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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

PEDRO RODRIGUEZ on behalf of himself and on
behalf of all persons similarly situated,

Plaintiff,

v.

R.M. PARKS, INC. (erroneously sued as R.M.
Parks Place, Inc.), a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2021-6050

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

Date: , 2023
Time: a.m.

Judge: Hon. Erin Guy Castillo
Dept.: 10B

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I. INTRODUCTION

Plaintiff PEDRO RODRIGUEZ. (collectively “Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 65 members of the Class and 40 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” or the “**Class**,” and “**Class Period**,” shall mean “all truck drivers who are or previously were employed by R.M. Parks, Inc. (“Defendant”) and performed work in California (“Class”) from July 7, 2017, to August 26, 2022 (“Class Period”). Agreement at §§ I(G), I(H). The Class is comprised of approximately 65 individuals who collectively worked approximately 6,500 Workweeks during the Class Period. Agreement at §III.A.2

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

3. The “**Aggrieved Employees**” and “**PAGA Period**” means all truck drivers who are or previously were employed by Defendant and performed work in California (“Aggrieved Employees”) from April 21, 2020, to August 26, 2022 (“PAGA Period”). Agreement at § § I.B, I.V. Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(2)(a). At the time of mediation, there were approximately 40 Aggrieved Employees during the PAGA Period. (JCL Dec., ¶ 19).

4. The “**Gross Settlement Amount**” is One Hundred Seventy-Five Thousand Dollars (\$175,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” in the amount of \$7,500 to Plaintiff for his services on behalf of the Class Members, and for agreeing to a broad release. Agreement at § I(I), III(M)(9);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross

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.

Settlement Amount for attorney's fees, currently estimated to be Fifty-Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33) and actually incurred litigation costs not to exceed Fifteen Thousand Dollars (\$15,000), to be paid to Class Counsel. Agreement at §§ I(E); III(M)(10);

c. A "**PAGA Settlement**" of \$8,000 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Settlement"). The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Settlement to the Labor and Workforce Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining twenty-five percent (25%) of the PAGA Settlement to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § III(M)(11); and,

d. "**Settlement Administration Costs**" currently estimated to be \$6,000.00 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at §§ I(GG), III(M)(12).

3. The "**Net Settlement Amount**" of approximately \$79,666.67 (Gross Settlement Amount minus the Class Representative Service Award, Class Counsel Award, Settlement Administration Costs, and the PAGA Settlement) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$1,225.64**. Agreement at § III(M)(1); JCL Dec., ¶ 6.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation

8 Defendant owns and operates a company that transports gasoline and diesel fuel products
9 throughout California, including San Joaquin County where Plaintiff worked. Plaintiff worked for
10 Defendant as a non-exempt employee in California from September of 2020 until October of 2020.
11 Throughout his employment, Plaintiff was classified as a non-exempt employee and was entitled to
12 legally compliant meal and/or rest periods, minimum and regular wages. Additionally, Plaintiff was
13 subject to Defendant's written policies and procedures contained in, among other documents, the
14 "Employee Policy Handbook." JCL Dec., ¶ 8; Declaration of Pedro Rodriguez ("PR Dec.") at ¶ 4.

15 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
16 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
17 accurate itemized wages statements, and failed to pay all wages when due. Defendant forcefully denies
18 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
19 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
20 including but not limited to, facially compliant meal and rest period policies, compliant wage
21 statements, reimbursement for all required business expenses, and payment of all wages upon
22 separation. JCL Dec., ¶ 9; PR Dec., ¶ 5.

23 On April 21, 2021, Plaintiff served Defendant 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 Defendant's 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 7, 2021, Plaintiff filed a class action complaint in the San Joaquin County Superior
2 Court, Case Number STK-CV-UOE-2021-0006050 (the “Action”). The Action alleged nine causes of
3 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
4 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
5 Failure to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Meal
6 Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure
7 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
8 IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal.
9 Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab.
10 Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and
11 203; and (9) Violations of the Private Attorneys General Act under California Labor Code §§ 2698, *et*
12 *seq.* (“Class Claims”). JCL Dec., ¶ 11.

13 On October 18, 2021, Plaintiff filed a First Amended Complaint, the operative complaint, against
14 R.M. Parks, Inc. (erroneously sued as R.M. Parks Place, Inc.) removing the causes of action for
15 violations of Cal. Lab. Code §§ 226.7 and 512 for failure to provide meal and rest periods. As
16 discussed, *infra*, on June 21, 2022, the Second District Court of Appeal issued its opinion in *Garcia v.*
17 *Superior Court of Los Angeles County* (2022) 80 Cal.App.5th 63, holding that the Preemption Decision
18 issued by Federal Motor Carrier Safety Administration (“FMCSA”) applied prospectively, not
19 retroactively. JCL Dec., ¶ 12.

20 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties
21 agreed to informally produce additional documents and data points subject to the mediation privilege,
22 including but not limited to, a sample of the Class Members’ time data and certain payroll data points.
23 As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
24 (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 13.

25 On June 27, 2022, the Parties participated in a full day mediation with Hon. Carl J. West (Ret.),
26 a highly regarded jurist and experienced mediator of wage and hour class and PAGA actions. After
27 arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Judge
28 West’s proposal and signed a Memorandum of Understanding. After reaching an agreement in

principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 14.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began their pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment, including time and payroll records. At the conclusion of the interviews, Class Counsel determined that each of Plaintiff's complaints appeared to substantiate Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked, failed to issue accurate itemized wage statements, failed to provide compliant meal and rest periods, and failed to pay all wages when due. JCL Dec., ¶ 15.

To prepare for mediation, Class Counsel requested documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced, among other things, the time and payroll records for all of the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks, policies, and agreements. In total, Defendant produced several pages of pertinent policy documents, time and payroll records for Class Members for Class Counsel to analyze. JCL Dec., ¶ 16.

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

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG estimated the amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the amount of unreimbursed business expenses, the amount of unpaid wages due to off-the-clock work, the number of missed, late, or truncated meal and rest periods, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 18.

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

12 Class Counsel only agreed to enter the Settlement following this thorough investigation and
13 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
14 for similar settlements, and considering the risk of significant delay and uncertainty associated with
15 litigation, and the various defenses asserted by Defendant, Class Counsel believe this Agreement to be
16 in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
17 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 20.

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

19 On June 27, 2022, the Parties conducted a full day of mediation with Hon. Carl J. West (Ret.), a
20 highly regarded jurist and mediator. Judge West helped manage the Parties' expectations and provided
21 a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress
22 with Judge West's assistance. Namely, the Parties exchanged information regarding their respective
23 claims and defense, including their respective evaluation of the damages. At the conclusion of the
24 mediation, the Parties reached a settlement, which was subsequently memorialized in the form of a
25 Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set
26 forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and
27 reasonable compromise of the claims at issue. JCL Dec., ¶ 21.

28 ///

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

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

3 The proposed Settlement Class consists of all truck drivers who are or previously were employed
4 by Defendant and performed work in California between July 7, 2017, to August 26, 2022. The
5 Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data
6 exchanged prior to the Mediation, there were approximately 65 Class Members who worked an
7 estimated 6,500 workweeks through the conclusion of the Class Period. Agreement at § III.A.2.
8 Additionally, at the time of mediation, Plaintiff's expert estimated that there were approximately 40
9 Aggrieved Employees who worked approximately 574 pay periods during the PAGA Period. (JCL
10 Dec., ¶ 22.)

11 2. The Settlement Consideration

12 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
13 Amount of \$175,000.00 The Gross Settlement Amount includes: (1) Individual Settlement Payments
14 to the Settlement Class; (2) a Class Representative Award of \$7,500 to Plaintiff for his services on
15 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
16 Settlement in the amount of \$8,000; (4) Settlement Administration Costs estimated to be \$6,000.00; (5)
17 a Class Counsel Award of \$73,333.33 comprised of attorneys' fees equal to one-third of the Gross
18 Settlement Amount currently estimated to be \$58,333.33, and an estimated \$15,000 for actually
19 incurred litigation expenses. See generally Agreement at § I.E.

20 Subject to the Court approving the Class Representative Award, Class Counsel Award, PAGA
21 Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to
22 each participating member of the Settlement Class. Agreement at § I(Q). There is no reversion to
23 Defendant. *Id.* at §III(A)(1).

24 3. The Funding Date

25 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
26 Amount of \$175,000.00 within fourteen (14) calendar days of the Court's entry of the order granting
27 final approval of this Settlement. Agreement at § I(N).

28 ///

1 4. Formula for Calculating Individual Settlement Payments

2 Each Class Member will receive an Individual Settlement Payment. The Individual Settlement
3 Payment will be proportional to the number of Workweeks each Class Member worked for Defendant
4 in California during the Class Period. Each Class Member's Individual Settlement Payment for
5 purposes of payment will be calculated by dividing the total number of Workweeks attributed to all
6 Class Members by all Workweeks attributed to members of the Class, multiplied by the Net Settlement
7 Amount. Agreement at § III(M)(1).

8 The Class Data provided by Defendant to the Settlement Administrator will include the pay
9 periods worked during the PAGA Period and the workweeks worked during the Class Period for
10 purposes of calculating the Individual Settlement Payments. Agreement at § III(L). Each Class
11 Member's Individual Settlement Payment for purposes of payment will be calculated by using a
12 fraction, the numerator of which is the Class Member's total number of Workweeks, and the
13 denominator of which is the total number of Workweeks of all Class Members. Each Individual
14 Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g.,
15 employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class
16 who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members
17 who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(M)(1).

18 Given that there are approximately 65 Settlement Class Members, *the average gross recovery is*
19 *approximately \$1,225.64* (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

20 ¶ 6.

21 5. Release by Participating Settlement Class Members

22 Generally, as of the Funding Date, which is fourteen (14) days after the Effective Date, Plaintiff
23 and the Settlement Class Members will release the Released Parties from the Released Class Claims,
24 which are any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs,
25 expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, contingent
26 or accrued, that are alleged, reasonably related to, or which were or could have reasonably been alleged
27 based on or arising out of the facts and allegations alleged in the operative complaint at the time the
28 Court enters an order preliminarily approving the Settlement which occurred during the Class Period,

1 but expressly excluding all other claims for vested benefits, wrongful termination, unemployment
2 insurance, disability, social security, workers compensation, PAGA claims, which are separately
3 released hereinbelow, and class claims outside of the Class Period. Agreement at §§ I(BB).

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

5 Generally, upon the Funding Date, Plaintiff, acting as the representative of the State of
6 California, on behalf of the Aggrieved Employees, will release the Released Parties from all Released
7 PAGA Claims which include any and all PAGA claims, liabilities, demands, obligations, penalties,
8 costs, expenses, attorney's fees, action or causes of action of whatever kind or nature, contingent or
9 accrued, for civil penalties pursuant to PAGA, that are alleged in the operative complaint at the time
10 the Court enters an order preliminarily approving this Settlement and Plaintiff's PAGA notice to the
11 LWDA which occurred during the PAGA Period, but expressly excluding all other claims for vested
12 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
13 compensation, and class claims outside of the PAGA Period. Agreement at § I(CC).

14 **III. ARGUMENT**

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

16 The proposed Settlement, including a Gross Settlement Amount of \$175,000.00 meets the
17 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
18 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary
19 conciliation and settlement are the preferred means of dispute resolution.")) Class action settlement
20 approval requires an early "preliminary" review by the trial court and a subsequent "final" review after
21 notice of the settlement has been distributed to class members for their comments and objections.
22 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
23 court first "preliminarily approves the settlement" and later "conducts a final approval hearing to
24 inquire into the fairness of the proposed settlement").)

25 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
26 proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable
27 range." (See *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
28 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 Hon. Carl J. West (Ret.), a highly respected jurist and wage and hour class action mediator. Judge West 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.*

1 *Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification
2 settlement negotiations helps to ensure that the proceedings were free of collusion and undue
3 pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-
4 collusive. The mediation concluded with a settlement, after both sides agreed to a Mediator’s proposal,
5 which was subsequently memorialized in a Memorandum of Understanding (“MOU”). After reaching
6 an agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the
7 subject of the instant motion. The Agreement is the final product of these mediated negotiations.
8 Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the
9 claims at issue. JCL Dec., ¶ 23.

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

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

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

1 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
2 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 25.

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

4 The Gross Settlement Amount of \$175,000.00 is within the range of reasonableness. To
5 determine whether a settlement is fair and reasonable, the court should "consider enough information
6 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
7 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
8 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
9 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
10 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
11 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
12 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
13 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
14 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
15 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
16 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' "
17 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
18 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 26.

19 The Gross Settlement Amount of \$175,000.00 is fair and reasonable considering the nature and
20 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
21 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant's
22 liability exposure while accounting for the uncertainties of continued litigation. The various models

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 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
2 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
3 PAGA Penalties) ranged between \$588,776 for damages and \$1,118,553 for damages and statutory
4 penalties if successful at trial. Thus, the Gross Settlement Amount of \$175,000.00 represents
5 approximately 29.7% of Defendant’s *class-wide* liability exposure for damages, and approximately
6 15.6% of Defendant’s *class-wide* liability exposure for damages and statutory penalties, as estimated
7 by Class Counsel at the time of mediation. The following summarizes Defendant’s estimated exposure.
8 JCL Dec., ¶ 27.

9 (a) Defendant’s Estimated Exposure for Wage Statement Violations

10 Plaintiff’s primary claim in this Action alleges that Defendant issued inaccurate wage
11 statements. Specifically, Plaintiff alleges that Defendant issued wage statements that failed to include
12 Defendant’s correct legal name in violation of Labor Code Section 226(a)(8). *See e.g. Noori v.*
13 *Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957, 964-966 (providing serious
14 truncations of the employer’s name on issued wage statements can violate Labor Code Section
15 226(a)(8) where confusion *might* ensue.). Defendant denied liability for the claim and argued that it
16 substantially complied with its obligation to provide its correct legal name on the wage statements
17 issued to its employees. Further, Defendant argued that even if it failed to furnish accurate wage
18 statements, Plaintiff could not establish the injury requirement on a class-wide basis. *See Price v.*
19 *Starbucks Corp.* (2011) 192 Cal.App.4th 1136 (holding that the employee must suffer an injury from
20 allegedly noncompliant wage statements.) Plaintiff estimated that Defendant’s exposure for this claim
21 was approximately \$46,950.00 dollars. JCL Dec., ¶ 28.

22 (b) Defendant’s Estimated Exposure for Meal and Rest Period Violations

23 Plaintiff also alleges that Defendant failed to provide compliant meal and rest periods from the
24 start of the Class Period on July 7, 2017, until December 28, 2018. In an order dated December 28,
25 2018, the Federal Motor Carrier Safety Administration (FMCSA) concluded that California meal and
26 rest break rules were preempted by the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31101 *et seq.*)
27 (“Preemption Decision”). On June 21, 2022, the Second District Court of Appeal issued its opinion in
28 *Garcia v. Superior Court of Los Angeles County, supra*, addressing whether California meal and rest

breaks were preempted by the Motor Carrier Safety Act of 1984. The Court held that the Preemption Decision issued by FMCSA, “does not apply to bar [meal and rest break] claims arising from conduct that occurred prior to the decision, i.e., before December 28, 2018.” *Id.* at 69. Stated differently, the language of the Preemption Decision “strongly suggests prospective, not retroactive application.” *Id.* JCL Dec., ¶ 29.

Conversely, Defendant denied these claims. As to the meal break claim, Defendant argued that it previously provided meal breaks to its petroleum products drivers until the Department of Transportation FMCSA’s Notice of Final Disposition granting an application for exemption for petroleum products drivers on April 9, 2018. Thus, Defendant argued that there was no potential liability for Plaintiff’s meal period violations. Plaintiff’s expert estimated the damages for these claims to be approximately \$228,794.00 dollars. JCL Dec., ¶ 30.

(c) Defendant’s Estimated Exposure for Off-the-Clock Work

Additionally, Plaintiff alleged that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserts that he was required to clean, wash, organize, and stock his truck before the start and end of each shift all while off-the-clock, which took approximately forty-five (45) minutes each time. Defendant argued, among other things, that it had in place a written policy that required its employees to accurately record all their time worked and that its policies directed its employees not to work while off-the-clock. Further, Defendant argued that the off-the-clock claims was not suitable for class treatment because individualized issues predominated. For example, assuming Plaintiff performed work while off-the-clock, the tasks performed and time spent would vary from class member to class member that it could not be established by common proof. Plaintiff’s expert estimated that Defendant’s exposure for unpaid off-the-clock work was approximately \$289,082.00 dollars. JCL Dec., ¶ 31.

(d) Defendant’s Estimated Damages for Unreimbursed Business Expenses

Plaintiff alleged that Defendant required Class Members and the Aggrieved Employees to incur personal expenses for the use of their own personal cellular phones. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that “[a]n employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
2 the discharge of his or her duties, or of his or her obedience to the directions of the employer...”).
3 Specifically, Plaintiff alleged Defendant required Plaintiff, Class Members, and Aggrieved Employees
4 to use their own cellular phones in order to perform work related tasks, but Defendant failed to
5 reimburse them for the costs related to the use of their personal cellular phones in violation of California
6 Labor Code section 2802. JCL Dec., ¶ 32.

7 Defendant vigorously denied liability for this claim and argued, among other things, that there
8 was never any requirement that drivers use their personal cell phones for work. Defendant’s exposure
9 for violations of Cal. Lab. Code § 2802 amount to approximately \$70,900.00 dollars. JCL Dec., ¶ 33.

10 (e) Exposure for Waiting Time Penalties

11 Plaintiff also alleged that Defendant’s labor code violations resulted in derivative liability for
12 waiting time penalties. Although these *penalties* represented Defendant’s largest dollar amount of
13 exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendant argued that Plaintiff could
14 not provide the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
15 Notwithstanding the uncertain nature of the claims, Plaintiff’s expert estimated Defendant’s exposure
16 for claim to be approximately \$310,627.00 dollars. JCL Dec., ¶ 34.

17 (f) Defendant’s PAGA Exposure

18 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
19 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
20 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
21 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
22 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
23 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
24 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
25 6, 2016) (PAGA penalties denied after trial).

26 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
27 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
28 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on

1 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
2 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employees suffered a violation
3 for each pay period the employee worked. Again, Defendant raised several defenses that presented
4 serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that its
5 employment practices complied with all applicable Labor Laws. In addition to those arguments
6 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
7 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
8 rest period claims. JCL Dec., ¶ 35.

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

15 The proposed Settlement allocates \$8,000 to satisfy the PAGA claims. This amount represents
16 4.6% of the Gross Settlement Amount. This is well within the range of approved PAGA Payments. *See*,
17 *e.g.*, *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation);
18 *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation
19 in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving
20 \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010
21 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands,*
22 *Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.)
23 JCL Dec., ¶ 36.

24 **a. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

1 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

2 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
3 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
4 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
5 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
6 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
7 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
8 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
9 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
10 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
11 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
12 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
13 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
14 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
15 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
16 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
17 certification of driver meal and rest period claims based on the predominance of individual issues).
18 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
19 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
20 settlement. JCL Dec., ¶ 37.

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

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

1 favor of preliminary approval.

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

3 Finally, continuing to litigate this action would require continued and extensive resources
4 coupled with significant Court time to proceed through trial and post-trial motions; which can often
5 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
6 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
7 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
8 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
9 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 38. “Avoiding such a trial and the
10 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
11 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
12 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
13 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

14 Given the amount of the settlement here, as compared to potential value of the claims, offset by
15 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 39.

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

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

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 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
2 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
3 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
4 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
5 procedure and time period within which to requests for exclusions or objections to the Settlement, the
6 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
7 and scope of the Released Claims. See generally Agreement at § III(L). This method was negotiated
8 by the Parties to ensure delivering the most reasonable method of notice to the Class Members while
9 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 40.

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

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

15 Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee*
16 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
17 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
18 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
19 UCLA L. Rev. 1303 (2006).) Enhancement payments "are intended to compensate class representatives
20 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
21 the action, and, sometimes, to recognize their willingness to act as a private attorney general."
22 (*Rodriguez*, 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to
23 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
24 conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC*
25 (2009) 175 Cal.App.4th 785.)

26 The Settlement provides for a Class Representative Service Award of \$7,500⁴ for Plaintiff. The

27 ⁴ The amount of the requested enhancement payment-\$7,500-is reasonable by reference to the amounts that California courts (both federal
28 and state) have repeatedly found to be reasonable for wage and hour class action settlements: See *Baker v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement

1 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of his case and the strategies for prosecuting the claims, responding to Defendant's written
4 discovery, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate
5 relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims arising
6 out of his employment. JCL Dec., ¶ 42.

7 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
8 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
9 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
10 Class Representative Service Award. JCL Dec., ¶ 43.

11 **D. The Court Should Preliminarily Approve Class Counsel's Class Counsel Award**

12 The purpose of an award of Class Counsel's Class Counsel Award in class action litigation is to
13 reward counsel who took the risk of non-payment and invested in a case that achieved a substantial
14 positive result for the class. California courts routinely award attorneys' fees equaling one-third or more
15 of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v.*
16 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the

17 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
18 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
19 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
20 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
21 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
22 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528
23 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
24 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
25 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
26 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No.
27 BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
28 BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC*
Monterey Park Hospital LP, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v.*
Catholic Moray Services, Inc., No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
\$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
\$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
(C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-
cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No.
RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.
CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int'l Holdings,*
Inc., No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security*
Services, LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel Award is fair and reasonable. JCL Dec., ¶ 44.

Plaintiff will file a formal motion for the negotiated award of the Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 45.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 46.

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

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

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is

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

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

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

13 Because all Class Members are Defendant’s current and former employees, the class is readily
14 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 47.

15 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
16 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
17 liability can be determined by facts common to all members of the class. The wage and hour issues are
18 both numerous and substantial, and a class action is the most advantageous method of dealing with the
19 claims of the Settlement Class. JCL Dec., ¶ 48.

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

27 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
28 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and

1 gained state court settlement approval of the same class-wide causes of action that are at issue in this
2 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
3 represent the interests of this Class. JCL Dec., ¶¶ 52-59; Declaration of Shani O. Zakay at ¶ 3.

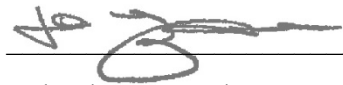
4 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
5 each individual claim, the Class Members likely have little incentive to litigate their claims on an
6 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
7 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
8 adjudication. JCL Dec., ¶ 51.

9 IV. CONCLUSION

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

13 Dated: January 5, 2023

JCL LAW FIRM, APC

14 By: 
15
16 Jean-Claude Lapuyade, Esq.