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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA BARBARA

ROBERT BARAY, on behalf of himself and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

CURATION FOODS, INC, a Delaware
Corporation; LANDEC CORPORATION, a
Delaware Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 21CV02834

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

Date: November 22, 2022

Time: 8:30 a.m.

Judge: Hon. James Regali

Dept.: 2

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1 I. INTRODUCTION

2 Plaintiff ROBERT BARAY (“Plaintiff”) seeks preliminary approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for approximately 160 Class Members and 92
5 Aggrieved Employees. The basic terms of the Agreement provide for the following:

6 1. The “**Class Members**,” “**Class**,” and “**Class Period**” shall mean all persons who are or
7 previously were employed by Defendants in California and classified as non-exempt employees during
8 the Class Period [July 16, 2017 to June 6, 2022] including participating Class Members (a Class Member
9 who does not submit a valid and timely exclusion request from the Settlement) or Non-Participating
10 Class Member (any Class Member who opts out of the Settlement by sending a valid and timely
11 exclusion request). Agreement at §§ I(G), (H).

12 2. The “**Settlement Class Members**” and “**Settlement Class**” means all Class Members
13 who have not submitted a timely and valid request for exclusion by the Response Deadline. Agreement
14 at § I(HH).

15 a. The “**Class Size**” is comprised of 160 individuals who collectively worked
16 approximately 20,012 Workweeks during the Class Period as estimated by Defendants at the time of
17 mediation. Agreement at § III(A)(2).

18 3. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all of Defendant’s current
19 and former non-exempt employees employed by Defendant (“Aggrieved Employees”) during the period
20 between May 12, 2020, to June 6, 2022 (“PAGA Period”). Agreement at §§ I(B), (V). Aggrieved
21 Employees may not object to the PAGA Settlement. Agreement at § III(L)(8). At the time of mediation,
22 there were approximately 92 Aggrieved Employees during the PAGA Period. (JCL Dec., ¶ 19).

23 4. The “**Gross Settlement Amount**” is Four Hundred Ninety-Five Thousand Dollars
24 (\$495,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes
25 the following:

26 a. A “**Class Representative Service Award**” in the amount of \$17,500 to Plaintiff

27
28 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 in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at §§
2 I(I); III(M)(9);

3 b. An award of “**Class Counsel Award**” consisting of attorneys’ fees currently not
4 to exceed one-third of the Gross Settlement Amount currently estimated to be \$165,000.00 out of
5 \$495,000.00 *plus* costs of up to \$20,000.00 to be paid to Class Counsel. Agreement at § III(M)(10);

6 c. A “**PAGA Settlement**” of Twenty Thousand Dollars (\$20,000.00) to be allocated
7 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
8 Attorneys General Act of 2004 (“PAGA Payment”). The Settlement Administrator shall pay
9 \$15,000.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency
10 (“LWDA Payment”). The Settlement Administrator shall distribute twenty-five percent (25%) of the
11 PAGA Payment (\$5,000.00) to the Aggrieved Employees (“Aggrieved Employee Payment”).
12 Agreement at § III(M)(11); and

13 d. “**Settlement Administration Costs**” not to exceed \$8,000.00 payable to the
14 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
15 and Individual Settlement Payments. Agreement at §§ I(GG), III(M)(12).

16 3. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount less
17 Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement
18 Administration Costs. Agreement at § I(Q). The Net Settlement Amount is approximately \$264,500.00
19 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of
20 Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement
21 Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in
22 an average Individual Settlement Payment of approximately **\$1,653.13**. JCL Dec., ¶ 6.

23 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
24 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
25 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
26 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
27 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
28 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being

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

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

7 **II. FACTS AND PROCEDURE**

8 **A. Overview of the Litigation**

9 Defendants are Delaware corporations that develop and commercialize packaged foods,
10 including at the Santa Barbara, California location where Plaintiff worked. Plaintiff worked for
11 Defendants as a non-exempt employee in California from approximately March of 2013 to July of
12 2020. Throughout his employment, Defendants failed to pay Plaintiff wages for all hours worked,
13 including overtime compensation, failed to provide legally compliant meal and rest periods, failed to
14 issue accurate itemized wage statements, and failed to pay all wages when due. Throughout his
15 employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among
16 other documents, the "Apio, Inc. Employee Policies" and "Curation Foods Employee Policies." JCL
17 Dec., ¶ 8; Declaration of Robert Baray ("RB Dec.") at ¶¶ 1-5.

18 Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert
19 that they fully complied with all applicable employment laws and raised several other significant
20 defenses to Plaintiff's claims, including but not limited to, compliant compensation policies and plans,
21 complaint meal and rest practices, compliant wage statements, and timely payment of all wages due
22 upon separation of employment. JCL Dec., ¶ 9.

23 On May 12, 2021, Plaintiff served Defendants and the Labor and Workforce Development
24 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
25 the facts and theories supporting Defendants' alleged violations of various provisions of the California
26 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
27 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
28 2698 *et seq.* ("PAGA"). JCL Dec., ¶ 10.

1 On July 16, 2021, Plaintiff filed a class action complaint in the Santa Barbara Superior Court,
2 Case Number 21CV02834 (“Action”). The Action alleged eight causes of action against Defendants
3 for: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to
4 pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1; (3) Failure
5 to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide
6 required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable
7 IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code
8 sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized
9 wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when
10 due in violation of Cal. Lab. Code sections 201, 202 and 203; and (8) Violation of the Private Attorneys
11 General Act [Labor Code section 2698, *et seq.*]. JCL Dec., ¶ 11.

12 Plaintiff commenced written discovery in September 2021. After answering Plaintiff’s
13 discovery requests and taking Plaintiff’s deposition, the Parties agreed to mediate the Action. To
14 prepare for mediation, the Parties agreed to informally produce additional documents and data points
15 subject to the mediation privilege, including but not limited to, employee handbooks, the Class
16 Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained
17 the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll
18 data. JCL Dec., ¶ 12.

19 On June 6, 2022, the Parties participated in a full day mediation with David Rotman, Esq., an
20 experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a
21 settlement, after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in
22 the form of a Memorandum of Understanding (“MOU”). JCL Dec., ¶ 13.

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

24 Months before filing the Action, Class Counsel began their pre-filing investigation into
25 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
26 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,
27 including portions of Defendants’ handbooks, compensation policies, and time and payroll records. At
28 the conclusion of the interviews, Class Counsel determined that each Plaintiff’s complaints justified

1 further inquiry. JCL Dec., ¶ 14.

2 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,
3 Defendants produced hundreds of pages of documents, including but not limited, copies of Plaintiff's
4 hiring documents, payroll and time records, performance reviews and separation documents. Class
5 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
6 Plaintiff's claim that Defendants failed to, among other things, provide accurate wage statements and
7 to provide compliant meal and rest periods. JCL Dec., ¶ 15.

8 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
9 Plaintiff's claims and Defendants' liability exposure to the Class Members. In response to Class
10 Counsel's request, Defendants produced, among other things, time and payroll records for a sample of
11 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
12 policies, and agreements. In total, Defendants produced over 120,000 unique cells of time and payroll
13 data for Class Counsel to analyze. JCL Dec., ¶ 16.

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

19 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
20 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
21 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
22 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
23 and rest periods, and the amount of missed meal and rest period premiums paid during the Class Period.
24 JCL Dec., ¶ 18.

25 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
26 Plaintiff's suitability as a putative class representative through interviews, background investigations,
27 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
28 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type

of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by 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., ¶ 21.

C. The Parties Settled At Mediation

On June 6, 2022, the Parties conducted a full day of mediation with David Rotman, Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Rotman 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 Mediator Rotman's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 22-23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members and Aggrieved Employees

The proposed Settlement Class consists of all Defendants' current and former non-exempt employees employed in California during the period from July 16, 2017, to June 6, 2022, who do not file a timely and valid Request for Exclusion. In the data exchanged at the time the Agreement was executed, there were approximately 160 Class Members that worked approximately 20,012 workweeks.

1 Agreement at § III(A)(2). Additionally, at the time of mediation, Plaintiff's expert estimated that there
2 were approximately 92 Aggrieved Employees who worked approximately 3,245 pay periods during the
3 PAGA Period. (JCL Dec., ¶ 19).

4 2. The Settlement Consideration

5 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
6 Amount of Four Hundred Ninety-Five Thousand Dollars (\$495,000.00). The Gross Settlement Amount
7 includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Class Representative
8 Service Award of \$17,500 to Plaintiff for his services on behalf of the Settlement Class; (3) a PAGA
9 Settlement in the amount of \$20,000; (4) Settlement Administration Costs estimated at \$8,000; (5)
10 Class Counsel Award in the amount of \$185,000.00, comprised of attorneys' fees equal to one-third of
11 the Gross Settlement Amount estimated to be \$165,000 and an estimated \$20,000 for actually incurred
12 litigation expenses. *See generally* Agreement at § III(M).

13 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
14 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
15 distributed to each participating member of the Settlement Class Member. Agreement at § III(M)(1).
16 There is no reversion to Defendants and Defendants must separately pay for its share of the employer
17 payroll taxes. Agreement at § III(A)(1).

18 3. The Funding Date

19 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
20 Amount of \$495,000.00 within ten (10) calendar days of the Effective Date. Agreement at § I(N).

21 4. Formula for Calculating Individual Settlement Payments

22 Each Settlement Class Member will receive an Individual Settlement Payment. The Class Data
23 provided by Defendants to the Settlement Administrator will include the number of eligible Workweeks
24 for each Settlement Class Member. The Individual Settlement Payment will be proportional to the
25 number of Workweeks each Settlement Class Member worked for Defendants in California during the
26 Class Period. Each Settlement Class Member's final Individual Settlement Payment for purposes of
27 payment will be calculated by dividing the total number of Workweeks attributed to all Class Members
28 by all Workweeks attributed to members of the Settlement Class, multiplied by the Net Settlement

Amount. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § III (M)(1).

Given that there are approximately 160 Settlement Class Members, the average gross recovery is approximately \$1,653.13 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, which is ten (10) calendar days after the Effective Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims, including all claims, demands, rights liabilities that were pled in any of the complaints in this matter, or which could have been pled in any of the complaints in this matter that arose during the Class Period. Agreement at §§ I(BB); III(A)(1).

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

Generally, upon the Court's entry of Final Approval Order and Judgment, and funding of the Gross Settlement Amount, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims which means all claims for PAGA penalties alleged in the Action, including, but not limited to, PAGA penalties, unpaid costs or expenses, attorneys' fees, litigation costs. Agreement at §§ I(CC); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of Four Hundred Ninety-Five Thousand Dollars (\$495,000.00), 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").)

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 the highly respected mediator David Rotman, Esq.,

1 Mediator Rotman managed the Parties' expectations and provided a useful, neutral analysis of the
2 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),
3 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
4 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
5 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
6 proceedings were free of collusion and undue pressure.")) At all times, the Parties' negotiations were
7 at an arm's length, adversarial, and non-collusive. The mediation concluded with a settlement, after
8 both sides agreed to a Mediator's proposal, which was subsequently memorialized in a Memorandum
9 of Understanding ("MOU"). After reaching an agreement in the principle, the Parties drafted and
10 negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the
11 final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
12 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22-23.

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

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

28 Class Counsel only agreed to enter the Settlement following this thorough investigation and

1 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
2 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
3 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
4 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
5 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

7 The Gross Settlement Amount of \$495,000.00 is within the range of reasonableness. To
8 determine whether a settlement is fair and reasonable, the court should "consider enough information
9 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
10 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
11 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
12 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
13 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
14 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
15 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
16 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
17 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
18 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
19 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' "
20 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
21 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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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").

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

3 The Gross Settlement Amount of \$495,000.00 is fair and reasonable considering the nature and
4 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
5 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants'
6 liability exposure while accounting for the uncertainties of continued litigation. The various models
7 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
8 and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding
9 PAGA Penalties) ranged between \$2,658,941.45 dollars for damages and \$2,846,512.45 dollars for
10 damages and statutory penalties if successful at trial. Thus, the Gross Settlement Amount of
11 \$495,000.00 represents approximately 18.6% of Defendants' *class-wide* liability exposure for damages,
12 and approximately 17% of Defendants' *class-wide* liability exposure for damages and statutory
13 penalties, as estimated by Class Counsel at the time of mediation. The following summarizes
14 Defendants' estimated exposure. JCL Dec., ¶ 24.

15 (1) Estimated Damages for Meal and Rest Period Violations.

16 Plaintiff's primary claim in this Action is that Defendants failed to provide Class Members with
17 compliant meal and rest periods. Specifically, Plaintiff alleges that as a result of their rigorous work
18 schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-
19 free meal and rest periods. When Plaintiff, Class Members and Aggrieved Employees were able to
20 take meal and rest periods, they were required to keep their radios on and on their persons during meal
21 and rest periods in violation of *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal. 5th 257.
22 Consequently, Plaintiff alleges that he is owed meal period premiums for meal and rest period violations
23 that occurred during the Class Period. JCL Dec., ¶ 25.

24 Conversely, Defendants argued, among other things, that it provided all their employees, i.e.,
25 Class Members and Aggrieved Employees, with the opportunity to take compliant meal and rest
26 periods. Defendants also argued that they maintained facially complaint meal and rest period policies.
27 Thus, Defendants argued that there was no potential liability for Plaintiff's alleged meal and rest period
28 violations and any claimed violations required a highly individualized inquiry not suitable to class

1 treatment. JCL Dec., ¶ 26. Plaintiff estimated the damages for this claim was approximately
2 \$2,606,005.80. JCL Dec., ¶ 27.

3 (2) Estimated Exposure for Unpaid Wages.

4 Plaintiff also alleged that Defendant failed to pay its employees for all hours worked.
5 Specifically, Plaintiff asserts that he, other Class Members and Aggrieved Employees performed a
6 substantial amount of off-the-clock work, including, but not limited to, undergoing pre-shift security
7 checkpoints all while off the clock. As a result, Defendants failed to accurately compensate Plaintiff
8 and other Class Members for all hours worked and their overtime hours worked. JCL Dec., ¶ 28.

9 Defendants argued that they maintained a facially compliant policy which prohibited employees
10 from working while off the clock. Notwithstanding, there is no defense to Defendants' failure to
11 compensate its employees for the time spend going through Defendants' security checkpoints. Plaintiff
12 estimated Defendants' exposure for underpayment of wages to its employees was approximately
13 \$52,935.65. JCL Dec., ¶ 29.

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

15 Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor
16 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
17 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
18 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor
19 Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class
20 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
21 226. JCL Dec., ¶ 30.

22 Plaintiff could not give the penalty claims great weight given that they depended on proving
23 the underlying claims, which had their own risks. Plaintiff estimated Defendant's exposure for this
24 claim to be approximately \$187,571.00 dollars. JCL Dec., ¶ 31.

25 (4) Defendants' PAGA Exposure

26 Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At
27 the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be approximately \$949,850
28 dollars. JCL Dec., ¶ 32.

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

9 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
10 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
14 each pay period the employee worked. Again, Defendants raised several defenses that presented serious
15 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
16 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
17 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
18 rest period claims. JCL Dec., ¶ 33.

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

25 The proposed Settlement allocates \$20,000 to satisfy the PAGA claims. This amount represents
26 approximately 4% of the Gross Settlement Amount. This is well within the range See, e.g., *Nordstrom*
27 *Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban*
28 *Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in \$5M

1 settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving \$3,000
2 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL
3 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc*
4 (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)
5 JCL Dec., ¶ 34.

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

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

12 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
13 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
14 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
15 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
16 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
17 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
18 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
19 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
20 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
21 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
22 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
23 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
24 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
25 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
26 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
27 certification of driver meal and rest period claims based on the predominance of individual issues).
28 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,

1 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
2 settlement. JCL Dec., ¶¶ 35.

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

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

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

13 Finally, continuing to litigate this action would require continued and extensive resources
14 coupled with significant Court time to proceed through trial and post-trial motions, which can often
15 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
16 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
17 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
18 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
19 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 36. “Avoiding such a trial and the
20 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
21 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
22 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
23 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

24 Given the amount of the settlement here, as compared to potential value of the claims, offset by
25 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 37.

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

27 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
28 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient

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

8 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
9 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
10 mail the proposed Notice Packet to all Class Members. The Notice Packet will include information
11 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure,
12 and time period within which to requests for exclusions or objections to the Settlement, the date for the
13 final approval hearing, the formula used to calculate settlement payments, and the terms and scope of
14 the Released Class Claims. Agreement at § III(L)(2)(a). The Parties negotiated this method to ensure
15 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
16 administration of the Settlement. JCL Dec., ¶¶ 38-39.

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

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

22 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
23 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
24 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
25 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53

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 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
2 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
3 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
4 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
5 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
6 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
7 (2009) 175 Cal.App.4th 785.)

8 The Settlement provides for a Class Representative Service Award of \$17,500 for Plaintiff. The
9 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
10 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
11 the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement
12 to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 40.

13 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
14 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
15 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
16 Class Representative Service Award. JCL Dec., ¶ 41.

17 **D. The Court Should Preliminarily Approve the Class Counsel Award**

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

28 Class Counsel took this matter on a contingency fee basis and invested significant time and

1 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
2 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
3 Members. Considering the positive outcome for the Class Members, and in light of the supporting
4 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 42.

5 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
6 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
7 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 43.

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

9 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
10 of the Class is appropriate. JCL Dec., ¶ 44.

11 1. The Standard for Class Certification

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

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

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

27 The community of interest requirement embodies three factors: (1) predominant common
28 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)

1 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

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

7 Because all Class Members are Defendants’ current and former non-exempt employees, the class
8 is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 45.

9 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
10 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
11 liability can be determined by facts common to all members of the class. The wage and hour issues are
12 both numerous and substantial, and a class action is the most advantageous method of dealing with the
13 claims of the Settlement Class. JCL Dec., ¶ 46.

14 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
15 from the same factual basis and are based on the same legal theories applicable to the other Class
16 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
17 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
18 Class Members were subject to and seeks the same relief. Plaintiff has already demonstrated his ability
19 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
20 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 47.

21 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
22 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
23 gained state court settlement approval of the same class-wide causes of action that are at issue in this
24 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
25 represent the interests of this Class. JCL Dec., ¶¶ 49-56; Declaration of Shani Zakay, ¶¶ 1-3.

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

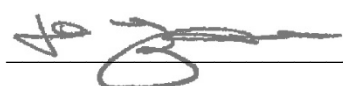
1 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
2 adjudication. JCL Dec., ¶ 46.

3 **IV. CONCLUSION**

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

7
8 Dated: October 18, 2022

JCL LAW FIRM, APC

9 By: 
10 Jean-Claude Lapuyade, Esq.