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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

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| TANYA MARSHALL, MARIA ANDRADE, individually, and on behalf of other members of the general public similarly situated,<br><br>Plaintiff,<br>v.<br><br>WATTS HEALTHCARE CORPORATION, a California Corporation; and DOES 1 through 100, inclusive,<br><br>Defendant. | Case No.: 19STCV27737<br>Related Case No. 20STCV08186<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>Date: February 26, 2025<br>Time: 10:30 a.m.<br><br>Judge: Hon. Stuart M. Rice<br>Dept.: 1 |

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# I. INTRODUCTION

Plaintiffs Tanya Marshall and Maria Andrade ("Plaintiffs") seek preliminary approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for an estimated 788 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class"** and **"Class Period"** shall mean all current and former hourly-paid or nonexempt employees of defendant Watts Healthcare Corporation ("Defendant") in California ("Class") at any time during the period commencing August 8, 2015 through October 27, 2024 ("Class Period"). Agreement at §§ 1.5, 1.12. Based on its review of the currently available data, Defendant estimates there are 788 Class Members who worked approximately 106,344 Workweeks during the Class Period. Agreement at § 4.1.

2. The **"Participating Class Member"** refers to all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.35.

3. The **"Aggrieved Employees"** and **"PAGA Period"** refers to all current and former hourly-paid or non-exempt employees of Defendant in California employed during the period between January 9, 2024, through October 27, 2024. Agreement at §§ 1.4, 1.31. Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 5.3; 7.5. As of the date of the Agreement, there were an estimated 352 Aggrieved Employees who worked an estimated 4,414 pay periods during the PAGA Period. Agreement at § 4.1.

4. The "**Gross Settlement Amount**" is Two Million Dollars and Zero Cents ($2,000,000.00). Agreement at §§ 1.22, 3.1. The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Class Representative Service Payments**" in the amount of $10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at §§ 1.14, 3.2.1;

b. A "**Class Counsel Fees Payment**" and "**Class Counsel Litigation Expenses Payment**" in the amount not to exceed 35% of the Gross Settlement Amount for attorney's fees, currently estimated

[1] The Agreement is attached as Ex "A" to the Declaration of Joanna Ghosh ("JG Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JG Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

to be $700,000.00 ***and*** litigation costs and expenses not to exceed $30,000.00, to be paid to Class Counsel. Agreement at §§ 1.7, 3.2.2. The Attorneys' Fees shall be divided between Class Counsel as follows: 85% to Lawyers for Justice, P.C., 7.5% to JCL Law Firm, APC, and 7.5% to Zakay Law Group, APLC. Plaintiffs have reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Tanya Marshall ("Marhsall Dec.") at ¶ 10; Declaration of Maria Andrade ("Andrade Dec.") at ¶ 10.

c. A "**PAGA Payment**" in the amount of $200,000.00 shall be set aside from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. Agreement at § 1.34; 3.2.5. The Administrator, Apex Class Action, LLC ("Administrator") shall pay $130,000 representing 65% of the PAGA Payment to the Labor and Workforce Development Agency ("LWDA Payment"). Agreement at §§ 1.27, 1.34, 3.2.5. The Administrator shall distribute $70,000 representing 35% of the PAGA Payment to the Aggrieved Employees ("Individual PAGA Payment"). Agreement at §§ 1.24, 1.34, 3.2.5.

d. "**Administration Expenses Payment**" not to exceed $14,990.00 payable to the Administrator for, *inter alia,* the administration of the Class Notice and Individual Class Payments. Agreement at § 3.2.3.

3. The "**Net Settlement Amount**" means the Gross Settlement Amount less the Individual PAGA Payments, the LWDA Payment, Class Representative Service Payments, Attorneys' Fees and Litigation Costs, and the Administration Expenses Payment, in the amounts approved by the Court. Agreement at § 1.28. The Net Settlement Amount is estimated to be approximately $1,035,010.00 which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at § 1.23, 3.2.4.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class, Aggrieved Employees, and the State of California is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class Members, Aggrieved Employees, and State of California. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by Plaintiffs in pursuing this putative wage and hour class action. Indeed, by settling now rather than proceeding to trial, Participating Class Members, Aggrieved Employees, and the State of California 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. JG Dec., ¶ 7.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement. JG Dec., ¶ 8.

## II. FACTS AND PROCEDURE

### A. Overview of the Litigation

Defendant is a non-profit charitable organization and designated Federally Qualified Health Center that provides medical, social, and behavioral services to the indigent and/or under-served communities in Los Angeles, California. Defendant has contended that its operations are primarily funded way of Federal funding, and to some extent State and County special grants and contracts, that are earmarked for particular purposes and use, and that these funds may not be diverted to non-service related issues. Defendant has also contended that it was economically impacted by the COVID-19 pandemic. In the course of litigation and mediation and settlement negotiations, Defendant has provided Plaintiffs' counsel with, on a confidential basis, documentation and information regarding its business and financial condition. JG Dec., ¶ 9. This action asserts claims on behalf of all of Defendant's current and former hourly-paid or non-exempt employees in California at any time during the Class Period. Plaintiff Tanya Marshall worked for Defendant in California from approximately February 2017 to May 2017 as a non-exempt employee, paid on an hourly basis. Plaintiff Maria Andrade worked for Defendant in California from approximately September 2021 to October 2021 as a non-exempt employee, paid on an hourly basis. During their employment, Plaintiffs allege that Defendant failed to provide them with compliant meal and rest periods, pay all wages due, and failed to reimburse business expenses. Throughout their employment, Plaintiffs and other putative class members and aggrieved employees were subject to Defendant's written and non-written operations and employment policies, practices, and procedures**.** JG Dec., ¶ 10; Marshall Dec. ¶ 4; Andrade Dec. ¶ 4.

Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages when due. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that Plaintiff and some of the putative class members are subject to collective bargaining agreements that cover the hours of labor, wages, and basic working conditions of Plaintiffs and other putative class members, which include grievance and arbitration procedures that expressly cover the claims asserted in the Action, and that many putative class members have availed themselves of the grievance and arbitration procedures so as to resolve disputes regarding their wages and hours and working conditions. Defendant also asserts that it fully complied with all of its obligations under any collective bargaining agreements and applicable state and federal wage and hour laws, and Defendant had raised several other significant defenses to Plaintiffs' claims. In the course of litigation, Defendant asserted that it intended to file a motion for judgment on the pleadings or motion for summary judgment, seeking to have the Court determine whether the claims asserted in the Action are preempted by section 301(a) of the Labor Management Relations Act and whether Plaintiffs were required to exhaust administrative remedies and/or internal grievance procedures, including the grievance and arbitration remedies provided by the collective bargaining agreements. JG Dec., ¶ 11.

On August 8, 2019, Plaintiff Tanya Marshall filed her complaint against Defendant in Los Angeles County Superior Court, alleging: (1) failure to pay overtime pursuant to California Labor Code sections 510 and 1198; (2) failure to provide compliant meal periods and associated premiums in violation of California Labor Code sections 226.7 and 512(a); (3) failure to provide compliant rest periods and associated premiums in violation of California Labor Code section 226.7; (4) failure to pay minimum wages pursuant to California Labor Code sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202; (6) failure to timely pay wages during employment in violation of California Labor Code section 204; (7) failure to provide accurate and itemized wage statements in violation of California Labor Code section 226(a); (8) failure to keep requisite payroll records in violation of California Labor Code section

1174(d); (9) failure to reimburse business expenses in violation of California Labor Code sections 2800 and 2802; and (10) violations of California Business and Professions Code section 17200, *et seq*. JG Dec., ¶ 12.

On November 12, 2020, Defendant filed a Notice of Related Case, identifying *Sonika Flournoy v. Watts Healthcare Corporation*, Los Angeles County Superior Court Case No. 20STCV08186 ("Flournoy Action"), filed on March 2, 2020, as a related case. On November 23, 2020, the Court entered an order finding that this Action and the Flournoy Action are related under California Rules of Court, rule 3.300(a) and the Court further deemed this Action as the lead case. Eventually, the Flournoy Action resolved by way of settlement on an individual basis and was dismissed. JG Dec., ¶ 13.

On December 8, 2021, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq., however the Parties did not reach a settlement at that time and the Action continued to be litigated. JG Dec., ¶ 14. On July 31, 2023, the Parties stipulated to an order granting Plaintiff Tanya Marshall leave to file a first amended complaint adding Maria Andrade as a named plaintiff in this Action, and the Court granted leave on August 1, 2023. The First Amended Class Action Complaint for Damages ("First Amended Complaint") was filed on August 3, 2023. The Parties continued to engage in settlement negotiations, including Defendant providing confidential financial information to further facilitate settlement discussions, with the Mediator's assistance between December 2021 and June 2024. Based on the mediator's evaluation, the Parties ultimately reached a settlement by accepting the mediator's proposal and executed a Memorandum of Understanding—Class Action and PAGA Settlement on July 29, 2024. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JG Dec., ¶ 15.

Thereafter, in order to effectuate the Settlement, Defendant and the Labor and Workforce Development Agency ("LWDA") were served, on behalf of Plaintiffs, with a notice pursuant to the Private Attorneys General Act, California Labor Code section 2698, *et seq*. ("PAGA") on January 9, 2025 ("PAGA Notice"). Plaintiffs' PAGA Notice sets forth the facts and theories regarding Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of their intent to pursue civil penalties. The Parties have stipulated to grant Plaintiffs leave to amend their complaint to add an additional cause of action for violation of the PAGA based on the same allegations already contained in the First Amended Complaint. JG Dec., ¶ 16.

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

Several attorneys at Lawyers *for* Justice, PC have worked on the Action since its inception. JG Dec., ¶ 17. Lawyers *for* Justice, PC has worked closely with JCL Law Firm, APC and Zakay Law Group, APLC in the pursuit of the Action since they were associated in as co-counsel, and our work with them has been a coordinated and combined effort. Together, Lawyers *for* Justice, PC, JCL Law Firm, APC, and Zakay Law Group are referred to herein as "Class Counsel." JG Dec., ¶ 18. Ultimately, the efforts of Plaintiffs and Class Counsel have resulted in a settlement recovery. JG Dec., ¶ 19

Collectively, Class Counsel investigated the veracity, strength, and scope of the claims, and worked on preparing the case for class certification and trial, prior to reaching the Settlement. This matter involved extensive and ongoing investigations and research into legal and factual issues, and extensive formal and informal discovery. Class Counsel obtained class contact information from Defendant as well as other information from Plaintiffs and percipient witnesses. Class Counsel reviewed and analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources, researched applicable law, and undertook analyses and calculations of the value of claims, damages, and penalties exposure. Class Counsel also met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, formal and informal discovery, production of information, documents, and data in the course of litigation and mediation and settlement negotiations, and the mediation and settlement negotiations. Other work that Class Counsel has performed and/or will perform include, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, and settlement-related papers; case management; claims assessment and evaluation; and preparing for and attending court proceedings and the mediation and settlement negotiations. JG Dec., ¶ 20.

As outlined herein, the Parties have conducted significant investigations and formal and informal discovery during the course of litigating this matter. Class Counsel analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources. This information, documents, and data provided a critical understanding of the nature of the work performed by class members and aggrieved employees, as well as Defendant's operations and employment policies, practices, and procedures, and were used in analyzing liability, damages, and penalties valuation issues in connection with all phases of the litigation, and ultimately, in connection with the mediation and settlement negotiation process. Accordingly, sufficient investigation and review of information has taken place in order for the Parties to be sufficiently informed of the nature and extent of the claims, and to enable all parties to fully evaluate the settlement for its fairness, adequacy, and reasonableness. For example, Defendant produced Plaintiffs' employee files, which included copies of various written policies, onboarding documents, and payroll records. Defendant also formally produced extensive documents in the course of formal discovery, including and not limited to, several Memorandum of Understanding with SEIU Local 721 and Personnel Policies and Procedures manuals, setting forth written policies, practices, and procedures, exemplar wage statements, exemplar business expense report and reimbursement forms, job descriptions, meal period waiver forms, workplace posters and bulletins, organizational charts, and telephone directory. In connection with mediation and settlement negotiation, Defendant produced a 50% sample of class time and payroll records and class statistics and datapoints, as well as its confidential information and documents regarding its financial condition. In total, Class Counsel reviewed thousands of pages of documents and data. JG Dec., ¶ 21.

After conducting significant investigation of the facts and law during the prosecution of the cases, counsel for the parties engaged in mediation and extensive settlement negotiations to try to resolve the case. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position. In the course of the mediation and settlement negotiations, the Parties discussed all aspects of the case, including the risks and delays of further litigation proceedings, class certification, and/or trial, the law relating to, *inter alia*, class certification, off-the-clock theory, meal and rest periods, rounding, regular rate, PAGA representative claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things. Arriving at a settlement that was acceptable to the parties was not easy. After conducting extensive investigations, formal and informal discovery, and settlement negotiations, and with the aid of the mediator's evaluations, the Parties ultimately agreed to resolve the case given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation, and the real possibility of no recovery after years of litigation. JG Dec., ¶ 22.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing a sampling of class time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's potential liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation and engaging in extensive additional settlement negotiations. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JG Dec., ¶ 23.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' 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 the Settlement Agreement to be in the best interests of the Class Members, Aggrieved Employees, and State of California. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JG Dec., ¶ 24.

**C. The Parties Settled After Mediation and Extensive Post-Mediation Settlement Negotiations**

On December 8, 2021, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq. Mediator Wagner 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.”).) The Parties did not reach a settlement at mediation, though the he Parties continued to engage in settlement negotiations, including Defendant providing confidential financial information to further facilitate settlement discussions, with the Mediator's assistance between December 2021 and June 2024. Based on the mediator's evaluation, the Parties ultimately reached a settlement by accepting the mediator's proposal and executed a Memorandum of Understanding—Class Action and PAGA Settlement on July 29, 2024. JG Dec., ¶¶ 14-15.

### D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Participating Class Members

The Participating Class Members consist of all persons who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the period commencing August 8, 2015 through October 27, 2024, who do not file a timely and valid Request for Exclusion from the Settlement. Agreement at §§ 1.5, 1.12, 1.35. Based on its review of the currently available data, Defendant believes there are an estimated 788 Class Members that worked approximately 106,344 Workweeks. 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 $2,000,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Participating Class Members; (2) Class Representative Service Payments of $10,000.00 to each of the two Plaintiffs for their services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of $200,000.00; (4) Administration Expenses Payment estimated at $14,990.00; (5) Attorneys' Fees and Litigation Costs in the amount of up to $730,000.00, comprised of attorneys' fees equal to 35% of the Gross Settlement Amount estimated to be $700,000.00 and up to $30,000.00 for actually incurred litigation expenses. *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 Class Member as Individual Class Payments. Agreement at § 1.28. There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § 3.1.

3. <u>The Funding Date and Installment Plan</u>

Assuming there are no objectors, and no appeal is filed, Defendant will fund the $2,000,000.00 Gross Settlement Amount in three (3) installments. Defendant will make the first payment in the amount of $666,667.00 by June 19, 2025 ("First Installment"). Defendant will make the second payment in the amount of $666,667.00 by June 19, 2026 ("Second Installment"). Defendant will make the third payment in the amount of $666,667.00 by June 19, 2027 ("Final Payment"). Agreement at § 4.3. Within 14 fays after Defendant makes the Second Payment, the Administrator will mail checks for all Individual Class Payments and all Individual PAGA Payments. Within 14 days after Defendant makes the Final Payment and fully funds the Gross Settlement Amount, the Administrator will mail checks for the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. Agreement at § 4.3.

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

Each Participating Class Member will receive an Individual Class Payment. The Class Data provided by Defendant to the Administrator will include the number of eligible Workweeks for each Participating Class Member. The Individual Class Payments will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings *(e.g.*, employee payroll taxes, etc.). Agreement at § 3.2.4.1.

5. <u>Release by Participating Class Members</u>

Generally, as of the date Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.39; 5.2.

6. PAGA Release by the Aggrieved Employees

Generally, as of the date Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.40; 5.3.

## III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $2,000,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

*Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation").)

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

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

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.) Here, the Parties reached a settlement by accepting the mediator's proposal. The settlement was reached with the Mediator's assistance, and after Defendant provided confidential financial information to further facilitate settlement discussions. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JG Dec., ¶¶ 14-15.

2. <u>Class Counsel's Thorough 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 informal and formal discovery, document review, and data analysis Class Counsel analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources. This information, documents, and data provided a critical understanding of the nature of the work performed by class members and aggrieved employees, as well as Defendant's operations and employment policies, practices, and procedures, and were used in analyzing liability, damages, and penalties valuation issues in connection with all phases of the litigation, and ultimately, in connection with the mediation and settlement negotiation process. Accordingly, sufficient investigation and review of information has taken place in order for the Parties to be sufficiently informed of the nature and extent of the claims, and to enable all parties to fully evaluate the settlement for its fairness, adequacy, and reasonableness The investigation allowed Class Counsel to realistically assess the value of the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JG Dec., ¶ 21.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' 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 the Settlement Agreement to be in the best interests of the Class Members, Aggrieved Employees, and State of California. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JG Dec., ¶ 24.

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

The Gross Settlement Amount of $2,000,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not

[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*

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).)

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

The Gross Settlement Amount of $2,000,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel reviewed and analyzed data produced by Defendant and developed damages and penalties analyses and models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. Based on data provided by Defendant, the total number of class members during the period from August 8, 2015 to October 27, 2024 was estimated to be approximately 788 individuals who were credited with an estimated total of 106,344 workweeks and estimated average hourly rate of pay of $19.98. Class Counsel calculated the potential and realistic values of each claim as follows:

Failure to Pay Overtime Wages: The potential value of this claim was estimated to be $6,374,259.36 (106,344 workweeks x 2 hours of unpaid overtime wages x overtime hourly rate of $29.97, which is based on the average hourly rate of $19.98). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $2,549,703.74), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $892,396.31), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $312,338.71). JG Dec., ¶ 25(a).

Failure to Pay Minimum Wages: The potential value of this claim was estimated to be $2,124,753.12 (106,344 workweeks x 1 hour of unpaid minimum wages x average hourly rate of

*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").

$19.98). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $743,663.59, a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $260,282.26), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $91,098.79). JG Dec., ¶ 25(b)

Failure to Provide Compliant Meal Periods and Associated Premiums: The potential value of this claim was estimated to be $4,249,506.24 (106,344 workweeks x 2 meal period premium x average hourly rate of $19.98). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $1,699,802.50), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $594,`930.88), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $208,225.81). JG Dec., ¶ 25(c)

Failure to Provide Compliant Rest Periods and Associated Premiums: The potential value of this claim was estimated to be $4,249,506.24 (106,344 workweeks x 2 rest period premiums x average hourly rate of $19.98). At this juncture, a discount of 60% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $1,699,802.50), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $594,930.88), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $208,225.81). JG Dec., ¶ 25(d)

Failure to Timely Pay Wages During Employment: The value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*. JG Dec., ¶ 25(e)

Failure to Timely Pay Wages After Termination (and Waiting-Time Penalties): Based on information and data provided by Defendant, it was estimated that approximately 404 putative class members had been terminated during the three-year statute of limitations (i.e., from August 8, 2015). Assuming that these individuals were not timely paid all wages due to them upon termination, the potential value of waiting-time penalties was estimated to be $1,937,260.80 collectively (404 individuals x [30 days x hourly rate of $19.98 x 8 hours]), or approximately $4,795.20 per individual. At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $678,041.28), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $237,314.45), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $83,060.06). JG Dec., ¶ 25(f)

<u>Failure to Provide Compliant Wage Statements</u>: The potential value of this claim was calculated to be $2,409,300.00 ([610 initial violations x $50 statutory penalty] + [23,788 subsequent violations x $100 statutory penalty]). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $843,255.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $295,139.25), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $103,298.74). JG Dec., ¶ 25(g)

<u>Failure to Maintain Payroll Records</u>: Arguably, civil penalties would only be recoverable by the Labor Commissioner, therefore, the value of this claim is considered as a part of the valuation of the PAGA claim contained *infra*. JG Dec., ¶ 25(h)

<u>Failure to Reimburse Necessary Business Expenses</u>: The potential value of this claim was estimated to be $531,720.00 (106,344 workweeks x $5.00 unreimbursed business expenses). At this juncture, a discount of 65% was applied to account for the risks associated with obtaining and maintaining class certification (bringing the value of this claim closer to $186,102.00), a discount of 65% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $65,135.70), and a discount of 65% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of this claim closer to $22,797.50). JG Dec., ¶ 25(i)

<u>PAGA Penalties</u>: The amount of civil penalties at issue, which the Court could determine

whether or not to assess and whether or not to reduce based on the facts and circumstances of the case (to avoid an award that is unjust, arbitrary and oppressive, or confiscatory, pursuant to California Labor Code section 2699(e)(2)), were estimated to be approximately $686,400.00 (352 aggrieved employees estimated to have worked during one-year statutory period x $1,950 civil penalties). At this juncture, a discount of 35% was applied to account for the risks associated with possible bifurcation of discovery and/or trial (bringing the value of this claim closer to $446,160.00), a discount of 35% was applied to account for the risks associated with succeeding on the merits and establishing liability (bringing the value of this claim closer to $290,004.00), and a discount of 35% was applied to account for the risks associated with the Court's discretion to reduce civil penalties and obtaining an award of civil penalties (bringing the value of this claim closer to $188,502.60). JG Dec., ¶ 25(j)

**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 *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*

*Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

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

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

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

Finally, continuing to litigate this Action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendant would appeal any favorable judgment (and the risk of an appeal and subsequent reversal is real. JG Dec., ¶ 26. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

The foregoing discussion confirms that the amount of the Settlement is adequate in light of

Plaintiffs' allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to certification, manageability, merits, and monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, manageability, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel also recognized that additional discounts could be made to the risk-adjusted value to account for the costs and expenses associated with further litigation and the present value of obtaining a settlement now as opposed to monetary recovery, if any, that may be obtained in the future after litigation. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts. JG Dec., ¶ 27.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Administrator will first verify addresses, then mail the proposed Class Notice in English and Spanish to all Class Members. The Class Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms,

[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.

the procedure, and time period within which to requests for exclusions or objections to the Class Settlement, the date for the Final Approval Hearing, the formula used to calculate settlement payments, and the terms and scope of the release of class claims and PAGA claims. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JG Dec., ¶ 28.

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

**C. The Court Should Preliminarily Approve the Class Representative Payment**

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." (*Rodriguez,* 563 F.3d at 958-59.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for Class Representative Service Payments in the amount of up to $10,000.00 each for Plaintiffs. These service awards are fair and reasonable compensation for Plaintiffs' efforts in pursuing the Action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Class Members, Aggrieved Employees, and State of California. For example, Plaintiffs expended significant time responding to and gathering and producing documents responsive to multiple sets of formal written discovery requests propounded on them by Defendant. The contemplated service awards are also fair and appropriate in light of Plaintiffs' broader general release of claims and Civil Code section 1542 waiver. JG Dec., ¶ 29.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class Representative Service Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Service Payments.

### D. The Court Should Preliminarily Approve the Attorneys' Fees and Litigation Costs

The purpose of a payment of Attorneys' Fees and Litigation Costs 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).)

Plaintiffs will file a formal motion for the negotiated Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.

### E. Provisional Certification for Settlement Purposes Is Appropriate

For settlement purposes only, Plaintiffs contend, and Defendant does not dispute, that provisional certification of the Class is appropriate. JG Dec., ¶ 30.

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

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

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

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

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

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

Because all Class Members are Defendant's current and former employees, the class is readily ascertainable from Defendant's regular business records, i.e., payroll records. JG Dec., ¶ 31.

The statutes relating to each of Plaintiffs' 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 Class Members. JG Dec., ¶ 32.

Plaintiffs' 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, Plaintiffs' interests are entirely coextensive with the interests of the Class Members. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive discovery, and evaluating the proposed Settlement to assure that it is fair. JG Dec., ¶ 33.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JG Dec., ¶¶ 34-39; Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶¶ 3-9; Declaration of Shani Zakay ("SOZ Dec.").

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., ¶ 4. Finally, Class Counsel is not aware of any other pending matters or actions asserting claims that will be extinguished or adversely affected by the Settlement. JCL Dec., ¶ 10; SOZ Dec., ¶ 4.

## IV. CONCLUSION

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

Dated: January 30, 2025

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