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

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K Hom (State Bar #327243)
Jaclyn Joyce (State Bar #285124)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
jackland@zakaylaw.com
jaclyn@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LAN HO, an individual, on behalf of herself, and on behalf of all persons similarly situated, Plaintiff, v. MHF MV MANAGER VI LLC a Delaware limited liability company; MHF MV OPERATING VI LLC dba COURTYARD SAN DIEGO MISSION VALLEY /HOTEL CIRCLE, a Delaware limited liability company; MHF MV VI LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendant.	Case No: 37-2024-00023005-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: February 27, 2026 Time: 9:00 a.m. Judge: Hon. Euketa Oliver Dept.: C-75

TABLE OF CONTENTS

/ / /

TABLE OF AUTHORITIES

CASES

/ / /

/ / /

STATUTES, RULES AND CODES

/ / /

SECONDARY SOURCES

I. INTRODUCTION

Plaintiffs Lan Ho ("Plaintiff Ho") and Marlene Benitez ("Plaintiff Benitez") (collectively, "Plaintiffs") seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, provides valuable monetary relief for approximately 331 Class Members and 161 Aggrieved Employees. The basic terms of the Agreement provide the following:

1. The **"Class"** and **"Class Period"** means all current and former non-exempt employees who were or are employed by Defendant MHF MV Manager VI LLC ("Defendant MHF Manager") and/or Defendant MHF MV Operating VI LLC dba Courtyard San Diego Mission Valley/Hotel Circle ("Defendant MHF Operating") and/or Defendant MHF MV VI LLC ("Defendant MHF") (collectively, "Defendants") in California ("Class") at any time during the period from May 17, 2020, to September 19, 2025 ("Class Period"). Agreement at §§ I(D), I(E).

a. The **"Settlement Class Members"** means all Class Members who have not submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at § I(MM).

b. The "**Class Size**" is comprised of approximately 331 individuals who collectively worked approximately 20,502 Workweeks during the Class Period as represented by Defendants at the time of mediation.

c. The "**Escalator"** or "**Claw Back"** means if the actual number of Workweeks worked during the Class Period exceeds 20,502 by more than 10%, Defendants shall have the option of: (a) increasing the Gross Settlement Amount by the percentage increase in the number of Workweeks worked by the Class Members above 10% (e.g., if number of Workweeks by 11%, the Gross Settlement Amount will increase by 1%); or (b) rolling back the Class Period and PAGA Period end dates to the date in which 22,552 Workweeks is met. Agreement at § III(A)(2).

2. The **"Aggrieved Employees"** and **"PAGA Period"** means all current and former non-exempt employees who were or are employed by Defendant MHF Manager and/or Defendant MHF

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

Operating and/or Defendant MHF in California ("Aggrieved Employees") at any time during the period from March 11, 2023, to September 19, 2025 ("PAGA Period"). Agreement at §§ I(B), I(Z). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(2). At the time of mediation, there were approximately 161 Aggrieved Employees. JCL Dec., ¶ 20.

3. The "**Gross Settlement Amount**" is Five Hundred Fifty Thousand Dollars and Zero Cents ($550,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. The "**Service Awards**" of not more than $10,000.00 to each Plaintiff ($20,000.00 total) in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § I(II);

b. **"Class Counsel Award"** in the amount not of not more than $222,500.00, comprised of 35% of the Gross Settlement Amount for attorney's fees, currently estimated to be $192,500.00 ***and*** litigation expenses not to exceed $30,000.00, to be paid to Class Counsel. Agreement at § I(H);

c. A "**PAGA Payment**" of Twenty-Seven Thousand Dollars and Zero Cents ($27,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 ("PAGA Payment"). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment ($20,250.00) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Payment ($6,750.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ I(G); I(R); and I(W); and

d. "**Settlement Administration Costs**" not to exceed $6,990.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice of Pendency of Class and Representative Action Settlement and Final Hearing Date ("Notice Packet") and costs associated with administration of the settlement. Agreement at §§ I(T), I(KK).

4. The "**Net Settlement Amount**" of approximately $273,510.00 (Gross Settlement Amount less the requested Class Counsel Award, Service Awards, PAGA Payment, and Settlement

Administration Costs) will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ III(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an estimated average Individual Settlement Payment of **$826.31**. JCL Dec., ¶ 6.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants own and operate the Courtyard Marriott Mission Valley hotel in San Diego, California, where Plaintiffs worked. Plaintiff Ho was employed by Defendants from September 2019 through October 2023 as a non-exempt employee. Declaration of Lan Ho ("Ho Dec.") at ¶ 4. Plaintiff Benitez was employed by Defendants from on or about May 30, 2022, through April 17, 2024, as a non-exempt employee. Throughout their employment, Plaintiffs were subject to Defendants' policies and procedures. JCL Dec., ¶ 8.

Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to properly calculate the regular rate of pay for purposes of overtime, meal period premiums and redeemed sick pay, failed to provide compliant meal and rest periods, failed to reimburse necessary business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants assert they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, asserting that it paid its employees for all hours worked, maintained facially compliant meal and rest period policies, issued compliant wage statements, properly reimbursed all necessary business expenses, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On March 11, 2024, Plaintiff Ho served Defendants and the LWDA with a Notice of Violations ("PAGA Notice"). Plaintiff Ho's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698, *et seq* ("PAGA"). JCL Dec., ¶ 10.

On May 17, 2024, Plaintiff Ho filed a class action complaint in the San Diego County Superior Court, Case No. 37-2024-00023005-CU-OE-CTL ("Ho Class Action" or "Lead Case") alleging class claims for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure To Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure To Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351. JCL Dec., ¶ 11.

That same day, Plaintiff Ho filed a separate representative action complaint in the San Diego County Superior Court, Case No. 37-2024-00023073-CU-OE-CTL ("Ho PAGA Action") alleging a single cause of action for violations of PAGA. JCL Dec., ¶ 12.

On May 22, 2024, Plaintiff Benitez submitted a Notice of Violations with the LWDA and served the same on Defendants. JCL Dec., ¶ 13.

On June 24, 2024, Plaintiff Benitez filed representative action complaint in the County of Alameda Superior Court, Case No. 24CV080932 ("Benitez PAGA Action"). On July 31, 2024, Plaintiff Benitez filed a first amended complaint. Per stipulation, the Benitez action was transferred to the San Diego County Superior Court, Case No. 37-2024-00900160-CU-MC-CTL alleging claims under the PAGA for: (1) Failure to Pay Minimum/Regular Wages; (2) Failure to Pay State Overtime; (3) Failure to Pay Wages Timely; (4) Failure to Comply with Meal and Rest Break Laws; (5) Failure to Provide Accurate Wage Statements; (6) Failure to Maintain Records; (7) Failure to Reimburse Expenses; (8) Sick Pay Violations; and (9) Violations of Various Miscellaneous Provisions of the Labor Code via the PAGA. JCL Dec., ¶ 14.

The Parties subsequently agreed to mediate the case. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra,* Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 15.

On June 19, 2025, the Parties participated in mediation presided over by Monique Ngo-Bonnici, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 16.

On January 12, 2026, the Parties submitted a Stipulation and [Proposed] Order for Leave to File First Amended Complaint in the *Ho* Class Action. Within ten (10) days of the Court granting leave to amend, Plaintiffs will file the Operative Complaint in the *Ho* Class Action, adding Plaintiff Benitez as a named plaintiff, and adding factual allegations, theories, and claims asserted in the *Ho* PAGA Action and the *Benitez* PAGA Action. JCL Dec., ¶ 17.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with

Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their employment, including payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. JCL Dec., ¶ 18.

Class Counsel subsequently requested Plaintiffs' employee files from Defendants. In response, Defendants produced dozens of pages of documents, including but not limited to, Plaintiffs' hiring documents and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claims that Defendants' failed to, among other things, pay for all time worked, failed to properly calculate the regular rate of pay for purposes of overtime, meal period premiums and redeemed sick pay, failed to provide compliant meal and rest periods, failed to reimburse necessary business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. JCL Dec., ¶ 19.

To prepare for mediation, Defendants produced more than 2.2 million unique cells of time and payroll data for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. JCL Dec., ¶ 20.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. JCL Dec., ¶ 21.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 22.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining

Plaintiffs' suitability as 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 the Class Member's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 23.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 24.

C. The Parties Settled at Mediation

On June 19, 2025, the Parties conducted a full day of mediation with Monique Ngo-Bonnici, Esq. Mediator Ngo-Bonnici helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ngo-Bonnici's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the MOU. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 25.

/ / /

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all current and former non-exempt employees who were or are employed by Defendant MHF Manager and/or Defendant MHF Operating and/or Defendant MHF in California at any time during the period beginning May 17, 2020, through September 19, 2025. Agreement at § I(D); I(E). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(MM). At the time of mediation, Defendants estimated that the Class was comprised of 331 individuals that worked approximately 20,502 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $550,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) Service Awards of not more than $10,000 to each Plaintiff ($20,000 total) for their services on behalf of the Class; (3) a PAGA Payment in the amount of $27,000.00; (4) Settlement Administration Costs estimated at $6,990.00; (5) Class Counsel Award in the amount of $222,500.00, comprised of attorneys' fees equal to thirty-five percent of the Gross Settlement Amount estimated to be $192,500.00 and an estimated $30,000.00 for actually incurred litigation expenses. *See* generally Agreement at § III(M).

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

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross Settlement Amount within ten (10) days of the Effective Date. Agreement at § I(N).

4. Formula for Calculating Individual Settlement Payments

Settlement Class Members will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Class Member worked for

Defendants in California during the Class Period. Agreement at § III(M)(1). The Class Data provided by Defendants to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § I(I). The Settlement Administrator will calculate each Class Member's final Individual Settlement Payment by dividing a particular Class Member's total number of Workweeks by the total number of Workweeks for all Class Members, resulting in a Class Payment Ratio for each Class Member. Agreement at § III(M)(1). Each Class Member's Class Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). *Id.* Individual Settlement Payments for members of the Settlement Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § *Id*.

Given that there are approximately 331 Class Members, ***the average gross recovery is estimated to be approximately $826.31*** (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

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

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

Generally, as of the Funding Date, Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § III(D).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $550,000.00 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. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg, § 11.51.) The Parties participated in mediation mediator Monique Ngo-Bonnici, Esq. Mediator Ngo-Bonnici managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").)

At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The matter resolved only after the Mediator heard arguments, reviewed evidence, and evaluated the Parties' respective claims and defenses. Once the Parties reached a settlement, the Parties engaged in protracted negotiations regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 27.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiffs' claims. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 28.

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

The Gross Settlement Amount of $550,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank*

[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").

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. <u>The Gross Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Gross Settlement Amount of $550,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger to develop economic damage models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) ranged between $1,484,768.59 ("Realistic Damages") and $2,387,950.40 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between 37.04% ("Realistic Damages") and 23.03% ("Maximum Damages") of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. JCL Dec., ¶ 29.

(1) <u>Defendants' Estimated Exposure for Unpaid Wages</u>

Plaintiffs allege that Defendants failed to pay its employees for all hours worked. Specifically, Plaintiffs assert that for a large portion of the Class Period, Defendants implemented a pre-shift COVID-19 screening policy under which employees were required to undergo mandatory temperature checks and fill out questionnaires, before clocking in for their shifts. Further, Plaintiffs assert that Defendants required employees to complete off-the-clock online training at the beginning of their employment. Finally, Plaintiffs assert that Defendants required employees to continue working *after* clocking out for their shifts. Plaintiffs allege that Defendants failed to compensate employees for this time. As a result, Plaintiffs and Class Members forfeited compensation, including overtime wages, for all the time they spent working under Defendants' control. Based on Plaintiffs' testimony and Class Counsel's investigation, Plaintiffs assumed 10 minutes of unpaid compensable time per workweek by the Class Members during the Class Period. JCL Dec., ¶ 30.

Defendants vigorously denied liability for this claim. Defendants maintained that they did not require Class Members to undergo temperature checks or to fill out a COVID-19 questionnaires off-the-clock. Further, Defendants asserted that they had in place written policies and procedures requiring employees to accurately record all their time worked daily and argued that such written policies and procedures directed its employees not to work while off the clock. Finally, Defendants argued that the off-the-clock claim was not suitable to class treatment because individualized issues predominated. For example, even assuming Plaintiffs performed work while off-the-clock, which Defendants dispute, Defendants argued that the time spent would vary drastically from class member to class member that it could not be established by common proof. JCL Dec., ¶ 31.

Considering Defendants' defenses, Plaintiffs applied 25% discount to this claim. Plaintiffs estimated Defendants' exposure for this claim ranged between approximately $30,973.31 and $41,297.75. JCL Dec., ¶ 32.

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

Plaintiffs also allege that Defendants failed to include certain non-discretionary compensation when calculating the regular rate of pay when paying overtime wages, meal period premiums, and redeemed sick pay. Specifically, Plaintiffs alleged that Defendants paid Class Members non-discretionary bonuses but failed to properly calculate these into Class Members' regular rates of pay for purposes of overtime, sick pay, and meal period premiums. Defendants vigorously denied liability and asserted that all incentive compensation was either properly calculated into the regular rate of pay or properly excluded as discretionary compensation. Due to the factual dispute at issue, Plaintiffs applied a 25% discount to this claim and estimated Defendants' exposure for this claim ranged from $23,526.00 to approximately $31,368.00. JCL Dec., ¶ 33.

(3) <u>Defendants' Estimated Exposure for Meal Period Violations</u>

Plaintiffs further allege that Defendants failed to provide compliant meal period and manipulated Plaintiffs' and Class Members' time records to create a synthetic record showing compliant breaks. Specifically, Plaintiffs allege that due to Defendants' understaffing, Class Members' meal periods were consistently missed, late, short and/or interrupted. Despite Plaintiffs' testimony, approximately 61% of Class Members' recorded meal periods were <u>*exactly*</u> 30 minutes in length. This suggests a practice of artificially recorded meal periods. Plaintiffs contend that these records do not reflect short or interrupted meal periods. Further, Plaintiffs alleged that Class Members did receive meal periods, Defendants required them to remain on hotel grounds and to keep their personal cell phones on them to remain reachable during their meal breaks. JCL Dec., ¶ 34.

Defendants raised a number of defenses to this claim. Defendants argued that they maintained complaint meal period policies and, in practice, provided employees with the opportunity to take compliant meal periods. Defendants argued, and the documents in fact reflect, that the time records evidence a high meal period compliance rate. Further, Defendants argued that employees were not required to remain on-premises or on call during their meal periods. Thus, Defendants argued that there was no potential liability for Plaintiffs' alleged meal period violations, and any claimed violations required a highly individualized inquiry not suitable to class treatment. Consequently, Plaintiffs applied a 25% discount to this claim and estimated Defendants' exposure for this claim ranged from $51,434.86 to approximately $68,579.81. JCL Dec., ¶ 35.

(4) Defendants' Estimated Exposure for Rest Period Violations

Plaintiffs also allege that Defendants failed to provide compliant rest periods. Plaintiffs allege that because of their rigorous work schedules, Plaintiffs and Class Members were not able to take timely and duty-free rest periods. Specifically, Plaintiffs contend that on the rare occasions that they were able to take rest breaks, Defendants required them to remain on premises and on call. JCL Dec., ¶ 36.

Again, Defendants denied liability and asserted that the workload is not such that it prevented employees from taking a break. Further, Defendants asserted that employees were not required to remain on premises or on call during their rest breaks. Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)

2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Accordingly, Plaintiffs' Conservative Model applied a 50% discount to the rest break claim. Plaintiffs estimated the range of potential outcomes for this claim was between approximately $521,356.42 to approximately $1,042,712.84. JCL Dec., ¶ 37.

(5) Defendants' Estimated Exposure for Unreimbursed Business Expenses

Plaintiffs further allege that Defendants failed to reimburse Class Members for use of their personal cell phones, personal computers, and home internet in furtherance of their job duties. California employers who require employees to incur personal business expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…."). JCL Dec., ¶ 38.

Again, Defendants vigorously denied any liability for this claim, arguing that there was no mandatory cell phone, computer, or home internet use, and in any event, Defendants provided avenues for reimbursement of legitimate business expenses. Considering Defendants' defenses, Plaintiffs applied an 85% discount to this claim. Plaintiffs estimated Defendants' exposure for this claim ranged between approximately $11,379.00 and $75,860.00. JCL Dec., ¶ 39.

(6) Defendants' Estimated Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiffs alleges that Defendants' violations resulted in *derivative* violations of Labor Code sections 203 and 226(a). Class Counsel weighed the potential recoveries against the strength and defenses of the underlying claims as outlined above. JCL Dec., ¶ 40.

Defendants denied that it violated California law regarding wage statements or waiting time penalties. Defendants argued that Plaintiffs could not prove the required "willful" prong under Labor Code section 203 and that Plaintiffs could not establish the necessary "injury" element to successfully recover derivative wage statement penalties, as required by Labor Code section 226. See, e.g., *Howard v. CVS Caremark Corp.,* 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc*. (C.D. Cal. 2011) 832 F. Supp. 2d

1122, 1134-1137 (finding insufficient evidence of bad faith or actual injury). Plaintiffs could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks. Consequently, Plaintiffs applied a 25% discount to the waiting time penalties claim and estimated that Defendant's exposure for this claim ranged from $617,761.50 and $823,682.00. Further, Plaintiffs applied a 25% discount to the wage statement penalties claim and estimated that Defendants' exposure for this claim ranged from $228,337.50 to $304,450.00. JCL Dec., ¶ 41.

(7) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure ranged between $16,955.00 and $752,050.00. JCL Dec., ¶ 42. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Payment in the amount of $27,000.00 which is 4.9% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($20,250.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($6,750.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 43.

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). JCL Dec., ¶ 44.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."). JCL Dec., ¶ 45.

Finally, even if a class is certified and Defendants are found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL Dec., ¶ 46.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 47.

"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 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 48. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $550,000.00 that is between 37.04% and 23.03% of Defendants' liability exposure for class damages. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 49.

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

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

---

[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* (7^{th} Cir. 1987) 826 F.2d 729, 732.

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § III(L)(2). This is a reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 50.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) JCL Dec., ¶ 51.

C. The Court Should Preliminarily Approve the Service Awards

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

The Settlement provides for Service Awards of not more than $10,000 to each Plaintiff ($20,000 total). The service awards are fair and reasonable compensation for the Plaintiffs' efforts bringing 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, reviewing the proposed

Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendants a general release of all claims arising out of their employment. JCL Dec., ¶ 52.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶ 53.

D. The Court Should Preliminarily Approve the Class Counsel Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 54.

Plaintiffs will file a formal motion for the negotiated Class Counsel Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 55.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiffs contend that provisional certification of the Class is appropriate. JCL Dec., ¶ 56.

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

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

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. JCL Dec., ¶ 57.

The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. JCL Dec., ¶ 58.

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. 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 Member by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 59.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 61-67, Declaration of Shani Zakay, ¶¶ 1-3; Declaration of Thomas D. Rutledge, ¶¶ 12-32; Declaration of Joel Larabee ¶¶ 12-21.

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., ¶ 60.

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, 2026

JCL LAW FIRM, APC

By: ______________________________
Jean-Claude Lapuyade, Esq.
Attorney for Plaintiffs