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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JUAN JIMENEZ-PADILLA, an individual;
on behalf of Plaintiffs, and on behalf of all
persons similarly situated,

Plaintiff,

v.

SANDAIR CORPORATION d.b.a.
CALIFORNIA FREIGHT SALES, a
California corporation; SUPERIOR TRUCK
LINES, INC., a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: STK-CV-UOE-2025-0009283

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

Judge: Hon. Esmeralda Zendejas
Dept.: 11A

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1 I. INTRODUCTION

2 Plaintiff Juan Jimenez-Padilla (“Plaintiff”) seeks preliminary approval of the Class Action and
3 PAGA Settlement Agreement and Class Notice (“Agreement”)¹ to resolve claims brought against
4 Defendant Sandair Corporation, dba California Freight Sales (“Defendant”). If approved, the
5 Agreement would provide valuable monetary relief for approximately 1,049 Class Members. The basic
6 terms of the Agreement provide for the following:

7 1. The “**Class**” or “**Class Member**” and “**Class Period**” shall mean all individuals who are
8 or previously were employed by Defendant in California and classified as non-exempt employees during
9 the period from July 7, 2021, through June 6, 2026 (“Class Period”). (Agreement at §§ 1.7, 1.12.) The
10 “Settlement Class Member” means a Class Member who does not submit a valid and timely Request for
11 Exclusion from the Settlement. (Agreement at § 1.46.)

12 2. The “**Aggrieved Employee**” and “**PAGA Period**” means all individuals who are or
13 previously were employed by Defendant in California and classified as non-exempt employees during
14 the period from July 7, 2024, through June 6, 2026 (“PAGA Period”). (Agreement at §§ 1.4, 1.36.)
15 Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement.
16 (Agreement at § 7.5.4).

17 3. The “**Gross Settlement Amount**” is One Million Eight Hundred Forty-Five Thousand
18 Dollars and Zero Cents (\$1,845,000.00). (Agreement at § 1.2.) The Gross Settlement Amount is non-
19 reversionary and includes the following:

20 a. A “**Class Representative Payment**” in the amount of \$10,000.00 to Plaintiff for
21 his services on behalf of the Class Members. (Agreement at § 3.2.1);

22 b. A payment of “**Attorneys’ Fees and Litigation Costs**” to be paid to Class
23 Counsel consisting of attorneys’ fees not to exceed thirty-three percent (33%) of the Gross Settlement
24 Amount, currently estimated to be \$608,850.00, plus reimbursement of actually incurred litigation costs
25 of up to \$65,000.00. (Agreement at § 3.2.2.) The attorneys’ fees portion shall be divided between Class
26

27 ¹ The Agreement is attached as Ex “A” to the Declaration of Sydney Castillo-Johnson (“SCJ Dec.”) at ¶ 3. All citations
28 to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

Counsel as follows: 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. (Agreement at § 1.6).

a. A “**PAGA Payment**” of Sixty Thousand Dollars (\$60,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (Lab. Code, §§ 2698 *et seq.*) (“PAGA”). The Administrator shall pay sixty-five percent (65%) of the PAGA Payment (\$39,000.00) to the California Labor and Workforce Development Agency (“LWDA Payment”). Thirty-five percent (35%) of the PAGA Payment (\$21,000.00) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). (Agreement at §§ 1.35, 3.2.5).

b. “**Administration Expenses Payment**” in the amount of \$16,000.00 paid to the Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Class Notice and Individual Class Payments. (Agreement at §§ 1.2, 3.2.3).

4. The “**Net Settlement Amount**” of approximately One Million, Eighty-Five Thousand One Hundred Fifty Dollars and Zero Cents (\$1,085,150.00) (Gross Settlement Amount minus the Class Representative Payment, Attorneys’ Fees and Litigation Costs, PAGA Payment and Administration Expenses Payment) 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 §§ 1.24, 3.2.4.3.) 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 Class Payment of approximately **\$1,034.46**.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by Plaintiff pursuing wage and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Settlement 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. (SCJ Dec., ¶ 4.)

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

6 II. FACTS AND PROCEDURE

7 A. Overview of the Litigation and Mediated Settlement

8 Defendant owns and operates a transportation business in the state of California, including in
9 San Joaquin County, where Plaintiff worked. Plaintiff was employed by Defendant as a non-exempt
10 employee, paid on an hourly basis, from approximately September 2024 through January 2025. At all
11 times during his employment, Plaintiff was classified by Defendant as a non-exempt employee, paid
12 on an hourly basis, and was entitled to legally compliant meal and/or rest periods, and minimum and
13 overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to
14 Defendant's written policies and procedures. (SCJ Dec., ¶ 6; Declaration of Juan Jimenez-Padilla ¶
15 4.)

16 Generally, Plaintiff claims that Defendant failed to pay for all hours worked, failed to provide
17 compliant meal and rest periods, failed to properly calculate the regular rate of pay for purposes of
18 overtime and redeemed sick pay, failed to reimburse employees for required business expenses, failed
19 to furnish accurate itemized wage statements, and failed to timely pay all wages due upon separation
20 of employment. Defendant adamantly denies liability for each of Plaintiff's claims. Further, Defendant
21 asserts that it fully complied with all applicable employment laws and raised several other significant
22 defenses to Plaintiff's claims, including but not limited to, that it maintained compliant timekeeping,
23 meal and rest period, and reimbursement policies and practices, that certain of its transportation drivers
24 were exempt from California's meal, rest period, and overtime requirements, and that it timely paid all
25 wages due upon separation of employment. (SCJ Dec., ¶ 7.)

26 On July 7, 2025, Plaintiff served Defendant and the Labor and Workforce Development Agency
27 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice sets forth the facts
28

1 and theories supporting Defendant’s alleged violations of various provisions of the California Labor
2 Code and applicable Industrial Welfare Commission (“IWC”) Wage Order and of his intent to pursue
3 claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698
4 *et seq.* (“PAGA”). (SCJ Dec., ¶ 8.)

5 On July 7, 2025, Plaintiff filed a class action complaint in the San Joaquin County Superior
6 Court, Case Number STK-CV-UOE-2025-0009283, alleging eight causes of action against Defendant
7 and Superior Truck Lines, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§
8 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and
9 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure
10 to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable
11 IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7
12 and 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage
13 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation
14 of Cal. Lab. Code §§ 201, 202 and 203; and (8) Failure to Reimburse Employees for Required Business
15 Expenses in Violation of Cal. Lab. Code § 2802 (“Action”). (SCJ Dec., ¶ 9.)

16 On September 12, 2025, Plaintiff filed a separate representative action complaint in the San
17 Joaquin County Superior Court, Case Number STK-CV-UOE-2025-13172, alleging a single cause of
18 action for violations of PAGA (“PAGA Action”). (SCJ Dec., ¶ 10.)

19 On April 28, 2026, Plaintiff filed a First Amended Complaint (“Operative Complaint”) in the
20 Class Action adding an additional cause of action for violations of PAGA, and subsequently dismissed
21 the PAGA Action. (SCJ Dec., ¶ 12.) On August 14, 2026, Plaintiff dismissed Defendant Superior Truck
22 Lines, Inc. from the Action. (SCJ Dec., ¶ 11.)

23 The Parties agreed relatively early to attend mediation. To facilitate settlement negotiations, the
24 Parties agreed to informally exchange documents and data points subject to the mediation privilege,
25 including but not limited to, the Class Members’ timekeeping and payroll records. As discussed *infra*,
26 the Parties jointly retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
27 Defendant’s time and payroll data. (SCJ Dec., ¶ 12.)

28 On March 3, 2026, the Parties participated in an all-day mediation presided over by Lisa

1 Klerman, Esq. (“Mediator Klerman”), a mediator of wage and hour class and representative actions.
2 Mediator Klerman helped manage the Parties’ expectations and provided a useful, neutral analysis of
3 the issues and risks to both sides. The Parties made substantial progress with Mediator Klerman’s
4 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
5 including their respective evaluation of the damages. The mediation concluded with a settlement after
6 both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a
7 Memorandum of Understanding (“MOU”). After reaching an agreement in principle, the Parties drafted
8 and negotiated a long-form settlement agreement, which is the subject of the instant motion. (SCJ Dec.,
9 ¶ 13.)

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

11 Months before filing the Action, Class Counsel began their pre-filing investigation into the
12 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
13 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,
14 including payroll records and policy documents. At the conclusion of the interviews, Class Counsel
15 determined that Plaintiff’s complaints justified further inquiry. (SCJ Dec., ¶ 14.)

16 Class Counsel subsequently requested Plaintiff’s employee file from Defendant. In response,
17 Defendant produced documents, including but not limited to, Plaintiff’s hiring and separation
18 documents, payroll records, and time records. Class Counsel reviewed and analyzed the documents and
19 determined the documents appeared to substantiate Plaintiff’s claim that Defendant failed to, among
20 other things, pay for all time worked, provide compliant meal and rest periods, properly calculate the
21 regular rate of pay, reimburse for required business expenses, provide accurate itemized wage
22 statements, and timely pay all wages due upon separation of employment. (SCJ Dec., ¶ 15.)

23 After the Parties agreed to mediate the Action, Defendant produced timekeeping and payroll
24 records for the Class Members, aggregate workweek and pay period data, and copies of applicable
25 policies and agreements. In total, Class Counsel reviewed hundreds of thousands of pages of documents
26 and time and payroll data. (SCJ Dec., ¶ 16.)

27 The Parties jointly retained the statisticians and economists at BCG to evaluate the Class
28 Members’ payroll and time data. BCG provides data analysis and damage modeling consulting services

1 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
2 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
3 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. (SCJ Dec., ¶
4 17.)

5 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
6 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
7 and pay periods during the Class Period, and the average length of shift and average number of hours
8 worked per week and per pay period during the Class Period. BCG also estimated the number of missed,
9 late, or truncated meal and rest periods, the amount of unpaid wages owed, the amount of off-the-clock
10 work performed, the amount of unreimbursed business expenses, and Defendant's potential exposure
11 for wage statement and waiting time penalties during the Class Period. (SCJ Dec., ¶ 18.)

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

23 Class Counsel only agreed to enter the Settlement following this thorough investigation and
24 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
25 for similar settlements, and considering the risk of significant delay and uncertainty associated with
26 litigation, and the various defenses asserted by Defendant, Class Counsel believes this Agreement to
27 be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
28

adequate, the Court should preliminarily approve the Settlement. (SCJ Dec., ¶ 20.)

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

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

The proposed Class consists of all individuals who are or previously were employed by Defendant in California and classified as non-exempt employees during the Class Period between July 7, 2021, and June 6, 2026. The Settlement Class excludes any person who submits a timely and valid request for exclusion. (Agreement at §§ 1.7, 1.12, 1.46.) Based on a review of its records through mediation, Defendant estimated that the Class was comprised of approximately 1,049 Class Members who collectively worked approximately 93,000 Workweeks during the Class Period, and approximately 204 Aggrieved Employees who worked approximately 22,107 PAGA Pay Periods during the PAGA Period. (Agreement at § 4.1.)

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$1,845,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class; (2) Class Representative Payment of not more than \$10,000 to Plaintiff for Plaintiff's services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$60,000.00; (4) Administration Expenses Payment estimated to be \$16,000.00; (5) Attorneys' Fees and Litigation Costs not to exceed thirty-three percent (33%) of the Gross Settlement Amount (estimated to be \$608,850.00) plus actually incurred litigations costs not to exceed \$65,000.00. (*See generally* Agreement at § 3.2).

Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. (Agreement at § 1.29.) There is no reversion to Defendant, and Defendant must separately pay for its share of the employer payroll taxes. (Agreement at § 3.1.).

3. The Funding Date

Defendant shall fully fund the Gross Settlement Amount and any amounts necessary to fully pay

Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than sixty (60) days after the final approval order. (Agreement at § 4.2).

4. Formula for Calculating Individual Class Payments

Each Settlement Class Member will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. An Individual Class Payment is calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks worked during the Class Period. (Agreement at § 3.2.4.)

Each Individual Class Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). (Agreement at § 3.2.4.1.) Individual Class Payments allocated to Class Members who submit valid and timely requests for exclusion will be retained in the Net Settlement Amount for distribution to Settlement Class Members on a pro rata basis. (Agreement at § 3.2.4.2).

Given that there are approximately 1,049 Settlement Class Members, *the average gross recovery is approximately \$1,034.46* (Net Settlement Amount divided by Settlement Class Members). (SCJ Dec., ¶ 5.)

5. Release by Settlement Class Members

As of the Funding Date, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims, which are defined as all damages, rights, liabilities, causes of action, obligations, losses, penalties, premiums, interest, attorneys' fees, costs and all other forms of relief arising out of or relating to the class claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the Action which occurred during the Class Period, and expressly excluding all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. (Agreement at §§ 1.40, 5.2).

6. PAGA Release by the Aggrieved Employees

1 As of the Funding Date, all Aggrieved Employees will release the Released Parties from the
2 Released PAGA Claims, which are defined as all PAGA claims pled and/or which are related to or
3 arise out of the facts alleged in the operative Complaint and the PAGA Notice that occurred during the
4 PAGA Period, and expressly excluding claims for vested benefits, wrongful termination,
5 unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside
6 of the PAGA Period. (Agreement at §§ 1.41, 5.3.)

7 **III. ARGUMENT**

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

9 The proposed Settlement, including a Gross Settlement Amount of \$1,845,000.00, meets the
10 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
11 remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
12 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
13 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
14 notice of the settlement has been distributed to class members for their comments and objections.
15 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
16 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
17 inquire into the fairness of the proposed settlement”).)

18 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
19 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
20 range.” (See *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
21 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
22 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
23 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
24 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
25 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
26 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
27 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
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1 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*
2 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
3 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
4 action litigation”).)

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

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

13 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
14 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
15 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
16 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
17 § 11.51.)

18 The Parties participated in mediation with Mediator Klerman, a wage and hour class action
19 mediator. Mediator Klerman managed the Parties’ expectations and provided a useful, neutral analysis
20 of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF
21 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
22 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
23 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
24 ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
25 negotiations were at an arm’s length, adversarial, and non-collusive. The Parties reached a settlement
26 following their acceptance of a mediator’s proposal. The Parties subsequently drafted and negotiated
27 a long-form settlement which is the subject of the instant motion. The Agreement is the final product
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1 of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a
2 reasonable compromise of the claims at issue. (SCJ Dec., ¶ 21.)

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

5 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
6 the factual and legal issues in dispute. In addition to informal discovery, document review, data
7 analysis, and legal research, Class Counsel also researched similar wage and hour actions. Although no
8 two cases are identical, this research provided Class Counsel with a marker to inform settlement
9 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
10 Counsel to realistically assess the value of Plaintiff’s claims and intelligently engage with Defense
11 Counsel in settlement discussions that culminated in the proposed settlement now before the Court.
12 (SCJ Dec., ¶ 22.)

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

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

20 The Gross Settlement Amount of \$1,845,000.00 is within the range of reasonableness. To
21 determine whether a settlement is fair and reasonable, the court should “consider enough information
22 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
23 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
24 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the
25 court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
26 ‘ballpark of reasonableness.’” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
27 explicit statement of value; [they] require [] a record which allows an understanding of the amount that
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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 Plaintiff 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 \$1,845,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, the Parties retained BCG to assist in developing 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 at \$2,328,040.50 (“Conservative Model”) and Defendant’s *total* exposure for class claims (including waiting time and wage statement penalties, but exclusive of PAGA penalties) at \$4,299,348.89 (“Aggressive Model”). Thus, the Gross Settlement Amount of \$1,845,000.00 represents between 42.91% and 78.25% of Defendant’s class-wide exposure. (SCJ Dec., ¶ 24.)

(1) Defendant’s Exposure for Meal Period Violations

Plaintiff alleged that Defendant failed to provide compliant meal periods. Specifically, Plaintiff alleged that Defendant’s strict delivery schedules made it impracticable for drivers to stop and take

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”).

1 timely, uninterrupted, off-duty meal periods. Plaintiff's expert found that 31.3% of shifts greater than
2 six hours were without a recorded first meal period, 99.6% of shifts between 10 and 12 hours were
3 without a recorded second meal period, and 95.95% of shifts greater than 12 hours were without a
4 recorded second meal period. (SCJ Dec., ¶ 25.)

5 Defendant contends that it fully complied with California meal period laws and maintained
6 compliant policies and practices. Defendant also argued that it provided Class Members with the
7 opportunity to take compliant meal periods, that Class Members executed on-duty meal period
8 agreements, and that certain interstate drivers are exempt from California's meal period requirements.
9 Defendant further argued that any non-compliant meal periods reflected individual employee choices
10 rather than a failure to provide compliant meal periods, and that any claimed violations required a
11 highly individualized inquiry not suitable to class treatment. In light of the foregoing, and considering
12 Defendant's defenses, Plaintiff provided a 25% discount and estimated that Defendant's exposure for
13 this claim ranged from \$937,263.96 to \$1,249,685.28. (SCJ Dec., ¶ 26.)

14 (2) Defendant's Estimated Exposure for Rest Period Violations

15 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
16 Plaintiff alleged that, because of their rigorous and continuous delivery obligations, Plaintiff and other
17 Class Members were unable to take timely and duty-free rest periods and were not relieved of all duties
18 during rest periods. Again, Defendant denied liability and asserted that it maintained legally compliant
19 rest period policies and practices throughout the Class Period and that employees were in complete
20 control over when they took their rest periods. Moreover, Plaintiff recognizes the evidentiary burdens
21 in establishing this claim. Establishing Plaintiff's rest period claim would depend, almost entirely, on
22 Class Member testimony, making it a riskier claim at class certification and liability stages.
23 Certification likely would have required depositions of Class Members who provided declarations, and
24 Defendant surely would have obtained opposing declarations stating either rest breaks were taken or
25 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
26 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, Plaintiff' evidence
27 that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
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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 provided a 25% discount and estimated that Defendant’s exposure for this claim ranged from \$937,263.96 to \$1,249,685.28. (SCJ Dec., ¶ 27.)

(3) Defendant’s Estimated Exposure for Unreimbursed Business Expenses

Plaintiff alleged that Defendant failed to reimburse Class Members for all necessary business expenses. Specifically, Plaintiff asserts that Class Members were required to use their personal cell phones for work-related purposes, including clocking in through a fleet-management application and using a delivery-tracking application, and to use their personal vehicles to travel between Defendant’s facilities, but that Defendant failed to fully reimburse Class Members for these costs, in violation of Labor Code section 2802. (SCJ Dec., ¶ 28.) 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 ...”).)

Defendant strongly denied any liability for this claim. Defendant argued, among other things, that it provided its employees with all devices and vehicles necessary to perform their job duties or provided appropriate reimbursements, and that any employee who voluntarily chose to use a personal cell phone or vehicle was not entitled to reimbursement. Considering Defendant’s defenses, Plaintiff provided a 50% discount and estimated Defendant’s exposure for this claim ranged from \$128,800.0 to \$257,600.00. (SCJ Dec., ¶ 29.)

(4) Defendant’s Estimated Exposure for Regular Rate Violations

Plaintiff also alleged that Defendant miscalculated the regular rate of pay for purposes of overtime and redeemed sick pay. Specifically, Plaintiff alleges that Defendant paid Class Members non-discretionary compensation that was not properly included in the regular rate of pay for purposes of overtime and redeemed sick pay. 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 redeemed sick pay, California Labor Code section 246(l)(1) expressly mandates that sick pay for non-exempt employees be based on either “the regular rate of pay for the workweek in which the employee uses paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick leave. For overtime work, “an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” (*Id.* at 553.) Defendant asserted that the incentive payments identified by Plaintiff were not required to be included in the regular rate of pay and disputed that any miscalculation occurred. In light of the above, Plaintiff estimated Defendant’s exposure for this claim ranged from \$34,086.80 to \$85,217.00. (SCJ Dec., ¶ 30.)

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(5) Defendant’s Exposure for Wage Statement Violations

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that, as a result of Defendant’s failure to provide meal and rest periods and failure to properly calculate the regular rate of pay as required by the California Labor Code, 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).) Defendant argued that its wage statements contained all of the information required by Labor Code section 226, that it was not liable for derivative penalties where it presented an objectively reasonable, good faith defense, and 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 estimated that Defendant’s exposure on this claim ranged between \$149,160.00 and \$372,900.00. (SCJ Dec., ¶ 31.)

(6) Defendant’s Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that Defendant’s labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented one of Defendant’s largest dollar amounts of exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendant argued that Plaintiff could

not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant argued that, under *Naranjo v. Spectrum Security Services* (2024) 15 Cal.5th 1056, an objectively reasonable, good faith defense creates difficulty in Plaintiff succeeding on a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claim, Plaintiff estimated that Defendant’s exposure for this claim ranged between \$86,399.70 and \$863,997.00. (SCJ Dec., ¶ 32.)

(7) Defendant’s PAGA Exposure

Class Counsel’s damage models also estimated Defendant’s exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiff estimated Defendant’s PAGA exposure ranged from \$2,401,305.50 and \$5,462,648.89. (SCJ Dec., ¶ 33.) 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. *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 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.*, 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 \$60,0000.00 which is 3.25% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Sixty-five percent (65%) of the PAGA Payment (\$39,000.00) will be paid to the LWDA (“LWDA Payment”), with the remaining thirty-five percent (35%) of the PAGA Payment (\$21,000.00) to be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the range of PAGA penalties approved by courts and should be approved. (SCJ Dec., ¶ 34.)

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
2 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
3 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
4 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
5 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
7 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
8 6, 2016) (PAGA penalties denied after trial).

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

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

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

22 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
23 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
24 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class
25 certification because employees' declarations attesting to having taken meal and rest breaks
26 demonstrated that individualized inquiries were required to show harm. See also *Campbell v. Best Buy*
27 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
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1 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
2 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
3 period claims based on the predominance of individual issues). (SCJ Dec., ¶ 35.)

4 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
5 Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
6 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor of Plaintiff in a
7 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077,
8 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
9 individualized questions of fact not susceptible to class treatment."). (SCJ Dec., ¶ 36.)

10 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
11 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
12 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
13 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded
14 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
15 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
16 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
17 action). (SCJ Dec., ¶ 37.)

18 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
19 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
20 factor favoring settlement. (SCJ Dec., ¶ 38.)

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

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

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

4 Finally, continuing to litigate this action would require continued and extensive resources
5 coupled with significant Court time to proceed through trial and post-trial motions, which can often
6 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
7 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
8 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
9 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
10 the risk of an appeal and subsequent reversal is real. (SCJ Dec., ¶ 39.) “Avoiding such a trial and the
11 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
12 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
13 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
14 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

15 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,845,000.00 that is
16 between approximately 42.91% and 79.25% of Defendant’s class-wide exposure. Given the amount of
17 the settlement here, as compared to the potential value of the claims, offset by the various inherent risks
18 to continued litigation, the settlement is fair and reasonable. (SCJ Dec., ¶ 40.)

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

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

2 The Parties jointly drafted the Class Notice, which fairly and neutrally informs the Class
3 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
4 mail the proposed Class Notice to all Class Members. The Class Notice will include information
5 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
6 definition, the procedure and time period within which to request exclusion from or object to the
7 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
8 and the terms and scope of the Released Class Claims. (Agreement at § 7.4; Ex. A to the Agreement.)
9 This method was negotiated by the Parties to ensure delivering the most reasonable method of notice
10 to the Class Members while ensuring cost effective administration of the Settlement. (SCJ Dec., ¶ 41.)

11 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
12 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
13 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
14 of the options open to dissenting class members.”).) (SCJ Dec., ¶ 42.)

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

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

26 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
27 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
28 appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
2 (2009) 175 Cal.App.4th 785.)

3 The Settlement provides for a Class Representative Payment of not more than \$10,000.00 to
4 Plaintiff. The Class Representative Payment is fair and reasonable compensation for Plaintiff’s efforts
5 bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with
6 Class Counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the
7 proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement
8 Class. (SCJ Dec., ¶ 43.)

9 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
10 Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully
11 submits that the above showing is sufficient for preliminary approval of the negotiated Class
12 Representative Payment. (SCJ Dec., ¶ 44.)

13 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs**

14 The purpose of an award of a Class Counsel’s attorney’s fees in class action litigation is to reward
15 counsel who took the risk of non-payment and invested in a case that achieved a substantial positive
16 result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the
17 potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix,*
18 *Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the
19 percentage method or the lodestar method is used, fee awards in class actions average around one-third
20 of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action*
21 *Settlements: An Empirical Study, J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at
22 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a
23 one-third fee is consistent with market rates).

24 Class Counsel took this matter on a contingency fee basis and invested significant time and
25 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
26 Individual Class Payment illustrates the demonstrably positive outcome for the Class Members. The
27 Agreement provides for a payment of Attorneys’ Fees and Litigation Costs in the amount of not more
28

than thirty-three percent (33%) of the Gross Settlement Amount (\$608,850.00) and reimbursement of actually incurred litigation costs in an amount not to exceed \$65,000.00. (Agreement at § 3.2.2.) Considering the positive outcome for the Settlement Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Litigation Costs are fair and reasonable. Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Litigation Costs 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., ¶ 45.)

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate, provided that Plaintiff and Class Counsel are in compliance with the terms of the Settlement Agreement. (SCJ Dec., ¶ 46.)

1. The Standard for Class Certification

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

9 Because all Class Members are Defendant’s current and former employees, the class is readily
10 ascertainable from Defendant’s regular business records, i.e., payroll records. (SCJ Dec., ¶ 47.)

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

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

23 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
24 each individual claim, the Class Members likely have little incentive to litigate their claims on an
25 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
26 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
27 adjudication. (SCJ Dec., ¶ 50.)

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel have 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., ¶¶ 51-56; Declaration of Jean-Claude Lapuyade ¶¶ 1-8; Declaration of Shani Zakay, ¶¶ 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, the Parties request that the Court preliminarily approve the settlement.

Dated: September 4, 2026

JCL LAW FIRM, APC

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