

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya Silva (State Bar #348080)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@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 Plaintiffs MARTIN MARISCAL, DANIEL GARCIA, and RAFAEL ROJAS

[Additional counsel on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

MARTIN MARISCAL, DANIEL GARCIA,
RAFAEL ROJAS, JOSE HERNANDEZ, AND
LUIS VAZQUEZ individuals, on behalf of
themselves and on behalf of all persons similarly
situated,

Plaintiffs,

v.

JANCO INDUSTRIES, INC., a California
corporation; TERRY ALEXANDER, an
individual; ANDREW ALEXANDER, an
individual; and DOES 1-50, Inclusive,

Defendants.

Case No: STK-CV-UOE-2022-7290
Related with: STK-CV-UOE-2022-9998;
STK-CV-UOE-2022-8450; and
STK-CV-UOE-2022-8790

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

Date:

Time:

Judge: Hon. George J. Abdallah

Dept.: 10A

GAINES & GAINES

Daniel Gaines, Esq.

Alex Katofsky, Esq.

4550 East Thousand Oaks Blvd, Suite 100

Westlake Village, CA 91362

T: (866) 400-4450

daniel@gaineslawfirm.com

alex@gaineslawfirm.com

Attorneys for PLAINTIFF JOSE HERNANDEZ

DREW LEWIS, PC

Drew Lewis, Esq.

2999 Douglas Blvd, Suite 180

Roseville, CA 95661

T: (833) 600-7400

drew@drewlewis.law

Attorneys for PLAINTIFF LUIS VAZQUEZ

TABLE OF CONTENTS

I.	INTRODUCTION	1
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	6
	D. The Proposed Settlement Fully Resolves Plaintiffs' Claims	7
	1. The Composition of the Settlement Class Members and Aggrieved Employees	7
	2. The Settlement Consideration	7
	3. The Funding Date	8
	4. Formula for Calculating Individual Class Payments	8
	5. Release by Participating Settlement Class Members	8
	6. PAGA Release by the State of California on behalf of the Aggrieved Employees	8
III.	ARGUMENT	9
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	9
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.	10
	2. Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.	10
	3. The Settlement Falls Within the Recognized Range of Reasonableness.	11

1	a. The Total Settlement Amount Meets the Recognized Range of Reasonableness.	12
2	.....	
3	(1) Defendant’s Estimated Exposure for Regular Rate Violations for	
4	Purposes of Overtime Compensation	12
5	.....	
6	(2) Defendant’s Estimated Exposure for Meal and Rest Period Violations	12
7	.....	
8	(3) Defendant’s Estimated Exposure for Failure to Reimburse Employees	
9	for All Necessary Business Expenditures	13
10	.....	
11	(4) Defendant’s Estimated Exposure for Wage Statement Violations	13
12	.....	
13	(5) Defendant’s Estimated Exposure for Waiting Time Penalties	14
14	.....	
15	(6) Defendant’s Estimated Exposure for Off-the-Clock Work	14
16	.....	
17	(7) Defendant’s PAGA Exposure	14
18	.....	
19	b. Inherent Risks of Continued Litigation Support Preliminary Approval	16
20	.....	
21	B. The Proposed Notice Informs the Class about the Case and Settlement	18
22	.....	
23	C. The Court Should Preliminarily Approve the Class Representative Service Award	19
24	.....	
25	D. The Court Should Preliminarily Approve Class Counsel’s Class Counsel Award	20
26	.....	
27	E. Provisional Certification for Settlement Purposes Is Appropriate	20
28	.....	
	1. The Standard for Class Certification	21
		
	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Participating Class Members	21
		
	IV. CONCLUSION	22
		

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.....	9
5	<i>Aguiar v. Cingular Wireless. LLC</i>	
6	No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011).....	19
7	<i>Ali v. U.S.A. Cab Ltd.</i>	
8	(2009) 176 Cal.App.4th 1333, 1341.....	17
9	<i>Brinker</i>	
10	53 Cal. 4th at 1021-1022.....	17, 21
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	17
13	<i>Bufile v. Dollar Financial Group, Inc.</i>	
14	(2008) 162 Cal.App.4th 1193, 1207.....	21
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	17
17	<i>Carrington v. Starbucks Corp.,</i>	
18	30 Cal. App. 5th 504, 517, 539 (2018).....	16
19	<i>Cart v. Super. Ct.</i>	
20	(1975) 50 Cal.App.3d 960, 972.....	18
21	<i>Cellphone Termination Fee Cases</i>	
22	180 Cal. App. 4th 1110, 1118, 1380, 1389, 1393 (2010).....	9-10, 19
23	<i>Chance v. Super. Ct.</i>	
24	(1962) 58 Cal.2d 275, 290.....	18
25	<i>Chavez v. Netflix, Inc.</i>	
26	(2008) 162 Cal.App.4th 43, 66 n.11.....	20
27	<i>Clark v. American Residential Services LLC</i>	
28	(2009) 175 Cal.App.4th 785.....	19
	<i>D'Amato v. Deutsche Bank</i>	
	(2d. Cir. 2001) 236 F.3d 78, 85.....	10
	<i>Dunk v. Ford Motor Co.</i>	
	(1996) 48 Cal.App.4th 1794, 1802.....	9
	<i>Duran v. U.S. Bank National Association</i>	
	(2014) 59 Cal.4th 1, 31.....	17
	<i>Fleming v. Covidien</i>	
	2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	16
	<i>Fontana v. Elrod</i>	
	(7 th Cir. 1987) 826 F.2d 729, 732.....	18
	<i>Frank v. Eastman Kodak Co.</i>	
	(W.D.N.Y. 2005) 228 FRD. 174, 186.....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	15
	<i>In re Apple Computer, Inc. Derivative Litig</i>	
	No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
	<i>In re Global Crossing Sec. and ERISA Litig.</i>	
	(S.D.N.Y 2004) 225 F.R.D. 436, 460.....	11
	<i>In re IKON Office Solutions, Inc Sec Litig.</i>	
	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11

1	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	12
2	<i>In re Nordstrom Com. Cases</i>	
	186 Cal.App.4th 576, 589 (2010).....	16
3	<i>In re Nvidia Derivs. Litig.</i>	
	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	17
4	<i>In re Omnivision Tech, Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
5	<i>In re Taco Bell Wage & Hour Actions</i>	
	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	16
6	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
7	<i>Kass v. Young</i>	
	(1977) 67 Cal.App.3d 100, 106).....	18
8	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 133.....	11
9	<i>Lee v. Dynamex, Inc.</i>	
	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	21
10	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	16, 18
11	<i>Magee v. American Residential Services, LLC</i>	
	No. BC423798 (LA. County Super. Ct Apr. 21, 2011).....	19
12	<i>Mares v. BFS Retail & Commercial Operations, LLC</i>	
	No. BC375967 (L.A. County Super. Ct. June 24, 2010).....	19
13	<i>McKenzie v. Fed. Express Corp.,</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)	15
14	<i>Misra v. Decision One Mortg. Co.</i>	
	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
15	<i>Moniz v. Adecco USA, Inc.</i>	
	(2021) 72 Cal.App.5th 56, 77.....	15
16	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11
17	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 527, 526.....	11, 18
18	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
19	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
20	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087.....	16-17
21	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	9, 11
22	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	17
23	<i>Rodriguez v. West Publishing Corp.</i>	
	(9 th Cir. 2009) 563 F.3d 948, 958-59.....	19
24	<i>Sav-On Drug Stores, Inc.</i>	
	(2014) 34 Cal.4th 319, 326, 333.....	21
25	///	

1	<i>Stambaugh v. Super. Ct</i>	
2	(1976) 62 Cal.App.3d 231, 236.....	9
3	<i>State v. Levi Strauss & Co.</i>	
4	(1986) 41 Cal.3d 460, 482, 485.....	10, 19
5	<i>Tien v. Tenet Healthcare Corp.</i>	
6	(2012) 209 Cal.App.4th 1077, 1088.....	17
7	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
8	(1975) 48 Cal. App. 3d 143, 151-52.....	18
9	<i>Zamora v. Balboa Life & Casualty LLC</i>	
10	No. BC360026 (LA. County Super. Ct. Mar. 7, 2013).....	19

STATUTES, RULES AND CODES

11	<i>Cal.Civ.Proc. Code § 382</i>	21
12	<i>Bus. and Prof. Code §§ 17200 et seq.</i>	4
13	<i>Cal. Lab. Code § 1197.1</i>	15
14	<i>Cal. Lab. Code § 510 et seq.</i>	12, 15
15	<i>Cal. Lab. Code § 226.7</i>	15
16	<i>Cal. Lab. Code § 512</i>	15
17	<i>Cal. Lab. Code § 226 et seq.</i>	13-14, 15
18	<i>Cal. Lab. Code § 203</i>	13, 15
19	<i>Cal. Rules of Court, rule 3.769(c)-(g)</i>	9
20	<i>Cal. Rules of Court, rule 3.776(e)-(f)</i>	19
21	<i>California IWC Wage Order No. 7 § 3(A)(1)</i>	12

SECONDARY SOURCES

22	Conte & Newberg, <i>Newberg on Class Actions</i> , §§ 11.26, 11.51 (4th ed. 2002) § 1 1:38	
23	.....	9-10, 19
24	Eisenberg & Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. Rev. 1303 (2006)	
25	.....	19
26	Theodore Eisenberg & Geoffrey P. Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study</i> , <i>J. of Empirical Legal Studies</i> , Vol. 1, Issue 1, 27-78, March 2004, at 35	
27	.....	20
28	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> § 1789, at 253 (2d ed. 1986)	
	.....	18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Plaintiffs MARTIN MARISCAL, DANIEL GARCIA, JOSE HERNANDEZ, RAFAEL ROJAS, and LUIS VAZQUEZ (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹ to resolve all claims brought against Defendants JANCO INDUSTRIES, INC., TERRY ALEXANDER and ANDREW ALEXANDER (“Defendants”) in their consolidated class and representative actions. If approved, the Agreement would provide valuable monetary relief for approximately 893 Class Members and approximately 548 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” or the “**California Class**” means all non-exempt employees who are or previously were employed by Defendant Janco Industries, Inc. and performed work in California during the period between August 19, 2018 to January 12, 2024. Agreement at §I(F);(I).

2. The “**Class Period**” means the period beginning August 19, 2018 to January 12, 2024. Agreement at §I(I).

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

4. The “**PAGA Group Members**” or “**Aggrieved Employees**” means all non-exempt employees who are or previously were employed by Defendant Janco Industries, Inc. and performed work in California during the PAGA Period. Agreement at §I(U).

5. The “**PAGA Period**” means the period means the period beginning July 13, 2021 to January 12, 2024. Agreement at §I(X).

6. The “**Gross Settlement Amount**” or “**GSA**” is Two Million Dollars and Zero Cents (\$2,000,000.00). Agreement at §I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” in the amount of \$15,000.00 or in an amount that the Court authorizes to be paid to each of the following Class Representatives: Martin Mariscal, Daniel Garcia,

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 Rafael Rojas, and Jose Hernandez, and an award in the amount of \$30,000.00 or in an amount the Court
2 authorizes to be paid to Class Representative Luis Vazquez, for their services on behalf of the Class
3 Members. Agreement at §I(HH).

4 b. “Attorneys’ Fees” to be paid to Class Counsel for the services they have rendered
5 to Plaintiffs and the Settlement Class in the Action, not to exceed 35% of the Gross Settlement Amount.
6 Attorneys’ Fees will be divided between Class Counsel as follows: 24.6% to JCL Law Firm, APC,
7 24.6% to Zakay Law Group, APLC, 32.8% to Gaines & Gaines, APLC, and 18% to Drew Lewis, PC.
8 Agreement at §I(E).

9 c. “Attorneys’ Expenses” to be paid to Class Counsel for the expenses they have
10 incurred of up to \$30,000. Agreement at §I(D).

11 d. A **“PAGA Payment”** of One Hundred Thousand Dollars and Zero Cents
12 (\$100,000.00) shall be allocated from the Gross Settlement Amount for settlement of PAGA Claims
13 asserted in the Action. Agreement at §I(Y). The Settlement Administrator shall pay seventy-five
14 percent (75%) of the PAGA Payment to the Labor and Workforce Development Agency (“LWDA
15 Payment”). The Settlement Administrator shall distribute the remaining twenty-five percent (25%) of
16 the PAGA Payment to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at
17 §I(Y).

18 e. **“Claims Administration Expenses”** paid to the Claims Administrator, Apex
19 Class Action Settlement Administration, from the Gross Settlement Amount for administering the
20 Settlement, currently estimated not to exceed \$13,000. Agreement at §I(B).

21 7. The **“Net Settlement Amount”** of approximately One Million Sixty Seven Thousand
22 Dollars and Zero Cents (\$1,067,000.00) (Gross Settlement Amount minus the Service Awards,
23 Attorneys’ Fees, Attorneys’ Expenses, PAGA Payment and Claims Administration Expenses) will be
24 allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks
25 each Settlement Class Member worked during the Class Period. Agreement at §III(M)(1). The entire
26 Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the
27 Settlement Class. JCL Dec., ¶ 7.

28 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the

1 California Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's
2 length. The Settlement confers substantial benefits to the California Class. **This is a cash settlement.**
3 Every Class Member who does not opt out of the Settlement will automatically be mailed an individual
4 settlement payment. The relief offered by the Settlement is particularly impressive when viewed against
5 the difficulties encountered by Plaintiffs pursuing wage and hour cases (*see infra*). Indeed, by settling
6 now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor
7 will they have to bear the risk of class certification being denied or of Defendants prevailing at trial.
8 JCL Dec., ¶ 8.

9 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
10 approval and falls within the range of reasonableness. The average Individual Settlement Payments to
11 the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the
12 proposed California Class is appropriate for provisional certification. Accordingly, Plaintiffs
13 respectfully request the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 9.

14 II. FACTS AND PROCEDURE

15 A. Overview of the Litigation

16 Defendant Janco Industries, Inc. ("Janco") is a concrete construction company. Defendants
17 Terry Alexander and Andrew Alexander are owners/managing members of Defendant Janco
18 Industries, Inc. Plaintiffs were employed by Janco as non-exempt employees in San Joaquin County.
19 Throughout their employment, Plaintiffs were entitled to legally compliant meal and/or rest periods,
20 minimum and regular wages. Additionally, Plaintiffs were subject to Defendant's written policies and
21 procedures. JCL Dec., ¶ 10.; Declaration of Martin Mariscal at ¶ 4; Declaration of Daniel Garcia at ¶
22 4, Declaration of Jose Hernandez at ¶ 4, Declaration of Rafael Rojas at ¶ 4, and Declaration of Luis
23 Vazquez at ¶ 4.

24 Generally, Plaintiffs claim that Defendants failed to pay minimum wages and overtime wages,
25 failed to provide compliant meal and rest periods, failed to furnish accurate itemized wages statements,
26 failed to pay all wages when due and failed to reimburse for mandatory business expenses. Defendants
27 forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully
28 complied with all applicable employment laws and raised several other significant defenses to

1 Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage
2 statements, reimbursement for all required business expenses, and payment of all wages upon
3 separation. JCL Dec., ¶ 11.

4 The Mariscal Class Action and PAGA Action

5 Plaintiffs Mariscal, Garcia, and Rojas exhausted the administrative requirements of the PAGA
6 on July 13, 2022, when they submitted a letter, by online submission to the Labor & Workforce
7 Development Agency ("LWDA") and by certified mail to Defendants, outlining the facts and theories
8 underlying their claims. On August 19, 2022, Plaintiffs Mariscal, Garcia, and Rojas filed their class
9 action complaint. On September 21, 2022, Mariscal, Garcia, and Rojas filed their separate PAGA
10 representative action complaint. JCL Dec., ¶ 12.

11 The Hernandez and Vazquez Actions

12 Plaintiff Hernandez exhausted the administrative requirements of PAGA on August 16, 2022
13 when he submitted a letter via online submission to the LWDA and by certified mail to Defendants,
14 outlining the facts and theories underlying his claims. On September 30, 2022, Hernandez filed his
15 class action complaint. Plaintiff Vazquez exhausted the administrative requirements of PAGA on
16 October 28, 2022 when he submitted a letter, by online submission to the LWDA and by certified mail
17 to Defendants, outlining the facts and theories underlying his claims. On October 31, 2022, Vazquez
18 filed his class action complaint. JCL Dec., ¶ 13.

19 Consolidation of the Actions

20 On or about March 30, 2023, the San Joaquin County Superior Court consolidated the four
21 actions, with the Mariscal, et al. class action as the lead case. The complaints alleged the following:
22 (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §17200; (2) Failure to pay minimum
23 wages; (3) Failure to pay overtime; (4) Failure to provide meal periods; (5) Failure to provide rest
24 periods; (6) Failure to provide accurate itemized statements; (7) Failure to reimburse employees for
25 required expenses; and (8) Failure to provide wages when due. JCL Dec., ¶ 14.

26 Prior to mediation, the Parties engaged in further investigation and the exchange of documents
27 and information in connection with the Action. As part of this process, Defendants provided a significant
28 sample of time records and payroll records, policies, as well as other documents and information, to

1 Class Counsel to review and analyze. On October 11, 2023, the Parties participated in a full day
2 mediation with Steve Rottman, an experienced mediator of wage and hour class and PAGA actions.
3 After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
4 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
5 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 15.

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

7 Months before filing the Action, Class Counsel began their pre-filing investigation into the
8 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
9 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,
10 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
11 each of Plaintiffs' complaints appeared to substantiate Plaintiffs' claims that Defendants failed to,
12 among other things, pay for all time worked, failed to provide compliant meal and rest periods, failed
13 to reimburse for all mandatory business expenses, failed to issue accurate itemized wage statements,
14 and failed to pay all wages when due. JCL Dec., ¶ 16.

15 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
16 Plaintiffs' claims and Defendant's liability exposure to the Class Members. In response to Class
17 Counsel's request, Defendants produced, among other things, the time and payroll records for a
18 representative sampling of the Class Members, aggregate workweek and pay period data, and copies
19 of applicable policies, and agreements. In total, Defendants produced nearly 800 pages of pertinent
20 documents for Class Members for Class Counsel to analyze. JCL Dec., ¶ 17.

21 Class Counsel then retained the statisticians and economists at Berger Consulting Group
22 ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and
23 damage modeling consulting services specializing in wage and hour class actions. BCG's team of
24 financial and data analysts are credentialed and experienced experts in their fields and have provided
25 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
26 Defendant's time and payroll data. JCL Dec., ¶ 18.

27 Prior to mediation, BCG analyzed the time and payroll data provided by Defendant to assist in
28 the development of various damage models. Among other things, BCG's analysis estimated the

1 number of workweeks, pay periods, average rate of pay, and the regular rate of pay. BCG also estimated
2 the amount of unreimbursed business expenses, unpaid wages due to off-the-clock work and regular
3 rate violations, the number of missed, late, or truncated meal and rest periods, number of missed meal
4 and rest period premiums paid during the Class Period and the amount of resulting PAGA penalties for
5 identified Labor Code violations. JCL Dec., ¶ 19.

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

17 Class Counsel only agreed to enter the Settlement following this thorough investigation and
18 evaluation of Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace
19 for similar settlements, and considering the risk of significant delay and uncertainty associated with
20 litigation, and the various defenses asserted by Defendant, Class Counsel believes this Agreement to
21 be in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
22 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

24 On October 11, 2023, the Parties conducted a full day of mediation with Steve Rottman., an
25 experienced wage and hour mediator. Mediator Rottman helped manage the Parties' expectations and
26 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
27 progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding
28 their respective claims and defenses, including their respective evaluation of the damages. At the

conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. 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., ¶ 22.

D. The Proposed Settlement Fully Resolves Plaintiffs' Claims

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

The proposed Settlement Class consists of all current and former non-exempt employees employed by Defendant Janco in California during the period between August 19, 2018 to January 12, 2024. 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 893 Class Members who worked an estimated 61,357 workweeks through the conclusion of the Class Period. JCL Dec., ¶ 23. Additionally, at the time of mediation, Plaintiffs' expert estimated that there were approximately 548 Aggrieved Employees who worked approximately 27,795 pay periods during the PAGA Period. JCL Dec., ¶ 24.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$2,000,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class; (2) a Service Award of not more than \$15,000.00 for Plaintiffs Martin Mariscal, Daniel Garcia, Rafael Rojas and Jose Hernandez, and a Service Award of not more than \$30,000.00 for Plaintiff Luis Vazquez for their services on behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA Payment in the amount of \$100,000.00; (4) Claims Administration Expenses estimated to be \$13,000.00; (5) Attorneys' Fees not to exceed 35% of the Gross Settlement Amount (estimated to be \$700,000.00) plus Attorneys' Expenses not to exceed \$30,000 for actually incurred litigation expenses. See generally Agreement at §§ I(B); I(D)-(E); I(Q); I(Y); and I(HH).

Subject to the Court approving the Service Award, Attorneys' Fees, Attorneys' Expenses, PAGA Payment, and the Claims Administration Expenses, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. Agreement at § I(Q). There is no reversion to

1 Defendant. *Id.* at § III(A)(1).

2 3. The Funding Date

3 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Total
4 Settlement Amount of \$2,000,000.00 in three installments, according to the following schedule: The
5 first installment of \$666,666.66 shall be made within fourteen (14) days of the date the Court enters the
6 order and judgment granting final approval of the settlement. The second installment of \$666,666.66
7 shall be made within six months of the First Installment. The third and final installment of \$666,666.67
8 shall be made within six months of the Second Installment. Each payment shall include a proportionate
9 share of employer payroll taxes due. Agreement at § I(N).

10 4. Formula for Calculating Individual Settlement Payments

11 Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid
12 pursuant to the formula set forth herein. Using the Class Data, the Claims Administrator shall add up
13 the total number of Workweeks for all Class Members. The respective Workweeks for each Class
14 Member will be divided by the total Workweeks for all Class Members, resulting in the Class Payment
15 Ratio for each Class Member. Each Class Member's Class Payment Ratio will then be multiplied by
16 the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement
17 Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax
18 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for Class Members
19 who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members
20 who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective
21 Class Payment Ratios. JCL Dec., ¶ 25.

22 5. Release by Participating Settlement Class Members

23 As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount,
24 and in exchange for the consideration set forth in this Agreement, Plaintiffs and the Settlement Class
25 Members release the Released Parties from the Released Class Claims. Agreement at § III(B).

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

27 As of the Effective Date, subject to Defendants' full payment of the Gross Settlement Amount,
28 and in exchange for the consideration set forth in this Agreement, the Plaintiffs, and the LWDA release

1 the Released Parties from the Released PAGA Claims. As a result of this release, the Aggrieved
2 Employees shall be precluded from bringing claims against Defendants for the Released PAGA Claims.
3 Agreement at § III(C).

4 III. ARGUMENT

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

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

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

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

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

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

14 The Parties participated in mediation with Steve Rottman, an experienced wage and hour class
15 action mediator. Mediator Rottman managed the Parties’ expectations and provided a useful, neutral
16 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-
17 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
18 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.
19 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
20 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
21 negotiations were at an arm’s length, adversarial, and non-collusive. The Parties subsequently drafted
22 and negotiated a long-form settlement which is the subject of the instant motion. The Agreement is the
23 final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and
24 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 26.

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

27 As detailed *infra*, Class Counsel conducted a very thorough investigation into the factual and
28 legal issues in dispute. Prior to mediation, Class Counsel fully assessed the nature and magnitude of

1 the claims being settled, as well as the impediments to recovery. Ultimately, Class Counsel made an
2 informed and independent assessment of the reasonableness of the terms to which the Parties have
3 agreed. JCL Dec., ¶ 27.

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

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

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

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").

reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’” (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 29.

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

The Total Settlement Amount of \$2,000,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained BCG to develop economic damage models measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA Penalties) ranged between \$6,122,790 (“Realistic Damages”) and \$22,434,587 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of between 33% (“Realistic Damages”) and 9% (“Maximum Damages”) of Defendant’s class-wide exposure for damages and statutory penalties – well within the recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL Dec., ¶ 30.

(1) Defendant’s Estimated Exposure for Regular Rate Violations for Purposes of Overtime Compensation

Plaintiffs allege that Defendants *miscalculated* the regular rate of pay when paying overtime and redeemed sick pay. Under California law, overtime work must be paid at a rate of “no less than one-and-one-half times the regular rate of pay” for non-exempt employees. Cal. Lab. Code § 510(a); California IWC Wage Order No. 7 § 3(A)(1). Plaintiffs assert that Defendants failed to calculate additional, non-discretionary bonuses earned by Class Members into the regular rate of pay. Plaintiff’s expert estimated Defendant’s maximum exposure for this claim to be \$201,466. JCL Dec., ¶ 31.

(2) Defendant’s Estimated Exposure for Meal and Rest Period Violations

Plaintiffs alleged that because of their rigorous work schedules the Settlement Class Members were required to work through and/or take late, short, or interrupted meal and rest periods. Consequently, Plaintiffs allege that they are owed meal and rest period premiums for violations that

1 occurred during the Class Period. The timecards provided by Defendants in advance of mediation
2 showed that 100% of the recorded meal periods were taken exactly on the hour or half hour and lasted
3 exactly 30 minutes in duration. Plaintiff alleged that this created a strong presumption that meal periods
4 were improperly rounded. Defendants argued that they maintained and implemented facially compliant
5 meal and rest period policies throughout the class period, and that Class Members were responsible for
6 recording their own time. JCL Dec., ¶ 32.

7 As Plaintiff does not believe the data provided by Defendants to be an accurate reflection of
8 meal period violation rates, Plaintiffs assumed between a 15% - 35% violation rate for meal and rest
9 periods. This creates realistic and maximum damages range of \$2,018,44 and \$4,709,704 for Plaintiffs'
10 meal period claims, and a damages range of \$2,018,44 and \$4,709,704 for Plaintiffs' rest period claims.
11 JCL Dec., ¶ 33.

12 (3) Defendant's Estimated Exposure for Failure to Reimburse Employees for All
13 Necessary Business Expenditures

14 Plaintiffs alleged that Class Members were required to use their personal cell phones, vehicles,
15 and tools in connection with their job duties for Defendants but were not reimbursed for these expenses.
16 Plaintiffs allege that Class Members could not complete their essential job duties, including, but not
17 limited to, communicating with staff and management regarding work-related matters, driving to work
18 sites, driving between work sites, and transporting equipment, without incurring these expenses.
19 Defendants maintain that necessary expenses for which reimbursements were sought were paid.
20 Plaintiff estimates Defendant's exposure for this claim to range between \$425,106 and \$2,046,464. JCL
21 Dec., ¶ 34.

22 (4) Defendant's Estimated Exposure for Wage Statement Violations

23 Plaintiffs also alleged that Defendants failed to furnish its employees with accurate itemized
24 wage statements because of the violations discussed above. Moreover, Plaintiffs allege facial violations
25 of Labor Code Section 226. Specifically, independent of the above allegations, the wage statements
26 issued to Class Members also failed to include the number of piece-rate units earned and any applicable
27 piece rate, in violation of Labor Code § 226(a)(3). Further, the wage statements issued to Class
28 Members failed to include the inclusive dates of the period for which the employee is paid, in violation

of Labor Code § 226(a)(6). Plaintiff's expert estimated Defendant's exposure for this claim to be \$1,498,750 in statutory penalties. JCL Dec., ¶ 35.

(5) Defendant's Estimated Exposure for Waiting Time Penalties

Plaintiffs further alleged that the Defendant's labor code violations resulted in derivative liability for waiting time penalties. Although these penalties represented Defendant's largest dollar amount of exposure, this is Plaintiffs' most uncertain claim. Specifically, Defendants argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendant's exposure for these claims ranged between \$2,880,589 and \$4,800,982. JCL Dec., ¶ 36.

(6) Defendant's Estimated Exposure for Off-the-Clock Work

Plaintiffs alleged that Defendants required Class Members to perform work off-the-clock. Specifically, Plaintiffs alleged Defendants required Class Members to perform work before and after their shifts in order to perform all the tasks required of them. Additionally, Defendants also required Class Members to load and unload vehicles prior to driving to or from their worksites. Many of the Class Members' jobsites were in the Bay Area, so the travel time to and from the company headquarters in Tracy could take as long as three or more hours per day. Despite this, Defendants told Class Members to only record the hours they are working at the worksite. Plaintiffs alleged that Defendants' superintendent or manager would also regularly record Class Members' hours worked, without including driving time and loading and unloading time. Defendants denied requiring any work performed off-the-clock, and further argued that this claim was not suitable for class treatment because individualized issues predominated. Plaintiffs estimated Defendant's realistic and maximum exposure for unpaid wages to range from \$1,116,879 to \$4,467,517. JCL Dec., ¶ 37.

(7) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiffs estimated Defendant's PAGA exposure to be approximately \$6,984,550 if successful at trial. JCL Dec., ¶ 38. Plaintiffs' claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
512 and 226.7 (meal period violations)	\$50	27,795	100% of pay periods	\$1,389,750
226.7 (rest period violations)	\$50	27,795	100% of pay periods	\$1,389,750
510, 1197.1 (unpaid wages)	\$50	27,795	100% of pay periods	\$1,389,750
226 (wage statement violation)	\$50	27,795	100% of pay periods	\$1,389,750
203 (waiting time)	\$100	358	358 former employees	\$35,800
226 (wage statement violation)	\$50	27,795	100% of pay periods	\$1,389,750
TOTAL				\$6,984,550

JCL Dec., ¶ 39.

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

Here, the Parties negotiated a good faith PAGA Payment in the amount of \$100,0000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$75,000.00) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment

1 (\$25,000.00) will be distributed to the PAGA Class Members, which is within the range of PAGA
2 Payment approved by courts and should be approved. JCL Dec., ¶ 40.

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

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

18 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

24 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
25 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
26 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
27 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
28 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., ¶ 41.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful

1 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
2 that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
3 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 42. “Avoiding such a trial and
4 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
5 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
6 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
7 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

8 Given the amount of the settlement here, as compared to potential value of the claims, offset by
9 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 43.

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

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

20 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
21 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
22 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
23 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
24 procedure and time period within which to requests for exclusions or objections to the Settlement, the
25 date for the final approval hearing, the formula used to calculate settlement payments, and the terms

26
27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 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 and scope of the Released Claims. See generally Agreement at § III(L). The Parties negotiated this
2 method to ensure delivering the most reasonable method of notice to the Class Members while ensuring
3 cost effective administration of the Settlement. JCL Dec., ¶ 44.

4 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
5 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
6 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
7 of the options open to dissenting class members.”).) JCL Dec., ¶ 45.

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

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

20 The Settlement provides for a Class Representative Service Award of up to \$15,000 for four of
21 the Plaintiffs, and \$30,000 for Plaintiff Luis Vazquez,⁴ subject to the Court’s approval. The service
22 award is fair and reasonable compensation for Plaintiffs efforts bringing the action, assisting Class
23 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of
24 their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure

25 ⁴ The amount of the requested enhancement payments is reasonable by reference to the amounts that California courts (both federal and
26 state) have repeatedly found to be reasonable for wage and hour class action settlements: See *Magee v. American Residential Services,*
27 *LLC*, No. BC423798 (L.A. County Super. Ct Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial*
28 *Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named
plaintiffs); *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); *Aguiar v. Cingular Wireless. LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding
\$14,767 enhancement payment).

1 that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide
2 Defendants and the Released Parties a general release of all claims arising out of their employment.
3 JCL Dec., ¶ 46.

4 Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
5 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiffs
6 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class
7 Representative Service Award. JCL Dec., ¶ 47.

8 **D. The Court Should Preliminarily Approve Class Counsel's Class Counsel Award**

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

19 Class Counsel took this matter on a contingency fee basis and invested significant time and
20 expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average
21 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
22 Members. Considering the positive outcome for the Class Members, and in light of the supporting
23 authority, the proposed award of Class Counsel Award is fair and reasonable. JCL Dec., ¶ 48.

24 Plaintiffs will file a formal motion for the negotiated award of the Class Counsel Award once
25 preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing
26 is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 49.

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

28 For Settlement only, Plaintiffs contend, and Defendants do not dispute, that provisional

1 certification of the Class is appropriate. JCL Dec., ¶ 50.

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 Settlement 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., ¶ 51.

28 The statutes relating to each of Plaintiffs’ claims apply with equal force and effect to the entire

1 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., ¶ 52.

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 52.

13 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
14 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
15 certified, and gained state court settlement approval of the same class-wide causes of action that are at
16 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
17 qualified to represent the interests of this Class. JCL Dec., ¶ 54; 56-64.; Declaration of Shani O. Zakay
18 at ¶ 3; Declaration of Daniel Gaines at ¶¶ 2 – 6; Declaration of Drew Lewis at ¶ #6-9.

19 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
20 each individual claim, the Class Members likely have little incentive to litigate their claims on an
21 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
22 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
23 adjudication. JCL Dec., ¶ 55.

24
25
26
27
28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100

Dated: June 3, 2024

By: Jean-Claude Lapuyade
Jean-Claude Lapuyade, Esq.