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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

GABRIEL GUZMAN JR., on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiffs,

v.

VULCAN MATERIALS COMPANY, a New
Jersey Corporation; CALMAT CO., a
Delaware Corporation; and DOES 1-50
Inclusive,

Defendants.

Case No. 37-2021-00024583-CU-OE-CTL

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

Date: October 14, 2022

Time: 1:30 PM

Judge: Honorable Katherine Bacal

Dept.: C-69

TABLE OF CONTENTS

I.	INTRODUCTION	1
	1. The “Class Members”, “Settlement Class Members” and “Settlement Class Period”	1
	2. The “Aggrieved Employees” and “PAGA Period”	1
	3. The “Gross Settlement Amount”	1
	a. A “Class Representative Service Award”	1
	b. A “Class Counsel Award”	1
	c. A “PAGA Settlement”	2
	d. “Settlement Administration Costs”	2
	4. The “Net Settlement Amount”	2
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled at Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiffs’ Claims	7
	1. The Composition of the Settlement Class Members	7
	2. The Settlement Consideration	8

1	3. The Funding Date	8
2	4. Formula for Calculating Individual Settlement Payments	8
3	5. Release by Participating Settlement Class Members	9
4	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	10
5		
6	III. ARGUMENT	10
7		
8	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	10
9		
10	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel	11
11		
12	2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the Settlement’s Reasonableness	12
13		
14	3. The Settlement Falls Within the Recognized Range of Reasonableness	12
15		
16	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	13
17		
18	(1) Estimated Exposure for Off-the-Clock Work	14
19		
20	(2) Estimated Damages for Meal Period Violations	14
21		
22	(3) Estimated Damages for Rest Period Violations	15
23		
24	(4) Estimated Exposure for Unreimbursed Business Expenses	16
25		
26	(5) Exposure for Wage Statement Violations and Waiting Time Penalties	16
27		
28		

1	(6) Defendant’s PAGA Exposure	17
2		
3	b. Inherent Risks of Continued Litigation Support Preliminary Approval	18
4		
5	B. The Proposed Notice Informs the Class about the Case and Settlement	20
6		
7	C. The Court Should Preliminarily Approve the Class Representative Enhancement Award	21
8		
9	D. The Court Should Preliminarily Approve the Class Counsel Award	22
10		
11	E. Provisional Certification for Settlement Purposes is Appropriate	23
12		
13	1. The Standard for Class Certification	23
14		
15	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members	23
16		
17	IV. CONCLUSION	25
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	11
5	<i>Acheson v. Express, LLC</i>	
6	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	22
7	<i>Aguilar v. Cingular Wireless, LLC</i>	
8	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	22
9	<i>Ali v. U.S.A. Cab Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	19
11	<i>Alonzo v. Maximus, Inc.</i>	
12	832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011).....	16-17
13	<i>Andres v. Laboratory Corporation of America</i>	
14	No. 2:13-cv-08773-GW-VBK (C.D. Cal. Nov. 3, 2015).....	17
15	<i>Baker v. LA. Fitness Int'l, LLC</i>	
16	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	22
17	<i>Barrett v. Doyon Security Services, LLC,</i>	
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19	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
20	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	22
21	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
22	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	22
23	<i>Brinker</i>	
24	53 Cal. 4th at 1021-1022.....	24
25	<i>Brown v. Fed Express Corp.</i>	
26	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	19
27	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
28	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	22
	<i>Bufile v. Dollar Financial Group, Inc.</i>	
	(2008) 162 Cal.App.4th 1193, 1207.....	23
	<i>Cacho v. Eurostar, Inc.</i>	
	(2019) 43 Cal.App.5th 885.....	18
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	22
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	18
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	19
	<i>Carrington v. Starbucks Corp.,</i>	
	30 Cal. App. 5th 504, 539 (2018).....	18
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	20
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	10-11, 21
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	20
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	23

1	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	21
2	<i>Coleman v. Estes Express Lines, Inc.</i>	
	No. BC429042 (LA. County Super. Ct. Oct. 3, 2013).....	22
3	<i>Contreras v. Serco Inc.</i>	
	No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012).....	22
4	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	11
5	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	11
6	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	19
7	<i>Ethridge v. Universal Health Services, Inc.</i>	
	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	22
8	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	17
9	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	21
10	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	13
11	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	22
12	<i>Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	13
13	<i>Hicks v. Toys 'R Us, Inc.</i>	
	2:13-cv-01302-DSF-JCG (C.D. Cal. Aug. 4, 2014; Judge Dale S. Fischer).....	17
14	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i>	
	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	22
15	<i>Hightower v. JPMorgan Chase Bank, N.A.</i>	
	No. 2:11-cv-01802-PSG-PLA (C.D. Cal. Oct. 5, 2015; Judge Philip S. Gutierrez).....	17
16	<i>Hill v. Sunglass Hut Int'l, Inc.</i>	
	No. BC422934 (LA. County Super. Ct. July 2, 2012).....	22
17	<i>Howard v. CVS Caremark Corp.,</i>	
	2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014).....	16
18	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	13
19	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	11
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	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	13
21	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66).....	13
22	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	17
23	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	19
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	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	13
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1	<i>In re Taco Bell Wage & Hour Action</i>	
2	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
3	<i>Kabamba v. Victoria's Secret Stores, LLC,</i>	
4	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	22
5	<i>Kass v. Young</i>	
6	(1977) 67 Cal.App.3d 100, 106).....	20
7	<i>Kullar v. Foot Locker Retail, Inc.</i>	
8	(2008) 168 Cal.App.4th 116, 133.....	13
9	<i>Kisliuk v. ADT Security Services, Inc.,</i>	
10	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	22
11	<i>Lee v. Dynamex, Inc.</i>	
12	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	23-24
13	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
14	(N.D. Cal. 2017) 2017 WL 2797811, at *7.....	13
15	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
16	(9 th Cir. 2021) 999 F.3d 668.....	19-20
17	<i>Magee v. American Residential Services, LLC</i>	
18	No. BC423798 (LA. County Super. Ct. Apr. 21, 2011).....	22
19	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
20	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	22
21	<i>Mendiola v. Tyco Electronics Corp.</i>	
22	RIC 1400721 (Riverside County Super. Ct. May 29, 2015).....	17-18
23	<i>Misra v. Decision One Mortg. Co.</i>	
24	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	18
25	<i>Morales v. BCBG Maxaria Int'l Holdings, Inc.,</i>	
26	No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013).....	22
27	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
28	(2010) 186 Cal.App.4th 399, 409.....	13
	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 527.....	13, 20
	<i>Nevarez v. Trader Joe's Co.,</i>	
	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	22
	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	13
	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	10
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	19
	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	10, 13
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	15
	<i>Ordaz v. Rose Hills Mortuary, LP.,</i>	
	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	22
	<i>Parra v. Aero Port Services, Inc.</i>	
	No. BC483451 (L.A. County Super. Ct. April 20, 2015).....	18
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7	<i>Silva v. Catholic Moray Services, Inc.,</i>	
8	No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	22
9	<i>Stambaugh v. Super. Ct</i>	
10	(1976) 62 Cal.App.3d 231, 236.....	11
11	<i>State v. Levi Strauss & Co.</i>	
12	(1986) 41 Cal.3d 460, 482, 485.....	11, 21
13	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
14	(N.D. Cal. 2015) 2015 WL 3776765 at * 4.....	13-14
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16	(2012) 209 Cal.App.4th 1077, 1088.....	19
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21	<i>Viceral v. Mistras Grp., Inc.</i>	
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I. INTRODUCTION

Plaintiffs GABRIEL GUZMAN JR. (“Plaintiff Guzman”) and JAMES SANCHO (“Plaintiff Sancho”) (collectively “Plaintiffs”) seek 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 1,216 members of the Class and 905 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**”, “**Settlement Class Members**” and “**Settlement Class Period**” shall mean “all of Defendants’ VULCAN MATERIALS COMPANY and CALMAT CO. (“Defendants”) current and former non-exempt employees employed in California (“Class Members”) during the period from June 3, 2017 to February 11, 2022 (“Class Period”).” Agreement at §§ I(G) and (H). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at §I(II).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means “all of Defendants’ current and former non-exempt employees employed in California (“Aggrieved Employees”) during the period from May 22, 2019 to February 11, 2022 (“PAGA Period”). Agreement at §§ I(B) and (V). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement.

3. The “**Gross Settlement Amount**” is One Million Two Hundred Seventy Thousand Dollars (\$1,270,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. “**Class Representative Service Awards**” in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members, and for agreeing to a broad release. Agreement at §III(O)(9);

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be Four Hundred Twenty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$423,333.33) *and* litigation costs and expenses not to exceed Twenty-Five Thousand Dollars (\$25,000.00), to be paid to Class

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 Counsel. Agreement at §III(O)(10);

2 c. A “**PAGA Settlement**” of Fifty Thousand Dollars (\$50,000.00) shall be allocated
3 from the Gross Settlement Amount for settlement of claims for civil penalties under the Private
4 Attorneys General Act of 2004 (“PAGA Settlement”). The Settlement Administrator shall pay 75% of
5 the PAGA Settlement to the Labor and Workforce Development Agency (“LWDA Payment”). The
6 Settlement Administrator shall distribute 25% of the PAGA Amount to the Aggrieved Employees
7 (“Aggrieved Employee Payment”). Agreement at §III(O)(11); and,

8 d. “**Settlement Administration Costs**” not to exceed Twenty Thousand Dollars
9 (\$20,000.00) payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia*, the
10 administration of the Notice Packet and Individual Settlement Payments. Agreement at §III(O)(12).

11 4. The “**Net Settlement Amount**” of approximately \$731,666.67 (Gross Settlement
12 Amount minus the requested Class Representative Service Awards, Class Counsel Award, PAGA
13 Settlement and Settlement Administration Costs) which will be allocated to all Settlement Class
14 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
15 worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class
16 Members who do not opt out of the Settlement Class resulting in an average Individual Settlement
17 Share of **\$601.69**. Agreement at §III(O)(1); JCL Dec., ¶ 6.

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

25 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
26 approval and falls within the range of reasonableness. The average Individual Settlement Share to the
27 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
28 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs

respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants operate businesses that produce construction aggregates like crushed stone, sand, gravel, asphalt, and ready-mixed concrete. Defendants operate facilities throughout California, including in the counties where Plaintiffs worked. This action asserts claims on behalf of Defendants' non-exempt employees who are or previously were employed in California. Plaintiff Guzman worked for Defendants as a non-exempt employee in California from April of 2020 to November of 2020. Plaintiff Sancho worked for Defendants as a non-exempt employee in California from 1990 to August of 2019. At all times during their employment, Plaintiffs earned hourly wages and were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendants' written policies and procedures contained in, among other documents, the Employee Handbook and Hourly Employee Bulletins and Policies. JCL Dec., ¶ 8; Declaration of Gabriel Guzman Jr. ("Guzman Dec.") at ¶ 4; Declaration of James Sancho ("Sancho Dec.") at ¶¶ 3-4.

Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to reimburse for required business expenses. Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and reimbursed for all required business expenses. JCL Dec., ¶ 9.

On March 30, 2021, Plaintiff Guzman served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice") and served the same on Defendants. Plaintiff Guzman's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA").

1 JCL Dec., ¶ 10.

2 On June 3, 2021, Plaintiff Guzman filed a class action complaint in the San Diego Superior
3 Court, Case Number 37-2021-00024583-CU-OE-CTL (the “*Guzman* Class Action”). The *Guzman*
4 Class Action alleged nine causes of action against Defendants for: (1) Unfair Competition in Violation
5 of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of
6 California Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation
7 of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation
8 of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to
9 provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the
10 applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of
11 California Labor Code section 226; (7) Failure to reimburse employees for required expenses in
12 violation of Cal. Lab. Code § 2802; (8) Failure to provide wages when due in violation of California
13 Labor Code sections 201, 202 and 203; and (9) Violation of Private Attorneys General Act [Labor Code
14 §§ 2698, *et seq.*]. On December 9, 2021, Plaintiff Guzman filed the First Amended Complaint (“FAC”)
15 against Defendants dismissing the cause of action for violations of PAGA. On December 13, 2021,
16 Plaintiff Guzman filed a representative action complaint in San Diego Superior Court, Case Number
17 37-2021-00052064-CU-OE-CTL (the “*Guzman* PAGA Action”). The *Guzman* PAGA Action alleges
18 a single cause of action for Violations of the Private Attorney General Act at Labor Code Sections 2698
19 *et seq.* JCL Dec., ¶ 11.

20 On May 20, 2020, Plaintiff Sancho filed a Notice of Violations with the LWDA and served the
21 same on Defendant Vulcan Materials Company. JCL Dec., ¶ 12.

22 On May 20, 2020, Plaintiff Sancho filed the *Sancho* Action against Defendant Vulcan Materials
23 Company for: (1) Failure to pay all wages; (2) Failure to furnish an accurate, itemized wage statement
24 upon payment of wages in violation of California Labor Code § 226; (3) Failure to pay all wages owed
25 at termination in violation of California Labor Code § 203; and (4) Violations of California Business
26 & Professions Code §§ 17200, *et. seq.* On June 26, 2020, the *Sancho* Action was removed to the United
27 States District Court for the Eastern District of California. On October 28, 2020, Plaintiff Sancho filed
28 a First Amended Complaint adding a claim for penalties pursuant to California Labor Code § 2698, *et*

1 seq. (PAGA)). On February 18, 2022, the *Sancho* action was dismissed. JCL Dec., ¶ 13.

2 To facilitate the Settlement, and review by this Court, the Parties stipulated to the filing of a
3 Second Amended Complaint in the *Guzman* Class Action to incorporate the claims and factual
4 allegations asserted in the *Guzman* PAGA Action and the *Sancho* Action as well as to add Plaintiff
5 James Sancho as a named plaintiff in the *Guzman* Class Action. The Second Amended Complaint is
6 in the format reflected as Exhibit B in the Settlement Agreement. JCL Dec., ¶ 14.

7 Plaintiff Guzman commenced written discovery in January of 2021. Prior to Defendants'
8 deadline to respond to Plaintiff Guzman's discovery, the Parties agreed to mediate the Action. To
9 prepare for mediation, the Parties agreed to informally produce additional documents and data points
10 subject to the mediation privilege, including but not limited to, the Class Members' time data and
11 certain payroll data points. As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at
12 Desmond, Marcello & Amster ("DMA") to analyze Defendants' time and payroll data. JCL Dec., ¶
13 15.

14 On November 2, 2021, the Parties participated in a full day mediation presided over by Tripper
15 Ortman, Esq., a well-respected wage and hour class action mediator. The mediation concluded without
16 a settlement. However, following the mediation, each side, represented by its respective counsel,
17 continued arms-length settlement negotiations and bargaining, with the assistance of Mediator Ortman,
18 until they agreed to settle the Action which was memorialized in the form of a Memorandum of
19 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
20 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 16.

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

22 Months before filing any one of the Actions, Class Counsel began its pre-filing investigation into
23 the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
24 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their
25 employment, including time and payroll records. At the conclusion of the interviews, Class Counsel
26 determined that each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claim that Defendants
27 failed to, among other things, pay for all time worked and to provide compliant meal and rest periods.
28 JCL Dec., ¶ 17.

1 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
2 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
3 mediation, Class Counsel requested documents and data points to further evaluate Plaintiffs' claims
4 and Defendants' liability exposure to the Class Members. In response to Class Counsel's request,
5 Defendants produced the time records for the Class Members, aggregate workweek and pay period data
6 for the Class Members, and time records and payroll data for the Class Members. In total, Defendants
7 produced more than 8.9 million unique cells of time and payroll data for Class Counsel to analyze. JCL
8 Dec., ¶ 18.

9 Class Counsel then retained the statisticians and economists at DMA to evaluate the Class
10 Members' payroll and time data. DMA provides data analysis and damage modeling consulting
11 services specializing in wage and hour class actions. DMA's team of financial and data analysts are
12 credentialed and experienced experts in their fields and have provided their expertise on thousands of
13 cases. Stated differently, the DMA is uniquely qualified to analyze Defendants' time and payroll data.
14 JCL Dec., ¶ 19.

15 DMA analyzed Defendants' time and payroll data to assist in the development of various damage
16 models. Among other things, DMA determined the approximate number of workweeks, pay periods
17 and average hourly rate during the Class Period. DMA also estimated the number of meal and rest
18 period violations, the amount of paid missed meal period premiums paid during the Class Period, and
19 the amount of off-the-clock work performed by the Class Members during the Class Period. DMA
20 calculated and created a damage model for Defendants' potential liability exposure while accounting
21 for the uncertainties of continued litigation. The damage model informed and guided Class Counsel
22 during the mediated settlement discussions. JCL Dec., ¶ 20.

23 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
24 Plaintiffs' suitability as putative class representatives through interviews, background investigations,
25 and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching
26 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
27 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendants'
28 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues

1 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants'
2 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
3 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
4 claims being settled, as well as the impediments to recovery, such as to make an independent
5 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 21.

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

7 On November 2, 2021, the Parties participated in a full day mediation presided over by Tripper
8 Ortman, Esq., a well-respected wage and hour class action mediator. Mediator Ortman helped manage
9 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
10 The Parties made substantial progress with Mediator Ortman's assistance. Namely, the Parties
11 exchanged information regarding their respective claims and defense, including their respective
12 evaluation of the damages. The mediation concluded without a settlement. However, following the
13 mediation, each side, represented by its respective counsel, continued arms-length settlement
14 negotiations and bargaining, with the assistance of Mediator Ortman, until they agreed to settle the
15 Action which was memorialized in the form of a Memorandum of Understanding. The complete and
16 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
17 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL
18 Dec., ¶ 24.

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

20 1. The Composition of the Settlement Class Members

21 The proposed Settlement Class consists of all of Defendants' current and former non-exempt
22 employees employed in California between June 3, 2017 to February 11, 2022. The Settlement Class
23 excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior
24 to the Mediation, Defendants estimated that the Class consisted of 1,216 individuals who collectively
25 worked approximately 170,686 workweeks from June 3, 2017 through October 14, 2021. Defendants
26 subsequently estimated that Class Members worked approximately 182,945 Workweeks during the
27 Class Period. Agreement at §III(A)(2).

28 ///

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of One Million Two Hundred Seventy Thousand Dollars (\$1,270,000.00). The Gross
4 Settlement Amount Fund: (1) Individual Settlement Payments to the Settlement Class; (2) Class
5 Representative Service Awards of \$10,000 to each Plaintiff for their services on behalf of the
6 Settlement Class and, equally important, for a general release of claims; (3) a PAGA Settlement in the
7 amount of \$50,000; (4) Settlement Administration costs estimated at \$20,000; (5) Class Counsel Award
8 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated at
9 \$423,333.33 and for actually incurred litigation costs and expenses not to exceed \$25,000. See
10 generally Agreement at §III(O).

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

16 3. The Funding Date

17 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$1,270,000
18 Gross Settlement Amount within sixty-five (65) days of the Court's entry of the order granting final
19 approval of this Settlement. Agreement at §I(M-N).

20 4. Formula for Calculating Individual Settlement Payments

21 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
22 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
23 worked for Defendants in California during the Class Period. The Class Data provided by Defendants
24 to the Settlement Administrator will include the number of Workweeks for each Class Member and the
25 number of PAGA Pay Periods worked during the relevant periods. Agreement at §I(F). Each
26 Settlement Class Member's final Individual Settlement Payment for purposes of payment will be
27 calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
28 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class

Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at §III(O)(1).

Given that there are approximately 1,216 Settlement Class Members, the average gross recovery is approximately \$601.69 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims, which are “any and all wage and hour claims, rights, debts, demands, damages, liabilities and causes of action that were asserted or could have been asserted based on the factual allegations in the Second Amended Complaint in the *Guzman* Class Action including all claims for unpaid wages, including failure to pay minimum wage, straight time compensation, overtime compensation, and interest; payment for all hours worked, including off-the-clock work; premium payments for meal period or rest break violations; waiting time penalties; reimbursement for all necessary business expenses; failure to keep accurate records; damages or penalties for inaccurate wage statements; unfair business practices pursuant to Business & Professions Code, section 17200, et seq.; claims for restitution, disgorgement, and other equitable relief, liquidated damages, or punitive damages; and attorneys’ fees and expenses, and shall include claims arising under the California Labor Code (including, but not limited to, sections 201, 202, 203, 204, 205, 210, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and/or the applicable California Industrial Welfare Commission Wage Order(s). Notwithstanding any limitation discussed below, the release of claims for waiting-time penalties and inaccurate itemized wage statement penalties shall encompass such claims regardless of the underlying theory.” Agreement at §§I(BB) and III(B).

///

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

Generally, upon the Funding Date, Plaintiffs, acting as the representatives of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all Released PAGA Claims, which are “all PAGA claims, rights, debts, demands, damages, liabilities and causes of action for civil penalties that were alleged, or could have been alleged based on the facts alleged in the Second Amended Complaint in the *Guzman* Class Action or Plaintiffs’ PAGA notices to the LWDA which occurred during the PAGA Period, including those based on alleged violations of California Labor Code sections 201, 202, 203, 204, 205, 210, 218.5, 218.6, 221, 222, 223, 224, 226, 226.3, 226.7, 227.3, 510, 511, 512(a), 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2751, 2800, and 2802 and the applicable California Industrial Welfare Commission Wage Order(s), whether for penalties, attorneys’ fees and costs, and expressly excluding all other claims.” Agreement at §§I(CC) and III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$1,270,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the fairness of the proposed settlement”).)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” (See *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length

1 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
2 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
3 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
4 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
5 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
6 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
7 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
8 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
9 action litigation”).)

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

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

18 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
19 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
20 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
21 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
22 § 11.51.)

23 The Parties participated in mediation the highly respected mediator Tripper Ortman, Esq.
24 Mediator Ortman managed the Parties’ expectations and provided a useful, neutral analysis of the issues
25 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL), 2008
26 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably
27 against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
28 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the

proceedings were free of collusion and undue pressure.”).) At all times, the Parties’ negotiations were at an arm’s length, adversarial and non-collusive. The matter resolved and the Parties reached a settlement, which was memorialized in a Memorandum of Understanding. JCL Dec., ¶ 24.

Once the Parties agreed to a settlement which was subsequently memorialized in the form of a Memorandum of Understanding, the Parties engaged in protracted negotiations regarding the written terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, witness interviews, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. The investigation allowed to Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 22.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs’ claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 23.

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

The Gross Settlement Amount of \$1,270,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.”

(*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 26.

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

In conclusion, the settlement of \$1,270,000.00 represents approximately 11.2% of the value of the maximum potential *damages* at issue. Even when including the penalties for Plaintiffs’ claims for wage statement violations and waiting time penalties under *Labor Code* Sections 203 and 226, the settlement represents up to 7.1% of the maximum potential liability, assuming all of these amounts could be proved at trial. This is well within the bounds of reasonableness. (*See Vicerel v. Mistras Grp., Inc.* (N.D. Cal. 2016) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. 2017) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *Stovall-Gusman v. W.W. Granger, Inc.*, (N.D.

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

Cal. 2015) 2015 WL 3776765 at * 4 (Approving California wage and hour misclassification settlement where the class received approximately 7.3% of the estimated trial award was within the “range of reasonableness.”).)The following summarizes Defendants’ estimated exposure. JCL Dec., ¶ 27.

(1) Estimated Exposure for Off-the-Clock Work

One of Plaintiffs’ primary claims in the Actions was that Defendants failed to pay for all hours worked. Specifically, Plaintiffs asserted that Defendants required Plaintiffs to work off-the-clock before Plaintiffs’ shifts started and after they ended by requiring Plaintiffs to wear personal protective equipment (“PPE”) in order to perform their job duties for Defendants. The donning and doffing process required Plaintiffs to show up to work before their shift began and after their shift ended. Plaintiffs contend that Defendants maintained a similar policy at its locations throughout California during the Class Period. JCL Dec., ¶ 28.

Defendants vigorously denied liability for claim. Defendants asserted that their policies and procedures directed its respective department leadership to ensure all work is conducted while on-the-clock. Defendants asserted that any deviation from these their policies were location specific and, thus, created individualized issues of liability unsuitable for class treatment. JCL Dec., ¶ 29.

Notwithstanding Defendants’ arguments, Plaintiffs perceived the off-the-clock as one of the strongest claims in the Actions. Assuming five (5) minutes of unpaid compensable time per day worked by the Class Members during the Class Period, DMA estimated Defendants’ exposure for this claim at \$3,646,919.74. JCL Dec., ¶ 30.

(2) Estimated Damages for Meal Period Violations

Plaintiffs also allege that Defendants failed to provide compliant meal periods. Plaintiffs contended that because of Plaintiffs’ and Class Members’ rigorous work requirements, the Class Members were often denied complaint meal periods. JCL Dec., ¶ 31.

Conversely, Defendants again argued that its policies and procedures required uninterrupted, statutorily compliant meal breaks. Similarly, Defendants argued any divergence from these policies were not systematic and, if they existed at all, were location specific. Defendants also asserted that it maintained facially compliant meal period policies and practices throughout the Class Period. Finally, Defendants argued that most of the Class Members were subject to various collective bargaining

1 agreements that preempted the California Labor Code with respect to meal periods, thereby completely
2 invalidating this claim. Thus, Defendants argued that there was no potential liability for Plaintiffs'
3 alleged meal period violations. JCL Dec., ¶ 32.

4 Plaintiffs' meal period claim (together with the rest period claim) likely represented some of the
5 most factually contested claim in the Actions. Accounting for the strength of Defendants' defenses,
6 and the arguably individualized nature of the claim, Plaintiffs heavily discounted Defendants' potential
7 liability for meal period violations. Plaintiffs estimated the damages for this claim at \$2,992,842.50.
8 JCL Dec., ¶ 33.

9 (3) Estimated Damages for Rest Period Violations

10 Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically,
11 Plaintiffs alleged that because of their rigorous work schedule they were not able to take timely and
12 duty-free rest periods. JCL Dec., ¶ 34. WC Wage Orders 5-2001 and 7-2001 provide that "[a]uthorized
13 rest period times shall be counted as hours worked for which there shall be no deduction from wages."
14 Lab. Code § 226.7(c) provides that "if an employer fails to provide an employee a meal or rest or
15 recovery period in accordance with a state law, including ... an ... order of the Industrial Welfare
16 Commission, the employer shall pay the employee one additional hour of pay at the employee's regular
17 rate of compensation for each workday that the meal or rest or recovery period is not provided."

18 Again, Defendants denied liability and asserted that it maintained legally compliant rest period
19 policies and practices throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary
20 burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely,
21 on Class Member testimony, making it a riskier claim at class certification and liability stages.
22 Defendants likely would have argued that only a small number of Class Members missed their rest
23 breaks. Certification likely would have required depositions of Class Members who provided
24 declarations, and Defendants surely would have obtained opposing declarations stating either rest
25 breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D.
26 Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
27 plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this
28 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.

Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Finally, Defendants argued that most of the Class Members were subject to various collective bargaining agreements that preempted the California Labor Code with respect to rest periods, thereby completely invalidating this claim. Accordingly, the rest break claim was heavily discounted in Plaintiffs’ valuation of the case and was estimated at \$2,992,842.50. JCL Dec., ¶ 35.

(4) Estimated Exposure for Unreimbursed Business Expenses

Plaintiffs alleged that Defendants required the Class Members to incur personal expenses for the use of their personal cell phones. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. Specifically, Plaintiffs alleged Defendants required Plaintiffs and Class Members to use their personal cell phones in order to perform work-related tasks, but Defendants failed to reimburse Plaintiffs and Class Members for the required business expenses in violation of Labor Code Section 2802. JCL Dec., ¶ 36.

Again, Defendants vigorously denied any liability for this claim. Defendants argued that on the rare occasions where employees did incur business expenses, these expenses were fully reimbursed. Defendants also offered evidence that it provides all supplies and equipment for employees to do their jobs. This claim was also heavily discounted based on Defendants’ defenses. Plaintiffs estimated Defendants’ exposure for this claim at \$1,660,800. JCL Dec., ¶ 37.

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

Plaintiffs alleged that Defendants’ alleged violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel considered these penalties and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue that Plaintiffs could not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants could argue that Plaintiffs could not show that Class Members suffered an “injury” because of wage statement violations, as required by Labor Code section 226. Plaintiffs would have to overcome precedent to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp.*, 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal.

2011) (finding insufficient evidence of bad faith or actual injury). These claims represented Plaintiffs' most legally precarious and uncertain claims. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendants' maximum exposure for these claims at approximately \$6,599,182.40 (approximately \$3,560,582.40 for waiting time and \$3,038,600 for wage statement). JCL Dec., ¶ 38.

(6) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure was approximately \$11 million dollars. JCL Dec., ¶ 39.

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

Here, the Parties have agreed to allocate \$50,000 to PAGA, which represents approximately 4% of the Gross Settlement Amount. California Courts have held that an allocation to PAGA of an amount equal to 1% of the gross settlement amount is fair, just, and reasonable. See *Andres v. Laboratory Corporation of America*, No. 2:13-cv-08773-GW-VBK (C.D. Cal. Nov. 3, 2015) (gross settlement fund of \$520,000, of which \$5,000 (or 1%) was allocated to the settlement of PAGA penalties); *Hightower v. JPMorgan Chase Bank, N.A.*, No. 2:11-cv-01802-PSG-PLA (C.D. Cal. Oct. 5, 2015; Judge Philip S. Gutierrez) (gross settlement fund of \$12 million, of which \$25,000 (or 0.2%) was allocated to the settlement of PAGA penalties); *Hicks v. Toys 'R Us, Inc.*, 2:13-cv-01302-DSF-JCG (C.D. Cal. Aug. 4, 2014; Judge Dale S. Fischer) (gross settlement fund of \$4 million, of which \$5,000 (or 0.13%) was allocated to the settlement of PAGA penalties); *Valdez v. Kevin Jewelers*, No. 502920 (Los Angeles County Superior Court Sept. 24, 2015; Judge John Shepard Wiley, Jr.) (gross settlement fund of \$345,000, of which \$5,000 (or 1.4%) was allocated to the settlement of PAGA penalties); *Mendiola v.*

1 *Tyco Electronics Corp.*, RIC 1400721 (Riverside County Super. Ct. May 29, 2015; Judge John W.
2 Vineyard) (gross settlement fund of \$495,000, of which \$20,000 (or 4%) was allocated to the settlement
3 of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April
4 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or
5 0.3%) was allocated to the settlement of PAGA penalties). JCL Dec., ¶ 40.

6 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the
7 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
8 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
9 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
10 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation
11 for each pay period the employee worked. Again, Defendants raised several defenses that presented
12 serious threats to the claims of the Plaintiffs and the Aggrieved Employees. Defendants asserted that its
13 employment practices complied with all applicable Labor Laws. In addition to those arguments
14 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
15 (2019) 43 Cal.App.5th 885, weakened Plaintiffs' claims, on liability, value, and manageability as to the
16 rest period claims. In all, Plaintiffs' PAGA liability exposure is hotly contested. JCL Dec., ¶ 41.

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

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

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
3 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
4 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
5 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
6 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
7 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
8 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
9 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
10 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
11 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
12 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
13 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
14 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
15 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
16 certification of driver meal and rest period claims based on the predominance of individual issues).
17 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
18 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
19 settlement. JCL Dec., ¶ 42.

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

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

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

2 Finally, continuing to litigate this action would require continued and extensive resources
3 coupled with significant Court time to proceed through trial and post-trial motions; which can often
4 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
5 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
6 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
7 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
8 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 44. “Avoiding such a trial and
9 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
10 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
11 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
12 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

13 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,270,000 that is
14 roughly 11.2% of Defendants’ liability exposure for damages, and 7.1% of Defendants’ liability
15 exposure for damages and penalties. Given the amount of the settlement here, as compared to potential
16 value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and
17 reasonable. JCL Dec., ¶ 45.

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

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

28 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain

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 request for exclusions or object to the Settlement, the date
6 for the final approval hearing, the formula used to calculate settlement payments, and the terms and
7 scope of the Released Class Claims. Agreement at §III(N). This method was negotiated by the Parties
8 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
9 effective administration of the Settlement. JCL Dec., ¶ 46.

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.").)

14 **C. The Court Should Preliminarily Approve the Class Representative Enhancement Awards**

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
27 to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
28 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 Settlement provides for Class Representative Service Awards of \$10,000⁴ for each Plaintiff.
2 The service awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the Actions,
3 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
4 the status of their cases and the strategies for prosecuting the claims, reviewing the proposed Settlement
5 to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to
6 provide Defendants a general release of all claims arising out of their employment. JCL Dec., ¶ 48.

7 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
8 Representative Service Awards once preliminary approval of the Settlement is granted. Plaintiffs
9 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
10 Representative Service Awards. JCL Dec., ¶ 49.

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

12 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
13 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
14 California courts routinely award attorneys' fees equaling one-third or more of the potential value of

15 ⁴ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California courts (both federal
16 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int'l, LLC*, No.
17 BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*
18 *Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement
19 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
20 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
21 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
22 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
23 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
24 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528
25 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
26 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
27 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
28 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No.
BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
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); *Aguilar 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).

the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average Individual 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 Class Counsel award is fair and reasonable. JCL Dec., ¶ 50.

Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 51.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 52; *Guzman Dec.* ¶¶ 6-9; *Sancho Dec.*, ¶¶ 4-12.

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

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

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

Because all Class Members are Defendants’ current and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 53.

The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. JCL Dec., ¶ 54.

Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation and evaluating

1 the proposed settlement to assure that it is fair. JCL Dec., ¶ 55.

2 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
3 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
4 certified, and gained state court settlement approval of the same class-wide causes of action that are at
5 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
6 qualified to represent the interests of this Class. JCL Dec., ¶¶ 58-65, Declaration of Shani O. Zakay, ¶¶
7 1-3, Declaration of Marcus Bradley, ¶¶ 3-8.

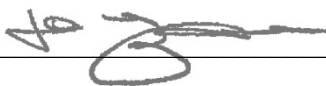
8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
11 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
12 adjudication. JCL Dec., ¶ 56.

13 IV. CONCLUSION

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

17 Dated: September 20, 2022

JCL LAW FIRM, APC

18 By: 
19
20 Jean-Claude Lapuyade, Esq.