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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

PETRA RIOS, an individual, on behalf of herself, and on behalf of all persons similarly situated, Plaintiff, v. PURESERVE BUILDING SERVICES, INC., a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 24CV003470 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: November 21, 2025 Time: 8:30 a.m. Judge: Hon. Carrie M. Panetta Dept.: 14

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTS AND PROCEDURE 3

A. Overview of the Litigation 3

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues 4

C. The Parties Settled Following Mediation 5

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims 5

1. The Composition of the Settlement Class 5

2. The Settlement Consideration 6

3. The Funding Date and Installment Plan 6

4. Formula for Calculating Individual Class Payments 6

5. Release by Participating Class Members 7

6. Release by Aggrieved Employees 7

III. ARGUMENT 7

A. The Court Should Preliminarily Approve the Proposed Class Action Settlement 7

/ / /

1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel. 8

2. Class Counsels' Investigation Provided an Objective Measurement of the Settlement's Reasonableness. 9

3. The Settlement Falls Within the Recognized Range of Reasonableness. 10

a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness. 10

(1) Estimated Damages for Meal Period Violations 11

(2) Estimated Damages for Rest Period Violations 11

(3) Estimated Exposure for Unpaid Wages 12

(4) Estimated Exposure for Unreimbursed Business Expenses 13

(5) Estimated Exposure for Wage Statement Violations and Waiting Time Penalties 13

(6) Defendant's PAGA Exposure 14

b. Inherent Risks of Continued Litigation Support Preliminary Approval. 15

B. The Proposed Notice Informs the Class about the Case and Settlement 17

C. The Court Should Preliminarily Approve the Service Award 18

D. The Court Should Preliminarily Approve the Class Counsel Award 19

E. Provisional Certification for Settlement Purposes Only Is Appropriate

……………………………………………………………………………………………..20

1. The Standard for Class Certification
……………………………………………………………………………………………..20

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

IV. CONCLUSION
……………………………………………………………………………………………..22

/ / /

<u>TABLE OF AUTHORITIES</u>
CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135, 1151……………………………………………………..…8
Ali v. U.S.A. Cab Ltd.
(2009) 176 Cal.App.4th 1333, 1341………………………………………………………15
Alonzo v. Maximus, Inc.
832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011)……….…………...…………………….14
Brinker v. Superior Court
53 Cal. 4th 1004, 1021-22 (2012)……………………………………………………16, 21
Brown v. Fed Express Corp.
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88…………………………………………………16
Bufil v. Dollar Financial Group, Inc.
(2008) 162 Cal.App.4th 1193, 1207……………………………………………………..20
Campbell v. Best Buy Stores, L.P.
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13…………………..………..………….........16
Carrington v. Starbucks Corp.,
30 Cal. App. 5th 504, 517, 539 (2018)………………………………….……..……………...15
Cart v. Super. Ct.
(1975) 50 Cal.App.3d 960, 972…………………………………………………………18
Cellphone Termination Fee Cases
180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010)………………………………..….8, 18
Chance v. Super. Ct.
(1962) 58 Cal.2d 275, 290……………………………………………………………….18
Chavez v. Netflix, Inc.
(2008) 162 Cal.App.4th 43, 66 n.11……………………………………………………..19
Clark v. American Residential Services LLC
(2009) 175 Cal.App.4th 785……………………………………………………..…………..19
D'Amato v. Deutsche Bank
(2d. Cir. 2001) 236 F.3d 78, 85…………………………………………………………....9
Dunk v. Ford Motor Co.
48 Cal. App. 4th 1794, 1802 (1996)……………………………….……………………..8
Duran v. U.S. Bank National Association
(2014) 59 Cal.4th 1, 31…..………………………………………………………………16
Fleming v. Covidien
2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011)…………………………………………15
Fontana v. Elrod
(7th Cir. 1987) 826 F.2d 729, 732………………………………………………………18
Fontana v. U.S. Bank National Association (2014)
59 Cal.4th 1, 31……………………………………………………………………………16
Frank v. Eastman Kodak Co.
(W.D.N.Y. 2005) 228 FRD. 174, 186………………………………………………...…10
Hopson v. Hanesbrands, Inc
No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009)……………………14
Howard v. CVS Caremark Corp.
2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014)……………………………….…13

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)…………..…9
In re Michael Milken and Assoc. Sec. Litig.
(S.D.N.Y. 1993) 150 F.R.D. 57, 66……………………………………………………..…10
In re Nordstrom Com. Cases
186 Cal.App.4th 576, 589 (2010)……………………………………………………………..15
In re Nvidia Derivs. Litig.
(N.D. Cal. 2008) 2008 WL 5382544, at *3…………………………………………………16
In re Taco Bell Wage & Hour Actions
2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016)………………………………..15
Jack v. Hartford Fire Ins. Co.
(S.D. Cal. 2011) 2011 WL 4899942 * 6…………………………………………………14
Kass v. Young
(1977) 67 Cal.App.3d 100, 106……………………………………………………....17-18
Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116, 133………………………………..……..…………..…10
Lee v. Dynamex, Inc.
(2008) 166 Cal.App.4th 1325, 1332, 1334……………………………………………….....20
Magadia v. Wal-Mart Associates, Inc.
(9th Cir. 2021) 999 F.3d 668………………………………………………………16-17
McKenzie v. Fed. Express Corp.
No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)…………14
Misra v. Decision One Mortg. Co.
(C.D. Cal. 2009) 2009 WL 4581276, at *7……………….………………………………..15
Moniz v. Adecco
(2021) 72 Cal.App.5th 56, 77………………………………………………………………....14
Munoz v. BCI Coca-Cola Bottling Co.
(2010) 186 Cal.App.4th 399, 409…………………………………………………………10
Nat'l Rural Telecomm. Coop. v. Directv. Inc.
(C.D. Cal. 2004) 221 F.R.D. 523, 526-27…………………………………….............17
North County Contractor's Assn., Inc. v. Touchstone Ins. Services
(1994) 27 Cal.App.4th 1085, 1089-90………………………………………………………8
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(9th Cir. 2018) 904 F.3d 1087……………………………………………………………...16
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(9th Cir. 1982) 688 F.2d 615, 625…………………………………………….................7
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(1990) 220 Cal.App.3d 1117, 1140, *opinion modified* (June 18, 1990)……………………….…17
Rodriguez v. West Publishing Corp.
(9th Cir. 2009) 563 F.3d 958-59……………………………………………..………18-19
Sav-On Drug Stores, Inc.
(2014) 34 Cal. 4th 319, 326, 333……….…………………………………..……..………..20
Stambaugh v. Super. Ct
(1976) 62 Cal.App.3d 231, 236………………………………………………….……………8
State v. Levi Strauss & Co.

(1986) 41 Cal.3d 460, 482, 485……………………………………………..……….…..9, 18
Tien v. Tenet Healthcare Corp.
(2012) 209 Cal.App.4th 1077, 1088……………………………………………………..16
Trotsky v. Los Angeles Fed Savings & Loan Assn.
(1975) 48 Cal.App.3d 143, 151-52………………………………………………….....17
Villa v. United Site Servs. of California, Inc.
(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8…………………...……..…..……….....12

RULES, CODES, AND STATUTES

Bus. & Prof. Code § 17200 *et seq*……………………………………………………………..3
Cal. Civ. Proc. Code § 382……………………………………………………………20-21
Cal. Lab. Code § 201……………………………………………………………………….3
Cal. Lab. Code § 202………………………………………………………………….……3
Cal. Lab. Code § 203……………………………………………………………….……....3, 13
Cal. Lab. Code § 226……………………………………………...………………...…3, 13
Cal. Lab. Code § 226(a)………………………………………...……………...……13
Cal. Lab. Code § 226.7 *et seq*…….………………………………………………...………3
Cal. Lab. Code § 510 *et seq*……………………………………………………….……….3
Cal. Lab. Code § 512…………………………………...…………………………………..3
Cal. Lab. Code § 1194.……………………..………………………………………………...3
Cal. Lab. Code § 1197…………………………………………………………………...…3
Cal. Lab. Code § 1197.1……………………………………………………………………3
Cal. Lab. Code § 2802……..……………….………………………………………...……3
Cal. Lab. Code § 2802(a)……..………………….………………………………......…13
C.R.C. 3.769(c)-(g)…………………………………………………………………………8
C.R.C. 3.776(e)-(f)………………………………………………………………………..…18

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…………………………………………………………………………………….......18-19

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……………………………………………………………………………………………18

I. INTRODUCTION

Plaintiff PETRA RIOS (hereinafter "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 340 Class Members. The key terms of the Agreement provide for the following:

1. The **"Class" and "Class Period"** shall mean "all current and former non-exempt employees who worked for Defendant Pureserve Building Services, Inc. ("Defendant") in California at any time during the Class Period." Agreement at § I(E). The Class Period means the period from August 20, 2020, through June 27, 2025. Agreement at § I(I). There are approximately 340 Class Members that collectively worked an estimated 18,350 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** and **"PAGA Period"** mean "all current and former non-exempt employees who worked for Defendant in California at any time during the PAGA Period." Agreement at § I(C). The PAGA Period means the period from August 20, 2023, to June 27, 2025." Agreement at § I(EE).

3. The "**Gross Settlement Amount**" is Three Hundred Ninety-Five Thousand Dollars and Zero Cents. ($395,000.00). Agreement at § I(T). The Gross Settlement Amount is non-reversionary and includes the following payments:

a. "**Service Award**" in the amount of $10,000.00 or in an amount that the Court authorizes to be paid to Plaintiff for her services on behalf of the Class, the Aggrieved Employees and the State of California. Agreement at § III(N)(9) (p. 23).

b. "**Class Counsel Award**" consisting of attorneys' fees not to exceed one-third of the Gross Settlement Amount, or One Hundred Thirty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($131,666.67), and reimbursement of attorneys' expenses supported by declaration not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00). Agreement at §III(N)(10) (p. 24).

c. "**PAGA Payment**" in the amount of Twenty Thousand Dollars and Zero Cents

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

($20,000.00) allocated from the Gross Settlement Amount for settlement of PAGA civil penalties claims under the Private Attorneys General Act of 2004. Agreement at §I(FF). The Settlement Administrator shall pay 65% of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA PAGA Payment"). The Settlement Administrator shall distribute 35% of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § III(N)(11) (p. 25).

d. "**Settlement Administration Costs**" not to exceed Seven Thousand Nine Hundred Ninety Dollars and Zero Cents ($7,990.00) payable to the Settlement Administrator, Apex Class Action LLC, to complete administration of the Settlement. Agreement at §§ I(VV) and I(WW); III(N)(12) (p. 25).

4. The "**Net Settlement Amount**" of approximately Two Hundred Thousand Three Hundred Forty-Three Dollars and Thirty-Three Cents ($200,343.33).[2] The Net Settlement Amount will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class**.** Agreement at §I(X).

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

As discussed below, the proposed Gross Settlement Amount satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant

[2] Gross Settlement Amount minus the requested Service Award, Class Counsel Award, PAGA Payment and Settlement Administration Costs. Agreement at I.X.

preliminary approval of the Gross Settlement Amount. JCL Dec., ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant provides janitorial services in the state of California, including in Monterey County, where Plaintiff worked. JCL Dec., ¶ 7.

Plaintiff was employed by Defendant from July 2023 through September 2023, as a non-exempt employee, paid on an hourly basis. Throughout her employment, Plaintiff was subject to Defendant's policies and procedures. JCL Dec., ¶ 8.

Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods, failed to pay all wages, failed to pay for all time worked, failed to reimburse necessary business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to timely payment of all wages due upon separation of employment. JCL Dec., ¶ 9.

On August 20, 2024, Plaintiff filed a class action complaint in the Monterey County Superior Court, Case No. 24CV003470 (the "Class Action"), alleging class claims 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 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 10.

On the same day, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. JCL Dec., ¶ 11.

On October 24, 2024, Plaintiff filed a representative action complaint in the Monterey County

Superior Court, Case No. 24CV004490 (the "PAGA Action"), alleging one cause of action for violations of PAGA. JCL Dec., ¶ 12.

On October 3, 2025, the Court consolidated the Class Action and the PAGA Action, with the Class Action deemed the lead case. JCL Dec., ¶ 13.

On June 27, 2025, the Parties participated in mediation presided over by Brian Sinclair, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator's settlement 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. JCL Dec., ¶ 14.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to her employment, including wage statements and time records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 15.

Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendants produced additional documents including policies, onboarding documents, and complete time and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all hours worked. JCL Dec., ¶ 16.

To prepare for mediation, Defendant produced a 30% sample of time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable policies and agreements. JCL Dec., ¶ 17.

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. JCL Dec., ¶ 18.

BCG analyzed Defendant's 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 unpaid and underpaid overtime, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 19.

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 Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the settlement. JCL Dec., ¶ 20.

C. The Parties Settled Following Mediation

On June 27, 2025, the Parties conducted a full day of mediation with Brian Sinclair, Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Sinclair helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Sinclair's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. At the conclusion of the mediation, Mediator Sinclair issued a mediator's proposal for settlement. The Parties ultimately accepted Mediator Sinclair's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 21.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The proposed Class consists of all current and former non-exempt employees that worked for Defendant in California during the Class Period. Agreement at § I(E). The Settlement Class excludes any person who submits a timely and valid objection or request for exclusion. Agreement at § I(XX). At the time of mediation, Defendant estimated that the Class was comprised of approximately 340 individuals who collectively worked approximately 18,350 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $395,000. Agreement at § I(T). The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Service Award of not more than $10,000 to Plaintiff for her services on behalf of the Class; (3) a PAGA Payment in the amount of $20,000.00; (4) Settlement Administration Costs not to exceed $7,990; (5) a Class Counsel Award of up to $156,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount ($131,666.67) and an estimated $25,000.00 for actually incurred litigation expenses. See generally Agreement at § III(N) (p. 21).

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 § I(X). There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes. Agreement at § I(T).

3. The Funding Date and Installment Plan

Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement Amount in three (3) equal installments. The first installment in the amount of $131,666.67 was made by Defendant on September 9, 2025 ("First Installment"). JCL Dec. ¶ 21. The second installment in the amount of $131,666.67 is to be made 6 months after payment of the First Installment, or the date the Court grants preliminary approval of the settlement, whichever is later ("Second Installment"). The third installment in the amount of $131,666.66 is to be made 6 months after payment of the Second Installment, or the date the Court grants final approval of the settlement, whichever is later ("Third Installment"). Agreement at § III(A)(3).

4. Formula for Calculating Individual Class Payments

Each Participating Class Member will receive an Individual Class Payment. The Individual Class Payments will be proportional to the number of Workweeks each Participating Class Member worked during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at § III(N)(1) (p. 21). For tax purposes, Individual Settlement Payments shall be allocated and treated as 20% wages and 80% penalties and pre-judgment interest. The wage portion of each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § III(N)(3) (pp. 21-22). Individual Settlement Payments for 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 based on their respective Payment Ratios. Agreement at § III(N)(1) (p. 21). Given that there are approximately 340 Class Members, ***the average gross Individual Class Payment is approximately $589.25.*** (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 5.

5. Release by Participating Class Members

Generally, upon entry of final judgment and full funding of the Gross Settlement Amount, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties from the Released Class Claims for the Class Period. Agreement at § III(B).

6. Release by the Aggrieved Employees

Generally, upon entry of final judgment and full funding of the Gross Settlement Amount, Plaintiff and the State of California release the Released Parties from the Released PAGA Claims for 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 Three Hundred Ninety-Five Thousand Dollars and Zero Cents ($395,000.00), 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 ("[V]oluntary 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* (2010) 180 Cal. App. 4th 1110, 1118 (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. of Sonoma County* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases, supra,* 180 Cal.App.4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. The 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, supra,* 186 Cal.App.4th at 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 of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.)

The Parties participated in mediation with Brian Sinclair, Esq., an experienced mediator of wage and hour class and PAGA actions. Mediator Sinclair 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.").) At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The Parties reached a settlement during mediation when Mediator Sinclair issued a proposal that the Parties accepted. Mediator Sinclair only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties' respective claims and defenses. JCL Dec., ¶ 22.

Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations regarding the written terms of the class action and PAGA 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., ¶ 23.

2. <u>Class Counsels' Investigation Provided an Objective Measurement of the Settlement's Reasonableness.</u>

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 formal and 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 Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ ¶ 15-20.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of Three Hundred Ninety-Five Thousand Dollars and Zero Cents. ($395,000.00) is within the range of reasonable settlement for preliminary approval. 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. 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 F.R.D. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

The Gross Settlement Amount of $395,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to the mediation, Class Counsel retained Berger Consulting Group to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure for *class claims* (excluding PAGA Penalties) ranged between $2,046,855.00 ("Realistic Damages") and

$4,289,380.00 ("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 19.30% ("Realistic Damages") and 9.21% ("Maximum Damages") of Defendant's class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendant's liability exposure. JCL Dec., ¶ 24.

(1) Estimated Damages for Meal Period Violations

Plaintiff's primary claim in the Action alleges that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleges that Defendant failed to record the actual time that Class Members worked. Instead, Defendant required Class Members sign off on fictitious handwritten timecards, reflecting their scheduled hours, including a 30-minute meal period. Plaintiff contends that these records do not accurately record the start and stop times for meal periods and, more importantly, do not reflect missed, late or short meal periods. As a result, nearly all of the recorded meal periods reflected exactly thirty (30) minutes, which Plaintiff argued creates a presumption of a meal period violation. JCL Dec., ¶ 25.

Defendant raised a number of defenses to this claim. Defendant argued that it maintained complaint meal period policies and, in practice, provided its employees with the opportunity to take compliant meal periods. Defendant argued, and the documents in fact reflect, that the written time records evidence nearly a 100% meal period compliance rate. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Consequently, Plaintiff applied a 50% discount to this claim and estimated Defendant's exposure for this claim ranged from $737,406.00 to approximately $1,474,812.00. JCL Dec., ¶ 26.

(2) Estimated Damages for Rest Period Violations

Plaintiff also alleges that Defendant failed to provide compliant rest periods. Plaintiff alleges that because of their rigorous work schedules, Plaintiff and Class Members were not able to take timely and duty-free rest periods. Specifically, Plaintiff contends that she was required to work through her rest periods in order to finish work-related tasks. JCL Dec., ¶ 27.

Again, Defendant denied liability and asserted that the workload is not such that it prevented employees from taking a break. 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 Defendant argued that they 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 Defendants 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"). Accordingly, Plaintiff's Conservative Model applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between approximately $776,214.00 to approximately $1,552,428.00. JCL Dec., ¶ 28.

(3) <u>Estimated Exposure for Unpaid Wages</u>

Plaintiff also alleges that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff alleges that throughout the entire Class Period, Defendant failed to record the actual time the Plaintiff and Class Members worked. Rather, Plaintiff alleges that Defendant required Class Members to fill in handwritten time sheets consistent with the Class Members' schedules, without any regard to the amount of time employees actually worked. Plaintiff contends that the time records produced by Defendant show that nearly 100% of all time entries were rounded to quarter-hour intervals. As a result, Plaintiff, Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the time they spent working under Defendant's control, including but not limited to time spent cleaning and performing other work-related tasks. Based on Plaintiff's testimony and Class Counsel's investigation, Plaintiff assumed five (5) minutes of unpaid compensable time per workweek by the Class Members during the Class Period. JCL Dec., ¶ 29.

Defendant vigorously denied liability for this claim. As a preliminary matter, Defendant maintains that all hours worked were entered on timecards by the employees and not the employer. Defendant argued that they instructed employees to accurately fill out their timecards to accurately reflect all hours worked, and that employees certified the accuracy of these time entries. Further, Defendant argued that it was entitled to rely on the accuracy of the time entries made by its employees and that it paid employees for all of their time worked. Considering Defendant's defenses, Plaintiff applied 75% discount to this claim. Plaintiff estimated Defendant's exposure for this claim ranged between approximately $5,735.00 and $22,940.00. JCL Dec., ¶ 30.

(4) Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleges that Defendant failed to reimburse Class Members for use of their personal cell phones and maintenance of their work uniforms in furtherance of their job duties. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her 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…."). JCL Dec., ¶ 31.

Again, Defendant vigorously denied any liability for this claim, arguing that there was no mandatory cell phone use, that Class Members were not required to maintain their own uniforms and, in any event, Defendant provided avenues for reimbursement of legitimate business expenses. Considering Defendant's defenses, Plaintiff applied a 50% discount to this claim. Plaintiff estimated Defendant's exposure for this claim ranged between approximately $3,400 and $6,800. JCL Dec., ¶ 32.

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

Plaintiff alleges that Defendant's violations resulted in *derivative* violations of Labor Code sections 203 and 226(a). Class Counsel weighed the potential recoveries against the strength and defenses of the underlying claims as outlined above. JCL Dec., ¶ 33.

Defendant denied that it violated California law regarding wage statements or waiting time penalties. Defendant argued that Plaintiff could not prove the required "willful" prong under Labor Code section 203 and that Plaintiff could not establish the necessary "injury" element to successfully recover derivative wage statement penalties, as required by Labor Code section 226. 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*. (C.D. Cal. 2011) 832 F. Supp. 2d 1122, 1134-1137 (finding insufficient evidence of bad faith or actual injury). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Nevertheless, Class Counsel estimated Defendant's exposure for these claims ranged between $432,000.00 and $864,000.00 for waiting time penalties and $92,100.00 and $368,400 for wage statement penalties. JCL Dec., ¶ 34.

(6) Defendant's PAGA Exposure

Class Counsels' damages models also estimated Defendant's alleged exposure for PAGA Payment. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at approximately $1,344,400.00. JCL Dec., ¶ 35. Here, the Parties negotiated a good faith allocation for PAGA Payment in the amount of $20,000, which is approximately 5% of the Gross Settlement Amount. Agreement at §§I(FF).

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 Payment 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. Sixty-Five percent (65%) of the allocated 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) distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at § III(N)(11) (p. 25). JCL Dec., ¶ 36.

The allocated amount for PAGA Payment, which is approximately 5% of the Gross Settlement Amount, falls well within the range of approved PAGA settlements. *Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Courts routinely approve of amounts for PAGA Payment 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.* (S.D. Cal. Oct. 13, 2011) No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement). JCL Dec., ¶ 37.

Further, Courts have considerable discretion to reduce the PAGA penalty awards. In *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced a PAGA Payment from $2,800,000 to $500,000, a reduction of 82.2%, because the court found the maximum penalties "unjust." In some instances, trial courts have awarded no civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (affirming an award of $0 in PAGA Payment in a wage and hour class action); *In re Taco Bell Wage & Hour Actions* (E.D. Cal. Apr. 6, 2016) 2016 U.S. Dist. LEXIS 48557, *40-43 (PAGA Payment denied after trial). JCL Dec., ¶ 38.

The decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff established the underlying Labor Code violations. Collectively, these cases illustrate the uncertainty and considerable risk associated with maintaining a claim for PAGA Payment. For these reasons, the allocation for PAGA Payment amounting to approximately 5% of the Gross Settlement Amount is fair, just, and reasonable, and should be approved. JCL Dec., ¶ 39.

b. 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). JCL Dec., ¶ 40.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Fontana v. U.S. Bank National Association* (2014) .. There, the Court reversed a trial verdict in favor of 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."). JCL Dec., ¶ 41.

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff 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). JCL 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. JCL 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).)

Further, 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, requires expert testimony, particularly with regard 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 Defendant would appeal any favorable judgment. JCL Dec., ¶ 44. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. "Avoiding such a trial and the subsequent appeal 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 $395,000.00 that is roughly between 9.21% ("Conservative Model") and 19.30% ("Aggressive Model") of Defendant's 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. JCL Dec., ¶ 45.

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

The Settlement Class is 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, supra,* 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]

Plaintiff drafted and Defendant reviewed the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice 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 within which to make 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 Class Claims. Agreement at § III(M). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 46.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice satisfy due process and the requirements of California law. (*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.").) JCL Dec., ¶ 47.

C. The Court Should Preliminarily Approve the Service Award

Enhancement payments "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).) Enhancement payments "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."

[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.

(*Rodriguez, supra*, 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.)

Approximately 340 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the settlement provides for a Service Award of $10,000 to Plaintiff (in addition to any Individual Class Payment and any Individual PAGA Payment). The Service Award is fair and reasonable compensation for the Plaintiff's efforts bringing the action. Among other things, Plaintiff assisted Class Counsel with the litigation and settlement, regularly conferred with Class Counsel on the status of her case and the strategies for prosecuting the claims and reviewed the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 48.

If this motion is granted, Class Counsel will file a formal motion with supporting arguments and evidence requesting the Court approve Service Award. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 49.

D. The Court Should Preliminarily Approve the Class Counsel Award

The purpose of a payment of 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 Class Payment and Individual PAGA Payment demonstrably illustrate the positive outcome for the putative Class Members. The Agreement provides for a payment of attorneys' fees not to exceed 1/3 of the Gross Settlement Amount ($131,666.67) and reimbursement of attorneys' expenses supported by declaration not to exceed $25,000.00. Agreement at § III(N)(10) (pp. 24-25). Considering the positive outcome for the Class Members and the supporting authority, the Class Counsel Award is fair and reasonable. Class Counsel will file a formal motion for approval of the Class Counsel Award at the time of final approval. JCL Dec., ¶ 50.

E. Provisional Certification for Settlement Purposes Only Is Appropriate

For settlement purposes only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 51.

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, supra,* 34 Cal.4th at 333.)

2. <u>The Proposed Settlement 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, supra,* 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, supra,* 53 Cal. 4th at 1021-1022 (citations omitted).)

Because all Class Members are Defendant's current and former employees, the putative class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JCL Dec., ¶ 52.

The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's 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. JCL Dec., ¶ 53.

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 she 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 her ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 54.

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. JCL 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. JCL Dec., ¶¶ 3, 56-62, Declaration of Shani O. Zakay, Esq., ¶¶1-3.

IV. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminary approval, Plaintiff requests, and Defendant does not oppose, that the Court preliminarily approve the settlement.

Dated: October 24, 2025

JCL LAW FIRM, APC

By: Perssia Razma

Perssia Razma, Esq.

Attorney for Plaintiff