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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ELISA ALVAREZ, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

SLO ARCHES, INC., a California Corporation;
IVERNIA, INCORPORATED, a California
Corporation; GOLDEN SENECA, INC., a
California Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 21CV-0533

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

Date: July 13, 2023

Time: 9:00 a.m.

Judge: Hon. Rita Coyne Federman

Dept.: 2

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	4
	C. The Parties Settled at Mediation	6
	D. The Proposed Settlement Fully Resolves Plaintiff's Claims	6
	1. The Composition of the Class	6
	2. The Settlement Consideration	6
	3. The Funding Date	7
	4. Formula for Calculating Individual Settlement Payments	7
	5. Release by Settlement Class Members	8
	6. PAGA Release by the State of California on behalf of the PAGA Class Members	8
III.	ARGUMENT	8
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement	8
	1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel	9

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
a. The Gross Settlement Amount Meets the Recognized Range of Reasonableness	11
(1) Defendants’ Estimated Exposure of Rest Period Violations	12
(2) Estimated Damages for Meal Period Violations	13
(3) Defendants’ Estimated Exposure for Off-the-Clock Work	13
(4) Exposure for Unreimbursed Business Expenses	13
(5) Defendants’ Estimated Exposure for Miscalculation of Regular Rate of Pay	14
(6) Defendants’ Estimated Exposure for Wage Statement Violations	14
(7) Defendants’ Estimated Exposure for Waiting Time Penalties	14
(8) Defendants’ PAGA Exposure	15
b. Inherent Risks of Continued Litigation Support Preliminary Approval	16
B. The Proposed Notice Informs the Class about the Case and Settlement	18
C. The Court Should Preliminarily Approve the Class Representative Service Award	19

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1	D. The Court Should Preliminarily Approve the Class Counsel Award	
2		20
3	E. Provisional Certification for Settlement Purposes Is Appropriate	
4		20
5	1. The Standard for Class Certification	
6		20
7	2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined	
8	Community of Interest Among the Settlement Class Members	
9		21
10	IV. CONCLUSION	
11		22

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TABLE OF AUTHORITIES

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7-Eleven Owners for Fair Franchising v. Southland Corp.	
(2000) 85 Cal.App.4th 1135, 1151.....	9
A.S.A. Cab Ltd.	
(2009) 176 Cal.App.4th 1333, 1341.....	16-17
Augustus v. ABM Security Services, Inc.	
(2016) 2 Cal. 5th 257.....	12
Brinker	
53 Cal. 4th at 1021-1022.....	17-21
Brown v. Fed Express Corp.	
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	17
Bufile v. Dollar Financial Group, Inc.	
(2008) 162 Cal.App.4th 1193, 1207.....	21
Cacho v. Eurostar, Inc.	
(2019) 256 Cal.Rptr.3d 547 at 569.....	12
Campbell v. Best Buy Stores, L.P.	
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	17
Carrington v. Starbucks Corp.	
(2018) 30 Cal.App.5th 504.....	16
Cart v. Super. Ct.	
(1975) 50 Cal.App.3d 960, 972.....	18
Cellphone Termination Fee Cases	
180 Cal.App.4th 1110, 1118, 1380, 1389, 1393 (2010).....	9, 19
Chance v. Super. Ct.	
(1962) 58 Cal.2d 275, 290.....	18
Chavez v. Netflix, Inc.	
(2008) 162 Cal.App.4th 43, 66 n.11.....	20
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175 Cal.App.4th 785 (2009).....	19
D'Amato v. Deutsche Bank	
(2d. Cir. 2001) 236 F.3d 78, 85.....	10
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(1996) 48 Cal.App.4th 1794, 1802.....	9
Duran v. U.S. Bank National Association	
(2014) 59 Cal.4th 1, 31.....	16
Fleming v. Covidien	
2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	15
Fontana v. Elrod	
(7th Cir. 1987) 826 F.2d 729, 732.....	18
Frank v. Eastman Kodak Co.	
(W.D.N.Y. 2005) 228 FRD. 174, 186.....	11
Hopson v. Hanesbrands Inc.	
No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).....	15
In re Apple Computer, Inc. Derivative Litig	
No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	10
In re Global Crossing Sec. and ERISA Litig.	

1	(S.D.N.Y. 2004) 225 F.R.D. 436, 460.....	11
2	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i>	
3	(E.D. Pa. 2000) 194 F.R.D. 166, 184.....	11
4	<i>In re Michael Milken and Assoc. Sec. Litig.</i>	
5	(S.D.N.Y. 1993) 150 F.R.D. 57, 66.....	11
6	<i>In re Nordstrom Com. Cases</i>	
7	186 Cal.App.4th 576, 589 (2010).....	15
8	<i>In re Nvidia Derivs. Litig.</i>	
9	(N.D. Cal. 2008) 2008 WL 5382544, at *3.....	17
10	<i>In re Omnivision Tech, Inc.</i>	
11	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	11
12	<i>In re Taco Bell Wage & Hour Actions</i>	
13	2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....	15
14	<i>Jack v. Hartford Fire Ins. Co.</i>	
15	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
16	<i>Kass v. Young</i>	
17	(1977) 67 Cal.App.3d 100, 106.....	18
18	<i>Kullar v. Foot Locker Retail, Inc.</i>	
19	(2008) 168 Cal.App.4th 116, 133.....	11
20	<i>Lee v. Dynamex, Inc.</i>	
21	(2008) 166 Cal.App.4th 1325, 1332, 1334.....	20-21
22	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
23	(9th Cir. 2021) 999 F.3d 668.....	16-17
24	<i>McKenzie v. Fed. Express Corp.</i>	
25	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
26	<i>Misra v. Decision One Mortg. Co.</i>	
27	(C.D. Cal. 2009) 2009 WL 4581276, at *7.....	16
28	<i>Moniz v. Adecco USA, Inc.</i>	
	(2021) 72 Cal.App.5th 56, 77.....	15
	<i>Munoz v. BCI Coca-Cola Bottling Co.</i>	
	(2010) 186 Cal.App.4th 399, 409.....	11
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	(2023) 88 Cal.App.5th 927.....	14
	<i>Nat'l Rural Telecomm. Coop. v. Directv. Inc.</i>	
	(C.D. Cal. 2004) 221 F.R.D. 523, 527.....	11, 17-18
	<i>Newman v. Stein</i>	
	(2d. Cir. 2002) 464 F.2d 689, 693.....	11
	<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i>	
	(1994) 27 Cal.App.4th 1085, 1089-90.....	9
	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9th Cir. 2018) 904 F.3d 1087.....	16
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	(9th Cir. 1982) 688 F.2d 615, 625, 628.....	8, 11
	<i>Ordonez v. Radio Shack, Inc.</i>	
	(C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11.....	12
	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1140, <i>opinion modified</i> (June 18, 1990).....	17

1	<i>Rodriguez v. West Publishing Corp.</i>	
2	(9th Cir. 2009) 563 F.3d 948, 958-59.....	19
3	<i>Sav-On Drug Stores, Inc.</i>	
4	(2014) 34 Cal.4th 319, 326, 333.....	20-21
5	<i>Stambaugh v. Super. Ct</i>	
6	(1976) 62 Cal.App.3d 231, 236.....	9
7	<i>State v. Levi Strauss & Co.</i>	
8	(1986) 41 Cal.3d 460, 482, 485.....	9, 19
9	<i>Tien v. Tenet Healthcare Corp.</i>	
10	(2012) 209 Cal.App.4th 1077, 1088.....	16
11	<i>Trotsky v. Los Angeles Fed Savings & Loan Assn.</i>	
12	(1975) 48 Cal.App.3d 143, 151-52.....	18
13	<i>Villa v. United Site Servs. of California, Inc.</i>	
14	(N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8.....	12

RULES, CODES, AND STATUTES

15	<i>Cal. Bus. & Prof. Code</i> §§ 17200 et seq.....	3
16	<i>Cal. Civ. Proc. Code</i> § 382.....	20-21
17	<i>Cal. Lab. Code</i> § 201.....	3
18	<i>Cal. Lab. Code</i> § 202.....	3
19	<i>Cal. Lab. Code</i> § 203.....	3, 14
20	<i>Cal. Lab. Code</i> § 226.....	3
21	<i>Cal. Lab. Code</i> § 226.7.....	3
22	<i>Cal. Lab. Code</i> § 510.....	3
23	<i>Cal. Lab. Code</i> § 512.....	3
24	<i>Cal. Lab. Code</i> § 1194.....	3
25	<i>Cal. Lab. Code</i> § 1197.....	3
26	<i>Cal. Lab. Code</i> § 1197.1.....	3
27	<i>Cal. Lab. Code</i> § 2802.....	3
28	<i>Cal. Lab. Code</i> § 2802(a).....	13
29	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	4
30	<i>Rule of Court Rule 3.769(c)-(g)</i>	9
31	<i>Rule of Court Rule 3.776(e)-(f)</i>	19

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I. INTRODUCTION

Plaintiff ELISA ALVAREZ (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 711 Class Members and 412 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or previously were employed by Defendants and performed work in California (“Class”) during the period from September 16, 2017 to October 17, 2022 (“Class Period”). Agreement at §§ I(G)-(H).

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

b. The “**Class Size**” is comprised of 711 individuals who collectively worked approximately 32,348 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § III(A)(2).

2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees who are or previously were employed by Defendants and performed work in California (“Aggrieved Employees”) during the period of September 16, 2020 to October 17, 2022 (“PAGA Period”). Agreement at § I(B), (W). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(L)(8). At the time of mediation, there were approximately 412 Aggrieved Employees who worked approximately 6,410 pay periods during the PAGA Period.

3. The “**Gross Settlement Amount**” is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Class Representative Service Award**” of not more than \$10,000.00 to Plaintiff in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ III(M)(9).

b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross

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.

Settlement Amount for attorney's fees, currently estimated to be \$250,000.00 **and** litigation expenses not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at § III(M)(10);

c. A "**PAGA Settlement**" of Thirty-Seven Five Hundred Dollars (\$37,500.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA Settlement (\$28,125.00) to the Labor and Workforce Development Agency ("LWDA Payment"). Twenty-five percent (25%) of the PAGA Settlement (\$9,375) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ I(X); III(M)(11).

d. "**Settlement Administration Costs**" not to exceed \$16,000.00 payable to the Settlement Administrator, ILYM Group Inc., for, *inter alia*, the administration of the Class Notice and Settlement Administration Costs. Agreement at § III(M)(12).

4. The "**Net Settlement Amount**" of approximately \$416,500.00 (Gross Settlement Amount less the requested Class Counsel Award, Class Representative Service Award, PAGA Settlement, and Settlement 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. Agreement at § III(M)(1). The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of **\$585.79**. JCL Dec., ¶ 6.

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 Settlement 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 Defendants prevailing at trial. JCL Dec., ¶ 6.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Settlement Payment to the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed

Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants operate McDonald's restaurants in San Luis Obispo, where Plaintiff worked. Plaintiff worked for Defendants in California from March of 2017 to March of 2019. At all times during her employment, Plaintiff was denied legally compliant meal and rest periods, and minimum wages and overtime compensation. Throughout her employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the Employee Handbook. JCL Dec., ¶ 8.

Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained facially compliant meal and rest period policies, paid their employees for all hours worked, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 9.

On September 16, 2021, Plaintiff filed a class action complaint in the San Luis Obispo County Superior Court, Case No. 21CV-0533 ("Action"). The Action alleged seven causes of action against Defendants for: (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510; (3) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1.; (4) Failure to Provide Required Meal Periods in Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of California Labor Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of California Labor Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; and (8) Failure to Provide Wages When Due in Violation of California Labor Code §§ 201, 202, and 203. JCL Dec., ¶ 10.

1 After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To
2 prepare for mediation, the Parties agreed to informally exchange additional documents and data points
3 subject to the mediation privilege, including but not limited to, the Class Members' time data and
4 certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at
5 Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 11.

6 On October 17, 2022, the Parties participated in a full day mediation with mediator, Steven
7 Rottman, Esq. The mediation concluded with a settlement which was subsequently memorialized in
8 the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-
9 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 12.

10 As part of the Settlement, on December 16, 2022, Plaintiff served Defendants and the Labor and
11 Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's
12 PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various
13 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC")
14 Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General
15 Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 13.

16 Prior to the filing of this Motion, Plaintiff filed a First Amended Complaint adding a ninth cause
17 of action for Violation of the Private Attorneys General Action [Labor Code §§ 2698, *et. seq.*] JCL
18 Dec., ¶ 14.

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

20 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
21 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
22 part of the interview process, the Plaintiff produced documents related to her employment, including
23 wage statements, portions of Defendants' handbooks, compensation policies and time and payroll
24 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
25 justified further inquiry. JCL Dec., ¶ 15.

26 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,
27 Defendants produced several documents, including but not limited, copies of Plaintiff's hiring
28 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and

1 determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among
2 other things, provide compliant meal and rest periods, failed to pay all wages due to rounding, and
3 failed to pay for all hours worked. JCL Dec., ¶ 16.

4 To prepare for mediation, Defendants produced time and payroll records for the Class Members,
5 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the
6 Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
7 policies, and agreements. In total, Class Counsel reviewed more than 1,000 pages of documents and
8 more than 100,000 unique cells of time and payroll data. JCL Dec., ¶ 17.

9 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
10 Members' payroll and time data. BCG provides data analysis and damage modeling consulting
11 services, specializing in wage and hour class actions. BCG's team of financial and data analysts are
12 credentialed and experienced experts in their fields and have provided their expertise on thousands of
13 cases. JCL Dec., ¶ 18.

14 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
15 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
16 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
17 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
18 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of unpaid
19 sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period premiums
20 paid during the Class Period. JCL Dec., ¶ 19.

21 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
22 Plaintiff's suitability as a putative class representative through interviews, background investigations,
23 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
24 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
25 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
26 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
27 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
28 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., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

C. The Parties Settled at Mediation

On October 17, 2022, the Parties conducted a full day of mediation with Steven Rottman, Esq. Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal. 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., ¶¶ 21-22.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Class

The proposed Settlement Class consists of all non-exempt employees who are or previously were employed by Defendants and performed work in California during the period of September 16, 2017 to October 17, 2022 who did not submit a timely and valid request for exclusion. Agreement at I(G). At the time of mediation, Defendants estimated that the Class was comprised of 711 individuals that worked approximately 32,348 workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

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

1 Amount of \$750,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
2 the Settlement Class; (2) a Class Representative Service Award of not more than \$10,000 to Plaintiff
3 for her services on behalf of the Settlement Class; (3) a PAGA Settlement in the amount of \$37,500;
4 (4) Settlement Administration Costs estimated at \$16,000; (5) Class Counsel Award in the amount of
5 \$270,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
6 to be \$250,000 and an estimated \$20,000 for actually incurred litigation expenses. See generally
7 Agreement at § III(M).

8 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
9 PAGA Settlement, and the Settlement Administration Costs, the Net Settlement Amount will be
10 distributed to each participating member of the Settlement Class Member. Agreement at § I(R). There
11 is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll
12 taxes. Agreement at § III(A)(1).

13 3. The Funding Date

14 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
15 Settlement Amount within ten (10) days of the Court's entry of the order granting final approval of this
16 Settlement. Agreement at § I(O).

17 4. Formula for Calculating Individual Settlement Payments

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

26 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
27 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments allocated to Class
28 Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class

Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at § III(M)(1).

Given that there are approximately 711 Settlement Class Members, the average gross recovery is approximately \$585.79 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶ 6.

5. Release by Settlement Class Members

Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released Class Claims are all class claims alleged in the operative First Amended Complaint which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at § I(CC).

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

Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all PAGA claims which are alleged in the operative First Amended Complaint 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. Agreement at § (DD).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$750,000.00 meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections.

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

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

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

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

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

1 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
2 § 11.51.)

3 The Parties participated in mediation with highly respected mediator Steven Rottman, Esq.
4 Mediator Rottman managed the Parties' expectations and provided a useful, neutral analysis of the
5 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),
6 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
7 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
8 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure.")) After a full day of mediated negotiations,
10 the Parties reached an agreement and the mediation session concluded with a settlement. JCL Dec., ¶
11 22.

12 Once the Parties memorialized the settlement in the form of a Memorandum of Understanding,
13 the Parties engaged in negotiations regarding the written terms of the class action settlement. The
14 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
15 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

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

18 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
19 the factual and legal issues in dispute. In addition to informal discovery, document review, data
20 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
21 two cases are identical, this research provided Class Counsel with a marker to inform settlement
22 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
23 Counsel to realistically assess the value of Plaintiff's claims and intelligently engage defense counsel
24 in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec.,
25 ¶¶ 15-21.

26 Class Counsel only agreed to enter the Settlement following their thorough investigation and
27 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and
28 marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated

1 with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believes this
2 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
3 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

5 The Gross Settlement Amount of \$750,000.00 is within the range of reasonableness. To
6 determine whether a settlement is fair and reasonable, the court should "consider enough information
7 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
8 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
9 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
10 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
11 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
12 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
13 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
14 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
15 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
16 have received if they had succeeded at trial.² Indeed, "[t]he determination whether a settlement is
17 reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" "
18 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
19 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

21 The Gross Settlement Amount of \$750,000.00 is fair and reasonable considering the nature and
22 magnitude of the claims being settled and the various potential impediments to recovery. Prior to

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 mediation, Class Counsel retained Berger Consulting Group to develop economic damage models
2 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
3 The various models were informed by Class Counsel's investigation, including the analysis of a
4 significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for
5 *class claims* (excluding PAGA Penalties) at \$4,131,730 dollars. Thus, the Gross Settlement Amount of
6 \$750,000 represents approximately 18.15% of Defendants' *class-wide* liability exposure. The
7 following summarizes Defendants' estimated exposure. JCL Dec., ¶ 24.

8 (1) Defendants' Estimated Exposure of Rest Period Violations

9 Plaintiff primary claim in this action alleges that Defendants failed to provide compliant rest
10 periods. Specifically, Defendants had in place a written rest period policy that was silent on whether
11 employees could leave the premises during rest periods in violation of *Augustus v. ABM Security*
12 *Services, Inc.*, (2016) 2 Cal. 5th 257. Consequently, Plaintiff alleged that she is owed rest period
13 premiums for rest period violations that occurred during the Class Period. JCL Dec., ¶ 25.

14 Again, Defendants denied liability and asserted that they maintained legally compliant rest
15 period policies and practices throughout the Class Period. Defendants argued that some evidence of a
16 uniform unlawful policy does not show that Defendants had a *practice* of denying rest breaks. (*See*
17 *Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that "the existence of a uniform
18 unlawful policy does not necessarily mean the employer has liability for violations that can be
19 demonstrated with common proof.")). Moreover, Plaintiff recognizes the evidentiary burdens
20 establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class
21 Member testimony, making it a riskier claim at class certification and liability stages. Certification
22 likely would have required depositions of Class Members who provided declarations, and Defendants
23 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
24 were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
25 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
26 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
27 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
28 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not

1 generate uniform practices.”). Accordingly, Plaintiff estimated Defendants’ exposure for rest period
2 claims at \$1,749,691. JCL Dec., ¶ 26.

3 (2) Estimated Damages for Meal Period Violations

4 Further, Plaintiff alleged that Defendants failed to provide compliant meal periods.
5 Specifically, Plaintiff alleged that because of her rigorous work schedules, Plaintiff, Class Members,
6 and Aggrieved Employees were unable to take timely and duty-free meal periods. Conversely,
7 Defendants argued, among other things, that they provided all their employees, i.e., Class Members
8 and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendants also
9 argued that they maintained facially complaint meal period policies and paid meal period premiums
10 throughout the Class Period. Thus, Defendants argued that any missed meal periods were voluntarily
11 and did not trigger liability for premium payments. Similarly, Defendants argued that any divergence
12 from these written policies were not systematic and, if they existed at all, were location specific. Thus,
13 Defendants argued that there was no potential liability for Plaintiff’s alleged meal period violations. In
14 total, Class Counsel estimated Defendants’ exposure for meal period claims at \$357,829. JCL Dec., ¶
15 27.

16 (3) Defendants’ Estimated Exposure for Off-the-Clock Work

17 Additionally, Plaintiff alleged that Defendants failed to pay their employees for all hours worked.
18 Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent responding to
19 COVID-19 questionnaires. Defendants vigorously denied liability for this claim. Defendants argued
20 that all Class Members were properly paid minimum and overtime compensation for all hours worked
21 and that Class Members were instructed not to work off-the-clock. In total, Class Counsel estimated
22 Defendants’ exposure for this claim at \$169,120. JCL Dec., ¶ 28.

23 (4) Exposure for Unreimbursed Business Expenses

24 Plaintiff further alleged that Defendants required the Class Members to regularly pay out-of-
25 pocket to launder their work uniforms. California law requires “[a]n employer shall indemnify his or
26 her employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”
28 (See *Cal. Labor Code* § 2802(a).) Class Counsel estimated Defendants’ exposure for this claim at

1 \$84,660 or \$10 per month for each member of the Class during the Class Period. Defendants deny they
2 owe any unpaid reimbursements to Class Members. JCL Dec., ¶ 29.

3 (5) Defendants’ Estimated Exposure for Miscalculation of Regular Rate of Pay

4 Plaintiff also alleged that Defendants failed to calculate certain non-discretionary compensation
5 into the regular rate of pay for purposes of paying overtime wages and redeemed sick pay. Based on
6 the review of the Class Members’ time and payroll data, BCG estimated Defendants underpaid the
7 Class Members approximately \$1,199. Defendants vigorously denied liability and asserted that
8 employees were paid all wages owing and that all incentive compensation was either properly
9 calculated into the regular rate of pay or properly excluded as discretionary compensation. JCL Dec., ¶
10 30.

11 (6) Defendants’ Estimated Exposure for Wage Statement Violations

12 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage
13 statements. Specifically, Plaintiff alleges that as a result of Defendants’ failure to provide meal and rest
14 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
15 derivative wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88
16 Cal.App.5th 927 (concluding that meal premiums are “wages” entitling employees to derivative wage
17 statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage
18 statements, Plaintiff could not establish the injury requirement on a class-wide basis. Class Counsel
19 estimated that Defendants’ exposure for this claim at \$620,400. JCL Dec., ¶ 31.

20 (7) Defendants’ Estimated Exposure for Waiting Time Penalties

21 Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative liability for
22 waiting time penalties. Although these *penalties* represented one of Defendants’ largest dollar amount
23 of exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendants argued that Plaintiff could
24 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
25 Notwithstanding the uncertain nature of the claims, Class Counsel’s estimated Defendants’ exposure
26 for this claim at \$1,148,831. JCL Dec., ¶ 32.

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1 (8) Defendants' PAGA Exposure

2 Class Counsel's damage models also estimated Defendants' exposure for PAGA Settlement. At
3 the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be \$2,935,400 if successful at
4 trial. JCL Dec., ¶ 33. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and
5 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a
6 good faith amount" for PAGA Settlement and "there is no indication that this amount was the result of
7 self-interest at the expense of class members," such amounts are generally considered reasonable.
8 *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).
9 Courts routinely approve of amounts for PAGA Settlement in the range of zero to two percent of the
10 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
11 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
12 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
13 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
14 in the range of zero to two percent of the total settlement).

15 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$37,500 which is 5%
16 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Settlement.
17 Seventy-Five percent (75%) of the PAGA Settlement (\$7,500.00) will be paid to the LWDA ("LWDA
18 PAGA Settlement") with the remaining twenty-five percent (25%) of the PAGA Settlement (\$2,500.00)
19 will be distributed to the Aggrieved Employees, which is within the range of PAGA Settlement approved
20 by courts and should be approved. JCL Dec., ¶ 34.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

1 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
2 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
3 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
4 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
5 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
6 penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment after
7 trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA
8 penalties awarded in this case could be less than Plaintiff's calculation, even had Plaintiff prevailed on
9 the PAGA claim. Here, multiplying the number of pay periods (approximately 6,410) by \$5 results in a
10 total potential liability of \$32,050. JCL Dec., ¶ 35.

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

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

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

19 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
20 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
21 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
22 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
23 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
24 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
25 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
26 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
27 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
28 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176

1 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
2 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
3 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
4 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
5 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
6 certification of driver meal and rest period claims based on the predominance of individual issues).
7 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
8 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
9 settlement. JCL Dec., ¶ 36.

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

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

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

20 Finally, continuing to litigate this action would require continued and extensive resources
21 coupled with significant Court time to proceed through trial and post-trial motions; which can often
22 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
23 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
24 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
25 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
26 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 37. “Avoiding such a trial and the
27 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
28 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221

1 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
2 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

3 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that is
4 approximately 18.15% of Defendants’ *class-wide* liability exposure for damages and statutory
5 penalties, and approximately 10.61% of Defendants’ maximum class wide liability exposure for
6 damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as
7 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
8 the settlement is fair and reasonable. JCL Dec., ¶ 38.

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

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

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

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 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
2 administration of the Settlement. JCL Dec., ¶ 39.

3 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
4 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
5 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
6 of the options open to dissenting class members.”). JCL Dec., ¶ 40.

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

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

19 The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The
20 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
21 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
22 the status of her case and the strategies for prosecuting the claims, and reviewing the proposed
23 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL
24 Dec., ¶ 41.

25 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
26 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
27 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
28 Class Representative Service Award. JCL Dec., ¶ 42.

1 **D. The Court Should Preliminarily Approve the Class Counsel Award**

2 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
3 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
4 California courts routinely award attorneys’ fees equaling one-third or more of the potential value of
5 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
6 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method or the
7 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 Class Counsel Award is fair and reasonable. JCL Dec., ¶ 43.

17 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
18 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
19 for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 44.

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

21 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
22 of the Class is appropriate. JCL Dec., ¶ 45.

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 Defendants’ current and former employees, the class is readily
20 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 46.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
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., ¶ 47.

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 she 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, undertaking extensive
4 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 48.

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., ¶¶ 50-59, 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., ¶ 49.

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 Dated: June 20, 2023

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.