beginning on April 4, 2021, through February 2, 2025. Agreement § I(C).

3. The **"PAGA Period"** means the period from April 4, 2021, to February 2, 2025. Agreement at § I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(H)(2)(a). At the time of mediation, there were approximately 359 Aggrieved Employees during the PAGA Period. SOZ Dec., ¶ 7.

4. The "**Gross Settlement Amount**" means Four-Hundred Thousand Dollars and Zero

[1] The Agreement is attached as Ex "1" to the Declaration of Shani O. Zakay ("SOZ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

Cents ($400,000.00) that Defendant must pay into the QSF in connection with this Settlement, inclusive of the sum of Individual Settlement Payments, Claims Administration Expenses, Attorneys' Fees and Expenses, the Service Award, and the PAGA Payment and ***exclusive*** of the employer's share of payroll tax, if any, triggered by any payment under this Settlement. Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **"Service Award"** in the amount of $10,000.00 or in an amount that the Court authorizes to be paid to the Class Representative, in addition to his Individual Settlement Payment and his individual Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at § I(HH);

b. **"Attorneys' Fees"** in the amount that the Court authorizes to be paid to Class Counsel for the services they have rendered to Plaintiff and the Settlement Class in the Action, not to exceed one-third of the Gross Settlement Amount (currently estimated to be $133,333.33 out of $400,000.00). Agreement at § I(E). Attorneys' Fees will be divided between Class Counsel as follows: 50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC;

c. **"Attorneys' Expenses"** in the amount that the Court authorizes to be paid to Class Counsel for the actual accosts they have incurred of up to $30,000.00. Agreement at § I(D);

d. A "**PAGA Payment**" of Twenty Thousand Dollars and Zero Cents ($20,000.00) to be allocated from the Gross Settlement Amount, with 25% of the payment ($5,000.00) going to the Aggrieved Employees ("Aggrieved Employee Payment") and 75% of the payment ($15,000.00) going to the LWDA ("LWDA Payment"). The amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(1). Any reallocation of the Gross Settlement Amount to increase the PAGA Payment will not constitute grounds by either party to void this Agreement, so long as the Gross Settlement Amount remains the same. Agreement at § I(W); and

e. "**Claims Administration Expenses**" in the amount that the Court authorizes to be paid to the Settlement Administrator for administering the Settlement pursuant to this Agreement currently estimated not to exceed $8,500.00. Agreement at § I(F).

f. **"Settlement Administrator"** means Atticus Class Action Administration, 1295 Northland Drive Suite 160, St. Paul, MN 55120; Tel 612-383-2505. The Settlement Administrator establishes, designates and maintains, as a Qualified Settlement Fund ("QSF") under Internal Revenue Code section 468B and Treasury Regulation section 1.468B-1, into which the amount of the Gross Settlement Amount is deposited for the purpose of resolving the claims of Settlement Class Members. The Settlement Administrator shall maintain the funds until distribution in an account(s) segregated from the assets of Defendant and any person related to Defendant. ***All accrued interest from the deposited Gross Settlement Agreement shall be paid and distributed to the Settlement Class Members as part of their respective Individual Settlement Payment.*** Agreement at § I(JJ).

5. The "**Net Settlement Amount**" or **"NSA"** means approximately $198,166.67 (Gross Settlement Amount less the requested Attorneys' Fees and Expenses, Service Award, PAGA Payment, and Claims Administration Expenses) which will be allocated to all Class Members on a pro-rata basis according to the number of Workweeks each Class Member worked during the Class Period. Agreement at §§ I(R); III(I)(1). The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of ***$296.21***. SOZ Dec., ¶ 7.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. 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. SOZ Dec., ¶ 7.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation: Defendant operates a brewery and restaurant in San Francisco, California, where Plaintiff worked. Plaintiff was employed by Defendant from March 2021 to January of 2022 as a non-exempt employee. Plaintiff alleges that he was denied legally compliant meal and rest periods, and minimum wages and overtime compensation at all times during his employment. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." SOZ Dec., ¶ 9. Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to accurately calculate the regular rate of pay for purposes of overtime and meal period premiums, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. 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. SOZ Dec., ¶ 10.

On April 4, 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"). SOZ Dec., ¶ 11. On June 9, 2022, Plaintiff filed a class action complaint in the San Francisco County Superior Court, Case No. CGC-22-600090 ("Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 1700, *et. seq.;* (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802; (8) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 698, *et seq.* ("PAGA")]. SOZ Dec., ¶ 12.

On August 4, 2022, Plaintiff filed a First Amended Complaint to dismiss the class claims without prejudice and allege a single PAGA representative cause of action. On September 15, 2022, Judge Richard B. Ulmer, Jr., granted Defendant's Motion to Compel Arbitration and stay of the action and declined to dismiss Plaintiff's representative claims. On July 4, 2023, Plaintiff filed a Motion to Vacate the September 15, 2022, order compelling Plaintiff's individual claims to arbitration pursuant to CCP §1281.98 on the grounds that Defendant was in material breach of the arbitration agreement and was in default of the arbitration agreement as Defendant failed to pay all fees and costs required to continue the arbitration proceeding. On August 1, 2023, Judge Ulmer granted Plaintiff's Motion to Vacate the Order compelling Plaintiff's Individual Claims to Arbitration. After Plaintiff's Motion for Leave to file a Second Amended Complaint was granted on October 30, 2023, Plaintiff filed a Second Amended Complaint on November 3, 2023, to reallege the previously dismissed class claims against Defendant. SOZ Dec., ¶ 13.

The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce 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. SOZ Dec., ¶ 14. On October 22, 2024, the Parties participated in a full day mediation with the Hon. Brian C. Walsh (Ret.) a highly respected mediator of wage and hour class actions. The mediation concluded without a settlement. However, with Judge Walsh's assistance, the Parties continued settlement discussions and ultimately reached a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU"). The complete and final terms of the Parties' settlement are now set forth in the Agreement, which is the subject of the instant motion. SOZ Dec., ¶ 15.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues: Months before filing the Action, Class Counsel began its pre-filing investigation into the 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, including his wage statements. Class Counsel reviewed the documents and determined that the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked, issue accurate itemized wage statements, and provide complaint meal and rest periods. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. SOZ Dec., ¶ 16.

To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced time records and payroll records, as well as other documents and information, to Class Counsel to review and analyze. To prepare for mediation, Defendant produced the 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, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed more than 100 pages of documents and more than 3 million unique cells of time and payroll data. SOZ Dec., ¶ 17.

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. SOZ Dec., ¶ 18. 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 wages, the amount of unreimbursed expenses, the amount of unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during the Class Period. SOZ Dec., ¶ 19.

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 Class Member'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. SOZ Dec., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SOZ Dec., ¶ 21.

C. The Parties Settled with the Assistance of the Mediator: On October 22, 2024, the Parties conducted a full day of mediation with Judge Walsh. Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded without a settlement. Following mediation, the Parties continued settlement negotiations with the assistance of Judge Walsh until reaching settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶¶ 22-23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Class Members:</u> The proposed Class consists of all persons who worked for Defendant as non-exempt employees in California at any time during the Class Period (June 9, 2018, to February 2, 2025). Agreement at § I(G). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § III(H)(7). At the time of mediation, Defendant estimated that the Class was comprised of 669 individuals that worked approximately 23,766 workweeks during the Class Period. Agreement at § III(A)(4).

2. The Settlement Consideration: The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of Four Hundred Thousand Dollars and Zero Cents ($400,000.00). The Gross Settlement Amount includes: (1) Individual Class Payments to the Class Members; (2) a Service Award of not more than $10,000.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of $20,000.00; (4) Claims Administration Expenses estimated at $8,500.00; (5) Attorneys' Fees and Expenses in the amount of $163,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $133,333.33 and an estimated $30,000.00 for actually incurred litigation expenses. See generally Agreement at § III(A). Subject to the Court approving the Service Award, Attorneys' Fees and Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each Class Member. Agreement at § III(I)(9). 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 by the later of the following: (1) the date by which the Court's judgment granting final approval of this Settlement becomes final; or (2) by February 3, 2026, whichever is later. Agreement at § I(N)-(O).

4. Formula for Calculating Individual Class Payments: Class Members will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Class Member worked for Defendant in California during the Class Period. Agreement at § III(I)(1). The Class Data provided by Defendant to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § I(I). Each Class Member's final Individual Class Payment for purposes of payment will be calculated by using a fraction, the numerator of which is the Class Member's total number of Workweeks, and the denominator of which is the total number of Workweeks of all Class Members. Agreement at § III(I)(1). For purposes of these calculations, a Workweek shall mean any week during which a Class Member worked for Defendant for at least one day during the Class Period. Agreement at § I(LL). Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at §

III(I)(1). Individual Class Payments for members of the Class Members who submit valid and timely requests for exclusion will be redistributed to Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(I)(1). Given that there are approximately 669 Class Members, ***the average gross recovery is approximately $296.21*** (Net Settlement Amount divided by Class Members). SOZ Dec., ¶ 7.

5. Release by Class Members: Generally, as of the Funding Date, Plaintiff and the Class Members will agree to release the Released Parties from the Settled Class Claims that accrued during the Class Period. Agreement at §§ I(DD); I(FF); III(A)(2).

6. PAGA Release by the State of California on behalf of the Aggrieved Employees: Generally, as of the Funding Date, Plaintiffs, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Settled PAGA Claims that accrued during the PAGA Period. Agreement at §§ I(EE)-(FF); III(A)(3).

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement: The proposed Settlement, including a Gross Settlement Amount of $400,000.00 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 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.*)

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel:</u> "[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 with the Hon. Brian C. Walsh (Ret.), a highly respected mediator of wage and hour class actions such as the present. Judge Walsh 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.”).) The mediation concluded without a settlement. However, the Parties continued settlement negotiations with Judge Walsh’s assistance until they agreed to settle the Action. SOZ Dec., ¶ 23.

Once the Parties reached an agreement, 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. SOZ Dec., ¶ 24.

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. SOZ Dec., ¶¶ 16-20.

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. SOZ Dec., ¶ 21.

3. The Settlement Falls Within the Recognized Range of Reasonableness: The Gross Settlement Amount of $400,000.00 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 plaintiff 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).)

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness: The Gross Settlement Amount of $400,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery, including Defendant's financial condition. 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 projects Defendant's liability exposure for *class claims* (excluding PAGA Penalties) ranged between $1,606,217.20 ("Conservative Model") and $3,387,234.00 ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 24.90% ("Conservative Model") and 11.81% ("Aggressive Model") of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's

[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").

liability exposure. SOZ Dec., ¶ 24.

(1) <u>Defendant's Estimated Exposure for Meal Period Violations</u>

Plaintiff's primary claim in this Action alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that they are owed meal period premiums for meal period violations that occurred during the Class Period. This allegation is supported by an analysis of the Class Members' time and payroll data. SOZ Dec., ¶ 25.

Conversely, Defendant argued, among other things, that it provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendant also argued that it maintained facially complaint meal period policies and that there were no instructions to take noncompliant meal periods. SOZ Dec., ¶ 27. In light of the above, and taking Defendant's defenses into account, Plaintiff estimates that the damages for this claim is approximately $337,551.00. SOZ Dec., ¶ 26.

(2) <u>Defendant's Estimated Exposure of Rest Period Violations</u>

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiffs, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods. Like the meal period violations, BCG assumed an identical 76% violation rate for rest periods based on Plaintiff's testimony and investigation. SOZ Dec., ¶ 27.

Again, Defendant denied liability and asserted that it 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."). Accordingly, Plaintiff's estimates that the damages for this claim is approximately $468,149.00. SOZ Dec., ¶ 28.

(3) Defendant's Estimated Exposure for Regular Rate Violations

Plaintiffs also allege that Defendants miscalculated the regular rate of pay for purposes of overtime and meal break premiums. Specifically, Plaintiff alleges that employees were paid at two or more hourly rates during a given pay period, but that Defendant failed to properly calculate the regular rate of pay by using the weighted average of those rates. SOZ Dec., ¶ 29. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Defendant maintains that it paid the correct regular rate, and that any errors in the regular rate calculation were inadvertent and incidental. Therefore, Defendant was also prepared to oppose class certification on the grounds that individualized, incidental issues would predominate over common issues, rendering class treatment inappropriate. Accordingly, Plaintiff estimates that Defendant's exposure on this claim is approximately $574.00. SOZ Dec., ¶ 30.

(4) Defendant's Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant failed to reimburse its employees for mandatory business expenses. Specifically, Plaintiff alleges that Defendant required Plaintiff, Class Members, and Aggrieved Employees to launder and press their work uniforms as a result of and in furtherance of their job duties but were not reimbursed for the cost associated with maintaining their work uniforms. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An 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…"). BCG estimated a reasonable $15 monthly reimbursement rate for Class Members for maintaining their work uniforms. SOZ Dec., ¶ 31.

Again, Defendant denied any liability for this claim. Defendant argued that employees had no reason to incur any business expenses in the discharge of their duties. It contends that it did not require employees to incur out-of-pocket costs for uniform maintenance, and that any such expenses were voluntary, incidental, or not incurred as a direct consequence of job duties. Defendant further asserts that, to the extent any expenses were incurred, they were minimal, not routinely required, and not brought to Defendant's attention. In light of the above, and taking Defendant's defense into account, Plaintiff discounted this claim by 50% and estimates Defendant's exposure for this claim ranged between $48,457.50 and $96,915.00. SOZ Dec., ¶ 32.

(5) <u>Defendant's Estimated Exposure for Unpaid Wages</u>

Plaintiff also alleged that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserted that Defendant failed to pay employees for time spent taking physical COVID-19 tests before the start of his shifts. Based on Plaintiff's testimony and Class Counsel's investigation, BCG estimated that Class Members performed approximately five to ten minutes of unpaid work performing COVID-19 screenings before every shift. Additionally, Plaintiff alleged that they and other Class Members worked off-the-clock placing garbage bins outside and securing the premises. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendant's control. SOZ Dec., ¶ 33.

Defendant vigorously denied liability for this claim. Further, Defendant asserted that it had in place a written policy requiring its employees to accurately record all their time worked daily and argued that such written policies and procedures directed its employees not to work while off the clock. Defendant also had in place compliant timekeeping policies that required employees to accurately record their hours worked. Accordingly, Plaintiff narrowed the period to 2020 through 2022 and estimates that Defendant's exposure for this claim ranges between $15,680.50 and $31,361.00. SOZ Dec., ¶ 34.

(6) <u>Defendant's Estimated Exposure for Wage Statement Violations</u>

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges facial violations of Labor Code section 226(a) in that Defendant failed to include the address of the legal entity that employed Plaintiff and Class Members and included non-worked hours in the total hours worked. Moreover, Plaintiff alleges that as a result of Defendant's failure to pay for all wages and provide meal and rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Defendant argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish that its failure was knowing and intentional. As a result, Plaintiff discounted this claim 70% to account for this risk. Plaintiff estimated that Defendant's exposure on this claim ranges $223,035 and $743,450. SOZ Dec., ¶ 35.

(7) <u>Defendant's Estimated Exposure for Waiting Time Penalties</u>

Plaintiff also alleged that the Defendant's Labor Code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo, supra,* 15 Cal. 5th 1056, creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Moreover, it is unclear at best whether Plaintiffs could establish the actual harm component necessary for class-certification on the facial claim under Labor Code Section 226(a), even if liability is established. Notwithstanding the uncertain nature of the claims, Plaintiff discounted the waiting time penalty claim by 70% and estimated Defendant's exposure for this claim ranged between $512,770.20 and $1,709,234.00. SOZ Dec., ¶ 36.

(8) <u>Defendant's PAGA Exposure</u>

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between $38,070 and

$3,303,500. SOZ Dec., ¶ 37. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 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 gross settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment ($15,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payments approved by courts and should be approved. SOZ Dec., ¶ 38.

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. SOZ Dec., ¶ 39.

"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).)

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 was 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. SOZ Dec., ¶ 40. "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.)

Finally, at mediation, Defendant represented that its ability to fund a class-wide settlement was constrained by its financial condition. In response, Class Counsel retained Kenneth L. Creal, CPA, an experienced financial accounting and forensics expert, to independently assess Defendants' financial capacity. Mr. Creal conducted a thorough review of Defendant's financial records. Based on that analysis, Mr. Creal concluded that the proposed Gross Settlement Amount is fair and reasonable in light of the company's financial position and projected financial trajectory. SOZ Dec., ¶ 41.

In this matter, Class Counsel negotiated a Gross Settlement Amount of $400,000.00 that is 11.81% to 24.90% of Defendant's *class-wide* liability exposure for damages and statutory 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, and in light of Defendant's financial condition, the settlement is fair and reasonable. SOZ Dec., ¶ 42.

B. The Proposed Notice Informs the Class about the Case and Settlement: The Class Members are 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(S); III(H)(2). The Parties negotiated this method to ensure delivering the most reasonable notice to the Class Members while ensuring cost effective administration of the Settlement. SOZ Dec., ¶ 43.

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[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.

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.").) SOZ Dec., ¶ 44.

C. The Court Should Preliminarily Approve the Service Award: Service Awards "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 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 Service Award of $10,000.00 to 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 their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members, and agreeing to provide Defendant a general release of all claims arising out of their employment. SOZ Dec., ¶ 45.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated 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 Service Award. SOZ Dec., ¶ 46.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Expenses: The purpose of a payment of Attorneys' Fees and Expenses 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 Class Payment illustrates the demonstrably positive outcome for the Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Expenses are fair and reasonable. SOZ Dec., ¶ 47.

Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Attorneys' Fees and Expenses. SOZ Dec., ¶ 48.

E. Provisional Certification for Settlement Purposes Is Appropriate: For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. SOZ Dec., ¶ 49.

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 Participating 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. SOZ Dec., ¶ 50. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire 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 Class Members. SOZ Dec., ¶ 51.

Plaintiff's wage and hour claims are typical of the proposed 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 Class. Plaintiff alleges that he 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. SOZ Dec., ¶ 52.

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. SOZ Dec., ¶¶ 6, 54, Declaration of Jean-Claude Lapuyade, ¶¶ 3-8.

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. SOZ Dec., ¶ 53.

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: September 25, 2025

ZAKAY LAW GROUP, APLC

By: ______________________

Jackland K. Hom, Esq.
Attorney for PLAINTIFF