

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

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

Attorneys for Plaintiff JONATHAN CHEUNG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JONATHAN CHEUNG, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

SIGNATURE COMMERCIAL SOLUTIONS,
LLC, a Florida limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No. 22STCV13034

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

Date: July 31, 2023

Time: 8:30 a.m.

Judge: Hon. Holly J. Fujie

Dept.: 56

Reservation ID.: 000742504080

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	4
	C. The Parties Settled at Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiff's Claims	6
	1. The Composition of the Class	6
	2. The Settlement Consideration	7
	3. The Funding Date	7
	4. Formula for Calculating Individual Class Payments	7
	5. Release by Participating Class Members	8
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
III.	ARGUMENT	8
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	8
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	9

///

2.	Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	10
3.	The Settlement Falls Within the Recognized Range of Reasonableness	11
a.	Estimated Damages for Meal Period Violations	12
b.	Defendant’s Estimated Exposure of Rest Period Violations	12
c.	Defendant’s Estimated Exposure for Unreimbursed Business Expenses	13
d.	Estimated Damages for Regular Rate Violations	14
e.	Defendant’s Estimated Exposure for Wage Statement Violations	14
f.	Defendant’s Estimated Exposure for Waiting Time Penalties	15
g.	Defendant’s PAGA Exposure	15
4.	Inherent Risks of Continued Litigation Support Preliminary Approval	16
B.	The Proposed Notice Informs the Class about the Case and Settlement	18
C.	The Court Should Preliminarily Approve the Class Representative Service Payment	19
D.	The Court Should Preliminarily Approve the Class Counsel Fees and Expenses Payment	20
E.	Provisional Certification for Settlement Purposes is Appropriate	21
1.	The Standard for Class Certification	21

///

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

.....21

IV. CONCLUSION

.....23

///

TABLE OF AUTHORITIES
CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.	
(2000) 85 Cal.App.4th 1135, 1151.....	9
Alvarado v. Dart Container Corp. of California	
(2018) 4 Cal.5th 542, 552-554.....	14
Apple Computer, Inc. Derivative Litig.	
No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
A.S.A Cal Ltd.	
(2009) 176 Cal.App.4th 1333, 1341.....	17
Brinker	
53 Cal. 4th at 1021-1022.....	17, 21
Brown v. Fed Express Corp.	
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	17
Bufile v. Dollar Financial Group, Inc.	
(2008) 162 Cal.App.4th 1193, 1207.....	21
Campbell v. Best Buy Stores, L.P.,	
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	17
Carrington v. Starbucks Corp.,	
30 Cal. App. 5th 504, 517, 539 (2018).....	16
Cart v. Super. Ct.	
(1975) 50 Cal.App.3d 960, 972.....	18-19
Cellphone Termination Fee Cases	
180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010)	9, 19
Chance v. Super. Ct.	
(1962) 58 Cal.2d 275, 290.....	18
Chavez v. Netflix, Inc.	
(2008) 162 Cal.App.4th 43, 66 n.11.....	20
Clark v. American Residential Services LLC	
(2009) 175 Cal.App.4th 785.....	20
D'Amato v. Deutsche Bank	
(2d. Cir. 2001) 236 F.3d 78, 85.....	10
Dunk v. Ford Motor Co.	
(1996) 48 Cal.App.4th 1794, 1802.....	9
Duran v. U.S. Bank National Association	
(2014) 59 Cal.4th 1, 31.....	17
Ferra v. Lowes Hollywood Hotel, LLC	
(2021) 11 Cal.5th 858.....	14
Fleming v. Covidien	
2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	16
Fontana v. Elrod	
(7 th Cir. 1987) 826 F.2d 729, 732.....	19
Frank v. Eastman Kodak Co.	
(W.D.N.Y. 2005) 228 FRD. 174, 186.....	11
Global Crossing Sec. and ERISA Litig.	
(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11

///

1	<i>Hopson v. Hanesbrands Inc.</i>	
2	No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	15
3	<i>IKON Office Solutions, Inc Sec Litig.</i>	
4	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
5	<i>Jack v. Hartford Fire Ins. Co.</i>	
6	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
7	<i>Kass v. Young</i>	
8	(1977) 67 Cal.App.3d 100, 106).....	18
9	<i>Kullar v. Foot Locker Retail, Inc.</i>	
10	(2008) 168 Cal.App.4th 116, 133.....	11
11	<i>Lee v. Dynamex, Inc.</i>	
12	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	21
13	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
14	(9 th Cir. 2021) 999 F.3d 668.....	17-18
15	<i>McKenzie v. Fed. Express Corp.</i>	
16	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
17	<i>Michael Milken and Assoc. Sec. Litig.</i>	
18	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	11
19	<i>Misra v. Decision One Mortg. Co.</i>	
20	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
21	<i>Moniz v. Adecco USA, Inc.</i>	
22	(2021) 72 Cal.App.5th 56, 77.....	15
23	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
24	(2010) 186 Cal.App.4th 399, 409.....	11
25	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
26	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	11, 18
27	<i>Naranjo v. Spectrum Security Services</i>	
28	(2022) 13 Cal. 5th 93.....	14
	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	16
	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	17
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	17
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	8, 11
	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	13
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	18
	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	19

1	<i>Sav-On Drug Stores, Inc.</i>	
2	(2014) 34 Cal.4th 319, 326, 333.....	21
3	<i>Stambaugh v. Super. Ct</i>	
4	(1976) 62 Cal.App.3d 231, 236.....	9
5	<i>State v. Levi Strauss & Co.</i>	
6	(1986) 41 Cal.3d 460, 482, 485.....	9, 19
7	<i>Taco Bell Wage & Hour Actions</i>	
8	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	16
9	<i>Tien v. Tenet Healthcare Corp.</i>	
10	(2012) 209 Cal.App.4th 1077, 1088.....	17
11	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
12	(1975) 48 Cal. App. 3d 143, 151-52.....	18
13	<i>Villa v. United Site Servs. of California, Inc.</i>	
14	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	13

STATUTES, RULES AND CODES

15	<i>Cal.Civ.Proc.</i> Code § 382.....	20-21
16	<i>Cal. Lab.</i> Code § 2698 <i>et seq.</i>	3-4
17	<i>Cal. Lab.</i> Code § 246(1)(1).....	14
18	<i>Cal. Lab.</i> Code § 203.....	15
19	<i>Cal. Lab.</i> Code § 2802(a).....	13
20	Cal. Rules of Court, rule 3.769(c)(g).....	9
21	Cal. Rules of Court, rule 3.776(e)-(f).....	19

SECONDARY SOURCES

22	Conte & Newberg, <i>Newberg on Class Actions</i> , § 1 1:38, §§ 11.26, 11.51 (4th ed. 2002)	
23		9-10, 19
24	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
25	53 UCLA L. Rev. 1303 (2006)	
26		19
27	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
28	<i>Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
29		20
30	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
31		19

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

I. INTRODUCTION

Plaintiff JONATHAN CHEUNG (“Plaintiff”) seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 846 Class Members and 502 PAGA Members. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” means all of Defendant’s current and former non-exempt employees, employed within the State of California at any time during the Class Period. Agreement at § 1.4. The Class Period means the period from April 19, 2018, to May 17, 2023. Agreement at § 1.11. There were approximately 846 Class Members who collectively worked approximately 42,609 Workweeks during the Class Period as estimated by Defendant at the time of mediation. Agreement at § 4.1.

2. The “**Participating Class Members**” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.37.

3. The “**PAGA Members**” and “**PAGA Period**” means all of Defendant’s current and former non-exempt employees, employed within the State of California at any time during the PAGA Period. Agreement at § 1.34. The PAGA Period means the period from February 8, 2021, to May 17, 2023. Agreement at § 1.32. At the time of mediation, there were approximately 502 PAGA Members that worked an estimated 21,493 PAGA Workweeks during the PAGA Period. Agreement at § 4.1.

4. The “**Gross Settlement Amount**” is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Agreement at § 1.22. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Payment**” of not more than \$10,000 to Plaintiff in recognition of h efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ 1.13, 3.2.1.

b. A “**Class Counsel Fees Payment**” and “**Class Counsel Litigation Expenses**”

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

1 **Payment**” (hereinafter, collectively “Class Counsel Fees and Expenses Payment”) in the amount not
2 to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be
3 \$250,000.00 *and* litigation expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at
4 §§ 1.6, 3.2.2.

5 c. A “**PAGA Penalties**” of Sixty Thousand Dollars (\$60,000) shall be allocated
6 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
7 Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-
8 five (75%) of the PAGA Penalties (\$45,000.00) to the Labor and Workforce Development Agency
9 (“LWDA PAGA Payment”). Twenty-five percent (25%) of the PAGA Penalties (\$15,000.00) will be
10 distributed to the PAGA Members. Agreement at § 1.27, 1.36, and 3.2.5.

11 d. “**Administration Expenses Payment**” not to exceed \$12,000 payable to the
12 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Class Notice and
13 Administration Expenses Payment. Agreement at § 3.2.3.

14 4. The “**Net Settlement Amount**” of approximately Three Hundred Ninety-Three
15 Thousand and Zero Cents (\$393,000.00), which is equal to the Gross Settlement Amount less the
16 requested Class Counsel Fees and Expenses Payment, Class Representative Service Payment, PAGA
17 Penalties, and Administration Expenses Payment, will be allocated to all Participating Class Members
18 on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked
19 during the Class Period. Agreement at §§ 1.28, 3.2.4. The entire Net Settlement Amount will be paid
20 to all Participating Class Members who do not opt out of the Settlement Class resulting in an average
21 Individual Class Payment of **\$464.53**. 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 Settlement Class. The relief offered by the Settlement
25 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
26 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
27 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
28

denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant offers technical, professional, and industrial staffing services for accounting and finance, administrative, architectural, automotive, aviation, call center, and clinical research industries in California, including Los Angeles, where Plaintiff worked. Plaintiff began working for Defendant in July of 2021. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Signature Consultants Employee Handbook." JCL Dec., ¶ 8.

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

On February 8, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 10.

1 On April 19, 2022, Plaintiff filed a class action complaint in the Los Angeles County Superior
2 Court, Case No. 21STCV13034 (“Action”). The operative Third Amended Complaint alleges nine
3 causes of action including, unfair competition, failure to pay minimum wages, failure to pay overtime
4 wages, failure to provide compliant meal and rest periods, failure to provide accurate itemized wage
5 statements, failure to provide wages when due, failure to reimburse required business expenses and
6 violations of the Private Attorneys General Act at Labor Code Sections 2698 *et. seq.* (“PAGA”). JCL
7 Dec., ¶ 11.

8 After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To
9 prepare for mediation, the Parties agreed to informally produce additional documents and data points
10 subject to the mediation privilege, including but not limited to, the Class Members’ time data and
11 certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at
12 Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 12.

13 On April 17, 2023, the Parties participated in a full day mediation with highly regarded wage
14 and hour and PAGA mediator Tripper Ortman. The mediation concluded with a settlement after both
15 sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a
16 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
17 agreement, which is the subject of the instant motion. JCL Dec., ¶ 13.

18 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

19 Months before filing the Action, Class Counsel began its pre-filing investigation into the
20 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
21 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
22 including portions of Defendant’s handbooks, compensation policies and time and payroll records. At
23 the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints justified further
24 inquiry. JCL Dec., ¶ 14.

25 Class Counsel subsequently requested Plaintiff’s employee files from Defendant. In response,
26 Defendant produced hundreds of pages of documents, including but not limited, copies of Plaintiff’s
27 hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents
28

1 and determined the documents appeared to substantiate Plaintiff's claim that Defendant's failed to,
2 among other things, provide accurate wage statements and to provide compliant meal and rest periods.
3 JCL Dec., ¶ 15.

4 To prepare for mediation, Defendant produced the time and payroll records for the Class
5 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
6 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
7 handbooks, policies, and agreements. In total, Class Counsel reviewed more than 400 pages of
8 documents and nearly 600,000 unique cells of time and payroll data. JCL Dec., ¶ 16.

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

14 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
15 models. Among other things, BCG determined the approximate amounts of unpaid wages, amount of
16 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
17 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
18 and rest periods, the amounts of unpaid wages, the amount of unpaid overtime, the amount of
19 unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during
20 the Class Period. JCL Dec., ¶ 18.

21 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
22 Plaintiff's suitability as a putative class representative through interviews, background investigations,
23 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
24 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
25 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's
26 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
27 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
28

liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 19.

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

C. The Parties Settled at Mediation

On April 17, 2023, the Parties conducted a full day of mediation with Tripper Ortman, Esq. who managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 21-22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Class consists of all Defendant's current and former non-exempt employees, employed within California at any time during the Class period. Agreement at § 1.4. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 846 individuals that worked approximately 42,609 workweeks during the Class Period. Agreement at § 4.1.

///

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of \$750,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the
4 Settlement Class; (2) a Class Representative Service Payment of not more than \$10,000 to Plaintiff for
5 his services on behalf of the Settlement Class and, equally important, for a general release of claims;
6 (3) a PAGA Penalties in the amount of \$60,000.00; (4) Administration Expenses Payment estimated at
7 \$12,000; (5) Class Counsel Fees and Expenses Payment in the amount of \$250,000.00, for attorneys'
8 fees equal to one-third of the Gross Settlement Amount and an estimated \$25,000.00 for actually
9 incurred litigation expenses. See generally Agreement at § 3.2.2.

10 Subject to the Court approving the Class Representative Service Payment, Class Counsel Fees
11 and Expenses Payment, PAGA Penalties, and the Administration Expenses Payment, the Net
12 Settlement Amount will be distributed to each participating member of the Settlement Class Member.
13 Agreement at § 1.28. There is no reversion to Defendant and Defendant must separately pay for its
14 share of the employer payroll taxes. Agreement at § 3.1.

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
17 Amount within fourteen (14) days after the Effective Date. Agreement at § 4.3. Assuming there are no
18 objectors, the Settlement becomes effective ninety (90) days after the Court enters a Judgment and
19 Order Granting Final Approval of the Settlement. Agreement at § 1.17.

20 4. Formula for Calculating Individual Class Payments

21 Participating Class Members will receive an Individual Class Payment. The Individual Class
22 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
23 in California during the Class Period. Agreement at § 3.2.4. The Class Data provided by Defendant to
24 the Settlement Administrator will include the number of Workweeks for each Class Member and the
25 number of PAGA Pay Periods worked during the relevant periods. Agreement at § 1.7. Each Class
26 Member's final Individual Class Payment for purposes of payment will be calculated by using a
27 fraction, the numerator of which is the Class Member's total number of Workweeks, and the
28

denominator of which is the total number of Workweeks of all Class Members. Agreement at § 3.2.4. For purposes of these calculations, a Workweek shall mean any week during which a Class Member worked for Defendant for at least one day during the Class Period. Agreement at § 1.47. Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Class Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Participating Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § 3.2.4.2.

Given that there are approximately 846 Participating Class Members, the average gross recovery is approximately \$464.63 (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 6.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims (those that were asserted in the Action, or could have been asserted in the Action, based on the facts, claims and theories plead in the operative complaint) that accrued during the Class Period. Agreement at §§ 1.41, 5.2.

6. PAGA Release by the State of California on behalf of the Aggrieved Employees

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims (those that were asserted in the operative complaint and Plaintiff's PAGA notice to the LWDA) that accrued during the PAGA Period. Agreement at §§ 1.42; 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$750,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections.

1 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
2 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
3 inquire into the fairness of the proposed settlement”).)

4 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
5 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
6 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
7 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
8 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
9 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
10 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
11 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
12 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
13 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
14 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
15 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
16 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
17 action litigation”).)

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

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

26 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
27 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
28

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
3 § 11.51.)

4 The Parties participated in mediation the highly respected mediator Tripper Ortman, Esq.
5 Mediator Ortman managed the Parties' expectations and provided a useful, neutral analysis of the issues
6 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
7 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
8 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
9 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
10 proceedings were free of collusion and undue pressure.").) After a full day of mediated negotiations,
11 the Parties reached an agreement and the mediation session concluded with a settlement. JCL Dec., ¶¶
12 21-22.

13 Once the Parties agreed to the Mediator's proposal, the Parties engaged in negotiations regarding
14 the written terms of the class action settlement. The Agreement is the final product of the mediated
15 negotiations.

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

18 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
19 the factual and legal issues in dispute. In addition to informal discovery, document review, data
20 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
21 two cases are identical, this research provided Class Counsel with a marker to inform settlement
22 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
23 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
24 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
25 ¶¶ 14-20.

26 Class Counsel only agreed to enter the Settlement following their thorough investigation and
27 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
28

1 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
2 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
3 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
4 reasonable, and adequate, the Court should preliminarily approve the Settlement.

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

6 The Gross Settlement Amount of \$750,000.00 is within the range of reasonableness. To
7 determine whether a settlement is fair and reasonable, the court should "consider enough information
8 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
9 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
10 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
11 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
12 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such
13 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
14 is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola*
15 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
16 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
17 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
18 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' "
19 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
20 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

21 The Gross Settlement Amount is fair and reasonable considering the nature and magnitude of
22

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").

the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) at approximately \$6.4 million dollars if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 11% of Defendant's class-wide liability exposure – well within the recognized range of reasonableness – *before* applying any discounts for various risk factors. The following summarizes Defendant's liability exposure. JCL Dec., ¶ 23.

a. Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that she is owed meal period premiums for meal period violations that occurred during the Class Period. An analysis of the Class Members' time and payroll data revealed a modest 26.3% meal period violation rate. JCL Dec., ¶ 24. Conversely, Defendant argued, among other things, that it provided all their employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant meal and rest periods. Defendant also argued that it maintained facially compliant meal and rest period policies. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal and rest period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 25. Plaintiff estimated that the damages for this claim at approximately \$1,043,598. JCL Dec., ¶ 26.

b. Defendant's Estimated Exposure of Rest Period Violations

Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free rest periods. Like the meal period violations, BCG assumed an identical 26.3% violation rate for rest periods based on Plaintiff's testimony and investigation.

1 However, unlike the meal period premium payments, there was no evidence Defendant ever paid a
2 premium for missed rest periods. JCL Dec., ¶ 27.

3 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
4 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
5 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
6 on Class Member testimony, making it a riskier claim at class certification and liability stages.
7 Certification likely would have required depositions of Class Members who provided declarations, and
8 Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or
9 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
10 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
11 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
12 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
13 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
14 generate uniform practices."). Plaintiff estimated Defendant's exposure for this claim at \$2,550,951.
15 JCL Dec., ¶¶ 28-29.

16 **c. Defendant's Estimated Exposure for Unreimbursed Business Expenses**

17 Plaintiff alleged that Defendant required the Class Members to use their personal cellular phones
18 as a result of and in furtherance of their job duties but were not reimbursed by Defendant. California
19 employers who require employees to incur personal business expenses for work purposes must
20 reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An
21 employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the
22 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the
23 directions of the employer..."). BCG estimated a reasonable \$25 monthly reimbursement rate for Class
24 Members for the use of their personal cell phones. JCL Dec., ¶ 30.

25 Again, Defendant denied any liability for this claim. Defendant argued that its written policies
26 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
27
28

1 the employees' duties or at Defendant's direction. Plaintiff estimated Defendant's exposure for this
2 claim at approximately \$311,000.00. JCL Dec., ¶ 31.

3 **d. Estimated Damages for Regular Rate Violations**

4 Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses when
5 calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed
6 sick pay. Specifically, Defendant paid Class Members non-discretionary incentive compensation in the
7 form of "Annual Bonus" payments which were not properly calculated into the regular rate of pay for
8 purposes of overtime, meal period premiums, and redeemed sick pay. JCL Dec., ¶ 32. The regular rate
9 of pay, which can change from pay period to pay period, includes adjustments to the straight time rate,
10 reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-
11 hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container*
12 *Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a
13 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires
14 meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See
15 *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Further, California Labor Code section
16 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular
17 rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in
18 the 90 days preceding the use of the sick leave.

19 Conversely, Defendants denied liability and asserted that the "Annual Bonus" reflected
20 *discretionary* payments properly excluded from the regular rate of pay. Plaintiff estimated Defendant's
21 exposure for this claim at approximately \$5,000. JCL Dec., ¶ 33.

22 **e. Defendant's Estimated Exposure for Wage Statement Violations**

23 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
24 statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal and rest
25 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
26 derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93
27 (concluding that meal premiums are "wages" entitling employees to derivative wage statement
28

penalties). Further, Defendant argued that even it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. Plaintiff estimated Defendant's exposure on this claim at \$1,916,000.00. JCL Dec., ¶ 34.

f. Defendant's Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for this claim at approximately \$570,000.00. This reflected the amount of waiting time penalty exposure resulting from what Plaintiff perceived as his strongest claim, i.e., unpaid wages for failure to properly calculate the regular rate of pay. JCL Dec., ¶ 35.

g. Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at \$3,513,000. Dec., ¶ 36. The proposed PAGA allocation of the Gross Settlement Amount is fair, just and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

///

1 Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$60,000 which is 8%
2 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Penalties.
3 Seventy-Five percent (75%) of the PAGA Penalties (\$45,000.00) will be paid to the LWDA ("LWDA
4 PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties (\$15,000.00)
5 will be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved
6 by courts and should be approved. JCL Dec., ¶ 37.

7 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
8 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
9 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
10 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
11 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
12 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
13 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
14 6, 2016) (PAGA penalties denied after trial).

15 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
16 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
17 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
18 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
19 Again, the *Carrington* decision was after Plaintiff prevailed at trial, and even then, the PAGA penalties
20 were reduced by 90%. For these reasons, the PAGA allocation of the Gross Settlement Amount is fair,
21 just and reasonable.

22 4. Inherent Risks of Continued Litigation Support Preliminary Approval

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
3 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
4 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
5 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
6 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
7 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
8 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
9 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
10 individualized questions of fact not susceptible to class treatment.”); *A.S.A. Cab Ltd.* (2009) 176
11 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
12 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
13 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
14 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
15 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
16 certification of driver meal and rest period claims based on the predominance of individual issues).
17 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
18 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
19 settlement. JCL Dec., ¶ 38.

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

24 [N]othing is assured when litigating against commercial giants with vast
25 litigative resources, particular in such complex litigation as this, which
26 would strain the cognitive capacities of any jury. Defense judgments were
27 hardly beyond the realm of possibility. Accordingly, this factor weighs in
28

1 favor of preliminary approval.

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

3 Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions, which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
7 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
8 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
9 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. “Avoiding such a trial and the
10 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
11 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
12 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
13 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

14 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that is
15 roughly 11% of Defendant’s *class-wide* liability exposure. and approximately – **before** applying any
16 discounts for various risk factors. Given the amount of the settlement here, as compared to potential
17 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
18 reasonable. JCL Dec., ¶ 40.

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

20 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
21 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
22 information to decide whether they should accept the benefits offered, opt out and pursue their own
23 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
24 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
25 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
26 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
27 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
28

1 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

2 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
4 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
5 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
6 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
7 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
8 and scope of the Released Claims. Agreement at § 7. The Parties negotiated this method to ensure
9 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
10 administration of the Settlement. JCL Dec., ¶ 41.

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
13 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
14 of the options open to dissenting class members.”).) JCL Dec., ¶ 42.

15 **C. The Court Should Preliminarily Approve the Class Representative Service Payment**

16 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
17 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
18 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
19 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
20 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
21 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
22 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
23 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
24 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
25

26 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
27 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
28 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 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
2 (2009) 175 Cal.App.4th 785.)

3 The Settlement provides for a Class Representative Service Payment of \$10,000 for Plaintiff.
4 The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
5 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
6 the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement
7 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to
8 provide Defendant a general release of all claims arising out of his employment. JCL Dec., ¶ 43.

9 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
10 Representative Service Payment once preliminary approval of the Settlement is granted. Plaintiff
11 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
12 Class Representative Service Payment. JCL Dec., ¶ 44.

13 **D. The Court Should Preliminarily Approve the Class Counsel Fees and Expenses Payment**

14 The purpose of a Class Counsel Fees and Expenses Payment in class action litigation is to reward
15 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
16 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
17 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix,*
18 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
19 percentage method or the lodestar method is used, fee awards in class actions average around one-third
20 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
21 *Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
22 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
23 one-third fee is consistent with market rates).)

24 Class Counsel took this matter on a contingency fee basis and invested significant time and
25 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
26 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
27 Members. Considering the positive outcome for the Class Members, and considering the supporting
28

1 authority, the proposed Class Counsel Fees and Expenses Payments are fair and reasonable. JCL Dec.,
2 ¶ 45.

3 Plaintiff will file a formal motion for the negotiated Class Counsel Fees and Expenses Payment
4 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
5 showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 46.

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

7 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
8 of the Class is appropriate. JCL Dec., ¶ 47.

9 1. The Standard for Class Certification

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

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

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

25 The community of interest requirement embodies three factors: (1) predominant common
26 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)
27 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)
28

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

6 Because all Class Members are Defendant’s current and former employees, the class is readily
7 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 48.

8 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
9 Settlement Class. Factually, Defendant’s policies and practices apply class-wide, and Defendant’s
10 liability can be determined by facts common to all members of the class. The wage and hour issues are
11 both numerous and substantial, and a class action is the most advantageous method of dealing with the
12 claims of the Settlement Class. JCL Dec., ¶ 49.

13 Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the
14 same factual basis and are based on the same legal theories applicable to the other Class Members.
15 Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff alleges
16 that he was injured by the same company-wide practices to which the proposed Class Members were
17 subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the
18 interests of the Class by initiating this litigation, undertaking extensive class discovery, and evaluating
19 the proposed settlement to assure that it is fair. JCL Dec., ¶ 50.

20 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
21 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
22 gained state court settlement approval of the same class-wide causes of action that are at issue in this
23 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
24 represent the interests of this Class. JCL Dec., ¶¶ 5, 52-59, Declaration of Shani Zakay, ¶¶ 1-3.

25 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
26 each individual claim, the Class Members likely have little incentive to litigate their claims on an
27 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
28

claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 5, 52-59.

IV. CONCLUSION

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

Dated: July 6, 2023

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.