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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUCAS DELACRUZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; BONOBO, INC., a
Delaware Corporation; and DOES 1 through
50, Inclusive,

Defendants.

Case No. 37-2021-00046421-CU-OE-CTL

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

Date: May 5, 2023

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: C-74

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I. INTRODUCTION

Plaintiff LUCAS DELACRUZ (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 291 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all current and former non-exempt California employees who worked at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time during the period beginning November 1, 2017, through March 6, 2023 (“Class Period”). Agreement at §§ I(G), I(J). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at § I(KK).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all current and former non-exempt employees who worked at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores (“Aggrieved Employees”) at any time during the period between August 27, 2020, through March 6, 2023 (“PAGA Period”). Agreement at §§ I(C), I(Y). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(K)(2)(a).

3. The “**Gross Settlement Amount**” is Four Hundred and Fifty Thousand Dollars (\$450,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” in the amount of \$10,000 to Plaintiff for his services on behalf of the Class Members. Agreement at § III(L)(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 \$150,000.00 **and** Attorneys’ Expenses not to exceed \$15,000, to be paid to Class Counsel. Agreement at § III(L)(10);

c. A “**PAGA Penalties**” of \$25,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004

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 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Penalties to the Labor
2 and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
3 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
4 Agreement at § III(L)(11); and

5 d. “**Administration Costs**” not to exceed \$7,500.00 payable to the Settlement
6 Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice Packet and
7 Individual Settlement Payments. Agreement at § I(JJ).

8 4. The “**Net Settlement Fund**” of approximately \$242,500.00 (Gross Settlement Amount
9 minus the requested Service Award, Attorneys’ Fees and Attorneys’ Expenses, PAGA Penalties and
10 Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis
11 according to the number of Workweeks each Settlement Class Member worked during the Class Period.
12 The Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the
13 Settlement Class resulting in an average Individual Settlement Share of **\$833.33**. Agreement at §
14 III(L)(1); JCL Dec., ¶ 5.

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

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

27
28 ////

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant Bonobos operates an e-commerce clothing retailer, throughout California, including San Diego County where Plaintiff worked. Walmart bought Bonobos before this Action was filed. This action asserts claims on behalf of all current and former non-exempt California employees who worked at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time during the period beginning November 1, 2017, through March 6, 2023. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Rest Breaks, Meal Periods and Days of Rest Policy" and "Associate Pay Policy." JCL Dec., ¶ 7; Declaration of Lucas Delacruz ("Delacruz Dec.") at ¶¶ 4-5.

On June 18, 2020, 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 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 January 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2021-00002597-CU-OE-CTL ("Class Action"). The Class Action alleged eleven 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 Reimburse Employees for Required Expenses; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Timely Pay Earned Wages in

1 Violation §204(a); (10) Wrongful Termination in Violation of Public Policy; and (11) Violation of the
2 Private Attorneys General Act [Labor Code §§ 2698, et seq.] (“Class Claims”). JCL Dec., ¶ 9.

3 On December 27, 2021, Plaintiff filed the operative First Amended Complaint, which dismissed
4 the causes of action for failure to pay sick pay at the correct rate (Labor Code § 246) and failure to
5 provide wages when due in violation of California Labor Code §§ 201, 202, 203, and 204. JCL Dec., ¶
6 10.

7 On August 31, 2022, Plaintiff filed a Second Amended Complaint for the purpose of
8 incorporating the claims and factual allegations for an alleged failure to provide seating claim pursuant
9 to Cal. Code of Reg., Title 8, Section 1 1070(14). JCL Dec., ¶ 11.

10 On March 21, 2023, Plaintiff filed a stipulation for leave to file a Third Amended Complaint to
11 readd the claims for Defendants’ failure to provide wages when due in violation of Labor Code §§ 201,
12 202, and 203, and to add additional allegations regarding off-the-clock Covid-19 screenings.² JCL Dec.,
13 ¶ 12.

14 Generally, Plaintiff claims that Defendant failed to pay overtime at the regular rate of pay, failed
15 to provide meal breaks and rest breaks, failed to reimburse for required business expenses, failed to pay
16 minimum wages, and failed to issue accurate itemized wage statements. Defendant forcefully denies
17 liability for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied with all
18 applicable employment laws and raised several other significant defenses to Plaintiff’s claims,
19 including but not limited to, facially compliant meal and rest period policies, payment of minimum
20 wages, payment of overtime at the correct rate, reimbursed its employees for business expenses,
21 compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec.,
22 ¶ 13.

23 Plaintiff commenced written discovery in February 2022. Before answering Plaintiff’s written
24 discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties agreed to
25 stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 14.

26 To prepare for mediation, the Parties agreed to informally produce additional documents and
27

28 ² As of the filing of this Motion, the stipulation for leave to file a Third Amended Complaint has not been granted by the Court.

1 data points subject to the mediation privilege, including but not limited to, a sampling of the Class
2 Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
3 Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
4 Defendants' time and payroll data. JCL Dec., ¶ 15.

5 On March 6, 2023, the Parties participated in a full day mediation with Jeffery A. Ross, Esq., an
6 experienced mediator of class and PAGA actions. After arms-length negotiations and bargaining, the
7 Parties accepted a Mediator's proposal and signed a Memorandum of Understanding. After reaching
8 an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which
9 is the subject of the instant motion. JCL Dec., ¶ 16.

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

11 Months before filing the Action, Class Counsel began its pre-filing investigation into the
12 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
13 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
14 including, among other things, copies of his wage statements and timekeeping policies. At the
15 conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified further
16 inquiry. JCL Dec., ¶ 17.

17 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,
18 Defendants produced several pages of documents, including but not limited, Plaintiff's payroll and time
19 records. Class Counsel reviewed and analyzed the documents and determined the documents appeared
20 to substantiate Plaintiff's claim that Defendants failed to, among other things, pay for all time worked
21 and to provide compliant meal and rest periods. JCL Dec., ¶ 18.

22 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
23 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
24 documents and data points to further evaluate Plaintiff's claims and Defendants' liability exposure to
25 the Class Members. In response to Class Counsel's request, Defendants produced a sampling of Class
26 Member time and payroll records, aggregate workweek and pay period data, and copies of applicable
27 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
28 policies. In total, Defendants produced over 200 pages of pertinent policy documents and

1 approximately 500,000 unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶
2 19.

3 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
4 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
5 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
6 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
7 differently, the BCG is uniquely qualified to analyze Defendants' time and payroll data. JCL Dec., ¶
8 20.

9 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
10 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
11 pay periods, average length of shift and average number of hours worked per week and pay periods
12 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
13 periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of
14 unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock
15 work performed by the Class Members during the Class Period. JCL Dec., ¶ 21.

16 In advance of mediation, Class Counsel created several damage models predicated on the BCG
17 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting
18 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
19 during the mediated settlement discussions. JCL Dec., ¶ 22.

20 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
21 Plaintiff's suitability as a putative class representative through interviews, background investigations,
22 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
23 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
24 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendant's
25 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
26 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
27 liability for purposes of settlement; (8) holding phone interviews with hundreds of putative class
28 members; (9) drafting the mediation brief; and (10) participating in the mediation. This investigation

1 allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as
2 the impediments to recovery, such as to make an independent assessment of the reasonableness of the
3 terms to which the Parties have agreed. JCL Dec., ¶ 23.

4 **C. The Parties Settled at Mediation**

5 On September 8, 2021, the Parties conducted a full day of mediation with Hon. Steven Denton
6 (Ret), a respected jurist and a highly regarded wage and hour mediator. Judge Denton helped manage
7 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
8 The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged
9 information regarding their respective claims and defense, including their respective evaluation of the
10 damages. After nearly eight hours of arm's length and adversarial negotiations, the mediation
11 concluded with a settlement. The complete and final terms of the Parties' settlement are now set forth
12 in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable
13 compromise of the claims at issue. JCL Dec., ¶¶ 24.

14 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

15 1. The Composition of the Class

16 The proposed Class consists of all current and former non-exempt California employees who
17 worked at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores, at
18 any time during the period beginning November 1, 2017, through March 6, 2023. The Settlement Class
19 excludes any person who submits a timely and valid request for exclusion. Agreement at § I(G); I(J);
20 I(KK). In the data exchanged prior to the mediation, there were approximately 291 Class Members
21 that worked an estimated 14,000 during the Class Period Agreement at § III(A)(2).

22 2. The Settlement Consideration

23 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
24 Amount of \$450,000.00. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to
25 the Settlement Class; (2) a Service Award of \$10,000 to Plaintiff for his services on behalf of the
26 Settlement Class; (3) PAGA Penalties in the amount of \$25,000; (4) Administration Costs estimated at
27 \$7,500; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$165,000, comprised of
28 attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$150,000.00 and an

1 estimated \$15,000 for actually incurred litigation expenses. *See generally* Agreement at § III(L).

2 Subject to the Court approving the Service Award, Attorneys' Fees and Attorneys' Expenses,
3 PAGA Penalties, and the Administration Costs, the Net Settlement Amount will be distributed to each
4 participating member of the Settlement Class Member. Agreement at § III(L)(1). There is no reversion
5 to Defendants and Defendants must separately pay for its share of the employer payroll taxes.
6 Agreement at § III(A)(1).

7 3. Formula for Calculating Individual Settlement Payments

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

16 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
17 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class
18 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class
19 Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their
20 respective Payment Ratios. Agreement at § III(L)(1).

21 Given that there are approximately 291 Settlement Class Members, **the average gross recovery**
22 **is approximately \$833.33** (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
23 ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by
24 California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego
25 Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The*
26 *Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net
27 recovery\$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case
28 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 class claims alleged in the operative Third Amended Complaint, or which could have been alleged in the operative complaint based on the facts alleged, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at §§ I(EE); III(B).

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 any all PAGA claims alleged in the operative Third Amended Complaint and Plaintiff's PAGA notice to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§ I(FF); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$450,000.00 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

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

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

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

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

26 The Parties participated in mediation with Jeffrey A. Ross, Esq., an experienced mediator of
27 wage and hour class and PAGA actions. Mediator Ross managed the Parties’ expectations and
28 provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc.*

1 *Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008)
2 (mediator's participation weighs considerably against any inference of a collusive settlement);
3 *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-
4 certification settlement negotiations helps to ensure that the proceedings were free of collusion and
5 undue pressure.".) At all times, the Parties' negotiations were at an arm's length, adversarial and non-
6 collusive. Only after a full day of mediated negotiations, the Parties reached a settlement. The matter
7 resolved only when Mediator Ross issued a mediator's proposal that the Parties accepted. Mediator
8 Ross only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the
9 Parties' respective claims and defenses. JCL Dec., ¶ 25.

10 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
11 regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's
12 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement.
13 The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms
14 are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

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

17 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
18 the factual and legal issues in dispute. In addition to informal discovery, document review, data
19 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
20 two cases are identical, this research provided Class Counsel with a marker to inform settlement
21 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
22 Counsel to realistically assess the value of the claims and intelligently engage defense counsel in
23 settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶¶
24 17-23.

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

1 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
2 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

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

4 The Gross Settlement Amount of \$450,000.00 is within the range of reasonable settlement for
5 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
6 “consider enough information about the nature and magnitude of the claims being settled, as well as
7 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
8 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
9 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
10 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis,
11 courts do “not require any such explicit statement of value; [they] require[] a record which allows an
12 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.
13 ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
14 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
15 recovery plaintiffs might have received if they had succeeded at trial. Indeed, “[t]he determination
16 whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a
17 particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In*
18 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

21 The Gross Settlement Amount of \$450,000.00 is well within the range of reasonableness
22 considering the nature and magnitude of the claims being settled and the various potential impediments
23 to recovery. JCL Dec., ¶ 27. To determine whether a settlement is fair and reasonable, the court should
24 “consider enough information about the nature and magnitude of the claims being settled, as well as
25 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
26 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
27 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
28 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.*) For this analysis, courts do “not

1 require any such explicit statement of value; [they] require[] a record which allows an understanding
2 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v.*
3 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The
4 reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery
5 plaintiffs might have received if they had succeeded at trial.³ Indeed, “[t]he determination whether a
6 settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized
7 sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael*
8 *Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

9 Class Counsel retained BCG to develop economic damage models measuring Defendants’
10 potential liability exposure with respect to the Class and PAGA claims. The damage models were
11 informed by Class Counsel’s investigation, including the analysis of the time and payroll data
12 Defendants produced. Class Counsel projected Defendants’ maxim **class** liability exposure was
13 \$2,747,655 (excluding PAGA Penalties), comprised of \$1,714,128 for damages and \$1,033,527 for
14 penalties, i.e., waiting time and wage statement penalties. Additionally, BCG separately estimated
15 Defendants’ PAGA exposure at \$1,536,700. Combined, BCG projected Defendants’ maxim liability
16 exposure at the time of mediation at \$4,284,355. The Gross Settlement Amount of \$450,000.00
17 represents approximately 10.5% of Defendants’ maxim liability exposure and 16.3% of the projected
18 class **damages**. JCL Dec., ¶ 36. The following summarizes Defendants’ estimated exposure. JCL Dec.,
19 ¶ 27.

20 (1) Estimated Damages for Regular Rate Violations

21 Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and
22 commissions when calculating the regular rate of pay when paying overtime wages, meal period

23 ³ Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 premiums, and redeemed sick pay. Specifically, Defendants paid Class Members non-discretionary
2 incentive compensation in the form of “HO Incentive” and “Bonobos VIP” payments, and had in place
3 the non-discretionary incentive programs, which were not properly calculated into the regular rate of
4 pay for purposes of overtime, meal period premiums, and redeemed sick pay. JCL Dec., ¶ 28. The
5 regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight
6 time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and
7 the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart*
8 *Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must
9 receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553. California law also
10 requires meal period premiums and rest period premiums to be paid at an employee’s regular rate of
11 pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) Further, California Labor Code
12 section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either “the
13 regular rate of pay for the workweek in which the employee uses paid sick time” or the regular rate of
14 pay in the 90 days preceding the use of the sick leave.

15 Conversely, Defendants denied liability and asserted it paid retro payments to Class Members
16 that trued up the correct rate of pay for purposes of overtime wages, meal period premiums, and sick
17 pay. Plaintiff estimated the range of outcomes for this claim was between \$0 and \$10,184 dollars. JCL
18 Dec., ¶ 29.

19 (2) Estimated Damages for Meal Period Violations

20 Plaintiff also alleged that Defendants failed to provide compliant meal periods. Specifically,
21 Plaintiff alleges that due to Defendants’ understaffing, Plaintiff was often scheduled for single-staffed
22 shifts. As a result, Plaintiff and the Class Members were expected to remain on the premises and on-
23 duty during their meal periods. JCL Dec., ¶ 30. Labor Code 512 requires employers to provide
24 employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours
25 of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
26 second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an
27 employer may not employ an employee for a work period of more than ten (10) hours, without
28 providing the employee with a second meal period of not less than thirty (30) minutes. Moreover, the

1 second meal period may not be waived if the total hours worked is more than twelve (12) hours.
2 California Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or
3 rest or recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare
4 Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular
5 rate of compensation for each workday that the meal or rest or recovery period is not provided.”

6 Defendants contend that they fully complied with California meal period laws and maintained
7 compliant policies and practices. Similarly, Defendants argued any divergence from these written
8 policies were not systematic and, if they existed at all, were location specific. Courts have found that
9 where an employer’s meal period policies are compliant, individualized issues exist as to the reasons
10 for missed, late, or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19
11 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees’ time punches for
12 meal periods were within the first 5 hours, the claim was not certifiable because individualized issues
13 existed as to the reasons for the late meal periods). Plaintiff estimated the range of outcomes for this
14 claim was between \$0 and approximately \$86,886 dollars. JCL Dec., ¶ 40.

15 (3) Estimated Damages for Rest Period Violations

16 Plaintiff further alleged that Defendants failed to provide compliant rest periods. Similar to the
17 meal period claims, Plaintiff alleges that due to Defendants’ understaffing, Plaintiff was often
18 scheduled for single-staffed shifts. As a result, Plaintiff and Class Members were not able to take
19 timely and duty-free rest periods and/or that they were expected to remain on the premises and on duty
20 during their rest breaks. JCL Dec., ¶ 32. IWC Wage Orders 5-2001 and 7-20017 provide that
21 “[a]uthorized rest period times shall be counted as hours worked for which there shall be no deduction
22 from wages.” Lab. Code § 226.7(c) provides that “if an employer fails to provide an employee a meal
23 or rest or recovery period in accordance with a state law, including ... an ... order of the Industrial
24 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
25 employee’s regular rate of compensation for each workday that the meal or rest or recovery period is
26 not provided.”

27 Defendants denied liability and asserted that it maintained legally compliant rest period policies
28 and practices throughout the Class Period. Plaintiff contended that this claim was potentially worth

1 approximately \$1,237,330, but it would have mainly relied on Class Member testimony, making it a
2 riskier claim at class certification and liability stages. JCL Dec., ¶ 33. Based on these contentions,
3 Defendants likely would have argued that only a small number of Class Members missed their rest
4 breaks on a few occasions, if any. Therefore, certification likely would have required depositions of
5 Class Members and Defendants surely would have obtained opposing declarations stating either rest
6 breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D.
7 Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court,
8 plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this
9 Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D.
10 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
11 written policy does not generate uniform practices.”). Accordingly, the rest break claim was heavily
12 discounted in Plaintiff’s valuation of the case. JCL Dec., ¶ 34.

13 (4) Defendants’ Estimated Exposure for Unreimbursed Business Expenses

14 Plaintiff alleged that Defendants required the Settlement Class Members to use their personal
15 cell phone as a result of and in furtherance of their job duties as employees for Defendants but were not
16 reimbursed or indemnified by Defendants for the cost associated with their cell phone use. JCL Dec.,
17 ¶ 35. California employers who require employees to use a personal cellular device for work purposes
18 must reimburse the employee for the cost incurred in furnishing the device, including voice and data
19 service. (*See* Cal. Labor Code § 2802(a), providing that “An employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer...”)

22 Again, Defendants vigorously denied any liability for this claim. Specifically, Defendants
23 argued that any cell phone use was voluntary, never mandatory, and contrary to written policies.
24 Plaintiff estimated Defendants’ exposure for this claim ranged between \$0 and \$178,600 dollars. JCL
25 Dec., ¶ 36.

26 (5) Exposure for Unpaid Minimum Wages (Off-the-Clock)

27 Plaintiff further alleges that Defendants failed to pay for all hours worked at the minimum wage
28 as he and other Class Members were required to work off-the-clock and were not compensated for that

1 time. Defendants vigorously denied liability for this claim. Collectively, Defendants asserted, among
2 other things, that its written policies and procedures directed its employees to perform work only while
3 on-the-clock. Defendants asserted that any deviation from these written policies was location and
4 individual-specific and thus, created individualized issues of liability unsuitable for class treatment.
5 JCL Dec., ¶ 37.

6 Based on Defendants’ practices requiring employees to work off-the-clock, Plaintiff assumed
7 ten (10) minutes of unpaid compensable time per workweek by the Class Members during the Class
8 Period. Plaintiff estimated Defendants’ exposure for this claim ranged between approximately \$0 and
9 \$201,128 dollars. JCL Dec., ¶ 38.

10 (6) Exposure for Wage Statement Violations and Waiting Time Penalties

11 Plaintiff alleges that Defendants’ violations resulted in derivative violations of Labor Code
12 sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties and
13 weighed the potential recoveries against probable defenses. JCL Dec., ¶ 39. Specifically, Defendants
14 could argue that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties
15 under Labor Code section 203. Additionally, Defendants could argue that Plaintiff could not show that
16 Class Members suffered an “injury” because of wage statement violations, as required by Labor Code
17 section 226. Plaintiff would have to overcome precedent to prove the Class deserved the penalties. See,
18 e.g., *Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014)
19 (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d
20 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). Plaintiff
21 could not give the penalty claims great weight given that they depended on proving the underlying
22 claims, which had their own risks. Plaintiff estimated Defendants’ exposure for this claim to be between
23 \$0 and approximately \$1,033,527 dollars. JCL Dec., ¶ 40.

24 (7) Defendants’ PAGA Exposure

25 Class Counsel’s damage models also estimate Defendants’ exposure for PAGA penalties arising
26 from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendants’ PAGA
27 exposure at approximately \$1,536,700 dollars. JCL Dec., ¶ 41. The proposed PAGA allocation of the
28 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).

Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$25,000 which is 5.5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$18,750.00) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties (\$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., ¶ 42.

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., ¶ 43.

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., ¶ 44.

“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., ¶ 45. “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 \$450,000.00 that is roughly 16.3% 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., ¶ 45.

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.*

1 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
2 information to decide whether they should accept the benefits offered, opt out and pursue their own
3 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
4 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
5 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
6 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
7 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
8 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁴

9 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
10 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
11 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
12 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
13 procedure and time period within which to requests for exclusions or objections to the Settlement, the
14 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
15 and scope of the Released Class Claims. Agreement at § III(K)(2)(a). This method was negotiated by
16 the Parties to ensure delivering the most reasonable method of notice to the Class Members while
17 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 47.

18 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
19 satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of Cal. v.*
20 *Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the
21 terms of the proposed compromise and of the options open to dissenting class members.”).) JCL Dec.,
22 ¶ 48.

23 **C. The Court Should Preliminarily Approve the Class Representative Enhancement Award**

24 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
25 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*

26
27 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 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.

1 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
2 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
3 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
4 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
5 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
6 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
7 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
8 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
9 (2009) 175 Cal.App.4th 785.)

10 Approximately 291 Class Members will share in the Net Settlement Amount due entirely to the
11 effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a
12 Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the
13 Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement,
14 regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the
15 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
16 for the Settlement Class. JCL Dec., ¶ 49.

17 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
18 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
19 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 50.

20 **D. The Court Should Preliminarily Approve the Payment of Attorneys’ Fees and Attorneys’**
21 **Expenses**

22 The purpose of a payment of Attorneys’ Fees and Attorneys’ Expenses in class action litigation
23 is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
24 positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more
25 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
26 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
27 percentage method or the lodestar method is used, fee awards in class actions average around one-third
28 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*

1 *Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
2 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
3 one-third fee is consistent with market rates).)

4 Class Counsel took this matter on a contingency fee basis and invested significant time and
5 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
6 Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The
7 Agreement provides for a payment of Attorneys' Fees and Attorneys' Expenses and in the amount of
8 one-third of the Gross Settlement Amount (\$150,000.00) and reimbursable litigations costs in an
9 amount not to exceed \$15,000. Agreement § III(L)(10). Considering the positive outcome for the Class
10 Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys'
11 Expenses are fair and reasonable. Plaintiff will file a formal motion for the negotiated Attorneys' Fees
12 and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiff respectfully
13 submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.
14 JCL Dec., ¶ 51.

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

16 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
17 of the Class is appropriate. JCL Dec., ¶ 52.

18 1. The Standard for Class Certification

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

27
28 ///

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

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

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

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

Because all Class Members are Defendants’ current and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 53.

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., ¶ 54.

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 he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive

1 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 55.

2 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
3 each individual claim, the Class Members likely have little incentive to litigate their claims on an
4 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
5 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
6 adjudication. JCL Dec., ¶ 56.

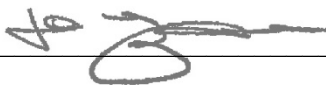
7 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
8 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
9 gained state court settlement approval of the same class-wide causes of action that are at issue in this
10 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
11 represent the interests of this Class. JCL Dec., ¶¶57-64.

12 IV. CONCLUSION

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

16
17 Dated: April 12, 2023

JCL LAW FIRM, APC

18 By: 
19 Jean-Claude Lapuyade, Esq.