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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

NOEMY FLORES and KIMBERLY WUJEK,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

AVEN GROUP, INC., a California corporation;
AVEN CARE PROVIDERS, INC., an entity of
unknown origin; ; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 21STCV36642

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

Date: July 18, 2024

Time: 11:00 a.m.

Judge: Hon. Kenneth R. Freeman

Dept.: 14

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I. INTRODUCTION

Plaintiffs NOEMY FLORES and KIMBERLY WUJEK (“Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 36 Class Members and 25 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by Defendant AVEN GROUP, INC. and/or Defendant AVEN CARE PROVIDERS, INC. (hereinafter “Defendants”) and performed work in California (“Class”) at any time during the period commencing October 5, 2017 through August 24, 2023 (“Class Period”). Agreement at §§ 1.7, 1.12. As of the date of the Agreement, there were approximately 36 Class Members who worked approximately 2,951 Workweeks during the Class Period. Agreement at § 8.

2. The “**Participating Class Member**” refers to all Class Members who do not file a timely and valid Request for Exclusion. Agreement at § 1.36.

3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all non-exempt employees who are or previously were employed by Defendants and performed work in California (“Aggrieved Employee”) during the period between July 30, 2020 through August 24, 2023. Agreement at §§ 1.4, 1.32. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 7.5.4; 5.3. As of the date of the Agreement, there were approximately 25 Aggrieved Employees who worked approximately 833 pay periods during the PAGA Period. Agreement at § 8.

4. The “**Gross Settlement Amount**” is One Hundred Fifteen Thousand Dollars and Zero Cents (\$115,000.00). Agreement at §§ 1.23, 3.1. The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Payment**” in the amount of \$10,000.00 to each Plaintiff for their services on behalf of the Class Members. Agreement at §§ 1.14, 3.2.1;

b. A payment of “**Attorneys’ Fees and Litigation Costs**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be

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 \$38,333.33 **and** litigation costs and expenses not to exceed \$15,000.00, to be paid to Class Counsel.
2 Agreement at §§ 1.5, 3.2.2. The Attorneys' Fees shall be divided between Class Counsel as follows:
3 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement at § 1.5. Plaintiffs
4 have reviewed the terms of the Agreement, including the monetary terms and releases, and executed
5 the Agreement. Declaration of Noemy Flores ("Flores Dec.") at ¶ 10; Declaration of Kimberly Wujek
6 ("Wujek Dec.") at ¶ 10.

7 c. A "**PAGA Payment**" in the amount of \$5,000.00 shall be set aside from the Gross
8 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act
9 of 2004. Agreement at § 1.35. The Administrator, Apex Class Action, LLC ("Administrator") shall pay
10 \$3,750.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency
11 ("LWDA Payment"). Agreement at §§ 1.2, 1.28, 1.35. The Administrator shall distribute \$1,250.00
12 representing 25% of the PAGA Payment to the Aggrieved Employees ("Individual PAGA Payment").
13 Agreement at §§ 1.25, 1.35.

14 d. "**Administration Expenses Payment**" not to exceed \$3,500.00 payable to the
15 Administrator for, *inter alia*, the administration of the Class Notice and Individual Class Payments.
16 Agreement at § 3.2.3.

17 3. The "**Net Settlement Amount**" means the Gross Settlement Amount less the PAGA
18 Payment, Class Representative Payment, Attorneys' Fees and Litigation Costs, and the Administration
19 Expenses Payment, in the amount approved by the Court. Agreement at § 1.29. The Net Settlement
20 Amount is approximately \$33,166.67 which will be allocated to all Participating Class Members on a
21 pro-rata basis according to the number of Workweeks each Participating Class Member worked during
22 the Class Period. Agreement at § 1.24, 3.2.4. The entire Net Settlement Amount will be paid to all
23 Participating Class Members who do not opt out of the Settlement resulting in an average Individual
24 Class Payment of approximately **\$921.29**. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶ 8.

25 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
26 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
27 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
28 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage

1 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Participating Class
2 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
3 certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 8.

4 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
5 approval and falls within the range of reasonableness. The average Individual Class Payment to the
6 Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the
7 proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request
8 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 9.

9 II. FACTS AND PROCEDURE

10 A. Overview of the Litigation

11 Defendants operate a healthcare staffing agency. Defendants assign their employees to one or
12 more clients for whom they provide care in the client's or the employee's home, including Los
13 Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendants' current
14 and former non-exempt employees employed in California at any time during the Class Period.
15 Plaintiff Flores worked for Defendants as a non-exempt employee in California from 2015 to
16 September 2020. Plaintiff Wujek worked for Defendants as a non-exempt employee in California from
17 2015 to 2019. At all times during their employment, Plaintiffs earned an hourly wage and were entitled
18 to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
19 worked. Throughout their employment, Plaintiffs were subject to Defendants' policies and
20 procedures. JCL Dec., ¶ 10; Flores Dec. at ¶¶ 1-5; Wujek Dec. at ¶¶ 1-5.

21 Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide
22 compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay
23 all wages when due. Defendants forcefully deny liability for each of Plaintiffs' claims. Further,
24 Defendants assert that they fully complied with all applicable employment laws and raised several other
25 significant defenses to Plaintiffs' claims, including but not limited to, asserting that they paid
26 employees for all hours worked, maintained facially compliant meal and rest period policies, issued
27 compliant wage statements, and timely paid all wages when due. JCL Dec., ¶ 11.

28 On July 30, 2021, Plaintiff Flores served Defendant Aven Group, Inc. and the Labor and

1 Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff
2 Flores’ PAGA Notice set forth the facts and theories supporting Defendant Aven Group, Inc.’s alleged
3 violations of various provisions of the California Labor Code and applicable Industrial Welfare
4 Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code
5 Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 12.

6 On October 5, 2021, Plaintiff Flores filed a class action complaint in the Los Angeles Superior
7 Court, Case Number 21STCV36642 (“Action”). The Action alleged ten causes of action against
8 Defendant Aven Group, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§
9 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 &
10 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure
11 to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
12 IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7
13 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required
14 Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements
15 in Violation Of Cal. Lab. Code § 226; (8) Failure to Provide Paid Sick Days and Sick Leave Balance
16 in Violation of Cal. Lab. Code § 246, *et seq.*; (9) Failure to Provide Wages When Due in Violation Of
17 California Labor Code §§ 201, 202, & 203; and (10) Violation of the Private Attorneys General Act
18 [Labor Code §§ 2698 *et seq.*]. On July 25, 2022, Plaintiff Flores filed an amendment to the Complaint,
19 identifying Defendant Aven Care Providers, Inc. and Doe 1. On November 28, 2023, Plaintiff Flores
20 again amended the Complaint, adding Plaintiff Wujek as a named plaintiff. JCL Dec., ¶ 13.

21 After engaging in written discovery, the Parties agreed to mediate the Action. On August 24,
22 2023, the Parties participated in a full day mediation with retired jurist and mediator Hon. James R.
23 Trembath (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to
24 settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the
25 Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant
26 motion. JCL Dec., ¶ 14.

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

28 Months before filing the Action, Class Counsel began their pre-filing investigation into

1 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
2 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,
3 including their wage statements. At the conclusion of the interviews and review of documents, Class
4 Counsel determined that each Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 15.

5 Class Counsel subsequently requested Plaintiffs' employee file from Defendants. In response,
6 Defendants produced various documents, including but not limited to, copies of Plaintiff's time and
7 payroll records. Class Counsel reviewed and analyzed the documents and determined the documents
8 appeared to substantiate Plaintiffs' claims that Defendants failed to, among other things, pay for all
9 time worked, issue accurate itemized wage statements, and provide compliant meal and rest periods.
10 JCL Dec., ¶ 16.

11 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
12 interest of both Parties to mediate the matter. Prior to mediation, Plaintiffs obtained, through formal
13 discovery, statistical data including time and payroll records for all Class Members. JCL Dec., ¶ 17.

14 Class Counsel then retained the statisticians and economists at Berger Consulting Group
15 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
16 damage modeling consulting services, specializing in wage and hour class actions. BCG's team of
17 financial and data analysts are credentialed and experienced experts in their fields and have provided
18 their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze
19 Defendants' time and payroll data. JCL Dec., ¶ 18.

20 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
21 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
22 pay periods, average length of shift, and average number of hours worked per workweek and pay
23 periods during the Class Period. BCG also estimated the number of meal and rest period violations,
24 the amount of unpaid wages, and the amount of off-the-clock work performed by the Class Members
25 during the Class Period. JCL Dec., ¶ 19.

26 In advance of mediation, Class Counsel created several damage models predicated on the BCG
27 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting
28 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel

1 during the mediated settlement discussions. JCL Dec., ¶ 20.

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

13 Class Counsel only agreed to enter the Settlement following this thorough investigation and
14 evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and
15 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
16 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this
17 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
18 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 22.

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

20 On August 24, 2023, the Parties conducted a full day of mediation with Hon. James R. Trembath
21 (Ret.), a jurist and mediator of wage and hour class and representative actions. Judge Trembath helped
22 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
23 sides. The Parties made substantial progress with Judge Trembath's assistance. Namely, the Parties
24 exchanged information regarding their respective claims and defenses, including their respective
25 evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of
26 which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair,
27 adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

28 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

1 1. The Composition of the Participating Class Members

2 The Participating Class Members consist of all non-exempt employees who are or previously
3 were employed by Defendants and performed work in California at any time during the period
4 commencing October 5, 2017 through August 24, 2023 who do not file a timely and valid Request for
5 Exclusion. Agreement at §§ 1.7, 1.12, 1.36. At the time the Agreement was executed, there were
6 approximately 36 Class Members that worked approximately 2,951 Workweeks. Agreement §§ 4.1, 8.

7 2. The Settlement Consideration

8 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
9 Amount of \$115,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the
10 Participating Class Members; (2) a Class Representative Payment of \$10,000.00 to each Plaintiff for
11 their services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of
12 \$5,000.00; (4) Administration Expenses Payment estimated at \$3,500.00; (5) Attorneys' Fees and
13 Litigation Costs in the amount of \$53,333.33, comprised of attorneys' fees equal to one-third of the
14 Gross Settlement Amount estimated to be \$38,333.33 and an estimated \$15,000.00 for actually incurred
15 litigation expenses. *See generally* Agreement at § 3.2.

16 Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation
17 Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be
18 distributed to each participating member of the Participating Class Member. Agreement at § 1.29.
19 There is no reversion to Defendants and Defendants must separately pay for their share of the employer
20 payroll taxes. Agreement at § 3.1.

21 3. The Funding Date

22 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$115,000.00
23 Gross Settlement Amount on the later of October 1, 2024 or 60 days after the Court's Final Approval
24 of the Settlement. *See generally* Agreement at 4.3.

25 4. Formula for Calculating Individual Class Payments

26 Each Participating Class Member will receive an Individual Class Payment. The Class Data
27 provided by Defendants to the Administrator will include the number of eligible Workweeks for each
28 Participating Class Member. The Individual Class Payments will be calculated by dividing the Net

Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.).

Given that there are approximately 36 Class Members, the average gross recovery is approximately \$921.29 (Net Settlement Amount divided by Participating Class Members). JCL Dec., ¶ 9.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.40; 5.2.

6. PAGA Release by the Aggrieved Employees

Generally, as of the Funding Date, Plaintiffs, acting as the representatives of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.41; 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$115,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable

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

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

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

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

The Parties participated in mediation with respected mediator and retired judge, Hon. James R. Trembath (Ret.). Judge Trembath managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-

4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-collusive. The Parties only reached an agreement after Judge Trembath heard arguments, reviewed evidence, and evaluated the Parties’ respective claims and defenses. JCL Dec., ¶ 24.

Once the Parties came to an agreement, the parties subsequently executed a binding and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to formal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 26.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs’ claims. Based on an investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 27.

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

The Gross Settlement Amount of \$115,000.00 is within the range of reasonableness. To

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

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

The Gross Settlement Amount of \$115,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of the Class Members’ time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding PAGA

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

penalties) at \$284,637.00 and Defendants' *maximum* exposure (including PAGA, waiting time and wage statement penalties) at \$760,996.00. This range reflects the uncertainty regarding several of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties. Thus, the Gross Settlement Amount of \$115,000.00 represents approximately 40.40% of Defendants' *class-wide* liability exposure and 15.11% of Defendants' *maximum* exposure as estimated by Class Counsel at the time of mediation. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 28.

(1) Estimated Exposure for Unpaid Wages

Plaintiffs' primary claim in this Action alleges that Defendant failed to pay its employees for all hours worked. Throughout the Class Period, Defendants failed to pay for any overtime, maintained an unlawful rounding policy, and failed to pay for time spent on pre/post-shift activities. Specifically, Defendants' time and payroll records reveal that Defendants failed to pay its employees any overtime regardless of how many hours they worked. Further, Defendants failed to maintain accurate time records, only recording the total duration of their shifts rounded to quarter-hour increments. Defendants also failed to pay for all hours worked by requiring its employees to perform work-related activities pre-shift and post-shift that they were unable to complete during their shifts. As a result, Plaintiffs, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. JCL Dec., ¶ 29.

Defendants vigorously denied liability for this claim. Defendants argued, among other things, that Industrial Wage Order No. 5 applied to its employees, alleviating Defendants' obligation to pay overtime wages. Further, Defendants argued that their employees were tasked with submitting their own hours and were instructed not to perform any work-related tasks off-the-clock. Despite these arguments, Plaintiffs' estimated Defendants' exposure for this claim at approximately \$64,699.00. JCL Dec., ¶ 30.

(2) Estimated Exposure for Meal Period Violations.

Plaintiffs also allege that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs allege that as a result of their single-staffed shifts, Plaintiffs, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal periods. Notably, Defendants did not

1 produce a single meal period waiver or on-duty meal period agreement applicable to Plaintiffs, Class
2 Members, or Aggrieved Employees during the Class Period. Additionally, as stated above, Defendants'
3 time records only recorded the total duration of employees' shifts and failed to record their meal
4 periods. Consequently, Plaintiffs allege that they are owed meal period premiums for meal period
5 violations that occurred during the Class Period. JCL Dec., ¶ 31.

6 Conversely, Defendants argued that it provided Class Members and Aggrieved Employees with
7 the opportunity to take compliant meal periods. Thus, Defendants argued that there was no potential
8 liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly
9 individualized inquiry not suitable to class treatment, especially considering IWC Wage Order No. 5
10 applied to their employees. Nevertheless, Plaintiffs estimated Defendants' exposure for this claim at
11 approximately \$56,326.00. JCL Dec., ¶ 32.

12 (3) Estimated Exposure for Rest Period Violations

13 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Most often,
14 Plaintiffs were the only employee assigned to a particular client and scheduled to work during a
15 particular shift. As a result, Plaintiffs' rest periods were often on-premises, on-duty, and/or on call, and
16 often interrupted. Again, Defendants denied liability and asserted that they maintained legally
17 compliant rest period practices throughout the Class Period. Moreover, Plaintiffs recognize the
18 evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely,
19 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
20 stages. Certification likely would have required depositions of Class Members who provided
21 declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks
22 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
23 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
24 plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this
25 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
26 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
27 written policy does not generate uniform practices."). Regardless, Plaintiffs estimated Defendants'
28 maximum exposure for this claim at approximately \$115,962.00. JCL Dec., ¶ 33.

1 (4) Estimated Exposure for Unreimbursed Business Expenses

2 Plaintiffs also alleged that Defendants failed to reimburse their employees for requires business
3 expenses. Specifically, Defendants required employees to use their personal cell phones to take work-
4 related calls throughout the day and failed to reimburse employees for the use of their personal cell
5 phones. Defendants argued that employees were not required to use their personal cell phones and were
6 properly compensated when the need for such use did arise. Plaintiffs estimated Defendants' exposure
7 for this claim at \$47,650.00. JCL Dec., ¶ 34.

8 (5) Estimated Exposure for Wage Statement Violations and Waiting Time
9 Penalties

10 Plaintiffs allege that Defendants' alleged violations resulted in derivative violations of Labor
11 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
12 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
13 that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor
14 Code section 203. Additionally, Defendants could argue that Plaintiffs could not show that Class
15 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
16 226. Defendants could also argue that that meal and rest period violations do not entitle employees
17 like Plaintiffs and the Class Members to pursue the derivative waiting time and itemized wage statement
18 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiffs could
19 not give the penalty claims great weight given that they depended on proving the underlying claims,
20 which had their own risks. Plaintiffs estimated Defendants' exposure for this claim at approximately
21 \$128,259.00. JCL Dec., ¶ 35.

22 (6) Defendants' PAGA Exposure

23 In all, Class Counsel projected Defendants' liability exposure for PAGA claims at approximately
24 \$348,100.00 if successful at trial. JCL Dec., ¶ 36. The proposed PAGA allocation of the Gross
25 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
26 77. Where settlements "negotiate a good faith amount" for PAGA Payment and "there is no indication
27 that this amount was the result of self-interest at the expense of class members," such amounts are
28 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 Payment 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 Payment in the amount of \$5,000 which is 4.35% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. The LWDA Payment of \$3,750.00 represents seventy-five percent (75%) of the PAGA Payment and will be paid to the LWDA. The Aggrieved Employee Payment of \$1,250.00 represents the remaining twenty-five percent (25%) of the PAGA Payment, which shall be distributed to the Aggrieved Employees and is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 37.

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).

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendants raised several defenses that presented serious threats to the claims of the Plaintiffs and the Aggrieved Employees. In addition to those

arguments discussed, *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.* (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 38.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 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 the 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.

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. Wal-Mart 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

1 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
2 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
3 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
4 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
5 certification of driver meal and rest period claims based on the predominance of individual issues).
6 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
7 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
8 settlement. JCL Dec., ¶ 39.

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

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

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

19 Finally, continuing to litigate this action would require continued and extensive resources
20 coupled with significant Court time to proceed through trial and post-trial motions; which can often
21 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
22 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
23 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
24 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
25 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and
26 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
27 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
28 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are

1 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

2 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$115,000.00 that is
3 roughly 40.40% of Defendants’ *class-wide* liability exposure and 15.11% of Defendants’ *maximum*
4 exposure as estimated by Class Counsel at the time of mediation. 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., ¶ 41.

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

8 The Class Members are 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
12 Cal.App.3d 143, 151-52.) The notice must advise class members “that they may be excluded from the
13 class if they so request and that they will be bound by the judgment, whether favorable or not, if they
14 do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the
15 class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart*
16 *v. 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 Administrator will first verify addresses, then mail the
19 proposed Class Notice in English to all Class Members. The Class Notice will be given in English only
20 because in order to work for Defendants, all Class Members had to be able to speak and read in English.
21 The parties do not have reason to believe that any of the Class Members will be unable to understand
22 the Class Notice in English. The Class Notice will include information regarding the nature of the
23 lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within
24 which to requests for exclusions or objections to the Settlement, the date for the final approval hearing,
25 the formula used to calculate settlement payments, and the terms and scope of the Released Class

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

1 Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering the most
2 reasonable method of notice to the Class Members while ensuring cost effective administration of the
3 Settlement. JCL Dec., ¶¶ 42-43.

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

8 **C. The Court Should Preliminarily Approve the Class Representative Payments**

9 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
10 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
11 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
12 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
13 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
14 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
15 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
16 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
17 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
18 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
19 (2009) 175 Cal.App.4th 785.)

20 The Settlement provides for a Class Representative Payments of \$10,000.00 for each Plaintiff.
21 The service award is fair and reasonable compensation for the Plaintiffs’ efforts bringing the action,
22 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
23 the status of his case and the strategies for prosecuting the claims, and reviewing the proposed
24 Settlement to ensure that its terms are fair and provide adequate relief for the Class Members. JCL
25 Dec., ¶ 44; Flores Dec., ¶ 6-10; Wujek Dec., ¶ 6-10.

26 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
27 Representative Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully
28 submit that the above showing is sufficient for preliminary approval of the negotiated Class

Representative Payments. JCL Dec., ¶ 45.

D. The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs

The purpose of a payment to Class Counsel for Attorneys’ Fees and Litigation Costs 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 Plaintiffs’ claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Litigation Costs payment is fair and reasonable. JCL Dec., ¶ 46.

Plaintiffs will file a formal motion for the negotiated Attorneys’ Fees and Litigation Costs, including arguments and lodestar information in support of the request, once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 47.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 48.

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 Class is Ascertainable and there is a Well-Defined Community of
8 Interest Among the Participating 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
12 where they may be readily identified without unreasonable expense or time by reference to official
13 records. (*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 Defendants’ current and former employees, the class is readily
23 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 49.

24 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire
25 Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be
26 determined by facts common to all members of the class. The wage and hour issues are both numerous
27 and substantial, and a class action is the most advantageous method of dealing with the claims of the
28 Class Members. JCL Dec., ¶ 50.

1 Plaintiffs' wage and hour claims are typical of the proposed Class because they arise from the
2 same factual basis and are based on the same legal theories applicable to the other Class Members.
3 Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class Members.
4 Plaintiffs allege that they were injured by the same company-wide practices to which the proposed
5 Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their
6 ability to advocate for the interests of the Class Member by initiating this litigation, undertaking
7 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
8 51.

9 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
10 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
11 certified, and gained state court settlement approval of the same class-wide causes of action that are at
12 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
13 qualified to represent the interests of this Class. JCL Dec., ¶¶ 52, 55-61, Declaration of Shani Zakay
14 ("SOZ Dec."), ¶¶ 1-3.

15 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
16 each individual claim, the Class Members likely have little incentive to litigate their claims on an
17 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
18 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
19 adjudication. JCL Dec., ¶ 53. Finally, Class Counsel is not aware of any other pending matters or
20 actions asserting claims that will be extinguished or adversely affected by the Settlement. JCL Dec., ¶
21 54; SOZ Dec., ¶ 4.

22 IV. CONCLUSION

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

26 Dated: December 19, 2023

JCL LAW FIRM, APC

27 By: 

28 Jean-Claude Lapuyade, Esq.