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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MANUEL FIMBRES, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

DREAMSTYLE REMODELING OF
CALIFORNIA, LLC, a Delaware limited
liability company; DREAMSTYLE
REMODELING OF CALIFORNIA, INC., a
California corporation; DREAMSTYLE
REMODELING, INC., a New Mexico
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 37-2022-00013690-CU-OE-CTL

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

Hearing Date: December 15, 2023

Hearing Time: 9:00am

Honorable Judge James A. Mangione
Department: C-75

Trial Date: Not Set

Action Filed: April 12, 2022

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT	1
III.	CASE BACKGROUND	4
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	6
	A. Factors To Be Considered In Granting Preliminary Approval	7
	1. The Settlement is the Product of Serious, Informed and Arm’s Length Negotiations by Experienced Counsel	7
	2. The Settlement Falls Within the Range of Approval	8
	a. The Settlement is Fair, Reasonable, and Adequate	8
	b. The Strengths and Weaknesses in Plaintiff’s Case and Defendant’s Defenses Warrant the Settlement	10
	c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration, and Complexity of Further Litigation Weigh in Favor of the Settlement	10
	3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class Representative or Segments of The Class	11
	4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval	12
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	12
	A. The Proposed Class Is Ascertainable and Numerous	

.....13

B. Common Issues of Law and Fact Predominate
.....13

C. The Claims of the Plaintiffs Are Typical of the Class Claims
.....13

D. The Class Representative Fairly and Adequately Protected the Class
.....14

E. The Superiority Requirement Is Met
.....14

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE
.....14

VII. CONCLUSION
.....15

TABLE OF AUTHORITIES
CASES

1		
2	<i>Amaral v. Cintas Corp.</i>	
3	163 Cal. App. 4 th 1157, 1209 (2008).....	10
4	<i>Brinker v. Superior Court</i>	
5	53 Cal. 4 th 1004 (2012).....	10
6	<i>Carrington v. Starbucks Corp.,</i>	
7	30 Cal. App. 5 th 504, 517, 539 (2018).....	10
8	<i>Clark v. American Residential Services LLC</i>	
9	(2009) 175 Cal.App.4 th 785.....	4
10	<i>Dunk v. Ford Motor Co.</i>	
11	(1996) 48 Cal.App.4 th 1794, 1801.....	6
12	<i>Duran v. U.S. Bank National Association</i>	
13	(2014) 59 Cal.4 th 1.....	11
14	<i>Frazier v. City of Richmond</i>	
15	184 Cal. App.3 ^d 1491, 1499 (1986).....	6
16	<i>Gautreaux v. Pierce</i>	
17	690 F.2d 616, 621 n.3 (7 th Cir. 1982).....	6
18	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
19	169 Cal. App. 4 th 1524, 1536 (2008).....	13
20	<i>Glass v. UBS Fin. Servs.</i>	
21	2007 WL 221862 at *4, 16-17 (N.D. Cal. Jan. 27, 2007).....	11-12
22	<i>Golba v. Dick's Sporting Goods, Inc.</i>	
23	238 Cal. App. 4 th 1251 (2015).....	4
24	<i>Green v. Obledo</i>	
25	29 Cal.3 ^d 126, 145-146 (1981).....	6
26	<i>Hanlon v. Chrysler Corp.</i>	
27	150 F.3 ^d 1011, 1020, 1026 (9 th Cir. 1988).....	10, 14
28	<i>In re Tableware Antitrust Litig.</i>	
	484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).....	7
	<i>In re Wash Public Power</i>	
	720 F. Supp. at 1392.....	8
	<i>Manual for Complex Litigation</i>	
	Second §30.44 at 229.....	6
	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4 th 576, 581 (2010).....	6
	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i>	
	323 F. Supp. 364, 372 (E.D. Pa. 1970).....	7
	<i>Reber v. AIMCO/Bethesda Holdings, Inc.</i>	
	2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008).....	9
	<i>Rose v. City of Hayward</i>	
	126 Cal. App.3 ^d 926, 934 (1981).....	13
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist, LEXIS 78671 at *12 (N.D. Cal. 2015).....	9
	<i>Tate v. Weyerhaeuser Co.</i>	
	723 F.2d 598, 608 (8 th Cir. 1983).....	13
	<i>Vasquez v. Superior Court</i>	
	4 Cal 3 ^d 800, 821 (1971).....	6

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STATUTES, RULES AND CODES

Cal.Civ.Proc. Code § 382.....12
Cal.Civ.Proc. Code § 384.....3
Bus. and Prof. Code § 17200.....4
Cal. Lab. Code § 1194.....4
Cal. Lab. Code § 1197.....4
Cal. Lab. Code § 1197.14
Cal. Lab. Code § 510 *et seq*4
Cal. Lab. Code § 226.74
Cal. Lab. Code § 512.....4
Cal. Lab. Code § 516.....4
Cal. Lab. Code § 226.....4, 9
Cal. Lab. Code § 226.2.....4
Cal. Lab. Code § 2802.....4
Cal. Lab. Code § 201.....4
Cal. Lab. Code § 202.....4
Cal. Lab. Code § 203.....4
Cal. Lab. Code § 2802.....4
Cal. Lab. Code § 2699(i).....4
Cal. Rules of Court, rule 3.766.....15
Cal. Rules of Court, rule 3.769(f).....15

SECONDARY SOURCES

Conte & Newberg, *Newberg on Class Actions*, 3d Ed.,§11.41, p.11-88
.....7

1 **I. INTRODUCTION**

2 Plaintiffs Manuel Fimbres, Andy Dohrer, Ryan Houser, Abens Ponce and Eliot Warner
3 (“Plaintiffs”) respectfully submit this memorandum in support of the motion for preliminary approval
4 of the proposed class and Private Attorneys General Act (“PAGA”) action settlement with Defendants
5 Dreamstyle Remodeling of California, LLC, Dreamstyle Remodeling of California, Inc., and
6 Dreamstyle Remodeling, Inc. (“Defendants”), and seek entry of an order: (1) preliminary approving
7 the proposed settlement of this class and PAGA action with Defendant; (2) approving the form and
8 method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to
9 the class; and (4) scheduling a final approval hearing date to consider Plaintiffs’ motion for final
10 approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’
11 fees and litigation expenses.

12 Plaintiffs and Defendants have reached a full settlement of the above-captioned action, which is
13 embodied in the Class and PAGA Action Settlement Agreement (“Agreement”). A copy of Agreement
14 is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed
15 herewith.

16 As consideration for this Settlement, the total amount to be paid by Defendants is One Million
17 Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000) (the “Gross Settlement
18 Amount”). The Settlement is all-in with no reversion to Defendants and no need to submit a claim
19 form. Agreement at ¶ III(A)(1). This Settlement was reached following an extensive investigation, and
20 after an all-day mediation with experienced mediator Steven Serratore. Plaintiffs and Class Counsel
21 believe that this Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
22 (Decl. Zakay at ¶ 3). Therefore, Plaintiffs respectfully request that this Court grant preliminary
23 approval of the Agreement and enter the proposed order submitted herewith.

24 **II. DESCRIPTION OF THE SETTLEMENT**

25 The Gross Settlement Amount to be paid by Defendants is One Million Three Hundred Fifty
26 Thousand Dollars and Zero Cents (\$1,350,000). Under the Settlement, the Gross Settlement Amount
27 consists of the following elements: (1) payments of the Individual Settlement Payments to
28 Participating Class Members; (2) Class Counsel Attorneys’ Fees and Expenses; (3) Settlement

Administration Costs, (4) the PAGA Penalties payment; (5) the Enhancement Awards to Plaintiffs. The Gross Settlement Amount does not include Defendants' share of employer payroll taxes, which Defendants shall pay to the Administrator separately. Agreement at I(R). The Gross Settlement Amount shall be all-in with no reversion to Defendant. Agreement at ¶ III(A)(1). Within 14 days of final approval and the Judgment becoming final, the Defendants will fund the Gross Settlement Amount. Agreement at III(A)(3). Within fifteen (14) days after Defendants fund the Gross Settlement Amount, the Settlement Administrator will pay: the Participating Class Members their Individual Settlement Payments; Aggrieved Employees their Aggrieved Employee Payments, the LWDA its LWDA Payment; Class Counsel their Class Counsel Attorneys' Fees and Expenses; and the Settlement Administrator its Settlement Administration Costs, all in the amounts approved by the Court. Agreement at ¶¶ III(M)(7);(9)-(11).

The Net Settlement Amount shall equal the net amount available for Individual Settlement Payments to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for the Enhancement Awards, the Class Counsel Attorneys' Fees and Costs, the PAGA Penalties, and the Settlement Administration Costs. The Net Settlement Amount shall be split between the Non-Exempt Piece Rate Class (all non-exempt employees who worked solely on a piece rate basis and hourly combination basis within the Class Period) and the Non-Exempt Hourly Class (all non-exempt employees who worked solely on an hourly basis within the Class Period), with 75% of the Net Settlement Amount to be allocated to the Non-Exempt Piece Rate Class and 25% of the Net Settlement Amount to be allocated to the Non-Exempt Hourly Class. Agreement at III(M)(1). Individual Settlement Payments shall be paid from the Net Settlement Amount pursuant to the formulas as follows: The Claims Administrator shall add up the total number of Workweeks for each member of the Non-Exempt Piece Rate Class, and divide this number by the total Workweeks for all Non-Exempt Piece Rate Class members, resulting in a Payment Ratio for each Non-Exempt Piece Rate Class member. Each Non-Exempt Piece Rate Class member's Payment Ratio will then be multiplied by portion of the Net Settlement Amount allocated to the Non-Exempt Piece Rate Class (i.e. 75% of the Net Settlement Amount), to calculate each Non-Exempt Piece Rate Class member's estimated Individual Settlement Payments. The same is true for members of the Non-Exempt Hourly

1 Class. the Settlement Administrator shall add up the total number of Workweeks for each member of
2 the Non-Exempt Hourly Class. The respective Workweeks for each Non-Exempt Hourly Class
3 member will be divided by the total Workweeks for all Non-Exempt Hourly Class members, resulting
4 in the Payment Ratio for each Non-Exempt Hourly Class Member. Each Non-Exempt Hourly Class
5 member's Payment Ratio will then be multiplied by portion of the Net Settlement Amount allocated to
6 the Non-Exempt Hourly Class (i.e. 25% of the Net Settlement Amount), to calculate each Non-Exempt
7 Hourly Class member's estimated Individual Settlement Payments. Agreement at III(M)(1)(a)-(b).

8 Class Members will have 45 days after the mailing of the Class Notice to exclude themselves or
9 submit written objections. Agreement at I(OO); III(L)(8). Class Members may choose to opt-out of the
10 Settlement by following the directions in the Class Notice. All Class Members who do not "opt out"
11 will be deemed Participating Class Members who will be bound by the Settlement and will be entitled
12 to receive a settlement payment. Finally, the Class Notice will advise the Class Members of their right
13 to object to the Settlement. Agreement at III(L)(7)-(8). If a check is returned to the Settlement
14 Administrator, the Settlement Administrator will make all reasonable efforts to obtain a correct
15 address for the Participating Class Member and re-mail the check to the Participating Class Member at
16 his or her correct address. Agreement at III(L)(4). If a Settlement Class Member and/or Aggrieved
17 Employees does not cash his or her settlement check within 90 days, the Settlement Administrator will
18 send a letter to such persons, advising that the check will expire after the 180th day, and invite that
19 Settlement Class Member and/or Aggrieved Employees to request reissuance in the event the check
20 was destroyed, lost or misplaced. In the event an Individual Settlement Payment and/or Aggrieved
21 Employees' individual share of the PAGA Penalties check has not been cashed within one hundred
22 and eighty (180) days, all funds represented by such uncashed checks, plus any interest accrued
23 thereon, shall be paid to the Community Law Project, a Cy Pres, in accordance with California Code
24 of Civil Procedure section 384. Agreement at III(M)(8). The Parties have agreed to use APEX Class
25 Action LLC as the Settlement Administrator for the Settlement. Payment of the expenses of the
26 Settlement Administrator from the Gross Settlement Fund shall be made for the expenses of
27 effectuating and administering the Settlement. The Settlement Administrator shall receive payment for
28 services in an amount not to exceed \$12,000.00. Agreement at I(B); I(QQ).

1 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
2 to exceed 1/3 of the Gross Settlement Amount as their Attorneys' Fees Payment. Class Counsel will
3 also be allowed to apply separately for an award of litigation expenses in an amount not to exceed
4 \$30,000. In support of this request, Class Counsel will provide evidentiary support, including lodestar
5 method calculations. Subject to Court approval, the Agreement provides for payment of Class
6 Representative Service Payment of no more than \$10,000 for Plaintiffs Andy Dohrer, Ryan Houser,
7 Abens Ponce, and Eliot Warner, and \$12,500 for Plaintiff Manuel Fimbres, or such lesser amount as
8 may be approved by the Court at final approval.¹ Defendants will not oppose a motion for approval of
9 attorneys' fees, expenses and Enhancement awards consistent with the Agreement. (Decl. Zakay at ¶
10 4). Subject to Court approval, \$50,000 will be paid from the Gross Settlement Amount for settlement
11 of civil penalties under PAGA (the "PAGA Payment"). Pursuant to the requirements of Labor Code
12 §2699(i), the PAGA Payment shall be allocated \$37,500 (75%) to the LWDA (the "LWDA Payment")
13 as the LWDA's share of the settlement of civil penalties and \$12,500 (25%) to the Net Settlement
14 Amount for distribution to the Participating Class Members in the Class ("Aggrieved Employee
15 Payment"). Agreement at I(DD).

16 III. CASE BACKGROUND

17 On February 18, 2022, Plaintiff Manuel Fimbres filed a Notice of Violations with the LWDA
18 and served the same on Defendant. On April 12, 2022, Plaintiff Manuel Fimbres filed the original
19 Complaint, alleging claims for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2)
20 Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime
21 Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§
22 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code
23 §§ 226.7, 516 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements
24 (Labor Code § 226 and 226.2 *et seq.*); (7) Failure to Provide Wages When Due (Labor Code §§ 201,
25 202, 203); and (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802). On
26

27 ¹ Plaintiffs will address the reasonableness of this award when filing their final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th
1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 April 25, 2022, Plaintiff Manuel Fimbres filed the First Amended Complaint, which added a ninth
2 cause of action for violation of the PAGA. On May 3, 2022, JCL Law Firm, APC and Zakay Law
3 Group, APLC entered into an Association of Counsel and Joint Prosecution Agreement with the Law
4 Office of Ken Seligson. Mr. Seligson was retained by four additional Plaintiffs, Andy Dohrer, Ryan
5 Houser, Abens Ponce, and Eliot Warner. On June 8, 2022, Plaintiff Elliot Warner filed a Notice of
6 Violations with the LWDA and served the same on Defendants. On July 1, 2022, Plaintiff Abens Ponce
7 filed a Notice of Violations with the LWDA and served the same on Defendants. On November 14,
8 2023, the Parties filed a stipulation allowing Plaintiff Fimbres leave to file a Second Amended
9 Complaint (“SAC”). The SAC adds Andy Dohrer, Ryan Houser, Abens Ponce, and Eliot Warner as
10 Plaintiffs to the Action.

11 This Action involves two separate sub-classes: employees that worked solely on a piece rate
12 basis and hourly combination basis (the “Non-Exempt Piece Rate Class”) and employees that worked
13 solely on an hourly basis (the “Non-Exempt Hourly Class”). The Non-Exempt Piece Rate Class and the
14 Non-Exempt Hourly Class are referred to collectively as “Class Members”. Plaintiffs seek to represent
15 Class Members who are or previously were employed by Defendants during the Class Period, which is
16 April 12, 2018 to December 31, 2023. The Action generally alleges that Defendants failed to pay
17 employees for all time worked, including overtime, failed to provide them with proper meal breaks and
18 rest breaks, failed to separately compensate employees for rest breaks, failed to provide them with
19 complete and accurate wage statements, failed to reimburse them for business expenses, engaged in
20 unfair business practices, and failed to timely pay them all wages owed at the time of the separation of
21 their employment. The Action seeks unpaid wages, statutory penalties, civil penalties, attorneys’ fees,
22 litigation costs², and any other equitable or legal relief allegedly due and owing to Plaintiffs and the
23 other Class Members by virtue of the foregoing claims. (Decl. Zakay at ¶ 5).

24 The Parties reached a settlement after an all-day mediation on September 7, 2023 presided over
25 by Steven Serratore, Esq. The Parties signed a Memorandum of Understanding and subsequently
26
27

28 ² Plaintiffs will provide a lodestar analysis for the fees and supporting evidence of the costs with the
final approval papers.

1 prepared the full Agreement, which was signed by all counsel and the Parties and is now presented to
2 this Court for preliminary approval. (Decl. Zakay at ¶ 6).

3 Although a resolution has been reached, Defendants deny that, for any purpose other than
4 Settlement, the Action is appropriate for class treatment. Defendants contend, among other things, that
5 they have correctly and fully compensated the Class Members, provided compliant meal and rest and
6 recovery periods to the Class Members, provided complete, accurate itemized wage statements,
7 reimbursed necessary business expenses, and complied at all times with the California Labor Code,
8 and the applicable Wage Orders. Further, Defendants contend that class certification would be
9 inappropriate for any reason other than for settlement. (Decl. Zakay at ¶ 7). The Parties agree that
10 certification for settlement purposes is not an admission that class certification would be proper or that
11 Plaintiffs would be adequate class representatives if the class certification issues were litigated.
12 Further, the Agreement is not admissible in this or any other proceeding as evidence that the Class
13 could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate
14 and agree that the requisites for establishing class certification with respect to the Class, as defined
15 above, are satisfied. (Decl. Zakay at ¶ 8).

16 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 17 **COURT TO GRANT PRELIMINARY APPROVAL**

18 California “[p]ublic policy generally favors the compromise of complex class action litigation.”
19 (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010). Class action settlements are approved
20 where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.*, 48 Cal.
21 App. 4th 1794, 1801 (1996). The primary question presented on an application for preliminary
22 approval of a proposed class action settlement is whether the proposed settlement is “within the range
23 of possible approval.” (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*,
24 690 F.2d 616, 621 n.3 (7th Cir. 1982)).³ Preliminary approval is merely the prerequisite to giving
25

26 ³ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800,
27 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are urged
28 to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting
class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing *Green v.*
Oblado, 29 Cal.3d 126, 145-146 (1981).

notice so that “the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the Class Members and a final settlement hearing is held by the Court.

A. Factors To Be Considered In Granting Preliminary Approval

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

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

This settlement is the result of extensive and hard-fought litigation and negotiations before an experienced and well-respected mediator. Defendants expressly denied and continue to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.⁴ The Parties scheduled and, on September 7, 2023, attended an arms-length private mediation before Steven Serratore, Esq. a respected and experienced mediator. (Decl. Zakay at ¶ 9). In preparation for the mediation, Class Counsel has conducted a thorough investigation into the facts of the class action. Defendants provided Class Counsel with necessary records and information

⁴ Upon the Effective Date and funding of the settlement in full by Defendant, any person who is a Class Member who does not timely and validly opt out shall be deemed to have fully and finally released any and “all claims contained in the operative complaint and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint during the Class Period. (See Agreement at ¶ A(24)).

1 for the members of the Class. Defendants produced a large sample consisting of pay records and time
2 records. Defendants also produced relevant employment policies, including compensation policies and
3 timekeeping policies. (Decl. Zakay at ¶10). Class Counsel retained Berger Consulting Group (“BCG”)
4 to develop economic damage models measuring Defendants’ liability exposure while accounting for
5 the uncertainties of continued litigation. The various models were informed by Class Counsel’s
6 investigation, including the analysis of a significant sample of time and payroll data. BCG determined
7 the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks,
8 pay periods, average length of shifts and average number of hours worked per week. BCG also
9 estimated the number of missed, late, or truncated meal and rest periods. Based on the foregoing data
10 and their own independent investigation, evaluation and experience, Class Counsel believe that the
11 Settlement reached at mediation is fair, reasonable, and adequate and are in the best interest of the
12 Class in light of all known facts and circumstances, including the risk of significant delay, the defenses
13 asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶ 11).

14 Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and
15 trying the Action against Defendants through possible appeals which could take several years. Class
16 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in
17 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
18 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon their
19 evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in the Agreement
20 is in the best interest of the Class Members. (Decl. Zakay at ¶ 12). Here, there can be no dispute that
21 the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties
22 were represented by experienced and capable counsel who zealously advocated their respective
23 positions with the assistance of an experienced mediator. Accordingly, “[t]here is likewise every
24 reason to conclude that settlement negotiations were vigorously conducted at arms’ length and without
25 any suggestion of undue influence.” (*In re Wash. Public Power*, 720 F. Supp. at 1392).

26 **2. The Settlement Falls Within the Range of Approval**
27 **a. The Settlement is Fair, Reasonable, and Adequate**
28

1 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
2 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
3 receive payment according to the formula described in Section II above if they do not opt out.
4 Agreement at III(M)(1). The amounts to compensate the Class Members for the alleged violations at
5 the time this Settlement was negotiated were calculated by Class Counsel. Plaintiffs and Class Counsel
6 analyzed the data and determined the potential damages for the employees. Class Counsel projected
7 Defendants’ liability exposure for *class claims* (excluding PAGA penalties) ranged between
8 \$3,959,282.43 (“Realistic Damages”) and \$7,918,564.85 (“Maximum Damages”) if successful at trial.
9 This consisted of damages between \$124,962 and \$249,924 for non-compliant meal periods, damages
10 between \$520,271 and \$1,040,543 for non-compliant rest and recovery periods, damages between
11 \$2,279,994 and \$4,559,988 for unpaid wages due to rest and recovery and non-productive time,
12 penalties between \$288,250 and \$576,500 for non-compliant wage statements, penalties between
13 \$587,792 and \$1,175,584 for waiting time penalties⁵, and damages between \$158,012 and \$316,025
14 for unreimbursed business expenses. (Decl. Zakay at ¶ 13). Consequently, Class Counsel negotiated a
15 Gross Settlement Amount of \$1,350,000 that is roughly between approximately 34% of Defendants’
16 realistic class-wide liability exposure for damages and statutory penalties, and approximately 17% of
17 Defendants’ maximum class-wide realistic liability exposure for damages and statutory penalties.
18 Given the amount of the settlement here, as compared to potential value of the claims, offset by the
19 various inherent risks to continued litigation, the settlement is fair and reasonable.

20 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
21 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
22 amount constituted roughly 10% of the estimated actual damages to the class, finding the settlement to
23 be fair, reasonable and adequate. Here, the settlement consideration far exceeds the percentage
24 approved in *Stovall-Gusman*. Accordingly, this settlement is entitled to preliminary approval. Lastly,
25
26

27 ⁵ Plaintiffs’ claims pursuant to Labor Code Section 226 and various PAGA penalties are subject to a
28 good faith defense as to whether any premium wages for meal or rest periods or other wages were
owed given Defendants’ position that Plaintiffs and the Class were properly compensated. *See Reber*
v. AIMCO/Bethesda Holdings, Inc., 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008)

1 Plaintiffs calculated that Defendants' liability exposure for civil penalties pursuant to the PAGA
2 ranged between \$316,900 and \$1,132,750.⁶ (Decl. Zakay at ¶ 14).

3 **b. The Strengths and Weaknesses in Plaintiffs' Case and Defendants' Defenses**

4 **Warrant the Settlement**

5 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v.*
6 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, a number of defenses asserted by
7 Defendants presented serious threats to the claims of the Plaintiffs and the other Class Members. In
8 general, Defendants asserted that the employment practices complied with all applicable Labor Laws.
9 Defendants argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
10 (2012) weakened, if not eliminated, Plaintiffs' claims, on liability, value, and class certifiability as to
11 the meal and rest period claims. Defendants argued that it adopted and strictly enforced lawful
12 policies, afforded Plaintiffs and the Class Members compliant meal and rest breaks, and had a system
13 in place to pay premiums when breaks were missed, short or untimely. As to expense reimbursement,
14 Defendants argued that any use of personal cellphones was voluntary, and not a necessary expense that
15 required reimbursement. (Decl. Zakay at ¶ 15).

16 **c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and**

17 **Complexity of Further Litigation Weigh in Favor of the Settlement**

18 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
19 to obtain class certification and thereby not recover on behalf of any employee other than themselves.
20 Defendants argued that the individual experience of each employee varied with respect to the alleged
21 claims. While other cases have approved class certification of wage and hour claims, class certification
22 in this action would have been hotly disputed and was by no means a foregone conclusion. Finally,
23

24 ⁶ Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by Defendants,
25 including that Class Members may not be able to recover subsequent penalties until, at a minimum,
26 Plaintiffs provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008) In
27 addition, Plaintiffs recognize that PAGA claims bear some risk. *See Carrington v. Starbucks Corp.*, 30
28 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his PAGA claim at 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 the plaintiff actually prevailed at
trial, and even then, the PAGA penalties were reduced by 90%.

1 even if class certification was successful, as demonstrated by the California Supreme Court decision in
2 *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for
3 a class-wide recovery even where the class has been certified. (Decl. Zakay at ¶ 16). This Settlement is
4 therefore entitled to preliminary approval. Were this case to go to trial, the Plaintiffs and other Class
5 Members would need to prove to the satisfaction of the Court, among other things, that wages,
6 premiums, and other damages were owed on a class-wide basis. This was and is a substantial risk, and
7 the Parties, after arm's-length negotiations between experienced and informed counsel, recognized the
8 potential risks and agreed on the settlement. The "risk, expense, complexity, and likely duration of
9 further litigation" in this case "favors the settlement." *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at
10 *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court might have ruled on the merits of the
11 legal issues, the losing party likely would have appealed, and the parties would have faced the expense
12 and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be
13 considered in evaluating the reasonableness of [a] settlement.'") (Decl. Zakay at ¶ 17).

14 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the Class**
15 **Representative or Segments of The Class**

16 The relief provided in the Settlement will benefit all members of the Class who do not opt out.
17 The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments of the
18 Class in any way. Each Participating Class Member will be entitled to an Individual Settlement
19 Payment based on the plan of allocation described in section II above. Plaintiffs will apply to the
20 Court for Enhancements Awards in consideration for their service, their broad release, and for the risks
21 undertaken on behalf of the Class. Agreement at III(D); III(M)(9). Plaintiffs performed their duties
22 admirably by working with Class Counsel. The requested Plaintiffs' Enhancement Awards are well
23 within the accepted range of awards for purposes of preliminary approval. *See e.g. Glass v. UBS Fin.*
24 *Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class
25 action and a pool of \$100,000.00 in enhancements). As explained in *Glass*, service awards are
26 routinely awarded to class representatives to compensate the employees for the time and effort
27 expended on the case, for the risk of litigation, for the fear of suing an employer and retaliation
28

therefrom, and to serve as an incentive to vindicate the statutory rights of all employees. *Id.* at *16-17.

4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before this action was filed. Class Counsel performed significant review and analysis of Defendants' documents, time records and pay records. Class Counsel were also experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶ 18). There can be no doubt that Counsel for both Parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶ 19).

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiffs seek certification of the Class for settlement purposes under Cal. Civ. Proc. Code § 382. While Defendants reserve all rights to dispute that the Plaintiffs can satisfy any of these requirements, Defendants will not dispute that these requirements may be satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement only. Plaintiffs accordingly request this Court conditionally certify the following classes for settlement purposes only: The "Non-Exempt Piece Rate Class" (all non-exempt employees who worked solely on a piece rate basis and hourly combination basis, who are or previously were employed by Defendants and performed work in California during the Class Period) and the "Non-Exempt Hourly Class" (all non-exempt employees who worked solely on an hourly basis, who are or previously were employed by Defendants and performed work in California during the Class Period). The Class Period is the period of time from April 12, 2018 to December 31, 2023. The Parties estimate that there are 689 Class Members who collectively worked approximately 21,618 Workweeks. Agreement at I(V); I(W); III(A)(2); (Decl. Zakay at ¶ 20).

1 **A. The Proposed Class Is Ascertainable and Numerous**

2 Here, the approximately 689 current and former employees that comprise the Class can be
3 identified based on Defendants’ records and are sufficiently numerous for class certification. All of
4 these employees are ascertainable because the class members can readily be determined through
5 examination of Defendants’ employment files. Given that the classes consist of approximately 689
6 members, numerosity is satisfied. *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
7 48 members satisfies numerosity requirement.) (Decl. Zakay at ¶ 21).

8 **B. Common Issues of Law and Fact Predominate**

9 Commonality exists if there is a predominant common legal question regarding how an
10 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
11 1524, 1536 (2008). Here, Plaintiffs contend that common questions of law and fact are present, and
12 specifically the common questions of whether Defendants’ employment practices were lawful,
13 whether Defendants failed to properly provide and/or pay for meal and rest periods, whether
14 Defendants paid for all time worked, whether Defendants provided accurate wage statements, whether
15 Defendants failed to pay all wages, whether Defendants failed to reimburse necessary business
16 expenses, and whether the Classes are entitled to compensation and related penalties. (Decl. Zakay at ¶
17 22). Defendants will not oppose such a finding for purposes of this settlement only.

18 **C. The Claims of the Plaintiffs Are Typical of the Class Claims**

19 The typicality requirement requires Plaintiffs to demonstrate that the members of the class have
20 the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of the
21 Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v. Weyerhaeuser*
22 *Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). Here, Plaintiffs were subject to the same employment
23 practices concerning payment of wages, and the meal and rest periods, and received similar wage
24 statements. Thus, the claims of the Plaintiffs and the Class Members arise from the same course of
25 conduct by the Defendant, involve the same employment policies, and are based on the same legal
26 theories. (Decl. Zakay at ¶ 23). For purposes of settlement, the typicality requirement is met as to the
27 common issues presented in this case. Defendants will not oppose such a finding for purposes of this
28 settlement only.

1 **D. The Class Representative Fairly and Adequately Protected the Class**

2 The Class Members are adequately represented because Plaintiffs and Class Counsel (a) do not
3 have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on
4 behalf of the class. (*See Hanlon* 150 F.3d at 1020). First, Plaintiffs are well aware of their duties as
5 representatives of the Class and have actively participated in the prosecution of this case to date. They
6 have effectively communicated with Class Counsel, provided documents to them and participated in
7 discovery, investigation and negotiations in the Action. Second, Plaintiffs retained competent counsel
8 who are experienced in employment class actions. Third, there is no antagonism between the interests
9 of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class Members seek monetary relief
10 under the same set of facts and legal theories. (Decl. Zakay at ¶ 24).

11 **E. The Superiority Requirement Is Met**

12 To certify a class, the Court must also determine that a class action is superior to other
13 available methods for the fair and efficient adjudication of the controversy. Here, a class action is the
14 superior mechanism for resolution of the claims as pled by the Plaintiffs. Defendants will not dispute
15 such a finding for purposes of this settlement only.

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

17 The Court has broad discretion in approving a practical notice program. The Parties have
18 agreed upon procedures by which the Class Members will be provided with written notice of the
19 Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance
20 with the Agreement, within 10 days after the Court enters its order granting Preliminary Approval of
21 the Settlement, Defendants will provide to the Settlement Administrator an electronic database
22 containing the Class Data. Agreement at III(L)(1). Within 21 days after the Court enters its order
23 granting Preliminary Approval of the Settlement, the Settlement Administrator will mail the Class
24 Notice Packets to all Class Members via first-class regular U.S. Mail to their last known addresses.
25 Agreement at III(L)(3). The Class Notice, drafted jointly and agreed upon by the Parties through their
26 respective counsel and to be approved by the Court, includes all relevant information. (*See Exhibit A*
27 to the Agreement). The Class Notice will include, among other information: (i) information regarding
28 the Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information

1 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated
2 settlement payment for each of the Class Members; (v) the amount of attorneys' fees and litigation
3 expenses to be sought; (vi) the amount of the Plaintiffs' Class Representative Service Payment
4 requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement Administration Costs.
5 *See* Ex. A to the Agreement. The Class Notice will state that the Class Members shall have forty-five
6 (45) calendar days from the date that the Class Notice is mailed to them to request exclusion or to
7 submit an objection. Agreement at I(OO). The Class Members will be given an opportunity to object
8 to the Settlement and to participate at the final approval hearing, in accordance with the instructions
9 set forth in the Class Notice. *See* Ex. A to the Agreement. Class Members will be instructed to only
10 contact the Settlement Administrator and Class Counsel and not the Court. Class Members who do not
11 opt out will automatically receive an Individual Settlement Payment. This notice program was
12 designed to meaningfully reach the Class Members and advises them of all pertinent information
13 concerning the Settlement. The mailing and distribution of the Class Notice satisfies the requirements
14 of due process, is the best notice practicable under the circumstances and constitutes due and sufficient
15 notice to all persons entitled thereto. The Class Notice provides information on the terms and
16 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
17 time and place of the final settlement approval hearing; and the procedure and deadline for submitting
18 comments, objections, and requests for exclusion. The Class Notice complies with Rules of Court
19 3.766 and 3.769(f). (Decl. Zakay at ¶ 25).

20 VII. CONCLUSION

21 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
22 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
23 fairness hearing for a date that is at least one hundred twenty (120) days after the date of Preliminary
24 Approval.

25 DATED: November 21, 2023

ZAKAY LAW GROUP, APC

26 _____
27 Jaclyn Joyce
28 Attorney for Plaintiffs