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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

SERENITY JEAN DEWOLF, an individual, on behalf of herself and on behalf of all persons similarly situated, Plaintiff, v. MARCOS RENTERIA AG SERVICES, INC., a California corporation; FOSTER POULTRY FARMS, LLC, a California limited liability company, previously named as fictious DOE 1; and DOES 2-50, Inclusive, Defendants.	Case No. SCCV-CVCV-2022-329 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 24, 2025 Time: 9:30 a.m. Courtroom: 2

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I. INTRODUCTION

Plaintiff SERENITY DEWOLF ("Plaintiff") seeks preliminary approval of the Class Action and PAGA Settlement and Release of Claims ("Settlement")[1], which if approved, would provide valuable monetary relief for approximately 343 Class Members. The basic terms of the Settlement provide for the following:

1. The **"Class Members" and "Class Period"** shall mean all non-exempt employees who are or previously were employed by Defendant and Cross-Complainant Mountain Counties Supply Company ("Defendant Mountain Counties"), Defendant and Cross-Complainant Prabhjot S. Randhawa ("Defendant Randhawa"), Defendant and Cross-Complainant Maruti Mountain Oil, LLC ("Defendant Maruti Mountain"), or Cross-Defendant Nichole Torsey ("Defendant Torsey") (collectively, "Defendants") and performed work in California during the period from April 1, 2018, through the date in which 15,800 workweeks are reached ("Class Period"). Settlement at §§ I(G), I(J); Memorandum of Understanding ("MOU") at ¶ 1. The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Settlement at § I(KK).

2. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean means all non-exempt employees who are or previously were employed by Defendant Counties, Defendant Randhawa, Defendant Maruti Mountain, or Defendant Torsey and performed work in California during the period from through the date in which 15,800 workweeks are reached beginning from April 1, 2018. Settlement at §§ I(C), I(Y); MOU at ¶ 2. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Settlement at § III(N)(7).

3. The "**Gross Settlement Amount**" is Five Hundred Twenty-Five Thousand Dollars and Zero Cents ($525,000.00). Settlement at § I(P); MOU at ¶ 6. The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Service Award**" in the amount of $10,000 to Plaintiff for her services on

[1] The basic terms of the Settlement are outlined in the fully executed Memorandum of Understanding ("MOU"), attached as Exhibit 2 to the Declaration Jean-Claude Lapuyade ("JCL Dec.") at ¶ 4. All citations to the MOU incorporate by this reference a citation to the JCL Dec., ¶ 4. Additional proposed terms of the Settlement are outlined in a long-form settlement agreement ("Settlement"), attached as Exhibit 1 to the JCL Dec. All citations to the Settlement incorporate by this reference a citation to the JCL Dec. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement. As detailed herein, this long-form agreement has not yet been executed by Defendants, though Defendants have not raised any issues with any specific provisions in the Settlement Agreement and Plaintiff expects to have a fully executed version shortly.

behalf of the Class Members. Settlement at §§ I(HH), and III(O)(9); MOU at ¶ 9;

b. A payment of "**Attorneys' Fees and Attorneys' Expenses**" in the amount not to exceed one-third of the Gross Settlement Amount for Attorney's Fees, currently estimated to be $175,000.00 ***and*** Attorneys' Expenses not to exceed $25,000.00, to be paid to Class Counsel. Settlement at §§ I(D)-(E), III(O)(10); MOU at ¶¶ 13-14;

c. A "**PAGA Payment**" of $25,000.00 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Amount"). The Settlement Administrator shall pay 75% of the PAGA Amount to the Labor and Workforce Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees ("Aggrieved Employee Payment"). Settlement at §§ I(W), III(O)(11); MOU at ¶ 10; and

d. "**Claims Administration Expenses**" not to exceed $7,600.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice Packet and Individual Settlement Payments. Settlement at §§ I(F), I(JJ), III(O)(12); MOU at ¶ 11.

4. The "**Net Settlement Amount**" of approximately $282,400.00 (Gross Settlement Amount less the requested Service Award, Attorneys' Fees and Attorneys' Expenses, PAGA Payment and Claims Administration Expenses) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Payment of ***$823.32***. Settlement at § I(R); MOU at ¶ 8; JCL Dec., ¶ 5.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. Both the Settlement Agreement and the MOU upon which the Settlement is based was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members. The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 5.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants operate and manage gas stations throughout the county of Siskiyou. This action asserts claims on behalf of all non-exempt employees who are or previously were employed by Defendants and performed work in California during the period from April 1, 2018 through the date on which 15,800 workweeks are reached. At all times during her employment, Plaintiff was classified by Defendants as a non-exempt employee, paid on an hourly basis, and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 7; Declaration of Serenity Dewolf at ¶¶ 4-5.

On January 24, 2022, Plaintiff served Defendants 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 Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 8.

On April 1, 2022, Plaintiff filed a class action complaint in the Siskiyou Superior Court, Case Number CVCV 22-329 ("Class Action"). The Class Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4)

Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Reimburse Employees for Required Expenses; and (9) Violations of the Private Attorneys General Act pursuant to Labor Code section 2698, *et seq*. JCL Dec., ¶ 9.

On May 6, 2022, Plaintiff served an amended PAGA notice to the LWDA to add Defendant Prabhjot S. Randhawa as an additional Defendant who acted as Plaintiff's joint employer. On May 12, 2022, Plaintiff filed a First Amended complaint for the purpose of adding Defendant Randhawa as an additional Defendant in the action. On August 28, 2023, Defendants Mountain Counties and Randhawa and Cross-Complainant Maruti Mountain Oil, LLC filed a cross-complaint against Cross-Defendant Nichole Torsey, alleging Cross-Defendant was the sole shareholder of Mountain Counties at all relevant times, until Cross-Defendant sold the company effective on or about February 1, 2021. JCL Dec., ¶ 10.

On October 10, 2023, Plaintiff served a second amended PAGA notice to the LWDA to add Defendant Maruti Mountain Oil, LLC as an additional Defendant who acted as Plaintiff's joint-employer. On October 12, 2023, Plaintiff filed a Second Amendment to the complaint for the purpose of identifying Defendant Maruti Mountain Oil, LLC as DOE 2 in the Class Action. JCL Dec., ¶ 11.

Generally, Plaintiff claims that Defendants failed to pay employees for all time worked, including overtime, failed to provide them with proper meal and rest breaks, failed to reimburse for required business expenses, and failed to issue accurate itemized wage statements. Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that they 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 polices, payment of minimum wages and overtime, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 12.

Plaintiff commenced written discovery on July 20, 2022. The Parties agreed to attend private mediation with Monique Ngo-Bonnici, Esq. on August 27, 2024. To facilitate settlement negotiations, Defendants agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sampling of the Class Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 13.

The Parties engaged in arms-length settlement negotiations with Mrs. Ngo-Bonnici's assistance, though the mediation concluded without a settlement. However, Ms. Ngo-Bonnici presented a mediator's proposal, which was accepted by the Parties and subsequently memorialized in the form of a Memorandum of Understanding, a fully executed version of which is attached to the JCL Dec. as Exhibit 2. JCL Dec., ¶ 14.

On October 14, 2024, Plaintiff sent Defendants the long-form draft of the Settlement Agreement, a partially executed copy of which has been attached as Exhibit 1 to the JCL Declaration. Defendants sent back a version with their revisions on November 13, 2024. Plaintiff accepted all revisions. The <u>only</u> outstanding issue for the Parties is to define the end of the Class Period by a calendar date, as the MOU defined the end of the Class Period as the date on which the Class worked a total of 15,800 workweeks. JCL Dec., ¶ 15. To find this date, the Parties agreed that Defendants would send the Class data to the Parties' chosen Class Administrator, Apex Class Actions, LLC ("Apex") so that Apex could determine the date on which the Class worked a total of 15,800 workweeks. On November 19, 2024, Apex provided Defendants with login credentials to securely transfer the class data through a secure link. JCL Dec., ¶ 16. To date, Defendants have not transferred the class data to Apex, thus the Parties have been unable to determine an end date to the Class Period. JCL Dec., ¶ 17.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment, including, among other things, copies of her wage statements. At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 18.

Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response, Defendants produced documents, including but not limited to, Plaintiff's payroll records and various wage and hour policies. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, pay for all time worked, provide compliant meal and rest periods, and provide accurate wage statements. JCL Dec., ¶ 19.

Considering the many anticipated factual disputes, the Parties agreed that it would be in the best interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendants' liability exposure to the Class Members. In response to Class Counsel's request, Defendants produced a sampling of Class Member time and payroll records, aggregate workweek and pay period data, and copies of applicable policies, and agreements containing, *inter alia,* compensation, timekeeping and meal and rest period policies. In total, Defendant produced hundreds of pages of pertinent policy documents and payroll data for Class Counsel to analyze. JCL Dec., ¶ 20.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, BCG is uniquely qualified to analyze Defendants' time and payroll data. JCL Dec., ¶ 21.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods during the Class Period, and the average length of shift and average number of hours worked per week and per pay period during the Class Period. BCG also estimated the amount of meal period premiums owed during the Class Period, the amount of unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 22. In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 23.

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

C. The Parties Settled after Serious, Informed and Arm's Length Negotiations

On August 27, 2024, the Parties conducted a full day of mediation with Monique Ngo-Bonnici, Esq., an experienced mediator of wage and hour class and PAGA actions. Ms. Ngo-Bonnici 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 Ms. Ngo-Bonnici's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded without a settlement. However, Ms. Ngo-Bonnici presented a mediator's proposal, which was accepted by the Parties and 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 Settlement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The proposed Class consists of all non-exempt employees who are or previously were employed by Defendants and performed work in California during the period beginning April 1, 2018 through the date in which 15,800 workweeks are reached. MOU at ¶ 1. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Settlement at §§ I(G), I(J), and I(KK);

MOU at ¶ 19. In the data exchanged for mediation, there were approximately 343 Class Members that worked an estimated 15,800 workweeks during the Class Period Settlement at § III(A)(3); MOU at ¶ 12.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $525,000.00. Settlement at I(P); MOU at ¶ 6. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of $10,000.00 to Plaintiff for her services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $25,000.00; (4) Claims Administration Expenses estimated at $7,600.00; (5) Attorneys' Fees and Attorneys' Expenses in the amount of $200,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $175,000.00 and an estimated $25,000.00 for actually incurred litigation expenses. *See* generally Settlement at § III(O); MOU at ¶¶ 9-11, 13-14.

Subject to the Court approving the Service Award, Attorneys' Fees and Attorneys' Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. Settlement at § III(O)(1), MOU at ¶ 8. There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Settlement at § III(A)(1); MOU at ¶ 6.

3. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendants in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Settlement at § III(O)(1); MOU at ¶ 8.

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class

Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Settlement at § III(O)(1).

Given that there are approximately 343 Settlement Class Members, ***the average gross recovery is approximately $823.32*** (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of $283.35); *Almanza v. The Express Group Inc*., San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery $174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery $715.97) and *Crawford et al. v. Outlook Amusements, Inc*., Los Angeles Superior Court Case No. BC617160 (average net recovery $333.98).

4. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from all claims, rights, demands, liabilities, and causes of action, that were or could have reasonably been pleaded based upon, arising from, or reasonably related to, the factual allegations set forth in the operative complaint in the Action, all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint that occurred during the Class Period. In addition to the above, as of the Funding Date, Plaintiff will issue a general release under Civil Code section 1542. Except as set forth above, Settlement Class Members do not release any other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Settlement at §§ I(DD); III(B); III(D); MOU at ¶ 15.

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

Generally, upon 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 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, that occurred during the PAGA Period, regardless of whether the Aggrieved Employee opts out from the Settlement. Settlement at §§ I(EE); III(C); MOU at ¶ 16.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $525,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with Monique Ngo-Bonnici, Esq, an experienced mediator of wage and hour class and PAGA actions. Mediator Ngo-Bonnici managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The matter resolved only after Mediator Ngo-Bonnici heard arguments, reviewed evidence, and evaluated the Parties' respective claims and defenses. JCL Dec., ¶ 26. The Settlement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 27.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to formal and informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 28.

Class Counsel only agreed to settle the action following this thorough investigation and evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Settlement 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., ¶ 29.

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

The Gross Settlement Amount of $525,000.00 is within the range of reasonable settlement for preliminary approval. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial. Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $525,000.00 is well within the range of reasonableness considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.*) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

Class Counsel retained BCG to develop economic damage models measuring Defendants' potential liability exposure with respect to the Class and PAGA claims. The damage models were informed by Class Counsel's investigation, including the analysis of the time and payroll data Defendants produced. Class Counsel projected Defendants' liability exposure for *class claims*

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

(excluding PAGA penalties) to be between $1,419,374.61 and $1,752.701.31. Thus, the Gross Settlement Amount of $525,000.00 represents between 36.9 – 29.95% of Defendants' *maximum* exposure. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 30.

(1) <u>Estimated Damages for Meal Period and Rest Period Violations</u>

Plaintiff alleged that Defendants failed to provide compliant meal and rest periods. Specifically, the issue disputed by the Parties is whether it was proper for Plaintiff and other Class Members to take "on duty" meal periods. Plaintiff alleges that the nature of the work being performed did not required on-duty meals, because the job of Plaintiff and other putative Class Members did not by its nature require the employee to be present at all times, nor was there a situation in which a single employee was present and there was not another employee employed at the worksite. Furthermore, Plaintiff alleged that even if an on-duty meal agreement was appropriate, it did not absolve Defendants of the requirement of recording meal periods. Defendant argued that on-duty meal periods were appropriate and moreover, to the extent they were not, individualized issues existed as to the circumstances for each employee and each location. As to rest breaks, Plaintiff has alleged that rest breaks were frequently missed, and Defendant did not pay any rest break premiums during the Class Period. Plaintiff alleged that Defendant cannot maintain a position that the nature of the work required the Class Members to take on-duty meal periods, but did not prevent the Class Members from taking compliant rest periods. In light of the foregoing, and considering Defendant's defenses, Plaintiff estimated Defendants' potential exposure for this claim to be between $345,496.00 and $431,870.00 for meal break claims, and $345,496.00 and $431,870.00 for rest breaks. JCL Dec., ¶ 31.

(2) <u>Defendants' Exposure for Failure to Pay for All Hours Worked</u>

Plaintiff alleged that Defendant failed to pay for all hours worked based on two separate theories. First, Plaintiff alleged that she and other Class Members were required to open the store and prepare the store for customers before clocking in. Second, Plaintiff alleges that Defendant underpaid she and other Class Members their overtime wages by failing to properly calculate employees' regular rate of pay in pay periods in which employees received non-discretionary bonuses. Plaintiff estimated Defendant's exposure for this claim to be $78,350.31. JCL Dec., ¶ 32.

(3) Defendant's Liability for Unreimbursed Business Expenses

Plaintiff alleges that Defendants required employees to wear company t-shirts while working their shift and allowed employees to wear jackets, however, the jackets required a company logo. These jackets were not provided by Defendants. If employees were cold and wanted to wear a jacket while working, they were obligated to purchase the jacket from Defendants. Defendants did not reimburse employees for this expense. Plaintiff estimated Defendant's exposure for this claim to be between $13,891.50 - $15,435.00. JCL Dec., ¶ 33.

(4) Estimated Exposure for Waiting Time Penalties

Plaintiff alleged that the Defendants' labor code violations triggered waiting time penalties under Labor Code Section 203. Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants 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 this claim, Plaintiff estimated Defendants' exposure for these penalties to be between $636,140.80 and $795,176.00. JCL Dec., ¶ 34.

(5) Defendants' PAGA Exposure

Class Counsel's damage models also estimate Defendants' exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendants' PAGA exposure at approximately $521,050.00. JCL Dec., ¶ 35.

Here, the Parties negotiated a good faith PAGA Payment in the amount of $25,000.00 which is 4.7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA penalties. Seventy-Five percent (75%) of the PAGA Payment ($18,750.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($6,250.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 36.

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

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

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. JCL Dec., ¶ 37.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

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

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 39. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221

F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $525,000.00 that is between 29.9% – 36.9% Defendants' liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 40.

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

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

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. Settlement at § III(N). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 41.

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

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

C. The Court Should Preliminarily Approve the Service Award

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

Approximately 343 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a Service Award of $10,000.00 for Plaintiff. The service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 43.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 37.

D. The Court Should Preliminarily Approve the Payment of Attorneys' Fees and Attorneys' Expenses

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members. The Settlement provides for a payment of Attorneys' Fees and Attorneys' Expenses and in the amount of one-third of the Gross Settlement Amount ($175,000.00) and reimbursable litigations costs in an amount not to exceed $25,000.00. Settlement § III(O)(10); MOU at ¶¶ 13-14. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys' Expenses are fair and reasonable. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 45.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiff contends that provisional certification of the Class is appropriate. JCL Dec., ¶ 46.

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

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. JCL Dec., ¶ 47. The California statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 48.

Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Members by initiating this litigation and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 49.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 50.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 51-57; Declaration of Shani O. Zakay at ¶ 3.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Accordingly, Plaintiff requests that the Court preliminarily approve the Settlement, the terms of which are outlined in the Parties' MOU, and more fully detailed in the partially-executed Settlement Agreement.

Dated: March 28, 2025

JCL LAW FIRM, APC

By: *Perssia Razma*

Perssia Razma, Esq.