JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
John L. Nitti (State Bar #330752)
Carolina Faccin (State Bar #340855)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com
jnitti@jcl-lawfirm.com
cfaccin@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K Hom (State Bar #327243)
Jaclyn Joyce (State Bar #285124)
3110 Camino Del Rio S, Suite 308
San Diego, CA 92108
Telephone: (619) 255-9047
shani@zakaylaw.com
jackland@zakaylaw.com
jaclyn@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALAA GADO KANA, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, v. DAVIDSON HOTEL COMPANY, LLC; a Delaware limited liability company; DHC SD HOLDINGS LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No: 24CU018187C **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: April 17, 2026 Time: 10:30 a.m. Judge: Hon. Carolyn M. Caietti Dept.: C-70

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I. INTRODUCTION

Plaintiff Alaa Gada Kana ("Plaintiff") seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement"),[1] which if approved, would provide valuable monetary relief for approximately 219 Class Members and 142 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all persons who are or previously were employed by Defendant Davidson Hotel Company, LLC and/or Defendant DHC SD Holdings, LLC ("Defendants") at the Hilton San Diego Gaslamp Quarter location and classified as non-exempt employees ("Class") at any time during the period beginning October 18, 2020, through July 30, 2025 ("Class Period"). Agreement at §§ I(H), I(J).

   a. The **"Settlement Class Members"** all Class Members who have not submitted a timely and valid request for exclusion. Agreement at § I(LL).

   b. The "**Class Size**" is comprised of approximately 219 individuals who collectively worked approximately 17,337 Workweeks through July 30, 2025. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** and **"PAGA Period"** means person who are or previously were employed by Defendants at the Hilton San Diego Gaslamp Quarter location and classified as non-exempt employees ("Aggrieved Employees") at any time during the period beginning October 18, 2023, through July 30, 2025 ("PAGA Period"). Agreement at §§ I(C), I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(M)(6). At the time of mediation, there were approximately 142 Aggrieved Employees during the PAGA Period. SCJ Dec., ¶ 4.

3. The "**Gross Settlement Amount**" is Four Hundred Forty Thousand Dollars and Zero Cents ($440,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

   a. A "**Service Award**" in the amount of $10,000, or in an amount that the Court authorizes to be paid to the Class Representative, in addition to his Individual Settlement Payment and

[1] The Agreement is attached as Ex "1" to the Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 2. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 2. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

his individual Aggrieved Employee Payment, in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at § I(II).

b. **"Class Counsel Award"** of fees and expenses that the Court authorizes to be paid to Class Counsel for the services they have rendered for Plaintiff, the Class Members, and the Aggrieved Employees in the Action, consisting of attorneys' fees currently not to exceed one-third of the Gross Settlement Amount currently estimated to be $146,666.67 ***plus*** costs of up to $25,000.00. Attorneys' fees will be divided between Class Counsel in the following percentages (50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC). Agreement at §§ I(E);

c. A "**PAGA Payment**" of Twenty Thousand Dollars and Zero Cents ($20,000.00) to be allocated from the Gross Settlement Amount, with 35% of the payment ($7,000.00) going to the Aggrieved Employees ("Aggrieved Employee Payment") and 65% of the payment ($13,000.00) going to the Labor and Workforce Development Agency ("LWDA Payment"). The amount of the PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(l). Agreement at §§ I(X); and

d. "**Settlement Administration Costs**" paid to the Settlement Administrator from the Gross Settlement Amount for administering the Settlement currently estimated not to exceed $6,900.00. Agreement at §§ I(JJ).

4. The "**Net Settlement Amount**" of approximately $231,433.33 (Gross Settlement Amount, less the requested Class Counsel Award, Service Award, PAGA Payment, and Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ III(N)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of ***$1,056.***77. SCJ Dec., ¶ 4.

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

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation and Mediated Settlement

Defendants operate a hotel management company in the state of California, including San Diego County, where Plaintiff worked. Plaintiff was employed by Defendants at the Hilton San Diego Gaslamp Quarter location since October 2008, as a non-exempt employee. Declaration of Alaa Gado Kana ("Kana Dec.") at ¶ 4. Plaintiff alleges that he was denied legally compliant minimum wage and overtime compensation, meal and rest breaks, accurate itemized wage statements, and reimbursements at all times during his employment. Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the Employee Handbook. SCJ Dec., ¶ 6.

Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, compliant reimbursement practices, and they timely paid all wages due upon separation of employment. SCJ Dec., ¶ 7.

On October 18, 2024, Plaintiff served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff'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"). SCJ Dec., ¶ 8.

On October 18, 2024, Plaintiff filed a class action complaint in the San Diego County Superior Court, Case No. 24CU018187C ("Class Action"). The Class Action alleged eight causes of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.;* (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802. SCJ Dec., ¶ 9.

On December 23, 2024, Plaintiff filed a separate representative action complaint in San Diego County Superior Court, Case No. 24CU030160C, alleging a single cause of action for violations of PAGA ("PAGA Action"). On September 15, 2025, Plaintiff filed a First Amended Complaint (the "Operative Complaint") adding a ninth cause of action to the Class Action for Violation of the Private Attorneys General Act [Labor Code §§ 2698 ET SEQ.]. On October 15, 2025, Plaintiff dismissed the PAGA Action. SCJ Dec., ¶ 10.

On July 30, 2025, the Parties participated in a full-day mediation with mediator Tripper Ortman, Esq. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec., ¶ 11.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

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

Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment, including portions of his time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. SCJ Dec., ¶ 12.

Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response, Defendants produced various documents, including but not limited to, copies of Defendants' written policies and Plaintiff's hiring documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendants' failed to, among other things, provide compliant meal and rest periods, to provide accurate wage statements, to pay for all hours worked, to compensate overtime, meal period premiums and sick pay wages at the correct regular rate of pay, and to reimburse for mandatory business expenses. SCJ Dec., ¶ 13.

To prepare for mediation, Defendants produced a sample of the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed thousands of unique cells of time and payroll data. SCJ Dec., ¶ 14.

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

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unreimbursed expenses, and the amount of missed meal and rest period premiums paid during the Class Period. SCJ Dec., ¶ 16.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. SCJ Dec., ¶ 17.

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

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. <u>The Composition of the Settlement Class Members</u>

The proposed Class consists of all persons who are or were previously employed by Defendants at the Hilton San Diego Gaslamp Quarter location and classified as non-exempt employees at any time during the period beginning October 18, 2020, through July 30, 2025. Agreement at § I(H), I(J). The Settlement Class Members exclude any person who submits a timely and valid request for exclusion. Agreement at § I(LL). At the time of mediation, Defendants estimated that the Class was comprised of 219 individuals that worked approximately 17,337 Workweeks during the Class Period. Agreement at § III(A)(2).

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement

Amount of $440,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Service Award of $10,000 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of $20,000; (4) Settlement Administration Costs estimated at $6,900; (5) Class Counsel Award in the amount of $171,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be $146,666.67 plus costs of up to $25,000.00. See generally Agreement at § III(A)(1).

Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at §§ III (N)(1). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § I(O).

3. <u>The Funding Date</u>

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount within sixty-five (65) days of the Effective Date. Agreement at § I(N).

4. <u>Formula for Calculating Individual Settlement Payments</u>

Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for Defendants in California during the Class Period. Agreement at § III(N)(1). The Class Data provided by Defendants to the Settlement Administrator will include each Class Member's full name; last known address; Social Security Number; telephone number, and the number of Workweeks and Pay Periods worked by each Class Member during the Class Period and Aggrieved Employee during the PAGA Period. Agreement at § I(G). The Settlement Administrator will calculate each Class Member's final Individual Settlement Payment by dividing a particular Class Member's total number of Workweeks by the total number of Workweeks for all Class Members, resulting in a Class Payment Ratio for each Class Member. Agreement at § III(N)(1). Each Class Member's Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.* Individual Settlement Payments for members of the Settlement Class Members 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 § *Id*.

Given that there are approximately 219 Class Members, ***the average gross recovery is approximately $1,056.77*** (Net Settlement Amount divided by Settlement Class Members). SCJ Dec., ¶ 4.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § III(B).

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

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, and the State of California (including the LWDA) will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $440,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions,* §§ 11.26 (4th ed. 2002).)

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

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

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.</u>

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

The Parties participated in mediation in front of mediator Tripper Ortman. Mr. Ortman managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated negotiations, mediation concluded with a settlement after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a Memorandum of Understanding (“MOU”). SCJ Dec., ¶ 19.

Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SCJ Dec., ¶ 20.

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, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiff’s claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SCJ Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff’s claims. Based on this 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. SCJ Dec., ¶ 22.

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

The Gross Settlement Amount of $440,000.00 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).)

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

The Gross Settlement Amount of $440,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) ranged between $1,084,361.84 ("Realistic Damages") and $1,989,214.67 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 40.1% ("Realistic

[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").

Damages") and 22.1% ("Maximum Damages") of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. SCJ Dec., ¶ 23.

(1) <u>Defendants' Estimated Exposure for Regular Rate Violations</u>

Plaintiff's primary claim in this Action alleges that Defendants failed to include certain non-discretionary bonuses and commissions when calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation in the form of "Bonus Reg, Banqsvcchg, Gratut, Roomsvcchg, Incentive Pay, Service Charge, and Commission" payments, which were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. Defendants' alleged failure to properly calculate the regular rate of pay for purposes of overtime affected approximately 61.5% of employees and approximately 32.4% of all workweeks. Further, Defendants' alleged failure to properly calculate the regular rate of pay for purposes of meal period premiums affected approximately 32% of Class Members. Furthermore, Defendants' alleged failure to properly calculate the regular rate of pay for purposes of redeemed sick pay affected approximately 29% of Class Members. Combined, these errors resulted in an underpayment of over $16,000 and triggered wage statement penalties, waiting time penalties, and PAGA penalties. SCJ Dec., ¶ 24.

The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

Conversely, Defendants denied liability and asserted they paid the correct rate of pay for purposes of overtime wages, meal period premiums, and redeemed sick pay. Defendants also argued that the bonuses paid were discretionary and did not need to be included in the regular rate calculation.

Accordingly, Plaintiff applied a 25% discount and estimated the range of outcomes for this claim was between $38,069.25 and $50,759.00. SCJ Dec., ¶ 25.

(2) Estimated Damages for Meal Period Violations

Plaintiff alleges that Defendants failed to provide compliant meal periods. Specifically, Plaintiff alleges Defendant unlawfully rounded Class Members' meal periods and found that approximately 45.2% of first meal periods were exactly 30-minutes in length. Additionally, Plaintiff alleged Defendant failed to provide Class Members with second meal periods when Class Members worked shifts between 10-12 hours. In fact, Plaintiff found approximately 93.4% of shifts between 10 and 12 hours were without a recorded second meal period. Furthermore, Plaintiff found that on approximately 86.1% of shifts exceeding 12 hours, during which a second meal period cannot be waived, Defendant did not provide a second meal period to Class Members. SCJ Dec., ¶ 26.

Defendants argued, among other things, that it provided Class Members and Aggrieved Employees with the opportunity to take compliant meal periods, including second meal periods. Defendants also argued that they had in place compliant meal period policies and enforceable meal period waivers. Further, Defendants allege that on those limited instances where a Class Member was not able to take a compliant meal period, and did not otherwise waive a compliant meal period, it paid meal period premiums. Thus, Defendants argued that any claimed violations required a highly individualized inquiry not suitable to class treatment. SCJ Dec., ¶ 27.

In light of these defenses, Plaintiff applied a 50% discount and estimated that the damages for this claim ranged from approximately $288,890.93 to approximately $577,781.85. SCJ Dec., ¶ 28.

(3) Defendants' Estimated Exposure for Unpaid Wages

Plaintiff also alleged that Defendants failed to pay their employees for all hours worked. Specifically, Plaintiff asserted that Defendants failed to pay employees for the time spent performing pre-shift covid screenings while off-the-clock. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. SCJ Dec., ¶ 29.

Defendants vigorously denied liability for this claim. Defendants emphasized that it had to enforce state mandates to keep its workforce safe. Defendants also argued that the covid checks were minimal in time, and employees conducted these checks while on the clock. Further, Defendants claimed these checks were not in effect during the entire Class Period. Consequently, Plaintiff applied a 75% discount to this claim and estimated Defendants' exposure for this claim ranged between $23,874.00 and $95,496.00. SCJ Dec., ¶ 30.

(4) Defendants' Estimated Exposure of Rest Period Violations

Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved Employees were not able to take timely and duty-free rest periods and were forced to remain on premise under Defendants' control. SCJ Dec., ¶ 31.

Defendants denied liability and asserted that it maintained legally compliant rest period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely almost entirely on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this 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."). SCJ Dec., ¶ 32.

Accordingly, Plaintiff applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between approximately $385,195.41 to approximately $770,390.82. SCJ Dec., ¶ 33.

(5) Defendants' Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendants required Class Members and Aggrieved Employees to use their personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by Defendants. Specifically, Plaintiff alleged that he and Class Members were required to use their personal cell phones in order to access a phone application called Workday to clock in and out, and to communicate with management. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…"). BCG estimated a reasonable $20 monthly reimbursement rate for Class Members for the use of their personal cell phones. SCJ Dec., ¶ 34.

Again, Defendants denied any liability for this claim. Defendants argued that its written policies provide for reimbursement to employees for necessary business expenses incurred in the discharge of the employees' duties or at Defendants' direction. Plaintiff applied an 85% discount and estimated that Defendants' exposure for this claim ranged between approximately $5,689.50 and approximately $37,930.00. SCJ Dec., ¶ 35.

(6) <u>Defendants' Estimated Exposure for Wage Statement Violations</u>

Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleged that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code, failure to adequately compensate for off-the-clock work performed, and failure to correctly calculate employee's regular rate of pay, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (See *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff discounted this claim 25% to account for this risk. Plaintiff estimated that Defendants' exposure on this claim ranged between $265,575.00 and $354,100.00. SCJ Dec., ¶ 36.

(7) <u>Defendants' Estimated Exposure for Waiting Time Penalties</u>

Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for waiting time penalties. Specifically, Defendants argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel's Realistic Model discounted the waiting time penalty claim by 25% and estimated Defendants' exposure for these claims ranged between $77,067.75 and $102,757.00. SCJ Dec., ¶ 37.

(8) <u>Defendants' PAGA Exposure</u>

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiff estimated Defendants' exposure for PAGA penalties exceeded $886,450.00. SCJ Dec., ¶ 38. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 4.5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Sixty-Five percent (65%) of the PAGA Payment ($13,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining thirty-five percent (35%) of the PAGA Payment ($7,000.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts and should be approved. SCJ 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).

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

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.

a. 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 *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also 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). SCJ Dec., ¶ 40.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*

Association (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also 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."). SCJ Dec., ¶ 41.

Finally, even if a class is certified and Defendants are found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and decertification of the class. These post-certification risks 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). SCJ Dec., ¶ 42.

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. SCJ Dec., ¶ 43.

"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 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 44. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $440,000.00 that is between approximately 40.1% of Defendants' *class-wide* liability exposure for damages, and 22.1% of Defendants' maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 45.

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

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

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then

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

mail the proposed Notice Packet to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § III(M)(2). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SCJ Dec., ¶ 46.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) SCJ Dec., ¶ 47.

C. The Court Should Preliminarily Approve the Service Award

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

The Settlement provides for a Service Award of $10,000.00 to Plaintiff. The Service Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendants a general release of all claims arising out of his employment. SCJ Dec., ¶ 48.

Class Counsel, on behalf of Plaintiff, will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. SCJ Dec., ¶ 49.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. SCJ Dec., ¶ 50.

Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ Dec., ¶ 51.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 52.

1. <u>The Standard for Class Certification</u>

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. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

2. <u>The Proposed Participating Class is Ascertainable and there is a Well-Defined Community of Interest Among the Class Members.</u>

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. SCJ Dec., ¶ 53.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire 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 Members. SCJ Dec., ¶ 54.

Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SCJ Dec., ¶ 55.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SCJ Dec., ¶ 56, Declaration of Jean-Claude Lapuyade, ¶¶ 3-8, Declaration of Shani Zakay, ¶¶ 1-3.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. SCJ Dec., ¶ 57.

IV. CONCLUSION

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

Dated: March 20, 2026

JCL LAW FIRM, APC

By: ______________________________

John L Nitti, Esq.