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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LUIS DE JESUS CLAUDIO, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

UNI CARE HOME HEALTH INC., a
California Corporation; and DOES 1 through
50, Inclusive,

Defendants.

Case No. 37-2022-00003063-CU-OE-CTL

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

Date: June 28, 2024

Time: 9:30 a.m.

Judge: Hon. Wendy M. Behan

Dept.: C-66

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I. INTRODUCTION

Plaintiff LUIS DE JESUS CLAUDIO (“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 151 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all employees who are or previously were employed by Uni Care Home Health Inc. who were paid in whole or in part on a piece-rate basis and performed work in California during the period beginning January 25, 2018 to March 5, 2024 (“Class Period”). Agreement at §§ I(E), I(I). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at § I(OO).

2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean “all employees who are or previously were employed by Uni Care Home Health who were paid in whole or in part on a piece-rate basis and performed work in California during the period beginning January 10, 2021 to March 5, 2024. Agreement at §§ I(C), I(Z). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(J)(2)(a).

3. The “**Gross Settlement Amount**” is Four Hundred Thousand Dollars and Zero Cents (\$400,000.00). Agreement at § I(P). 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(K)(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 \$133,333.33 **and** Attorneys’ Expenses not to exceed \$20,000, to be paid to Class Counsel. Agreement at § III(K)(10);

c. A “**PAGA Penalties**” of \$20,000 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(K)(11); and

5 d. “**Administration Costs**” not to exceed \$5,500.00 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 § III(K)(12).

8 4. The “**Net Settlement Fund**” of approximately \$211,166.67 (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 **\$1,398.45**. Agreement at §
14 III(K)(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 Payment to
24 the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
25 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
26 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

27
28 ////

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant offers a full spectrum of home health care, hospice, in-home health and telehealth services, including in San Diego County where Plaintiff worked. This action asserts claims on behalf of all employees who are or previously were employed by Defendant who were paid in whole or in part on a piece-rate basis and performed work in California during the period beginning January 25, 2018 to March 5, 2024. At all times during his employment, Plaintiff was classified by Defendant as a non-exempt employee, paid on a piece-rate basis, 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 Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 7; Declaration of Luis De Jesus Claudio ("LC Dec.") at ¶¶ 4-5.

On January 10, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of 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 25, 2022, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2022-00003063-CU-OE-CTL ("Class Action"). The Class Action alleged eight 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; and (8) Failure to Reimburse Employees for Required Expenses. JCL Dec., ¶ 9.

1 On March 16, 2022, Plaintiff filed the operative First Amended Complaint, which added a ninth
2 cause of action for Violations of the Private Attorneys General Act pursuant to Labor Code section
3 2698, *et seq.* JCL Dec., ¶ 10.

4 Generally, Plaintiff claims that Defendant failed to pay employees for all time worked, including
5 overtime, failed to provide them with proper meal and rest breaks, failed to separately compensate
6 employees for rest breaks and non-productive time, failed to reimburse for required business expenses,
7 and failed to issue accurate itemized wage statements. Defendant forcefully denies liability for each of
8 Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment
9 laws and raised several other significant defenses to Plaintiff's claims, including but not limited to,
10 facially compliant meal and rest period policies, payment of minimum wages and overtime reimbursed
11 its employees for business expenses, compliant wage statements, and timely paid all wages due upon
12 separation of employment. JCL Dec., ¶ 11.

13 Plaintiff commenced written discovery in July 2022. In August of 2022, Defendant filed its
14 Motion to Compel Arbitration ("Defendant's Motion"), which was set for hearing in February 2023.
15 While Defendant's Motion was pending, the Parties agreed to attend private mediation with Louis
16 Marlin, Esq. on April 12, 2023. As such, the Parties agreed to continue the hearing on Defendant's
17 Motion until after the Parties' mediation. The Parties' April 12, 2023 mediation was unsuccessful.
18 Consequently, Defendant's Motion to Compel Arbitration was heard on June 9, 2023, and ultimately
19 denied by the Court. Thereafter, Defendant appealed the Court's denial of its Motion. While
20 Defendant's appeal was pending and prior to commencement of briefing in the appeal, the Parties
21 continued to engage in arms-length settlement negotiations with Mr. Marlin's assistance and ultimately
22 accepted a mediator's settlement proposal. JCL Dec., ¶ 12.

23 To facilitate settlement negotiations, the Parties agreed to informally produce additional
24 documents and data points subject to the mediation privilege, including but not limited to, a sampling
25 of the Class Members' time and payroll data, and pertinent written wage and hour policies. As
26 discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group
27 ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 13.

28 On April 12, 2023, the Parties participated in a full day mediation with Louis Marlin, Esq., an

1 experienced mediator of class and PAGA actions. Although the mediation was unsuccessful, the
2 Parties ultimately a mediator's proposal, which was subsequently memorialized in the form of a
3 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
4 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
5 14.

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

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

12 Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response,
13 Defendant produced documents, including but not limited, Plaintiff's payroll and time records. Class
14 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
15 Plaintiff's claim that Defendant failed to, among other things, pay for all time worked, including
16 separate compensation for rest periods and non-productive time, and to provide compliant meal and
17 rest periods. JCL Dec., ¶ 16.

18 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
19 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
20 documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to
21 the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class
22 Member time and payroll records, aggregate workweek and pay period data, and copies of applicable
23 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
24 policies. In total, Defendant produced over 500 pages of pertinent policy documents and over 80,000
25 unique cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 17.

26 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
27 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
28 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed

1 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
2 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶
3 18.

4 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
5 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
6 pay periods, average length of shift and average number of hours worked per week and pay periods
7 during the Class Period. BCG also estimated the amount of paid missed meal period premiums paid
8 during the Class Period, the amount of unreimbursed business expenses, the amount of unpaid wages
9 owed, and the amount of off-the-clock work performed by the Class Members during the Class Period.
10 JCL Dec., ¶ 19.

11 In advance of mediation, Class Counsel created several damage models predicated on the BCG
12 analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting
13 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
14 during the mediated settlement discussions. JCL Dec., ¶ 20.

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

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

27 On April 12, 2023, the Parties conducted a full day of mediation with Louis Marlin, Esq., an
28 experienced mediator of wage and hour class and PAGA actions. Mr. Marlin 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 Mr. Marlin's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. Despite a full day of arm's length and adversarial negotiations, the mediation concluded without a settlement. However, the Parties ultimately accepted a mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Class consists of all employees who are or previously were employed by Uni Care Home Health Inc. who were paid in whole or in part on a piece-rate basis and performed work in California during the period beginning January 25, 2018 to March 5, 2024. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(E), I(I), I(OO). In the data exchanged for mediation and prior to Mr. Marlin's mediator's proposal, there were approximately 151 Class Members that worked an estimated 12,332 workweeks during the Class Period Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$400,000.00. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of \$10,000 to Plaintiff for his services on behalf of the Settlement Class; (3) PAGA Penalties in the amount of \$20,000; (4) Administration Costs estimated at \$5,500; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$153,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$133,333.33 and an estimated \$20,000.00 for actually incurred litigation expenses. See generally Agreement at § III(K).

Subject to the Court approving the Service Award, Attorneys' Fees and Attorneys' Expenses, PAGA Penalties, and the Administration Costs, the Net Settlement Amount will be distributed to each

participating member of the Settlement Class Member. Agreement at § III(L)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. 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 Defendant 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 Payments. Agreement at § III(L)(1).

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. Agreement at § III(K)(1).

Given that there are approximately 151 Settlement Class Members, the average gross recovery is approximately \$1,398.45 (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

1 release the Released Parties from all claims alleged in the Action or which could have been alleged in
2 the Action based on the facts alleged in the operative pleading (including without limitation for
3 violations or damages relating to meal periods, rest periods, pay stubs, off the clock work, unpaid
4 regular and overtime wages, late payment of wages, record keeping, record production, waiting time
5 penalties and unreimbursed business expenses) which arose during the Class Period, and, expressly
6 excluding claims for vested benefits, wrongful termination, unemployment insurance, disability, social
7 security, workers' compensation, and class claims outside of the Class Period. Agreement at §§ I(GG);
8 III(B).

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

10 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of
11 California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA
12 claims alleged in the Action or which could have been alleged in the Action based on the facts alleged
13 in the operative pleading and/or Plaintiff's PAGA notice to the LWDA (including without limitation
14 for violations or damages relating to meal periods, rest periods, pay stubs, off the clock work, unpaid
15 regular and overtime wages, late payment of wages, record keeping, record production, waiting time
16 penalties and unreimbursed business expenses) which arose during the PAGA Period. Agreement at §§
17 I(HH); III(C).

18 **III. ARGUMENT**

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

20 The proposed Settlement, including a Gross Settlement Amount of \$400,000.00 meets the
21 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
22 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
23 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
24 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
25 notice of the settlement has been distributed to class members for their comments and objections.
26 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
27 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
28 inquire into the fairness of the proposed settlement”).)

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

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

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

23 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
24 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
25 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
26 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
27 § 11.51.)

28 The Parties participated in mediation with Louis Marlin, Esq., an experienced mediator of wage

1 and hour class and PAGA actions. Mediator Marlin managed the Parties' expectations and provided a
2 useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative*
3 *Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's
4 participation weighs considerably against any inference of a collusive settlement); *D'Amato v.*
5 *Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification
6 settlement negotiations helps to ensure that the proceedings were free of collusion and undue
7 pressure.")) At all times, the Parties' negotiations were at an arm's length, adversarial and non-
8 collusive. The matter resolved only when Mediator Marlin issued a mediator's proposal that the Parties
9 accepted. Mediator Marlin only arrived at his proposal after hearing arguments, reviewing evidence,
10 and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 23.

11 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
12 regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's
13 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement.
14 The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms
15 are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

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

18 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
19 the factual and legal issues in dispute. In addition to formal and informal discovery, document review,
20 data analysis and legal research, Class Counsel also researched similar wage and hour actions.
21 Although no two cases are identical, this research provided Class Counsel with a marker to inform
22 settlement discussions and, ultimately, to measure this settlement against. The investigation allowed
23 Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in
24 settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶¶
25 15-22.

26 Class Counsel only agreed to enter the Settlement following this thorough investigation and
27 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
28 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated

1 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
2 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
3 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

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

5 The Gross Settlement Amount of \$400,000.00 is within the range of reasonable settlement for
6 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
7 “consider enough information about the nature and magnitude of the claims being settled, as well as
8 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
9 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
10 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
11 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis,
12 courts do “not require any such explicit statement of value; [they] require[] a record which allows an
13 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.
14 ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
15 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
16 recovery plaintiffs might have received if they had succeeded at trial. Indeed, “[t]he determination
17 whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a
18 particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In*
19 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

22 The Gross Settlement Amount of \$400,000.00 is well within the range of reasonableness
23 considering the nature and magnitude of the claims being settled and the various potential impediments
24 to recovery. JCL Dec., ¶ 24. To determine whether a settlement is fair and reasonable, the court should
25 “consider enough information about the nature and magnitude of the claims being settled, as well as
26 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
27 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
28 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class

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

10 Class Counsel retained BCG to develop economic damage models measuring Defendant’s
11 potential liability exposure with respect to the Class and PAGA claims. The damage models were
12 informed by Class Counsel’s investigation, including the analysis of the time and payroll data
13 Defendant produced. Class Counsel projected Defendant’s liability exposure for *class claims*
14 (excluding penalties) at \$2,346,365.93 and Defendant’s *maximum* exposure (including waiting time
15 and wage statement penalties) at \$2,905,445.93. Thus, the Gross Settlement Amount of \$400,000.00
16 represents approximately 17.04% of Defendant’s *class-wide* liability exposure and 13.76% of
17 Defendant’s *maximum* exposure. The following summarizes Defendant’s estimated exposure. JCL
18 Dec., ¶ 24.

19 (1) Estimated Damages for Unpaid Wages and Rest Periods Due to Defendant’s
20 Failure to Separately Compensate for Non-Productive Time and Rest Periods

21 California law requires employees paid on a piece-rate basis be “compensated for rest and
22 recovery period and other non-productive time separate from any piece-rate compensation.” (Labor

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

Code section 226.2(a)(1).) The California Court of Appeal in *Blueford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864 confirmed that piece-rate pay systems that “do[] not compensate separately for rest periods do[] not comply with California minimum wage law.” The holding in *Blueford* is now codified in Labor Code § 226.2, which requires that employees paid on a piece-rate basis receive compensation for rest breaks, separate and distinct from any piece-rate compensation.

Here, Plaintiff alleged that Defendant’s piece-rate compensation plan violated California minimum wage and overtime laws because it failed to separately compensate the Class Members for all non-productive time, including rest periods. For example, Plaintiff alleged that he and other Class Members were not compensated for traveling to and from visits with patients and patient charting before and after visits. Further, Plaintiff alleged Defendant’s piece-rate pay plan failed to provide separate compensation for paid rest periods because (1) Class Members were compensated on a piece-rate basis and, logically, could not perform work tasks while on a rest period; and (2) Class Members did not receive separate compensation for paid rest periods. Defendant contended that it fully complied with California labor laws, including those for piece-rate based employees, and paid Plaintiff and Class Members for all of their time worked, including separate compensation for non-productive time, including rest periods. Assuming 1-hour unpaid non-productive work per shift, which includes 10-20 minutes for separately paid rest periods per shift, Plaintiff estimated Defendant’s potential exposure for this claim to be \$2,106,115.33. JCL Dec., ¶ 25.

(2) Estimated Damages for Meal Period Violations

Plaintiff also alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that due to rigorous work schedules imposed by Defendant, Plaintiff was regularly seeing patients during what was supposed to be his meal period. As a result, Plaintiff and the Class Members regularly suffered from late, short, missed or interrupted meal periods. JCL Dec., ¶ 26. Labor Code 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more than ten (10) hours, without providing the employee with a second meal period of not less than thirty

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

Plaintiff alleged that Defendant’s rigorous work requirements caused Plaintiff and Class Members to forego compliant meal periods because they were regularly required to see patients during what was supposed to be their off-duty meal periods. Defendant contends that they fully complied with California meal period laws and maintained compliant policies and practices. Similarly, Defendant argued that many Class Members did not work shifts long enough to entitle them to meal periods and, as such, argued any divergence from its written policies were not systematic and, if they existed at all, were individualized. Courts have found that where an employer’s meal period policies are compliant, individualized issues exist as to the reasons for missed, late, or truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832, 851 (2018) (holding that although only 11.1% of the employees’ time punches for meal periods were within the first 5 hours, the claim was not certifiable because individualized issues existed as to the reasons for the late meal periods). Plaintiff’s expert found that the number of shifts that were long enough to entitle Class Members to meal periods was relatively low. In light of the foregoing, and considering Defendant’s defenses, Plaintiff assumed a conservative one meal break violation per week (20% violation rate) and estimated Defendant’s potential exposure for this claim to be \$240,250.60. JCL Dec., ¶ 27.

(3) Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiff also alleged that the Defendant’s labor code violations resulted in derivative liability for wage statement violations and waiting time penalties. Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant argued that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant argued that Plaintiff could not show that Class Members suffered an “injury” because of wage statement violations, as required by Labor

Code section 226. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927.)
Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for these
penalties to be approximately \$559,080 (\$316,830 for Labor Code section 203 penalties and \$242,250
for Labor Code section 226 penalties. JCL Dec., ¶ 28.

(4) Defendant's PAGA Exposure

Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising
from the aforementioned violations. At the time of mediation, Plaintiff estimate Defendant's PAGA
exposure at approximately \$601,650 dollars. JCL Dec., ¶ 29. The proposed PAGA allocation of the
Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th
56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no
indication that this amount was the result of self-interest at the expense of class members," such amounts
are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
Jack v. Hartford Fire Ins. Co., No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$20,000 which is 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 (\$15,000.00) will be paid to the LWDA ("LWDA
PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties (\$5,000.00)
will be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved
by courts and should be approved. JCL Dec., ¶ 30.

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

1 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
2 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
3 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
4 6, 2016) (PAGA penalties denied after trial).

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

11 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,
12 just, and reasonable. JCL Dec., ¶ 31.

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

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

19 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
20 certification of similar wage and hour claims are demonstrated by *Magadia v. Walmart Associates, Inc.*
21 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
22 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
23 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
24 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
25 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
26 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
27 reason, if any, that employees might not take their breaks were predominantly individualized questions
28 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341

1 (affirming denial of certification because employees’ declarations attesting to having taken meal and
2 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
3 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
4 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
5 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
6 meal and rest period claims based on the predominance of individual issues). Collectively, the
7 examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of
8 obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL
9 Dec., ¶ 32.

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

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

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

20 Finally, continuing to litigate this action would require continued and extensive resources
21 coupled with significant Court time to proceed through trial and post-trial motions; which can often
22 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
23 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
24 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
25 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
26 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 33. “Avoiding such a trial and the
27 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
28 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221

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

3 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$400,000.00 that is
4 roughly 17.04% Defendant’s liability exposure for class damages. Given the amount of the settlement
5 here, as compared to potential value of the claims, offset by the various inherent risks to continued
6 litigation, the settlement is fair and reasonable. JCL Dec., ¶ 34.

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

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

17 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
18 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
19 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
20 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
21 procedure and time period within which to requests for exclusions or objections to the Settlement, the
22 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
23 and scope of the Released Class Claims. Agreement at § III(J)(2)(a). This method was negotiated by
24 the Parties to ensure delivering the most reasonable method of notice to the Class Members while
25 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 35.

26
27 ³ 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 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
2 satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of Cal. v.*
3 *Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the
4 terms of the proposed compromise and of the options open to dissenting class members.”).) JCL Dec.,
5 ¶ 36.

6 **C. The Court Should Preliminarily Approve the Class Representative Service Award**

7 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
8 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
9 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
10 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
11 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
12 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
13 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
14 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
15 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
16 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
17 (2009) 175 Cal.App.4th 785.)

18 Approximately 151 Class Members will share in the Net Settlement Amount due entirely to the
19 effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for a
20 Service Award of \$10,000 for Plaintiff. The service award is fair and reasonable compensation for the
21 Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement,
22 regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the
23 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
24 for the Settlement Class. JCL Dec., ¶ 37.

25 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
26 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
27 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 38.

28 **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 Agreement provides for a payment of Attorneys' Fees and Attorneys' Expenses and in the amount of one-third of the Gross Settlement Amount (\$133,333.33) and reimbursable litigations costs in an amount not to exceed \$20,000. Agreement § III(K)(10). 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., ¶ 39.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 40.

1. The Standard for Class Certification

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

1 court” (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
2 certification is appropriate when there is an “ascertainable class and a well-defined community of
3 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
4 is appropriate even if class members at some point may be required to make an individual showing as
5 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
6 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

22 Because all Class Members are Defendant’s current and former employees, the class is readily
23 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 43.

24 The California statutes relating to each of Plaintiff’s claims apply with equal force and effect to
25 the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and
26 Defendant’s liability can be determined by facts common to all members of the class. The wage and
27 hour issues are both numerous and substantial, and a class action is the most advantageous method of
28 dealing with the claims of the Settlement Class. JCL Dec., ¶ 42.

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual basis and are based on the same legal theories applicable to the other Class
3 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
4 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
5 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
6 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive
7 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 43.

8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
11 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
12 adjudication. JCL Dec., ¶ 44.

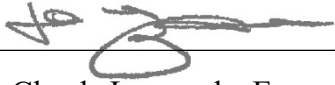
13 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
14 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
15 gained state court settlement approval of the same class-wide causes of action that are at issue in this
16 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
17 represent the interests of this Class. JCL Dec., ¶¶ 45-51; Declaration of Shani O. Zakay at ¶ 3.

18 IV. CONCLUSION

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

22
23 Dated: June 4, 2024

JCL LAW FIRM, APC

24 By: 
25 Jean-Claude Lapuyade, Esq.