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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ISAAH D. HUGHES, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ASIAN AND PACIFIC ISLANDER WELLNESS
CENTER, INC. (dba SAN FRANCISCO
COMMUNITY HEALTH CENTER), a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CGC-22-599270

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

Date: November 2, 2023

Time: 9:30 a.m.

Judge: Hon. Anne-Christine Massullo
Dept.: 610

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1 I. INTRODUCTION

2 Plaintiff Isaiah D. Hughes (“Plaintiff”) seeks preliminary approval of the Class Action and
3 PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary
4 relief for approximately 124 Class Members who collectively worked approximately 8,000 workweeks.
5 The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or
7 previously were employed by Asian and Pacific Islander Wellness Center, Inc. *dba* San Francisco
8 Community Health Center who performed work in California during the period of April 21, 2018
9 through the earlier of May 2, 2023 or the date on which the total number of Workweeks worked by the
10 Class Members equals 8,800 (“Class Period”). Agreement at §§ I(F), I(I).

11 a. The “**Class Size**” is comprised of 124 individuals who collectively worked
12 approximately 8,000 workweeks the Class Period as estimated by Defendant at the time of mediation.
13 Agreement at § III(A)(3).

14 2. The “**PAGA Members**” and “**PAGA Period**” means all non-exempt employees who are
15 or previously were employed by Asian and Pacific Islander Wellness Center, Inc. *dba* San Francisco
16 Community Health Center who performed work in California during the period of February 14, 2021
17 through the earlier of May 2, 2023 or the date on which the total number of Workweeks worked by the
18 Class Members during the Class Period equals 8,800 (“PAGA Period”). Agreement at §I(U). Aggrieved
19 Employees do not have the ability to opt-out of the PAGA portion of the settlement.

20 3. The “**Gross Settlement Amount**” or “GSA” is Two Hundred and Fifty Thousand Dollars
21 and Zero Cents (\$250,000.00). Agreement at § III(A)(1). The Gross Settlement Amount is non-
22 reversionary and includes the following:

23 a. A “**Service Award**” of not more than ten thousand dollars (\$10,000) to Plaintiff
24 in recognition of his efforts and risks in assisting with the prosecution of the Action and in exchange
25 for executing a General Release. Agreement at §§ III(M)(9).

26 b. “**Attorneys’ Fees and Attorneys’ Expenses**” in the amount not of not more than
27

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

1 \$108,333.33, comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently
2 estimated to be \$83,333.33 **and** litigation expenses not to exceed \$25,000.00, to be paid to Class
3 Counsel. Agreement at §§ III(M)(10).

4 c. The “**PAGA Payment**” of Ten Thousand Dollars (\$10,000) shall be allocated
5 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
6 Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall pay seventy-
7 five (75%) of the PAGA Payment (\$7,500) to the Labor and Workforce Development Agency (“LWDA
8 PAGA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$2,500) will be distributed to
9 the Aggrieved Employees (“Individual PAGA Payment”). Agreement at §§ I(Y); and

10 d. “**Claims Administration Expenses**” not to exceed \$6,500.00 payable to the
11 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class
12 Notice and Settlement Administration Expenses. Agreement at § III(M)(12).

13 4. The “**Net Settlement Amount**” of approximately \$115,166.67 (Gross Settlement
14 Amount less the requested Attorneys’ Fees and Expenses, Service Payment, PAGA Payment, and
15 Claims Administration Expenses) which will be allocated to all Class Members who do not submit
16 valid and timely Requests for Exclusion (the “Participating Class Members”) on a pro-rata basis based
17 on their respective Payment Ratios. “Payment Ratio” means the respective Workweeks for each Class
18 Member divided by the sum total Workweeks for all Class Members during the Class Period.
19 Agreement at §§ I(Q); I(AA); III(M)(1). The entire Net Settlement Amount will be paid to all Class
20 Members who do not opt out of the Settlement resulting in an average Individual Class Payment of
21 **\$928.76**. JCL Dec., ¶ 6.

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

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant is in the business of providing health care services in San Francisco County, where
9 Plaintiff worked from June of 2017 to June of 2021 as a non-exempt employee. JCL Dec., ¶ 8.
10 Generally, Plaintiff alleges that Defendant failed to provide compliant meal and rest periods,
11 maintained an unlawful rounding practice, and failed to pay for all hours worked. Defendant asserts
12 that it fully complied with all applicable employment laws and raised several other significant defenses
13 to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, and
14 Defendant has maintained that it has compensated employees for all hours worked. JCL Dec., ¶ 9.

15 On February 14, 2022, Plaintiff served Defendant and the Labor and Workforce Development
16 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
17 the facts and theories supporting Defendant's alleged violations of various provisions of the California
18 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
19 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
20 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10.

21 On April 21, 2022, Plaintiff filed a PAGA and class action complaint in the San Francisco
22 County Superior Court, Case No. CGC-22-599270 ("Action"). The Action alleged nine causes of action
23 against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*;
24 (2) Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime
25 Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in
26 violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide
27 Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
28 Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226;

(7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for Required Expenses in violation of Cal. Lab. Code §2802; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et. seq.* (“PAGA”)]. JCL Dec., ¶ 11.

The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange documents and data points subject to the mediation privilege, including but not limited to a sampling of the Class Members’ time data and payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

On February 2, 2023, the Parties participated in a full day mediation with highly regarded wage and hour PAGA and class action mediator Steven J. Rottman, Esq. The mediation concluded with a settlement which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff’s complaints. Class Counsel’s investigation started with lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including his wage statements. At the conclusion of Plaintiff’s interviews, Class Counsel determined that Plaintiff’s complaints justified further inquiry. JCL Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff’s employee file from Defendant. In response, Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff’s hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff’s claim that Defendant failed to, among other things, pay for all hours worked, and failed to provide compliant meal and rest periods. JCL Dec., ¶ 15.

To prepare for mediation, Defendant produced the time and payroll records for 20% of the Class Members, aggregate time and pay data for the Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents and various

1 spreadsheets containing time and payroll data for Plaintiff and Class Members. JCL Dec., ¶ 16.

2 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
3 Members' payroll and time data. BCG provides data analysis and damages modeling consulting
4 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
5 credentialed and experienced experts in their fields and have provided their expertise on thousands of
6 cases. JCL Dec., ¶ 17.

7 BCG analyzed Defendant's time and payroll data to assist in the development of various damages
8 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
9 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
10 number of hours worked per week. BCG was unable to estimate the number of missed, late, or
11 truncated meal periods, as Defendant did not maintain records that reflected the start and stop times of
12 Class Members' meal periods. JCL Dec., ¶ 18.

13 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
14 Plaintiff's suitability as a putative class representative through interviews, background investigations,
15 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
16 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
17 of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendant's
18 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
19 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
20 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
21 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
22 claims being settled, as well as the impediments to recovery, such as to make an independent
23 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 19.

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

and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

C. The Parties Settled at Mediation

On February 2, 2023, the Parties conducted a full day of mediation with Steve Rottman, Esq. Mediator Rottman 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 Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 21-22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The proposed Class consists of all non-exempt employees who are or previously were employed by Asian and Pacific Islander Wellness Center, Inc. *dba* San Francisco Community Health Center who performed work in California during the period of April 21, 2018 through the earlier of May 2, 2023 or the date on which the total number of Workweeks worked by the Class Members equals 8,800. Agreement at § I(F). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(JJ). At the time of mediation, Defendant estimated that the Class was comprised of 124 individuals that worked approximately 8,000 workweeks during the Class Period. Agreement at § III(A)(3).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$250,000. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) a Service Award of not more than \$10,000.00 to Plaintiff for his service on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of \$10,000.00; (4) Claims Administration Expenses estimated at \$6,500; (5) Attorneys' Fees and Expenses in the amount of \$108,333.33 comprised of attorneys' fees equal to one-

third of the Gross Settlement Amount estimated to be \$83,333.33 and an estimated \$25,000.00 for actually incurred litigation expenses. Agreement at §§ I(Q); III(M)(9-12).

Subject to the Court approving the Service Award, Attorneys' Fees and Expenses, PAGA Payment, and the Settlement Administration Expenses, the Net Settlement Amount will be distributed to each Participating Class Member. Agreement at § III(M). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount within thirty (30) days of the Court's entry of the order granting final approval of this Settlement. Agreement at § III(A)(2).

4. Formula for Calculating Individual Class Payments

Participating 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. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks during the Class Period for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members who submit valid and timely Requests for Exclusion will be redistributed to Settlement Class Members who do not submit valid and timely Requests for Exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(M)(1). For purposes of these calculations, a Workweek shall mean the number of weeks of employment during the Class Period that each Class Member was employed by Defendant in California. Agreement at § I(KK).

Given that there are approximately 124 Participating Class Members, *the average gross recovery is approximately \$928.76* (Net Settlement Amount divided by Participating Class Members). JCL Dec., ¶ 6.

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

14 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
15 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
16 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
17 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
18 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
19 and adequate to all concerned.” (*Id.*)

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

22 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
23 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
24 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
25 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
26 § 11.51.)

27 The Parties participated in mediation the highly respected mediator Steve Rottman, Esq.
28 Mediator Rottman managed the Parties’ expectations and provided a useful, neutral analysis of the

1 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),
2 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
3 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
4 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
5 proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations,
6 the mediation concluded with a settlement. JCL Dec., ¶ 23. The Parties then engaged in negotiations
7 regarding the written terms of the class action settlement. The Agreement is the final product of the
8 mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
9 compromise of the claims at issue. JCL Dec., ¶ 24.

10 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
11 Settlement’s Reasonableness.

12 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
13 the factual and legal issues in dispute. In addition to informal discovery, document review, data
14 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
15 two cases are identical, this research provided Class Counsel with a marker to inform settlement
16 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
17 Counsel to realistically assess the value of Plaintiff’s claims and intelligently engage defense counsel
18 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
19 ¶ 25.

20 Class Counsel only agreed to enter the Settlement following their thorough investigation and
21 evaluation of Plaintiff’s claims. Based on this investigation of the facts, applicable law, and
22 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
23 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
24 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
25 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

27 The Gross Settlement Amount of \$250,000.00 is within the range of reasonableness. To
28 determine whether a settlement is fair and reasonable, the court should “consider enough information

1 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
2 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
3 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
4 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
5 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
6 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
7 is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
8 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
9 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
10 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
11 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
12 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
13 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66)).

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

15 The Gross Settlement Amount of \$250,000.00 is fair and reasonable considering the nature and
16 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
17 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
18 liability exposure while accounting for the uncertainties of continued litigation. The various models
19 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
20 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
21 PAGA Penalties) ranged between \$1,134,226 (“Realistic Damages”) and \$1,649,590 (“Maximum
22 Damages Plus Derivative Statutory Penalties”) if successful at trial. This range reflects the uncertainty

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 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”).

1 regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between
2 22% (“Realistic Damages”) and 15% (“Maximum Damages Plus Derivative Penalties”) of Defendant’s
3 class-wide exposure – well within the recognized range of reasonableness. The following summarizes
4 Defendant’s liability exposure. JCL Dec., ¶ 27.

5 (1) Estimated Damages for Meal Period Violations

6 Plaintiff’s primary claim in this Action alleges that Defendant failed to provide compliant meal
7 periods. Specifically, Plaintiff alleges that throughout the Class Period, Defendant merely maintained
8 the records of the *length of Plaintiff’s and Class Members’ daily shifts* (e.g., 8 hours), but failed to
9 maintain time records of when meal periods were taken, the length of meal periods, and whether they
10 were even taken. Defendant’s inadequate timekeeping practices have rendered Plaintiff’s expert’s
11 ability to analyze Defendant’s exposure for this claim difficult, if not near impossible. Based on the
12 records provided, Class Members’ time records include no indication that Defendant provided any meal
13 periods to Class Members. Defendant maintains that the time records account for 30-minute compliant
14 breaks. Even if true, however, Plaintiff asserts that such breaks would be considered rounded, and
15 therefore presumed non-compliant, under *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. JCL
16 Dec., ¶ 28.

17 Taking into account Defendant’s compliant policies, and assuming that meal breaks were non-
18 compliant 50% of the time, Plaintiff estimated that the damages for this claim to be approximately
19 \$485,802 dollars. JCL Dec., ¶ 29.

20 (2) Defendant’s Estimated Exposure for Off-The-Clock Work

21 Plaintiff alleged that, as evidenced from the records produced by Defendant, Defendant
22 systematically failed to properly record and maintain records of the actual hours worked by its
23 employees. The records simply show rounded total hours worked, which total exactly eight hours
24 worked each day. Plaintiff alleges that Defendant input his and Class Members’ daily time as eight
25 hours, automatically, without providing the employees the opportunity to review their time, and that
26 Defendant does not maintain records of time actually worked. JCL Dec., ¶ 30.

27 Plaintiff alleges that the 8-hour work day assumes that employees began working at 8:30 a.m.,
28 when Defendant conducted a morning meeting. However, Plaintiff alleges that he and the Class

Members were under the direction and control of Defendant before 8:30, undergoing a required COVID-19 screening, setting up their workstations, gather their necessary belongings for the morning meeting, turning on their work phones, and preparing for the morning meeting. Plaintiff further alleges that he and Class Members regularly worked past the end of their scheduled shift end in order to complete their daily tasks or attend to remaining clients. Plaintiff alleges that he and the Class Members worked on average a minimum of 5 minutes per shift that was not recorded by Defendant's practice of simply inputting that each employee worked eight hours per shift. Accordingly, Plaintiff estimated that the damages for this claim to be approximately \$128,077 dollars. JCL Dec., ¶ 31.

(3) Defendant's Estimated Exposure for Rest Break Violations

Plaintiff alleged that Defendant required Plaintiff and Class Members to carry their cellular phones on them during their rest breaks, and remain available and on-call in the event they are needed. As a result, Plaintiff and the Class Members never received complaint off-duty rest breaks, pursuant to *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal. 5th 257, 259. Instead, Plaintiff and Class Members were required to remain on the premises and on-call, subject to Defendant's control. Plaintiff also notes that the records produced by Defendant do not show any rest period premiums were paid. JCL Dec., ¶ 32.

Defendant denied that Class Members were interrupted during their rest breaks, and argued that it maintained compliant rest breaks both in policy and in practice. Assuming a violation rate of 50%, Plaintiff estimated the damages for this claim to be \$520,347 dollars. JCL Dec., ¶ 33.

(4) Defendant's Estimated Exposure for Derivative Penalties

Plaintiff alleged that as a result of the Labor Code violations described above, Defendant is also liable for derivative penalties for both failure to provide accurate wage statements, and failure to provide wages when due. Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Plaintiff estimated Defendant's damages for waiting time penalties pursuant to Labor Code Section 203 are \$323,914, based on a total of 54 terminated Class Members within the Class Period. Plaintiff estimated Defendant's penalties for inaccurate wage statements was \$191,450. JCL Dec., ¶ 34.

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1 (5) Defendant's PAGA Exposure

2 Class Counsel's damages models also estimated Defendant's exposure for PAGA penalties. At
3 the time of mediation, Plaintiff estimated Defendant's PAGA exposure to be approximately \$440,850
4 dollars. JCL Dec., ¶ 35. The proposed PAGA allocation of the Gross Settlement Amount is fair, just,
5 and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate
6 a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of
7 self-interest at the expense of class members," such amounts are generally considered reasonable.
8 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
9 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the
10 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
11 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
12 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
13 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
14 in the range of zero to two percent of the total settlement).

15 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000.00 which is
16 4% of the Gross Settlement Amount. This amount falls well within the range of court-approved PAGA
17 payments. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA
18 ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment
19 (\$2,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA
20 payments approved by courts and should be approved. JCL Dec., ¶ 36.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

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

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

9 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
17 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
18 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
19 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
20 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
21 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
22 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
23 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
24 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
25 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
26 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
27 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
28 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 37.

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

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

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

16 Finally, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
20 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
21 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
22 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and the
23 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
24 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
25 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
26 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

27 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$250,000.00 that is
28 roughly between approximately 22% of Defendant’s *class-wide* liability exposure for damages, and

1 approximately 15% of Defendant's maximum class wide liability exposure for damages and statutory
2 penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset
3 by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶
4 39.

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

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

15 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
16 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
17 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
18 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
19 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
20 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
21 and scope of the Released Claims. See Class Notice, attached as Exhibit A to the Settlement
22 Agreement. The Parties negotiated this method to ensure delivering the most reasonable method of
23 notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec.,
24 ¶ 40.

25 ///

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

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

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

6 Service awards “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases*
7 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
8 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
9 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
10 UCLA L. Rev. 1303 (2006).) Service awards “are intended to compensate class representatives for
11 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
12 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
13 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
14 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
15 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
16 (2009) 175 Cal.App.4th 785.)

17 The Settlement provides for a Service Award of \$10,00.00 to Plaintiff. The service award is fair
18 and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with
19 the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the
20 strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair
21 and provide adequate relief for the Participating Class Members, and agreeing to provide Defendant a
22 general release of all claims arising out of their employment. JCL Dec., ¶ 42.

23 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
24 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
25 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 43.

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

27 The purpose of a payment of Attorneys’ Fees and Expenses in class action litigation is to reward
28 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive

1 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
2 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix,*
3 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
4 percentage method or the lodestar method is used, fee awards in class actions average around one-third
5 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
6 *Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
7 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
8 one-third fee is consistent with market rates).)

9 Class Counsel took this matter on a contingency fee basis and invested significant time and
10 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
11 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
12 Members. Considering the positive outcome for the Class Members, and in light of the supporting
13 authority, the proposed Attorneys’ Fees and Expenses are fair and reasonable. JCL Dec., ¶ 44.

14 Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Expenses once
15 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
16 is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 45.

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

18 For Settlement purposes only, Plaintiff contends, and Defendant does not dispute, that
19 provisional certification of the Class is appropriate. JCL Dec., ¶ 46.

20 1. The Standard for Class Certification

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

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

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

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

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

Because all Class Members are Defendant’s current and former employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 47.

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 Participating Class Members. JCL Dec., ¶ 48.

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

