

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

CRISTAL RODRIGUEZ, on behalf of herself and
on behalf of all persons similarly situated,

Plaintiffs,

v.

EAH INC. a California Corporation; and DOES 1-
50, Inclusive.

Defendants.

Case No. 21CV00884

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

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18	<i>Nordstrom Comm'n Cases</i>	
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21	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
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25	///	

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2	(S.D. Cal. 2010) 2010 WL 2196104 *2.....	11
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5	<i>State v. Levi Strauss & Co.</i>	
6	(1986) 41 Cal.3d 460, 482, 485.....	7, 14
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SECONDARY SOURCES

28	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 11.26, 11.51 (4th ed. 2002) § 1 1:38	
29		6-7
30	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. Rev.	
31	1303 (2006)	
32		14
33	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
34	<i>Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
35		15
36	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
37		13

1 I. INTRODUCTION

2 Plaintiff CRISTAL RODRIGUEZ (“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 862 Class Members and 608
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 non-exempt
7 employees who are or previously were employed by EAH, Inc. (“Defendant”) and performed work in
8 California during the period between April 5, 2017 and November 18, 2022 (“Class Period”).
9 Agreement at §§ I(G), (J). The Class is comprised of approximately 862 individuals who collectively
10 worked approximately 74,553 Workweeks during the Class Period. Agreement at §§III(A)(2).

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

14 3. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all non-exempt
15 employees who are or previously were employed by Defendant and performed work in California during
16 the period between April 5, 2020 and November 18, 2022 (“PAGA Period”). Agreement at §§ I(C),
17 (Y). At the time of mediation, there were approximately 608 Aggrieved Employees during the PAGA
18 Period. (JCL Dec., ¶ 6).

19 4. The “**Gross Settlement Amount**” is One Million Four Hundred Fifty Thousand Dollars
20 (\$1,450,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and includes
21 the following:

22 a. A “**Enhancement Award**” in the amount of Ten Thousand Dollars (\$10,000.00)
23 to Plaintiff in recognition of her effort and risk assumed in assisting with the prosecution of the Action.
24 Agreement at §§ I(0); III(L)(9);

25 b. An award of “**Attorneys’ Expenses**” “**Attorneys’ Fees**” consisting of Attorneys’
26 Expenses of up to Thirty Thousand Dollars (\$30,000.00) and Attorneys’ Fees not to exceed one-third

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 of the Gross Settlement Amount, currently estimated to be Four Hundred Eighty-Three Thousand Three
2 Hundred Thirty-Three Dollars and Thirty-Three Cents (\$483,333.33) paid to Class Counsel. Agreement
3 at §§ I(E), (F) and III(L)(10);

4 c. A “**PAGA Penalties**” of Eighty Thousand Dollars (\$80,000) to be allocated from
5 the Gross Settlement Amount, with 25% of the payment going to the Aggrieved Employees
6 (“Aggrieved Employee Payment”) and 75% of the payment going to the Labor and Workforce
7 Development Agency (“LWDA Payment”). Agreement at § III(L)(11); and

8 d. “**Settlement Administration Costs**” not to exceed \$14,500.00 payable to the
9 Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the administration of the Notice Packet
10 and Individual Settlement Payments. Agreement at § III(M)(12).

11 5. The “**Net Settlement Amount**” refers to the portion of the Gross Settlement Amount less
12 Attorneys’ Fees, Attorneys’ Expenses, Enhancement Award, Settlement Administration Costs and
13 PAGA Penalties. Agreement at § I(Z). The Net Settlement Amount is approximately \$832,166.67
14 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of
15 Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement
16 Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in
17 an average Individual Settlement Payment of approximately **\$965.39**. JCL Dec., ¶ 6.

18 6. The “**Released Class Claims**” means once the Gross Settlement Amount is funded,
19 Plaintiff and the Settlement Class Members agree to release Defendant from all class claims alleged in
20 the operative complaint which occurred during the Class Period, and expressly excluding all other
21 claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability,
22 social security, workers’ compensation, and class claims outside of the Class Period. Agreement at
23 §§I(EE) and III(B).

24 7. The “**Released PAGA Claims**” means once the Gross Settlement Amount is funded,
25 Plaintiff, the LWDA and the State of California, agree to release Defendant from all all claims for civil
26 penalties arising under Plaintiff’s PAGA claims alleged in the operative complaint and Plaintiff’s April
27 5, 2021 Notice to the LWDA which occurred during the PAGA Period, and excluding all other claims
28 for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers

1 compensation and PAGA Claims outside the PAGA Period. Agreement §§ I(FF) and III(C).

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

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

14 II. FACTS AND PROCEDURE

15 A. Overview of the Litigation

16 Defendant is a California corporation that develops and manages affordable housing projects
17 throughout Northern California. Plaintiff worked for Defendant as a non-exempt employee in Santa
18 Cruz, California from approximately April 2019 to August 2020. Plaintiff alleges that Defendant
19 failed to, among other things, properly calculate the regular rate of pay, pay for all hours worked,
20 failed to provide compliant meal and rest periods, issued non-compliant wage statements, and failed
21 to pay all wages when due. Throughout her employment, Plaintiff was subject to Defendant's written
22 policies and procedures contained in, among other documents, the EAH Employee Handbook. JCL
23 Dec., ¶ 8; Declaration of Cristal Rodriguez ("CR Dec.") at ¶¶ 1-7.

24 Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts
25 that it fully complied with all applicable employment laws and raised several other significant defenses
26 to Plaintiff's claims, including but not limited to, compliant compensation policies and plans, complaint
27 meal and rest practices, compliant wage statements, and timely payment of all wages due upon
28 separation of employment. JCL Dec., ¶ 9.

1 On April 5, 2021, Plaintiff served Defendant and the Labor and Workforce Development Agency
2 (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts
3 and theories supporting Defendant’s alleged violations of various provisions of the California Labor
4 Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue
5 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et*
6 *seq.* (“PAGA”). JCL Dec., ¶ 10.

7 At the same time, Plaintiff filed this class action complaint in the Santa Cruz Superior Court.
8 The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation
9 of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of
10 California Labor Code sections 1194, 1197 & 1197.1; (3) Failure to pay overtime wages in violation
11 of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation
12 of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to
13 provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the
14 applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of
15 California Labor Code section 226; (7) Failure to reimburse employees for required business expenses
16 in violation of California Labor Code section 2802; and (8) Failure to provide wages when due in
17 violation of Cal. Lab. Code sections 201, 202 and 203. On June 9, 2021, Plaintiff filed the operative
18 First Amended Complaint and asserted a ninth cause of action for violations of the California Labor
19 Code Private Attorneys General Act [Labor Code section 2698, *et seq.*]. After commencing written
20 discovery, the Parties agreed to mediation. JCL Dec., ¶ 11.

21 **B. Class Counsels’ Investigation**

22 To prepare for mediation, Class Counsel requested pertinent documents and data points to
23 evaluate Plaintiff’s claims and measure Defendant’s liability exposure to the Class. In response,
24 Defendant produced, among other things, time, and payroll records for 20% of Class Members,
25 aggregate workweek and pay period data, and copies of applicable handbooks, policies, and procedures.
26 In total, Defendant produced over 30,000 pages of documents and nearly 1 million unique cells of time
27 and payroll data for Class Counsel to analyze. JCL Dec., ¶ 12.

28 Class Counsel then retained the statisticians and economists at Econ One to evaluate the Class

Members’ payroll and time data and to calculate Defendant’s liability exposure to the Class. Econ One provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. Econ One analyzed Defendant’s time and payroll data and developed various damage models that assisted Class Counsel at the time of mediation. JCL Dec., ¶ 13.

Overall, Class Counsel thoroughly investigated the claims at issue. Class Counsel (1) reviewed Plaintiff’s suitability as a putative class representative through interviews, background investigations, and analysis of her employment files; (2) evaluated Plaintiff’s potential claims; (3) researched similar wage and hour class actions; (4) analyzed the Class Members’ time and payroll records; (5) analyzed Defendant’s labor policies and practices; (6); developed comprehensive damage models which estimated Defendant’s liability for purposes of settlement; (7) drafted the mediation brief; and (8) participated in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, and to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. 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. JCL Dec., ¶ 14.

C. The Parties Settled at Mediation

On July 5, 2022, the Parties participated in a full day mediation with Jeff Ross an experienced wage and hour mediator. Unfortunately, the mediation concluded with a settlement. Thereafter, the Parties again engaged in formal discovery. After several months and continued negotiations guided by Mediator Ross, both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a Memorandum of Understanding (“MOU”). JCL Dec., ¶ 15. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 16.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of One Million Four Hundred

1 Fifty Thousand Dollars (\$1,450,000.00), meets the standards for preliminary approval. Pre-trial
2 settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv.*
3 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred
4 means of dispute resolution.”).) Class action settlement approval requires an early “preliminary”
5 review by the trial court and a subsequent “final” review after notice of the settlement has been
6 distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone*
7 *Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first “preliminarily approves the
8 settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed
9 settlement”).)

10 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
11 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
12 range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
13 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
14 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
15 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
16 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
17 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
18 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
19 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
20 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*
21 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
22 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
23 action litigation”).)

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

1 and adequate to all concerned.” (*Id.*)

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

4 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
5 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
6 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
7 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
8 § 11.51.)

9 The Parties participated in mediation with highly respected mediator Jeff Ross. Mediator Ross
10 managed the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
11 sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
12 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference
13 of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
14 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
15 of collusion and undue pressure.”).) The Parties only reached a settlement after both sides agreed to a
16 Mediator’s proposal, which was subsequently memorialized in a Memorandum of Understanding
17 (“MOU”). At all times, the Parties’ negotiations were at an arm’s length, adversarial, and non-
18 collusive. After reaching an agreement in the principle, the Parties drafted and negotiated a long-form
19 settlement which is the subject of the instant motion. Objectively, the Settlement terms are fair,
20 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 16.

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

23 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
24 the factual and legal issues in dispute. The investigation allowed Class Counsel to fully assess the
25 nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to
26 make an independent assessment of the reasonableness of the terms to which the Parties have agreed.
27 Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and
28 considering the risk of significant delay, uncertainty associated with litigation, and the various defenses

1 asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the
2 Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should
3 preliminarily approve the Settlement. JCL Dec., ¶¶ 12-14.

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

5 The Gross Settlement Amount of \$1,450,000.00 is within the range of reasonableness. To
6 determine whether a settlement is fair and reasonable, the court should "consider enough information
7 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
8 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
9 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
10 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
11 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
12 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
13 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
14 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
15 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
16 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
17 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank*
18 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
19 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

20 The Gross Settlement Amount of \$1,450,000.00 is fair and reasonable considering the nature
21 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
22 mediation, Class Counsel retained Econ One to develop economic damage models measuring

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").

Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) at \$9,280,559 dollars. Thus, the Gross Settlement Amount of \$1,450,000.00 represents approximately 15.62% of Defendant's *class-wide* liability exposure. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 17.

(a) Estimated Damages for Miscalculation of the Regular Rate of Pay

Plaintiff's primary claim in this Action is that Defendant failed to calculate certain non-discretionary compensation into the regular rate of pay for purposes of paying overtime and redeemed sick pay. Based on the review of the Class Members' time and payroll data, Econ One estimated Defendant underpaid the Class Members approximately \$2,812,296. Defendant vigorously denied liability and asserted that all incentive compensation was either properly calculated into the regular rate of pay or properly excluded as discretionary compensation. JCL Dec., ¶ 18.

(b) Estimated Damages for Meal and Rest Period Violations

Plaintiff also alleged that because of her rigorous work schedule, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free meal and rest periods. However, Defendant's time and payroll data evidenced a meager **4.4%** violation rate for meal periods. Plaintiff utilized the same violation rate for purposes of quantifying damages for rest period violations. In total, Class Counsel estimated Defendant's exposure for the meal and rest claims at \$1,742,533. JCL Dec., ¶ 19.

Defendant argued, *inter alia*, that it provided the Class Members and Aggrieved Employees with compliant meal and rest periods as evidenced by the extremely low violation rate. Defendant also argued that they maintained facially complaint meal and rest period policies and paid more than \$100,000 in meal period premiums during the Class Period. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal and rest period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 20.

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1 **(c) Exposure for Wage Statement Violations and Waiting Time Penalties**

2 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
3 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
4 and weighed the potential recoveries against probable defenses. Specifically, Defendant could argue
5 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor
6 Code section 203. Additionally, Defendant could argue that Plaintiff could not show that Class
7 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
8 226. Plaintiff estimated Defendant's exposure for these claims to be approximately \$4,725,770
9 (\$2,451,970 for LC 203 penalties and \$2,273,800 for LC 226 penalties). JCL Dec., ¶ 21.

10 **(d) Defendant's PAGA Exposure**

11 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
12 the time of mediation, Plaintiff estimated Defendant's PAGA exposure to be approximately \$5,213,800
13 dollars. JCL Dec., ¶ 22. Under PAGA, Courts have considerable discretion to reduce the penalty award.
14 In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
15 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
16 penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually
17 awarded no civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com.*
18 *Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and
19 hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D.
20 Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

21 To recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
22 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
23 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
24 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
25 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
26 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
27 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
28 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*

(2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the rest period claims. JCL Dec., ¶ 23.

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

The proposed Settlement allocates \$80,000 to satisfy the PAGA claims. This amount represents approximately 5% of the Gross Settlement Amount. This achieves a fair, reasonable, and adequate resolution of Plaintiff's PAGA claim. See *Moniz v. Adecco* (2021) 72 Cal.App.5th 56. Further, the amount allocated to the satisfaction of Plaintiff's PAGA claim, is well within the range of reasonableness. See, e.g., *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in \$5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving \$3,000 PAGA allocation in \$1.2M settlement); *Singer v. Becton Dickinson & Co.* (S.D. Cal. 2010) 2010 WL 2196104 *2 (approving \$3,000 PAGA allocation in \$1M settlement); and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving \$1,500 PAGA allocation in \$1.026M settlement.) JCL Dec., ¶ 24.

4. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110

million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶ 25-26.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often

1 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
2 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
3 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
4 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
5 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶¶ 25-27. “Avoiding such a trial and
6 the subsequent appeal in this complex case strongly militates in favor of settlement rather than further
7 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
8 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
9 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

10 Given the amount of the settlement here, as compared to potential value of the claims, offset by
11 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 28.

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

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

22 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
23 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
24 mail the proposed Notice Packet to all Class Members. The Notice Packet will include information
25 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure,

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 and time within which to requests for exclusions or objections to the Settlement, the date for the final
2 approval hearing, the formula used to calculate settlement payments, and the terms and scope of the
3 Released Class Claims. Agreement at § III(K). The Parties negotiated this method to ensure delivering
4 the most reasonable method of notice to the Class Members while ensuring cost effective administration
5 of the Settlement. JCL Dec., ¶¶ 29-30.

6 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
7 Packet satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
8 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
9 compromise and of the options open to dissenting class members.”).)

10 **C. The Court Should Preliminarily Approve the Enhancement Award**

11 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
12 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
13 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
14 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
15 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
16 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
17 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
18 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
19 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
20 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
21 (2009) 175 Cal.App.4th 785.)

22 The Settlement provides for an Enhancement Award of \$10,000 for Plaintiff. The Enhancement
23 Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class
24 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his
25 case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its
26 terms are fair and provide adequate relief for the Class. JCL Dec., ¶¶ 31-32.

27 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
28 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff

1 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
2 Class Representative Service Award. JCL Dec., ¶ 33.

3 **D. The Court Should Preliminarily Approve the Attorneys' Fees and Attorneys' Expenses**

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

14 Class Counsel took this matter on a contingency fee basis and invested significant time and
15 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
16 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
17 Considering the positive outcome, and considering the supporting authority, the proposed Attorneys'
18 Fees and reimbursement of Attorneys' Expenses are fair and reasonable. JCL Dec., ¶ 34.

19 Plaintiff will file a formal motion for the Attorneys' Fees and Attorneys' Expenses once
20 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
21 is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 35.

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

23 For Settlement, Plaintiff contends, and Defendant do not dispute, that provisional certification
24 of the Class is appropriate. JCL Dec., ¶ 36.

25 1. The Standard for Class Certification

26 Class actions are statutorily authorized "when the question is one of common or general interest,
27 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
28 court" (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class

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

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

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

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

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

21 Because all Class Members are Defendant’s current and former non-exempt employees, the class
22 is readily ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 37.

23 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
24 Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be
25 determined by facts common to all members of the class. The wage and hour issues are both numerous
26 and substantial, and a class action is the most advantageous method of dealing with the claims of the
27 Class. JCL Dec., ¶ 38.

28 Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the

1 same factual basis and are based on the same legal theories applicable to the other Class Members.
2 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges
3 that she was injured by the same company-wide practices to which the proposed Class Members were
4 subject to and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for the
5 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
6 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 39.

7 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
8 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
9 gained state court settlement approval of the same class-wide causes of action that are at issue in this
10 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
11 represent the interests of this Class. JCL Dec., ¶¶ 5, 41-48; Declaration of Shani Zakay, ¶¶ 3, 8

12 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
13 each individual claim, the Class Members likely have little incentive to litigate their claims on an
14 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
15 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
16 adjudication. JCL Dec., ¶ 40.

17 IV. CONCLUSION

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

21
22 Dated: March 3, 2023

JCL LAW FIRM, APC

23 By: 
24 Jean-Claude Lapuyade, Esq.