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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KAREN TRUDELLE and ANTHONY
BROUSSARD, individuals, on behalf of
themselves, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

CHILDREN OF THE RAINBOW, INC., a
California corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 37-2022-00034860-CU-OE-CTL
[Lead]
Case No. 37-2023-00006660-CU-OE-CTL

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

Date: June 14, 2024
Time: 8:30 a.m.

Judge: Hon. Robert Longstreth
Dept.: C-65

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I. INTRODUCTION

Plaintiffs KAREN TRUDELLE (“Plaintiff Trudelle”) and ANTHONY BROUSSARD (“Plaintiff Broussard”) (hereinafter collectively referred to as “Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 106 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all non-exempt employees who are or previously were employed by Defendant and performed work in California during the period between August 30, 2018, to June 30, 2023 (“Class Period”). Agreement at §§ I(G), I(J). The Settlement Class Members exclude any Class Member that submitted a valid and timely request for exclusion. Agreement at § I(KK).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees who are or previously were employed by Defendant and performed work in California (“Aggrieved Employees”) during the period between July 28, 2021 to June 30, 2023 (“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)(a).

3. The “**Gross Settlement Amount**” is Two Hundred and Forty Thousand Dollars and Zero Cents (\$240,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Awards**” in the amount of \$10,000 or in an amount that the Court authorizes to be paid to each Plaintiff for their services on behalf of the Class Members. Agreement at § III(N)(9);

b. A payment of “**Attorneys’ Fees and Attorneys’ Expenses**” in the amount not to exceed one-third of the Gross Settlement Amount for Attorney’s Fees, currently estimated to be \$80,000.00 and Attorneys’ Expenses not to exceed \$25,000, to be paid to Class Counsel. Agreement at § III(N)(10);

¹ The Agreement is attached as Ex “A” 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.

1 c. A “**PAGA Payment**” of \$10,000 shall be allocated from the Gross Settlement
2 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004
3 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Payment to the Labor
4 and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
5 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
6 Agreement at § III(N)(11); and

7 d. “**Claims Administration Expenses**” not to exceed \$5,500.00 payable to the
8 Settlement Administrator, Apex Class Action Administration, for, *inter alia*, the administration of the
9 Notice Packet and Individual Settlement Payments. Agreement at § III(N)(12); Agreement at § I(JJ).

10 4. The “**Net Settlement Amount**” of approximately \$99,500 (Gross Settlement Amount
11 minus the requested Service Awards, Attorneys’ Fees and Attorneys’ Expenses, PAGA Payment, and
12 Claims Administration Expenses) which will be allocated to all Settlement Class Members on a pro-
13 rata basis according to the number of Workweeks each Settlement Class Member worked during the
14 Class Period. The Net Settlement Amount will be paid to all Settlement Class Members who do not
15 opt out of the Settlement Class resulting in an average Individual Settlement Share of **\$938.67**
16 Agreement at § III(L)(7); JCL Dec., ¶ 5.

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

24 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
25 approval and falls within the range of reasonableness. The average Individual Settlement Share to the
26 Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
27 proposed Settlement Class is appropriate for provisional certification. Accordingly, Plaintiffs
28 respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 6.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant Children of the Rainbow, Inc. owns, operates, and/or manages childcare facilities in San Diego County, where Plaintiffs worked. This action asserts claims on behalf of all current and former non-exempt California employees who worked for Defendant at any time during the period between August 30, 2018, to June 30, 2023. At all times during their employment, Plaintiffs earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures contained in, among other documents, the "Children of the Rainbow Employee Handbook." JCL Dec., ¶ 7; Declaration of Karen Trudelle ("Trudelle Dec.") at ¶ 4; Declaration of Anthony Broussard ("Broussard Dec.") at ¶ 3.

On July 28, 2022, Plaintiff Trudelle served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Trudelle's PAGA Notice set forth the facts and theories supporting Defendant's 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., ¶ 8.

On August 30, 2022, Plaintiff Trudelle filed a class action complaint in the San Diego Superior Court, Case Number 37-2022-00034860-CU-OE-CTL ("Trudelle Class Action"). The Trudelle Class Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226. JCL Dec., ¶ 9.

1 On October 3, 2022, Plaintiff Trudelle filed the operative First Amended Complaint, which
2 added a ninth cause of action for Violation of the Private Attorneys General Act. JCL Dec., ¶ 10.

3 On February 14, 2023, Plaintiff Broussard served Defendant and the Labor and Workforce
4 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Broussard’s
5 PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various
6 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
7 Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General
8 Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 11.

9 On February 14, 2023, Plaintiff Broussard filed a class action complaint in the San Diego
10 Superior Court, Case Number 37-2023-00006660-CU-OE-CTL (“Broussard Class Action”). The Class
11 Action alleged seven causes of action against Defendant for: (1) Minimum Wage Violations (Labor
12 Code §§ 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages (Labor Code §§ 204,
13 510, 558, 1194, 1198); (3) Meal Period Violations (Labor Code §§ 226.7, 512, 558); (4) Failure to
14 Reimburse Necessary Business Expenses (Labor Code §§ 2802, 2804); (5) Wage Statement Violations
15 (Labor Code § 226 *et seq.*); (6) Waiting Time Penalties (Labor Code § 201-203); and (7) Unfair
16 Competition (Business & Professions Code § 17200 *et seq.*). JCL Dec., ¶ 12.

17 On April 21, 2023, Plaintiff Broussard filed a First Amended Complaint, which added an eighth
18 cause of action for Violation of the Private Attorneys General Act. JCL Dec., ¶ 13.

19 On October 9, 2023, the Court ordered the consolidation of the Trudelle Class Action and the
20 Broussard Class Action, with the Trudelle Class Action being the lead case. JCL Dec., ¶ 14.

21 Generally, Plaintiffs claim that Defendant failed to provide meal breaks and rest breaks, failed
22 to reimburse for required business expenses, failed to pay minimum wages, and failed to issue accurate
23 itemized wage statements. Defendant forcefully denies liability for each Plaintiffs’ claims. Further,
24 Defendant asserts that it fully complied with all applicable employment laws and raised several other
25 significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest
26 period policies, payment of minimum wages, reimbursed its employees for business expenses,
27 compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec.,
28 ¶ 15.

1 Plaintiffs commenced written discovery in February 2023. Before answering Plaintiffs' written
2 discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties agreed to
3 stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 16.

4 To prepare for mediation, the Parties agreed to informally produce additional documents and
5 data points subject to the mediation privilege, including but not limited to, a sampling of the Class
6 Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
7 Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
8 Defendant's time and payroll data. JCL Dec., ¶ 17.

9 On June 20, 2023, the Parties participated in a full day mediation with the Hon. Steven R. Denton
10 (Ret.), an experienced jurist and mediator of class and PAGA actions. After arms-length negotiations
11 and bargaining, the Parties accepted a Mediator's proposal and signed a Memorandum of
12 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
13 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

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

15 Months before filing the Action, Class Counsel began its pre-filing investigation into the
16 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
17 Plaintiffs. As part of the interview process, the Plaintiffs produced documents related to their
18 employment, including, among other things, copies of their wage statements and timekeeping policies.
19 At the conclusion of the interviews, Class Counsel determined that each Plaintiff's complaints justified
20 further inquiry. JCL Dec., ¶ 19.

21 Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In response to
22 Plaintiff Trudelle's request, Defendant produced several pages of documents, including but not limited
23 to, Plaintiffs' payroll and time records. Defendant did not respond to Plaintiff Broussard's records
24 request. Class Counsel reviewed and analyzed the documents and determined the documents appeared
25 to substantiate Plaintiffs' claim that Defendant failed to, among other things, pay for all time worked
26 and to provide compliant meal and rest periods. JCL Dec., ¶ 20.

27 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
28 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested

documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class Member time and payroll records, aggregate workweek and pay period data, and copies of applicable policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period policies. JCL Dec., ¶ 21.

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. Stated differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶ 22.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 23.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 24.

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 Settlement Class' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues

1 which could affect settlement approval; (7) evaluating Plaintiffs' claims and estimating Defendant's
2 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
3 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
4 claims being settled, as well as the impediments to recovery, such as to make an independent
5 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 25.

6 **C. The Parties Settled at Mediation**

7 On June 20, 2023, the Parties conducted a full day of mediation with the Hon. Steven Denton
8 (Ret.), a respected jurist and a highly regarded wage and hour mediator. Judge Denton helped manage
9 the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides.
10 The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged
11 information regarding their respective claims and defense, including their respective evaluation of the
12 damages. Although the mediation concluded without a settlement, the Parties subsequently accepted a
13 Mediator's Proposal, which was memorialized in the form of a Memorandum of Understanding. The
14 complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel
15 submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at
16 issue. JCL Dec., ¶ 27.

17 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

18 1. The Composition of the Class

19 The proposed Class consists of all non-exempt employees who are or previously were employed
20 by Defendant during the period beginning August 30, 2018, through June 30, 2023. The Settlement
21 Class excludes any person who submits a timely and valid request for exclusion. Agreement at § I(G);
22 I(J); I(KK). In the data exchanged prior to the mediation, there were approximately 106 Class Members
23 that worked an estimated 12,962 during the Class Period Agreement at § III(A)(3).

24 2. The Settlement Consideration

25 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
26 Amount of \$240,000.00. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to
27 the Settlement Class; (2) a Service Award of \$10,000 to each Plaintiff for their services on behalf of
28 the Settlement Class; (3) PAGA Payment in the amount of \$10,000; (4) Claims Administration

Expenses estimated at \$5,500; (5) Attorneys' Fees and Attorneys' Expenses in the amount of \$105,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$80,000 and an estimated \$25,000 for actually incurred litigation expenses. *See generally* Agreement at § III(N).

Subject to the Court approving the Service Award, Attorneys' Fees and Attorneys' Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class Member. Agreement at § III(N)(1). There is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

3. Formula for Calculating Individual Settlement Payments

Each Settlement Class Member will receive an Individual Settlement Payment. The Individual Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendant in California during the Class Period. Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at § III(N)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(N)(1).

Given that there are approximately 106 Settlement Class Members, **the average gross recovery is approximately \$938.67** (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,

¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of \$283.35); *Almanza v. The Express Group Inc.*, San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery

\$174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery \$715.97) and *Crawford et al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

4. Release by Participating Settlement Class Members

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from all class claims that were or reasonably could have been alleged in the operative complaints, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at §§ I(DD); III(B).

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

Generally, upon the Funding Date, Plaintiffs, acting as the representatives of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims that were or reasonably could have been alleged in the operative complaints and Plaintiffs' PAGA Notices to the LWDA which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at §§ I(EE); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$240,000.00 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

1 inquire into the fairness of the proposed settlement”).)

2 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
3 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
4 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
5 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
6 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
7 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
8 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
9 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
10 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
11 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
12 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
13 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
14 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
15 action litigation”).)

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

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

24 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
25 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
26 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
27 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
28 § 11.51.)

1 The Parties participated in mediation with Hon. Steven R. Denton (Ret.), an experienced jurist
2 and mediator of wage and hour class and PAGA actions. Judge Denton managed the Parties'
3 expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple*
4 *Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal.
5 Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive
6 settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in
7 pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and
8 undue pressure.")) At all times, the Parties' negotiations were at an arm's length, adversarial and non-
9 collusive. Although the Parties did not reach a settlement during mediation, the matter resolved only
10 when Judge Denton subsequently issued a mediator's proposal that the Parties accepted. Judge Denton
11 only arrived at his proposal after hearing arguments, reviewing evidence, and evaluating the Parties'
12 respective claims and defenses. JCL Dec., ¶ 28.

13 Once the Parties agreed to the Mediator's proposal, the Parties engaged in protracted negotiations
14 regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's
15 length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement.
16 The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms
17 are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 29.

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

20 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
21 the factual and legal issues in dispute. In addition to informal discovery, document review, data
22 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
23 two cases are identical, this research provided Class Counsel with a marker to inform settlement
24 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
25 Counsel to realistically assess the value of the claims and intelligently engage defense counsel in
26 settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶¶
27 19-25.

28 Class Counsel only agreed to enter the Settlement following their thorough investigation and

1 evaluation of Plaintiffs' claims. Based on their investigation of the facts, applicable law, and
2 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated
3 with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
4 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
5 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 26.

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

7 The Gross Settlement Amount of \$240,000.00 is within the range of reasonable settlement for
8 preliminary approval. To determine whether a settlement is fair and reasonable, the court should
9 "consider enough information about the nature and magnitude of the claims being settled, as well as
10 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to
11 which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
12 In making this determination, the court is "not to try the case" but rather "satisfy itself that the class
13 action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis,
14 courts do "not require any such explicit statement of value; [they] require[] a record which allows an
15 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."
16 " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).)
17 The reasonableness of a settlement is not dependent upon its actual value approaching the potential
18 recovery plaintiffs might have received if they had succeeded at trial. Indeed, "[t]he determination
19 whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a
20 particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In*
21 *re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

24 The Gross Settlement Amount of \$240,000.00 is well within the range of reasonableness
25 considering the nature and magnitude of the claims being settled and the various potential impediments
26 to recovery. JCL Dec., ¶ 30. To determine whether a settlement is fair and reasonable, the court should
27 "consider enough information about the nature and magnitude of the claims being settled, as well as
28 the impediments to recovery, to make an independent assessment of the reasonableness of the terms to

1 which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.)
2 In making this determination, the court is “not to try the case” but rather “satisfy itself that the class
3 action settlement is within the ‘ballpark of reasonableness.’” (*Id.*) For this analysis, courts do “not
4 require any such explicit statement of value; [they] require[] a record which allows an understanding
5 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v.*
6 *BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The
7 reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery
8 plaintiffs might have received if they had succeeded at trial.² Indeed, “[t]he determination whether a
9 settlement is reasonable does not involve the use of a ‘mathematical equation yielding a particularized
10 sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael*
11 *Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

12 Class Counsel retained BCG to develop economic damage models measuring Defendant’s
13 potential liability exposure with respect to the Class and PAGA claims. The damage models were
14 informed by Class Counsel’s investigation, including the analysis of the time and payroll data
15 Defendant produced. Class Counsel projected Defendant’s maximum **class** liability exposure was
16 \$1,668,527 (excluding PAGA penalties), comprised of \$1,229,597 for damages and \$438,930 for
17 penalties, i.e., waiting time and wage statement penalties. Additionally, Class Counsel separately
18 estimated Defendant’s PAGA exposure at \$1,243,650. Class Counsel projected Defendant’s maxim
19 liability exposure at the time of mediation at \$2,912,177. The Gross Settlement Amount of \$240,000.00
20 represents approximately 8.2% of Defendant’s maxim liability exposure and 19.51% of the projected
21 class **damages**. JCL Dec., ¶ 31. The following summarizes Defendant’s estimated exposure.

22 (1) Estimated Damages for Regular Rate Violations

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 Plaintiffs allege that Defendant failed to include certain non-discretionary bonuses and
2 commissions when calculating the regular rate of pay when paying overtime wages and redeemed sick
3 pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to
4 the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift
5 differentials and the per-hour value of any non-hourly compensation the employee has earned.
6 *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an
7 employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553.
8 Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt
9 employees be based on either “the regular rate of pay for the workweek in which the employee uses
10 paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick leave. JCL Dec.,
11 ¶ 32.

12 Conversely, Defendant denied liability and asserted that it correctly calculated the regular rate
13 of pay. Class Counsel estimated Defendant’s exposure for this claim at \$18,363. JCL Dec., ¶ 33.

14 (2) Estimated Damages for Meal Period Violations

15 Plaintiffs also alleged that Defendant failed to provide compliant meal periods. Specifically,
16 Plaintiffs allege that due to Defendant’s understaffing, Plaintiffs were often not able to take a meal
17 period or took a late meal period because instructors were required to supervise students at all times.
18 As a result, Plaintiffs and the Class Members were expected to remain on the premises and on-duty
19 during their meal periods. JCL Dec., ¶ 34. Labor Code 512 requires employers to provide employees
20 with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work.
21 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
22 thirty (30) minute uninterrupted and duty-free meal period. Pursuant to Labor Code § 512, an employer
23 may not employ an employee for a work period of more than ten (10) hours, without providing the
24 employee with a second meal period of not less than thirty (30) minutes. Moreover, the second meal
25 period may not be waived if the total hours worked is more than twelve (12) hours. California Lab.
26 Code § 226.7(c) provides that “if an employer fails to provide an employee a meal or rest or recovery
27 period in accordance with a state law, including ... an ... order of the Industrial Welfare Commission,
28 the employer shall pay the employee one additional hour of pay at the employee’s regular rate of

1 compensation for each workday that the meal or rest or recovery period is not provided.” JCL Dec., ¶
2 35.

3 Defendant contends that they fully complied with California meal period laws and maintained
4 compliant policies and practices. Similarly, Defendant argued any divergence from these written
5 policies were not systematic and, if they existed at all. Courts have found that where an employer’s
6 meal period policies are compliant, individualized issues exist as to the reasons for missed, late, or
7 truncated meal periods. *See e.g. Lampe v. Queen of the Valley Medical Center*, 19 Cal.App.5th 832,
8 851 (2018) (holding that although only 11.1% of the employees’ time punches for meal periods were
9 within the first 5 hours, the claim was not certifiable because individualized issues existed as to the
10 reasons for the late meal periods). Class Counsel estimated Defendant’s exposure for this claim at
11 \$581,683. JCL Dec., ¶ 36.

12 (3) Estimated Damages for Rest Period Violations

13 Plaintiffs further alleged that Defendant failed to provide compliant rest periods. Similar to the
14 meal period claims, Plaintiffs allege that due to Defendant’s understaffing, Plaintiffs were often unable
15 to take rest periods. As a result, Plaintiffs and Class Members were not able to take timely and duty-
16 free rest periods and/or that they were expected to remain on the premises and on duty during their rest
17 breaks. JCL Dec., ¶ 37. IWC Wage Orders 5-2001 and 7-20017 provide that “[a]uthorized rest period
18 times shall be counted as hours worked for which there shall be no deduction from wages.” Lab. Code
19 § 226.7(c) provides that “if an employer fails to provide an employee a meal or rest or recovery period
20 in accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the
21 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
22 compensation for each workday that the meal or rest or recovery period is not provided.” JCL Dec., ¶
23 38.

24 Defendant denied liability and asserted that it maintained legally compliant rest period policies
25 and practices throughout the Class Period. Class Counsel estimated Defendant’s exposure for this
26 claim at \$581,683, but it would have mainly relied on Class Member testimony, making it a riskier
27 claim at class certification and liability stages. JCL Dec., ¶ 39. Based on these contentions, Defendant
28 likely would have argued that only a small number of Class Members missed their rest breaks on a few

occasions, if any. Therefore, certification likely would have required depositions of Class Members and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy does not generate uniform practices.”). Accordingly, the rest break claim was heavily discounted in Plaintiffs’ valuation of the case. JCL Dec., ¶ 40.

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

Plaintiffs alleged that Defendant required the Settlement Class Members to use their personal cell phone as a result of and in furtherance of their job duties as employees for Defendant but were not reimbursed or indemnified by Defendant for the cost associated with their cell phone use. JCL Dec., ¶ 41. California employers who require employees to use a personal cellular device for work purposes must reimburse the employee for the cost incurred in furnishing the device, including voice and data service. (*See* Cal. Labor Code § 2802(a), providing that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”.) JCL Dec., ¶ 42.

Again, Defendant vigorously denied any liability for this claim. Specifically, Defendant argued that any cell phone use was voluntary, never mandatory, and contrary to written policies. Class Counsel estimated Defendant’s exposure for this claim at \$31,500. JCL Dec., ¶ 43.

(5) Exposure for Failure to Pay for All Hours Worked

Plaintiffs further allege that Defendant failed to pay for all hours worked at the minimum wage. Plaintiffs and Class Members were required to work off-the-clock, and Defendant’s rounding practice systematically undercompensated Plaintiffs and Class Members for minimum and overtime wages owed. Specifically, Plaintiffs contend that Defendant required Plaintiffs and other Class Members to undergo mandatory COVID-19 screenings by conducting temperature checks every day, off-the-clock.

Further, Defendant's practice of rounding time records to quarter-hour intervals consistently benefitted Defendant at the expense of its employees. Defendant vigorously denied liability for these claims. Collectively, Defendant asserted, among other things, that its written policies and procedures directed its employees to perform work only while on-the-clock. Defendant asserted that any deviation from these written policies was location and individual-specific and thus, created individualized issues of liability unsuitable for class treatment. Defendant also asserted that it did not have a rounding policy, and even if there was rounding, that it did not systematically undercompensate employees. JCL Dec., ¶ 44.

Based on the foregoing, Class Counsel estimated Defendant's exposure for this claim at \$16,368. JCL Dec., ¶ 45.

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

Plaintiffs allege that Defendant's violations resulted in derivative violations of Labor Code sections 203 and 226(a). Class Counsel weighed the potential recoveries against probable defenses. JCL Dec., ¶ 46. Specifically, Defendant could argue that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiffs could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. Plaintiffs would have to overcome precedent to prove the Class deserved the penalties. 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.*, 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (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. Class Counsel estimated Defendant's exposure for this claim at \$438,930, which is comprised of \$332,000 for wage statement penalties and \$106,930 for waiting time penalties. JCL Dec., ¶ 47.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiffs estimate Defendant's PAGA exposure at approximately \$1,243,650. JCL Dec., ¶ 48. The proposed PAGA allocation of the Gross

1 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
2 77. Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication
3 that this amount was the result of self-interest at the expense of class members,” such amounts are
4 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
5 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
6 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
7 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
8 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
9 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
10 PAGA claim settlements in the range of zero to two percent of the total settlement).

11 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000 which is 4.16%
12 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.
13 Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA (“LWDA
14 PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will
15 be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
16 courts and should be approved. JCL Dec., ¶ 49.

17 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
18 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
19 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
20 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
21 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
22 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
23 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
24 6, 2016) (PAGA penalties denied after trial). JCL Dec., ¶ 50.

25 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
26 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
27 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
28 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%. JCL Dec., ¶ 51.

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. JCL Dec., ¶ 52.

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. Walmart 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. JCL

Dec., ¶ 53.

“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).) JCL Dec., ¶ 54.

Further, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, 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. As demonstrated by *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 55. “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.)

Finally, Defendant argued that they have financial limitations that restrict their ability to pay a class settlement, and the Parties agreed to use a forensic accountant’s review of Defendant’s financial records to advise on Defendant’s ability to fund a settlement. Plaintiffs subsequently retained Creal & Creal, an accountancy corporation that regularly performs litigation support and forensic accounting services, including providing opinions related to solvency. Kenneth Creal, CPA, of Creal & Creal was

provided with a number of Defendant's financial documents including tax returns from recent years, balance sheets, and profit and loss summaries. Kenneth Creal also performed an investigation into the assets owned by Defendant and their owners. Following his review, Kenneth Creal advised Plaintiffs via a written opinion regarding a settlement amount that would be fair and not destroy Defendant's business, especially here, where Defendant is a non-profit organization that provides childcare services. JCL Dec., ¶ 56.

Accordingly, in this matter, Class Counsel negotiated a Gross Settlement Amount of \$240,000.00 that is roughly 19.51% of Defendant's 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., ¶ 57.

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

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass*, 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 Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to requests for exclusions or objections to the Settlement, the

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.

1 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
2 and scope of the Released Class Claims. Agreement at § III(L)(2)(a). This method was negotiated by
3 the Parties to ensure delivering the most reasonable method of notice to the Class Members while
4 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 58.

5 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
6 satisfy due process and the requirements of California law. (See C.R.C. 3.776(e)-(f); *State of Cal. v.*
7 *Levi Strauss* (1986) 41 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the
8 terms of the proposed compromise and of the options open to dissenting class members.”).) JCL Dec.,
9 ¶ 59.

10 **C. The Court Should Preliminarily Approve the Class Representative Enhancement Award**

11 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
12 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
13 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
14 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
15 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
16 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
17 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
18 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
19 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
20 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
21 (2009) 175 Cal.App.4th 785.)

22 Approximately 106 Class Members will share in the Net Settlement Amount due entirely to the
23 effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for
24 a Service Award of \$10,000 for each Plaintiff. The service award is fair and reasonable compensation
25 for the Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement,
26 regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the
27 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
28 for the Settlement Class. JCL Dec., ¶ 60.

1 Class Counsel, on behalf of Plaintiffs, will file a formal motion for the negotiated Service Award
2 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above
3 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 61.

4 **D. The Court Should Preliminarily Approve the Payment of Attorneys' Fees and Attorneys'**
5 **Expenses**

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

16 Class Counsel took this matter on a contingency fee basis and invested significant time and
17 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
18 Individual Settlement Share illustrates the demonstrably positive outcome for the Class Members. The
19 Agreement provides for a payment of Attorneys' Fees and Attorneys' Expenses and in the amount of
20 one-third of the Gross Settlement Amount (\$80,000.00) and reimbursable litigations costs in an amount
21 not to exceed \$25,000. Agreement § III(N)(10). Considering the positive outcome for the Class
22 Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys'
23 Expenses are fair and reasonable. Plaintiffs will file a formal motion for the negotiated Attorneys' Fees
24 and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiffs respectfully
25 submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees.
26 JCL Dec., ¶ 62.

27 **E. Provisional Certification for Settlement Purposes Is Appropriate**

28 For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional certification

1 of the Class is appropriate. JCL Dec., ¶ 63.

2 1. The Standard for Class Certification

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

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

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

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

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

26 Because all Class Members are Defendant’s current and former employees, the class is readily
27 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 64.

28 The California statutes relating to each Plaintiff’s claims apply with equal force and effect to the

1 entire Settlement Class. Factually, Defendant's policies and practices apply class-wide and Defendant's
2 liability can be determined by facts common to all members of the class. The wage and hour issues are
3 both numerous and substantial, and a class action is the most advantageous method of dealing with the
4 claims of the Settlement Class. JCL Dec., ¶ 65.

5 Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise
6 from the same factual basis and are based on the same legal theories applicable to the other Class
7 Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement
8 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the
9 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
10 their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
11 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
12 66.

13 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
14 each individual claim, the Class Members likely have little incentive to litigate their claims on an
15 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
16 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
17 adjudication. JCL Dec., ¶ 67.

18 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
19 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
20 certified, and gained state court settlement approval of the same class-wide causes of action that are at
21 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
22 qualified to represent the interests of this Class. JCL Dec., ¶¶68-75.

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Dated: May 21, 2024

By: 
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