

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
Perssia Razma (State Bar # Pending)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

TAMIKA R. THOMAS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CENTER FOR ELDERS'
INDEPENDENCE, a California corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No. 22CV024221

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

Date: December 29, 2023

Time: 9:00 a.m.

Reservation ID: 628376307502

Judge: Hon. Evelio Grillo

Dept.: 21

TABLE OF CONTENTS

I.	INTRODUCTION	1
	1. The “Class Members”, “Settlement Class Members” and “Class Period”	1
	2. The “Aggrieved Employees” and “PAGA Period”	1
	3. The “Gross Settlement Amount”	1
	a. A “Service Award”	1
	b. “Attorneys’ Expenses”	1
	c. “Attorneys’ Fees”	1
	d. “PAGA Penalties”	1
	e. “Administration Costs”	2
	4. The “Net Settlement Amount”	2
II.	FACTS AND PROCEDURE	3
	A. Overview of the Litigation	3
	B. Class Counsel Thoroughly Investigated the Factual and Legal Issues	5
	C. The Parties Settled at Mediation	7
	D. The Proposed Settlement Fully Resolves Plaintiff’s Claims	7
	1. The Composition of the Settlement Class Members	7

///

1	2. The Settlement Consideration	7
2	3. The Funding Date	8
3	4. Formula for Calculating Individual Settlement Payments	8
4	5. Release by Settlement Class Members	9
5	6. PAGA Release by the State of California and on behalf of the Aggrieved Employees	9
6		
7		
8		
9		
10	III. ARGUMENT	9
11		
12	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
13		
14	1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led by Experienced Counsel	10
15		
16	2. The Settlement Falls Within the Recognized Range of Reasonableness	11
17		
18	a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	12
19		
20	(1) Estimated Exposure for Unpaid Wages	13
21		
22	(2) Estimated Damages for Meal Period Violations	13
23		
24	(3) Estimated Damages for Rest Period Violations	14
25		
26	(4) Exposure for Regular Rate Violations	14
27		
28	(5) Exposure for Failure to Reimburse for Mandatory Business Expenses	15

///

1	(6) Exposure for Wage Statement Violations	16
2	(7) Exposure for Waiting Time Penalties	16
3	(8) Defendant's PAGA Exposure	16
4	b. Inherent Risks of Continued Litigation Support Preliminary Approval	18
5	B. The Proposed Notice Informs the Class about the Case and Settlement	19
6	C. The Court Should Preliminarily Approve the Service Award	20
7	D. The Court Should Preliminarily Approve the Attorneys' Fees	22
8	E. Provisional Certification for Settlement Purposes Is Appropriate	22
9	1. The Standard for Class Certification	22
10	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Settlement Class Members	23
11	IV. CONCLUSION	24

///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1151.....	10
5	<i>Acheson v. Express, LLC</i>	
6	No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011)	21
7	<i>Aguilar v. Cingular Wireless, LLC</i>	
8	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	21
9	<i>Ali v. U.S.A. Cab Ltd.</i>	
10	(2009) 176 Cal.App.4th 1333, 1341.....	18
11	<i>Alvarado v. Dart Container Corp. of California</i>	
12	(2018) 4 Cal.5th 542, 552-554.....	15
13	<i>Apple Computer, Inc. Derivative Litig.</i>	
14	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	11
15	<i>Baker v. LA. Fitness Int'l, LLC</i>	
16	No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012).....	21
17	<i>Barrett v. Doyon Security Services, LLC,</i>	
18	Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010).....	21
19	<i>Bejarano v. Amerisave Mortgage Corp.,</i>	
20	No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010).....	21
21	<i>Blue v. Codwell Banker Residential Brokerage Co.</i>	
22	No. BC417335 (L.A. County Super. Ct Mar. 21, 2011).....	21
23	<i>Brinker</i>	
24	53 Cal. 4th at 1021-1022.....	18, 23
25	<i>Brown v. Fed Express Corp.</i>	
26	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	18
27	<i>Buckmire v. Jo-Ann Stores, Inc.,</i>	
28	No. BC394795 (L.A. County Super. Ct. June 11, 2010).....	21
	<i>Bufile v. Dollar Financial Group, Inc.</i>	
	(2008) 162 Cal.App.4th 1193, 1207.....	23
	<i>Cacho v. Eurostar, Inc.</i>	
	(2019) 43 Cal.App.5th 885.....	17
	<i>Carbajal v. Sally Beauty Supply LLC</i>	
	No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012).....	21
	<i>Cardenas v. McLane Foodservice, Inc.</i>	
	2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....	17
	<i>Campbell v. Best Buy Stores, L.P.,</i>	
	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	18
	<i>Carrington v. Starbucks Corp.,</i>	
	30 Cal. App. 5th 504, 517, 539 (2018).....	17-18
	<i>Cart v. Super. Ct.</i>	
	(1975) 50 Cal.App.3d 960, 972.....	20
	<i>Cellphone Termination Fee Cases</i>	
	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	10, 20
	<i>Chance v. Super. Ct.</i>	
	(1962) 58 Cal.2d 275, 290.....	20
	<i>Chavez v. Netflix, Inc.</i>	
	(2008) 162 Cal.App.4th 43, 66 n.11.....	22

1	<i>Clark v. American Residential Services LLC</i>	
	(2009) 175 Cal.App.4th 785.....	21
2	<i>Coleman v. Estes Express Lines, Inc.</i>	
	No. BC429042 (LA. County Super. Ct. Oct. 3, 2013).....	21
3	<i>Contreras v. Serco Inc.,</i>	
	No. 10-cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012).....	21
4	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	11
5	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	10
6	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	18
7	<i>Ethridge v. Universal Health Services, Inc.</i>	
	No. BC391958 (L.A. County Super. Ct. May 27, 2011).....	21
8	<i>Ferra v. Lowes Hollywood Hotel, LLC</i>	
	(2021) 11 Cal.5th 858.....	15
9	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	17
10	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	20
11	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
12	<i>Guerrero v. R.R. Donnelley & Sons Co.</i>	
	No. RIC 10005196 (Riverside Super. Ct July 16, 2013).....	21
13	<i>Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	12
14	<i>Hickson v. South Coast Auto Insurance Marketing, Inc.,</i>	
	No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012).....	21
15	<i>Hill v. Sunglass Hut Int'l, Inc,</i>	
	No. BC422934 (LA. County Super. Ct. July 2, 2012).....	21
16	<i>IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	12
17	<i>Kabamba v. Victoria's Secret Stores. LLC,</i>	
	No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011).....	21
18	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106.....	19-20
19	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
20	<i>Kisliuk v. ADT Security Services, Inc.,</i>	
	No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011).....	21
21	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	22-23
22	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	18-19
23	<i>Magee v. American Residential Services, LLC</i>	
	No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	21
24	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	21
25	///	

1	<i>Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
2	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	18
3	<i>Morales v. BCBG Maxaria Int’l Holdings, Inc.,</i>	
	No. JCCP 4582 (Orange County Super. Ct Jan. 24, 2013).....	21
4	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11-12
5	<i>Naranjo v. Spectrum Security Services</i>	
	(2022) 13 Cal. 5th 93.....	16
6	<i>Nat’l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 526-27.....	12, 19
7	<i>Nevarez v. Trader Joe’s Co.,</i>	
	No. BC373910 (LA. County Super. Ct. Jan. 29, 2010).....	21
8	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	12
9	<i>Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	17
10	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	10
11	<i>Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	19
12	<i>O’Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	18
13	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 12
14	<i>Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	12
15	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	14
16	<i>Ordaz v. Rose Hills Mortuary, LP.,</i>	
	No. BC386500 (LA. County Super. Ct. Mar. 19, 2010).....	21
17	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	19
18	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	20-21
19	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 319, 326, 333.....	22-23
20	<i>Sheldon v. AHMC Monterey Park Hospital LP</i>	
	No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013).....	21
21	<i>Silva v. Catholic Moray Services, Inc.,</i>	
	No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011).....	21
22	<i>Stambaugh v. Super. Ct</i>	
	(1976) 62 Cal.App.3d 231, 236.....	10
23	<i>State v. Levi Strauss & Co.</i>	
	(1986) 41 Cal.3d 460, 482, 485.....	10, 20
24	<i>Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	17
25	///	

1	<i>Tien v. Tenet Healthcare Corp.</i>	
2	(2012) 209 Cal.App.4th 1077, 1088.....	18
3	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
4	(1975) 48 Cal. App. 3d 143, 151-52.....	20
5	<i>Villa v. United Site Servs. of California, Inc.</i>	
6	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	14
7	<i>Weisbarth v. Banc West Investment Services, Inc.</i>	
8	No. BC422202 (L.A. County Super. Ct. May 24, 2013).....	21
9	<i>Zamora v. Balboa Life & Casualty LLC</i>	
10	No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	21

RULES, CODES, AND STATUTES

11	<i>Cal. Bus & Prof. Code</i> §§ 17200.....	4
12	<i>Cal. Civ. Proc. Code</i> § 382.....	22-23
13	<i>Cal. Govt. Cod</i> §§ 12940, <i>et seq.</i>	4
14	<i>Cal. Lab. Code</i> § 201.....	4
15	<i>Cal. Lab. Code</i> § 202.....	4
16	<i>Cal. Lab. Code</i> § 203.....	4, 16
17	<i>Cal. Lab. Code</i> § 226.....	4
18	<i>Cal. Lab. Code</i> § 226.7.....	4
19	<i>Cal. Lab. Code</i> § 246(1)(1).....	15
20	<i>Cal. Lab. Code</i> § 512.....	4
21	<i>Cal. Lab. Code</i> § 1194.....	4
22	<i>Cal. Lab. Code</i> § 1197.....	4
23	<i>Cal. Lab. Code</i> § 1197.1.....	4
24	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	3
25	<i>Cal. Lab. Code</i> § 2802.....	4, 15
26	<i>Rule of Court</i> Rule 3.769 (c)-(g).....	10
27	<i>Rule of Court</i> Rule 3.776 (e)-(f).....	20

SECONDARY SOURCES

28	Conte & Newberg, <i>Newberg on Class Actions</i> , §§11.26, 1 1:38, 11.51 (4th ed. 2002)	
29		10-11, 20
30	Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study,	
31	53 UCLA L. Rev. 1303 (2006)	
32		20
33	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical</i>	
34	<i>Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
35		22
36	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
37		20

1 I. INTRODUCTION

2 Plaintiff TAMIKA R. THOMAS (“Plaintiff”) seeks preliminary approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for approximately 486 Class Members and 366
5 Aggrieved Employees. The basic terms of the Agreement provide for the following:

6 1. The “**Class Members**”, “**Settlement Class Members**” and “**Class Period**” shall mean
7 all non-exempt employees who are or previously were employed by Defendant [Center for Elders’
8 Independence] and performed work in California during the period of December 7, 2019 to September
9 20, 2023 (“Class Period”). Agreement at § I(H). The Settlement Class Members exclude any Class
10 Member that submits a valid and timely request for exclusion. Agreement at § I(M).

11 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees
12 who are or previously were employed by Defendant and performed work in California during the period
13 of December 20, 2021 to September 20, 2023 (“PAGA Period”). Agreement at § I(C). Aggrieved
14 Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §
15 III(K)(7).

16 3. The “**Gross Settlement Amount**” is Nine Hundred, Seventy Thousand Dollars and Zero
17 Cents (\$970,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and
18 includes the following:

19 a. A “**Service Award**” of no more than \$5,000 to Plaintiff for her services on behalf
20 of the Class Members. Agreement at ¶ 50(a);

21 b. “**Attorneys’ Expenses**” to reimburse Class Counsel for their litigation costs and
22 expenses not to exceed \$25,000.00. Agreement at § I(F);

23 c. “**Attorneys’ Fees**” of up to one-third of the Gross Settlement Amount for
24 attorney’s fees, currently estimated to be \$323,333.33. Agreement at § I(G);

25 d. A “**PAGA Penalties**” of \$48,500.00 shall be allocated from the Gross Settlement
26 Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004.

27
28 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.

The Settlement Administrator shall pay 75% of the PAGA Penalties to the Labor and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall distribute 25% of the PAGA Penalties proportionately to all Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at § I(AA); and

e. “**Administration Costs**” not to exceed \$9,000 payable to the Settlement Administrator, Apex Class Action, LLC, for, *inter alia*, the administration of the Notice Packet and Individual Settlement Payments. Agreement at § III(L)(12).

4. The “**Net Settlement Amount**” of approximately \$559,166.67 (Gross Settlement Amount minus the requested Service Award, Attorneys’ Fees, Attorneys’ Expenses, PAGA Penalties, and Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Individual Settlement Payment of **\$1,150.54**. Agreement at § III(L)(1); JCL Dec., ¶ 8.

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length. The Settlement confers substantial benefits to the Class. 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 have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 8.

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 or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 9.

///

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant is a California nonprofit corporation that provides in-home care, medical services, nutrition services, social services, family services, logistical services, and transportation services to the elderly. This action asserts claims on behalf of Defendant's current and former non-exempt employees employed in California. Plaintiff worked for Defendant as a non-exempt employee in California between May of 2007 to approximately October of 2021. At all times during her employment, Plaintiff earned hourly wage, including overtime, and performance-based incentive compensation, and was entitled to legally compliant meal and/or rest periods. Throughout her employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Center for Elders' Independence Employee Handbook." JCL Dec., ¶ 10; Declaration of Tamika R. Thomas ("Thomas Dec.") at ¶¶ 1-5.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to pay overtime, meal premiums, and sick pay at the correct regular rate of pay, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and timely payment all wages due upon separation of employment. JCL Dec., ¶ 11.

On December 20, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff'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., ¶ 12.

On December 20, 2022, Plaintiff filed a class action complaint in the Alameda Superior Court, Case Number 22CV024221 ("Action"). The 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 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; and (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 13.

On January 24, 2022, Plaintiff filed a Charge of Discrimination with the California Department of Fair Employment and Housing and received a “right to sue” on November 10, 2022, thereby exhausting her administrative remedies. Thomas Dec., ¶ 14.

On February 8, 2023, Plaintiff filed a first amended complaint alleging additional causes of action for (9) Discrimination on the Basis of Disability in Violation of California Govt. Code §§ 12940, *et seq.*; (10) Failure to Reasonably Accommodate in Violation of California Govt. Code §§ 12940, *et seq.*; (11) Failure to Engage in a Timely, Good Faith Interactive Process in Violation of California Govt. Code §§ 12940, *et seq.*; (12) Work Environment Harassment; (13) Retaliation in Violation of California Govt. Code §§ 12940, *et seq.*; and (14) Failure to Prevent Discrimination and Harassment in Violation of California Govt. Code §§ 12940, *et seq.* (“Plaintiff’s Individual Claims”). JCL Dec., ¶ 15.

On March 27, 2023, Plaintiff filed a second amended complaint alleging an additional cause of action for violations of PAGA. JCL Dec., ¶ 16.

Plaintiff propounded written discovery in January of 2023. Prior to responding to written discovery, the Parties agreed to mediate the Action with Hon. Brian C. Walsh (Ret.), a retired judge and experienced wage and hour mediator. In anticipation of mediation, the Parties agreed to stay formal discovery and continue deadlines for class certification in the Action. To prepare for mediation, Defendant agreed to informally produce 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*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 17.

1 On September 20, 2023, the Parties participated in a full day mediation with Judge Walsh. After
2 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
3 Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
4 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
5 entire Agreement. JCL Dec., ¶ 18.

6 The Parties also reached an agreement with respect to Plaintiff's Individual Claims. Plaintiff's
7 individual settlement was negotiated the same day as the class and PAGA mediation. However, the
8 settlement of Plaintiff's Individual Claims was negotiated separately and only **after** the class and
9 PAGA settlement was reached. At all times during the mediation and settlement negotiations, Plaintiff
10 prioritized the claims of the class, and did not engage in settlement negotiations of Plaintiff's Individual
11 Claims until the class action was tentatively settled. Plaintiff intends on dismissing her Individual
12 Claims following final approval of the Settlement. JCL Dec., ¶ 19.

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

14 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
15 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
16 part of the interview process, Plaintiff produced documents related to her employment, including
17 correspondence with Defendant, timekeeping records, and payroll records. At the conclusion of the
18 interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶
19 20.

20 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
21 Defendant produced hundreds of pages of documents, including but not limited to, copies of Plaintiff's
22 hiring documents, payroll and time records, various policies and performance reviews. Class Counsel
23 reviewed and analyzed the documents and determined the documents appeared to substantiate
24 Plaintiff's claim that Defendant's failed to, among other things, pay for all time worked and to provide
25 compliant meal and rest periods. JCL Dec., ¶ 21.

26 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
27 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
28 documents and data points to further evaluate Plaintiff's claims and Defendant's liability exposure to

1 the Class Members. In response to Class Counsel's request, Defendant produced the time records for
2 the Class Members, aggregate workweek and pay period data for the Class Members, average hourly
3 rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing,
4 *inter alia*, compensation, timekeeping and meal and rest period policies. In total, Defendant produced
5 nearly 800 pages of pertinent policy documents and more than 2.2 million unique cells of time and
6 payroll data for Class Counsel to analyze. JCL Dec., ¶ 22.

7 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
8 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
9 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
10 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
11 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶
12 23.

13 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
14 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
15 pay periods, average length of shift and average number of hours worked per week and pay periods
16 during the Class Period. BCG also estimated the number of missed, late or truncated meal and rest
17 periods, the amount of paid missed meal period premiums paid during the Class Period, the amount of
18 underpayment of overtime, premiums, and sick time resulting from miscalculation of the regular rate
19 of pay, and the amount of unreimbursed business expenses incurred by Class Members during the Class
20 Period. JCL Dec., ¶ 24.

21 In advance of mediation, Class Counsel created a damage model predicated on the BCG analysis.
22 Class Counsel's model calculated Defendant's potential liability exposure while accounting for the
23 uncertainties of continued litigation. This damage model informed and guided Class Counsel during
24 the mediated settlement discussions. JCL Dec., ¶ 25.

25 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
26 Plaintiff's suitability as a putative class representative through interviews, background investigations,
27 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
28 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 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's 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., ¶ 26.

C. The Parties Settled at Mediation

On September 20, 2023, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.), a retired judge and experienced wage and hour mediator. Judge Walsh 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 Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. After a full day of arm's length and adversarial negotiations, the mediation concluded in a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 27.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all non-exempt employees who are or previously were employed by Defendant and performed work in California December 7, 2019 to September 20, 2023. The Settlement Class excludes any person who submits a timely and valid request for exclusion. In the data exchanged prior to the mediation, there were approximately 475 Class Members that worked an estimated 48,530 Workweeks through January 15, 2022. Agreement at § III(A)(2). Through the conclusion of the Class Period, there are approximately 486 Class Members that worked an estimated 48,554 Workweeks during the Class Period. Declaration of Walker Macon ("WM Dec.") at ¶¶ 2-7.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement

1 Amount of \$970,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments
2 to the Settlement Class; (2) a Service Award of \$5,000 to Plaintiff for her services on behalf of the
3 Settlement Class; (3) a PAGA Penalties in the amount of \$48,500.00; (4) Administration Costs
4 estimated at \$9,000; (5) Attorneys' Fees in the amount equal to one-third of the Gross Settlement
5 Amount estimated to be \$323,333.33; and (6) Class Counsel Litigation Expenses estimated at \$25,000
6 for actually incurred litigation expenses. See generally Agreement at § III(L)(9)-(12).

7 Subject to the Court approving the Service Award, Attorneys' Fees, Class Counsel Litigation
8 Expenses, PAGA Penalties, and the Administration Costs, the Net Settlement Amount will be
9 distributed to each participating member of the Settlement Class. Agreement at § III(L)(1). There is
10 no reversion to Defendant and Defendant must separately pay for its share of the employer payroll
11 taxes. Agreement at § I(Q).

12 3. The Funding Date

13 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$970,000.00
14 Gross Settlement Amount no later than sixty (60) calendar days after the Judgment becomes final.
15 Agreement at § I(P).

16 4. Formula for Calculating Individual Settlement Payments

17 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
18 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
19 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
20 the Settlement Administrator will include the number of Workweeks for each Class Member and the
21 number of Pay Periods worked during the relevant periods. Agreement at § III(A)(2). Each Settlement
22 Class Member's final Individual Settlement Payment for purposes of payment will be calculated by
23 dividing the number of Workweeks for each Class Member by the total number of Workweeks for all
24 Class Members, resulting in a Payment Ratio for each Class Member. The Payment Ratio will then be
25 multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
26 Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated
27 employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for
28 members of the Settlement Class who submit valid and timely requests for exclusion will be

redistributed to Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at III(K)(7).

Given that there are approximately 486 Class Members, the average gross recovery is approximately \$1,150.54 (Net Settlement Amount divided by Class Members). JCL Dec., ¶ 8.

5. Release by Settlement Class Members

Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members release the Released Parties (as defined in the Agreement) from all class claims alleged, or reasonably could have been alleged based on the facts alleged in the Operative Complaint in the Action which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period ("Released Class Claims"). Agreement at §§ I(FF), I(HH), III(B).

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

Generally, upon the Funding Date, in exchange for the consideration set forth in this Agreement, the Plaintiff, the LWDA and the State of California release the Released Parties from the all PAGA claims alleged in the Operative Complaint in the Action and Plaintiff's PAGA notice 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 ("Released PAGA Claims") for the period beginning December 20, 2021 to September 20, 2023 ("PAGA Period"). Agreement at § I(Z), I(GG), III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$970,000.00 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

1 notice of the settlement has been distributed to class members for their comments and objections.
2 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
3 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
4 inquire into the fairness of the proposed settlement”).)

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

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

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

27 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
28 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the

1 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
2 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
3 § 11.51.)

4 The Parties participated in mediation with the highly respected mediator Hon. Brian C. Walsh
5 (Ret.). Judge Walsh managed the Parties' expectations and provided a useful, neutral analysis of the
6 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),
7 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
8 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
9 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
10 proceedings were free of collusion and undue pressure.")) At all times, the Parties' negotiations were
11 at an arm's length, adversarial and non-collusive. The matter was resolved only after a full day of
12 mediated negotiations managed by Judge Walsh who heard arguments, reviewed evidence and
13 evaluated the Parties' respective claims and defenses. JCL Dec., ¶ 28.

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

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

20 The Gross Settlement Amount of \$970,000.00 is within the range of reasonableness. To
21 determine whether a settlement is fair and reasonable, the court should "consider enough information
22 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
23 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
24 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
25 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
26 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
27 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
28 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*

1 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
2 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
3 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
4 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank*
5 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
6 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

9 The Gross Settlement Amount of \$970,000.00 is fair and reasonable considering the nature and
10 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
11 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s
12 liability exposure while accounting for the uncertainties of continued litigation. The various models
13 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
14 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
15 PAGA penalties) ranged between \$2,608,859.05 dollars (“Conservative Model”) and \$7,667,017.12
16 dollars (“Aggressive Model”) if successful at trial. This range reflects the uncertainty regarding several
17 of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage
18 statements and waiting time penalties. Thus, the Gross Settlement Amount of \$970,000.00 represents
19 approximately between 12.65% (“Aggressive Model”) and 37.18% (“Conservative Model”) of
20 Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The
21 following summarizes Class Counsel’s estimation of Defendant’s exposure. JCL Dec., ¶ 30.

22 ///

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 (1) Estimated Exposure for Unpaid Wages

2 One of Plaintiff's primary claims in the Action was that Defendant failed to pay for all hours
3 worked. Specifically, Plaintiff alleged that Defendant had an unlawful rounding policy, and that it
4 failed to pay Plaintiff and the Class Members all wages due for purposes of straight pay, overtime pay,
5 and double-time pay. Defendant denied liability and asserted that its employees were paid for all time
6 worked. Defendant argued that it corrected any conceivable rounding issue in April of 2021 and
7 Plaintiff's expert confirmed this to be true. Furthermore, Defendant argued that, even if successful,
8 this claim resulted in minimal actual damage to the Class Members. Thus, Plaintiff applied a 75%
9 discount to the Conservative Model for this claim and estimated Defendant's exposure for this claim
10 ranged from approximately \$8,270.75 to approximately \$33,083.00. JCL Dec., ¶ 31.

11 (2) Estimated Damages for Meal Period Violations

12 Plaintiff also alleges that Defendant failed to provide compliant meal periods. In analyzing this
13 claim, Plaintiff's expert found that Defendant had a low violation rate with respect to first meal periods.
14 On average, approximately 5.2% of first meal periods were short, late, or missed. While Defendant had
15 a low violation rate with respect to first meal periods, Plaintiff's expert found that approximately 51.8%
16 of all meal periods were rounded to exactly 30 minutes. Consequently, Plaintiff alleges that she is
17 owed meal period premiums for meal period violations that occurred during the Class Period. JCL
18 Dec., ¶ 32.

19 Conversely, Defendant argued, among other things, that it provided all their employees, i.e.,
20 Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods.
21 Specifically, Defendant argued that precise 30-minute meal periods were not an indicator of violations
22 because the data showed that many employees took short or long meal periods. Defendant argued that
23 employees taking short or long meal periods did so on their own volition. Defendant also argued that
24 it maintained facially compliant meal period policies and that it paid more than \$490,000 in meal period
25 premiums throughout the Class Period. Thus, Defendant argued that there was no potential liability for
26 Plaintiff's alleged meal period violations and any claimed violations required a highly individualized
27 inquiry not suitable to class treatment. JCL Dec., ¶ 33.

28 Consequently, Plaintiff applied a 50% discount to this claim to account for the modest violation

1 rate, facially compliant policies, and payment of meal period premiums. Plaintiff estimated that the
2 damages for this claim ranged from approximately \$1,731,688.84 to approximately \$3,463,377.68.
3 JCL Dec., ¶ 34.

4 (3) Estimated Damages for Rest Period Violations

5 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
6 Plaintiff alleged that because of their rigorous work schedule, Class Members were not able to take
7 timely and duty-free rest periods. JCL Dec., ¶ 35.

8 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
9 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
10 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
11 on Class Member testimony, making it a riskier claim at class certification and liability stages.
12 Defendant likely would have argued that only a small number of Class Members missed their rest
13 breaks. Certification likely would have required depositions of Class Members who provided
14 declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks
15 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
16 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,
17 plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this
18 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
19 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
20 written policy does not generate uniform practices."). Accordingly, the rest break claim was heavily
21 discounted in Plaintiff's valuation of the case between approximately \$330,009.61 and \$1,320,038.44.
22 JCL Dec., ¶ 36.

23 (4) Exposure for Regular Rate Violations

24 Plaintiff alleges that Defendant failed to include certain non-discretionary bonuses when
25 calculating the regular rate of pay when paying overtime wages, meal period premiums and sick pay.
26 Specifically, Defendant paid Class Members non-discretionary incentive compensation in the form of
27 "BIL BILINGUAL PAY Earnings," "BRF Ref Bonus Earnings," and "BSO SignOnBonus Earnings"
28 payments, and had in place the non-discretionary incentive programs, which were not properly

1 calculated into the regular rate of pay for purposes of overtime, meal period premiums, and sick pay.
2 JCL Dec., ¶ 37. The regular rate of pay, which can change from pay period to pay period, includes
3 adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and
4 awards, shift differentials and the per-hour value of any non-hourly compensation the employee has
5 earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. For overtime
6 work, “an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]” *Id.*
7 at 553. California law also requires meal period premiums and rest period premiums to be paid at an
8 employee’s regular rate of pay. See *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)
9 Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt
10 employees be based on either “the regular rate of pay for the workweek in which the employee uses
11 paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick leave.

12 Conversely, Defendant denied liability and asserted it paid Class Members at the correct rate of
13 pay for purposes of overtime wages, meal period premiums, and sick pay. Defendant produced its
14 written bonus policy and made arguments during mediation to demonstrate that bonuses are
15 discretionary. Plaintiff applied a 50% discount and estimated Defendant’s exposure for this claim
16 between approximately \$98,456.00 and \$196,912.00. JCL Dec., ¶ 38.

17 (5) Exposure for Failure to Reimburse for Mandatory Business Expenses

18 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business
19 expenses. Specifically, Plaintiff and Class Members, as business expenses, were required by Defendant
20 to use their own personal cellular phones as a result of and in furtherance of their job duties as
21 employees for Defendant but were not reimbursed or indemnified by Defendant for the cost associated
22 with the use of their personal cellular phones for Defendant’s benefit. JCL Dec., ¶ 39. California
23 employers who require employees to use a personal cellular device and vehicle for work purposes must
24 reimburse the employee for the cost incurred in furnishing the device, costs associated with such use,
25 and the appropriate mileage expenses. See Cal. Labor Code § 2802, providing that “[a]n employer shall
26 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
27 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of
28 the employer...”

1 Defendant argued that the number of affected employees was minimal. Further, Defendant
2 argued that it issued work cellular phones to employees who in fact were required to use cellular phones
3 as a result of and in furtherance of their job duties. Plaintiff acknowledged that Defendant issued her a
4 work cell phone. As a result, Plaintiff applied an 85% discount and estimated Defendant's exposure for
5 this claim between approximately \$15,763.75 and \$63,055.00. JCL Dec., ¶ 40.

6 (6) Exposure for Wage Statement Violations

7 Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage
8 statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide meal and
9 rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled
10 to derivative wage statement penalties. (See *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th
11 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement
12 penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements,
13 Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff
14 discounted this claim 50% to account for this risk. Plaintiff estimated that Defendant's exposure on
15 this claim ranged between \$276,025 and \$1,104,100. JCL Dec., ¶ 41.

16 (7) Exposure for Waiting Time Penalties

17 Plaintiff also alleged that the Defendant's labor code violations resulted in derivative liability for
18 waiting time penalties. Although these *penalties* represented Defendant's largest dollar amount of
19 exposure, this is Plaintiff's most uncertain claim. Specifically, Defendant argued that Plaintiff could
20 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.
21 Notwithstanding the uncertain nature of the claims, Class Counsel's Conservative Model discounted
22 the waiting time penalty claim by 90% and estimated Defendant's exposure for these claims ranged
23 between \$148,645.10 and \$1,486,451.00. JCL Dec., ¶ 42.

24 (8) Defendant's PAGA Exposure

25 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
26 the time of mediation, Plaintiff estimated Defendant's PAGA exposure was approximately \$1,169,500.
27 JCL Dec., ¶ 43.

28 ///

1 Here, the Parties negotiated a good faith PAGA Penalties in the amount of \$48,500.00 which is
2 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
3 Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$36,375.00) will be paid to the LWDA
4 (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties (\$12,125.00)
5 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the
6 range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 44.

7 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
8 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
9 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
10 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
11 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
12 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
13 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
14 6, 2016) (PAGA penalties denied after trial).

15 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
16 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
17 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on
18 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
19 defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
20 each pay period the employee worked. Again, Defendant raised several defenses that presented serious
21 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
22 discussed *supra*, Defendant also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
23 (2019) 43 Cal.App.5th 885, weakened Plaintiff’s claims, on liability, value, and manageability as to the
24 rest period claims. In all, Plaintiff’s PAGA liability exposure is hotly contested. JCL Dec., ¶ 45.

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%.

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 46.

“The Settlement eliminates these and other risks of continued litigation, including the very real

1 risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal. 2008) 2008
2 WL 5382544, at *3.) Indeed, potential appeals aside, litigating a complex case through trial is
3 inherently perilous regardless of the strengths of merits of the claims:

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

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

10 Finally, continuing to litigate this action would require continued and extensive resources
11 coupled with significant Court time to proceed through trial and post-trial motions; which can often
12 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
13 extensive expert testimony, particularly with regard to damages. But even if Plaintiff is successful at
14 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
15 Defendant would appeal any favorable judgment. JCL Dec., ¶ 47. As demonstrated by *Magadia*,
16 *supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “Avoiding such a trial and
17 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
18 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
19 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
20 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

21 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$970,000.00 that is
22 roughly 12%-37% of Defendant’s maximum class wide liability exposure estimated by Class Counsel.
23 Given the amount of the settlement here, as compared to potential value of the claims, offset by the
24 various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 48.

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

26 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
27 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
28 information to decide whether they should accept the benefits offered, opt out and pursue their own

1 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
2 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
3 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
4 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
5 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
6 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

7 The Parties jointly drafted the Notice of Class Action Settlement (“Class Notice”) which fairly
8 and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator
9 will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will
10 include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s
11 terms, the class definition, the procedure and time period within which to request for exclusion or to
12 object to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
13 payments, and the terms and scope of the Released Class Claims. The Parties negotiated this method
14 to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
15 effective administration of the Settlement. JCL Dec., ¶ 49.

16 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
17 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
18 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
19 of the options open to dissenting class members.”).) JCL Dec., ¶ 50.

20 **C. The Court Should Preliminarily Approve the Service Award**

21 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
22 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
23 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
24 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
25 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
26

27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 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 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
2 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
3 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
4 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
5 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
6 (2009) 175 Cal.App.4th 785.)

7 The Settlement provides for a Service Award of \$5,000⁴ for Plaintiff. The service award is fair
8 and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with
9 the litigation and settlement, regularly conferring with Class Counsel on the status of her case and the
10 strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that its terms are
11 fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 51.

12 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
13 once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above
14 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 52.

15 ⁴ The amount of the requested enhancement payment-\$5,000-is reasonable by reference to the amounts that California courts (both federal
16 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No.
17 BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*
18 *Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement
19 payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
20 payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
21 \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011)
22 (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.
23 Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July
24 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528
25 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional
26 compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct.
27 Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A.
28 County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No.
BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No.
BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC*
Monterey Park Hospital LP, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v.*
Catholic Moray Services, Inc., No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the
named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding
\$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding
\$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct.
Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguilar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal.
Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx)
(C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San
Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-
cv-04526-CAS-JEMx (CD. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No.
RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No.
CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int’l Holdings,*
Inc., No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security*
Services, LLC, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

1 **D. The Court Should Preliminarily Approve the Attorneys’ Fees**

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

12 Class Counsel took this matter on a contingency fee basis and invested significant time and
13 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
14 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
15 Members. Considering the positive outcome for the Class Members, and in light of the supporting
16 authority, the proposed Attorneys’ Fees payment is fair and reasonable. JCL Dec., ¶ 53.

17 Plaintiff will file a formal motion for the negotiated Attorneys’ Fees once preliminary approval
18 of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for
19 preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 54.

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

21 For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification
22 of the Class is appropriate. JCL Dec., ¶ 55.

23 1. The Standard for Class Certification

24 Class actions are statutorily authorized “when the question is one of common or general interest,
25 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court.” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
27 certification is appropriate when there is an “ascertainable class and a well-defined community of
28 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment

1 is appropriate even if class members at some point may be required to make an individual showing as
2 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
3 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

19 Because all Class Members are Defendant’s current and former employees, the class is readily
20 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 56.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
23 liability can be determined by facts common to all members of the class. The wage and hour issues are
24 both numerous and substantial, and a class action is the most advantageous method of dealing with the
25 claims of the Settlement Class. JCL Dec., ¶ 57.

26 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
27 from the same factual basis and are based on the same legal theories applicable to the other Class
28 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement

1 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
2 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
3 to advocate for the interests of the Class Member by initiating this litigation, participating in mediation,
4 and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 58.

5 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
6 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
7 gained state court settlement approval of the same class-wide causes of action that are at issue in this
8 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
9 represent the interests of this Class. JCL Dec., ¶¶ 60-67, Declaration of Shani Zakay, ¶¶ 1-3.

10 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
11 each individual claim, the Class Members likely have little incentive to litigate their claims on an
12 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
13 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
14 adjudication. JCL Dec., ¶ 59.

15 IV. CONCLUSION

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

19
20 Dated: December 5, 2023

JCL LAW FIRM, APC

21 By: Sydney Castillo-Johnson
22 Sydney Castillo-Johnson, Esq.