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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 AMENDED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date:

Time:

Judge:

Dept.:

Hon. Craig van Rooyen

2

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1 I. INTRODUCTION

2 Plaintiff ELISA ALVAREZ (“Plaintiff”) files this amended motion seeking preliminary
3 approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 630
5 Class Members and 209 Aggrieved Employees. The basic terms of the Agreement provide for the
6 following:

7 1. The “**Class**” and “**Class Period**” shall mean all non-exempt employees who are or
8 previously were employed by Defendants and performed work in California (“Class”) during the period
9 from September 16, 2017 to May 28, 2021 (“Class Period”). Agreement at §§ I(G)-(H), III(A)(2).
10 Pursuant to the Agreement at Section III(A)(2), “At the time of mediation, Defendants estimated that
11 the Settlement Class was comprised of 711 individuals who collectively worked 32,348 Workweeks
12 (“Projected Workweeks”) during the Class Period....If the workweek number increases by more than
13 10% of the estimate stated herein, then Defendants, at its option, can either choose to: (1) cut off the
14 end date for the class release as of the date on which the number of workweeks reaches 32,348 or (2)
15 increase the Settlement Amount proportionally for the number of workweeks over 110% of 32,348
16 (35,583). Agreement at § III(A)(2). Here, while the Class Period pursuant to Section I(H) of the
17 Agreement is September 16, 2017 to October 17, 2022, the Class Data provided by Defendants to the
18 Settlement Administrator contained 762 individuals who worked 38,783 workweeks during the Class
19 Period. (Declaration of Cassandra Polites of ILYM Group, Inc. (“ILYM Dec.”) at ¶ 2.) As such,
20 pursuant to the Agreement at Section III(A)(2), the number of Projected Workweeks exceeded 35,583,
21 and the escalator provision was triggered. Defendants elected to cut off the end date for the class release
22 as of the date on which the number of workweeks reached 32,348. (See Agreement at §§ III(A)(2).)

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

26 b. The “**Class Size**” is comprised of 630 individuals who collectively worked
27

28 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 approximately 32,348 Workweeks during the Class Period. Agreement at § III(A)(2).

2 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees
3 who are or previously were employed by Defendants and performed work in California (“Aggrieved
4 Employees”) during the period of September 16, 2020 to May 28, 2021 (“PAGA Period”). Agreement
5 at § I(B), (W). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the
6 settlement. Agreement at § III(L)(8). There are approximately 209 Aggrieved Employees who worked
7 approximately 2,107 pay periods during the PAGA Period.

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

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

14 b. A “**Class Counsel Award**” in the amount not to exceed one-third of the Gross
15 Settlement Amount for attorney’s fees, currently estimated to be \$250,000.00 *and* litigation expenses
16 not to exceed \$20,000.00, to be paid to Class Counsel. Agreement at § III(M)(10);

17 c. A “**PAGA Settlement**” of Thirty-Seven Thousand Five Hundred Dollars
18 (\$37,500.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil
19 penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay
20 seventy-five (75%) of the PAGA Settlement (\$28,125.00) to the Labor and Workforce Development
21 Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Settlement (\$9,375) will be
22 distributed to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement at §§ I(X);
23 III(M)(11).

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

27 4. The “**Net Settlement Amount**” of approximately \$416,500.00 (Gross Settlement
28 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 ***\$661.11***, assuming all 630 Class Members participate in the Settlement. 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

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

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

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

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

26 As part of the Settlement, on December 16, 2022, Plaintiff served Defendants and the Labor
27 and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice").
28 Plaintiff's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of

various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 13.

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

B. Overview of Plaintiff’s Original Motion for Preliminary Approval, Mailing of the Class Notice, and Motion for Final Approval

On June 20, 2023, Plaintiff filed the original Motion for Preliminary Approval (“original Motion”). The original Motion represented to the Court that if preliminary approval was granted, valuable monetary relief would be provided to 711 Class Members and 412 Aggrieved Employees. Further, the original Motion included a copy of the Agreement, wherein Section III(A)(2) provided that if the escalator provision was triggered, Defendants had the option to either pay a proportional increased settlement amount, or to cut off the end date for the Class Period on the date the number of workweeks reached 32,348. (Agreement at § III(A)(2).) On July 28, 2023, the Court entered the order granting Plaintiff’s original Motion for preliminary approval (“Preliminary Approval Order”). The Preliminary Approval Order stated, in part, “The Court preliminarily approves the Stipulation of Settlement of Class Action Claims and Release of Claims.” Accordingly, Defendants’ option to either pay a proportional increased settlement amount, or to cut off the end date of the Class Period was not an element of surprise as it was expressly provided for in the Agreement and not negotiated after the escalator was triggered. Nonetheless, Plaintiff recognizes that Defendants’ declaration regarding the number of Class Members and workweeks worked during the Class Period should have been requested and filed with Plaintiff’s original Motion. Similarly, Plaintiff recognizes that the oversight led to the original Motion requesting preliminary approval of the original, rather than shortened Class Period, and the Court’s Preliminary Approval Order conditionally certified the Class and approved the Class Notice based on the original Class Period. JCL Dec., ¶ 15.

On November 9, 2023, Plaintiff filed the original Motion for Final Approval. The Settlement Administrator submitted a supplemental declaration in support thereof, providing the Court with a

1 timeline of events leading up to the initial mailing of the Class Notice. In summary, between August
2 11, 2023 and October 4, 2023, Defendants provided the Settlement Administrator with the Class Data,
3 the Settlement Administrator discovered that the escalator was triggered, informed Defendants that
4 the Gross Settlement Amount would increase by \$67,447.94 if Defendants paid a proportional increase
5 pursuant to the escalator provision, and Defendants ultimately elected to cut off the end date for the
6 Class Period as of the date on which the number of workweeks reached 32,348, which was May 28,
7 2021. Thereafter, the Class Notice was revised to reflect the shortened Class Period of September 16,
8 2017 to May 28, 2021. On October 11, 2023, the Settlement Administrator **only** mailed the Class
9 Notice to the 630 individuals who worked for Defendants during the shortened Class Period. JCL
10 Dec., ¶ 16.

11 As articulated in Section III(A)(1) herein, the Settlement, if approved using the shortened Class
12 Period, does not prejudice any Class Members *outside* of the shortened Class Period and results in
13 Class Members *within* the shortened Class Period being paid more than they would have under the
14 original Class Period. JCL Dec., ¶ 17.

15 **C. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

16 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
17 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
18 part of the interview process, the Plaintiff produced documents related to her employment, including
19 wage statements, portions of Defendants' handbooks, compensation policies and time and payroll
20 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
21 justified further inquiry. JCL Dec., ¶ 18.

22 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,
23 Defendants produced several documents, including but not limited, copies of Plaintiff's hiring
24 documents and payroll and time records. Class Counsel reviewed and analyzed the documents and
25 determined the documents appeared to substantiate Plaintiff's claims that Defendants failed to, among
26 other things, provide compliant meal and rest periods, failed to pay all wages due to rounding, and
27 failed to pay for all hours worked. JCL Dec., ¶ 19.

28 To prepare for mediation, Defendants produced time and payroll records for the Class Members,

1 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to
2 the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks,
3 policies, and agreements. In total, Class Counsel reviewed more than 1,000 pages of documents and
4 more than 100,000 unique cells of time and payroll data. JCL Dec., ¶ 20.

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

10 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
11 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
12 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
13 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
14 and rest periods, the amount of unpaid wages, the amount of unpaid overtime, the amount of unpaid
15 sick pay, the amount of off-the-clock work, and the amount of missed meal and rest period premiums
16 paid during the Class Period. JCL Dec., ¶ 22.

17 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
18 Plaintiff's suitability as a putative class representative through interviews, background investigations,
19 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
20 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
21 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants'
22 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
23 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
24 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
25 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
26 claims being settled, as well as the impediments to recovery, such as to make an independent
27 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 23.

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

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

7 **D. The Parties Settled at Mediation**

8 On October 17, 2022, the Parties conducted a full day of mediation with Steven Rottman, Esq.
9 Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of
10 the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's
11 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
12 including their respective evaluation of the damages. The mediation concluded with a settlement, after
13 both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement
14 are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair,
15 adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 25-26.

16 **E. The Proposed Settlement Fully Resolves Plaintiff's Claims**

17 1. The Composition of the Class

18 The proposed Settlement Class consists of all non-exempt employees who are or previously
19 were employed by Defendants and performed work in California during the period of September 16,
20 2017 to October 17, 2022 who did not submit a timely and valid request for exclusion. Agreement at
21 I(G). At the time of mediation, Defendants estimated that the Class was comprised of 711 individuals
22 that worked approximately 32,348 workweeks during the Class Period. Agreement at § III(A)(2).

23 2. The Settlement Consideration

24 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
25 Amount of \$750,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
26 the Settlement Class; (2) a Class Representative Service Award of not more than \$10,000 to Plaintiff
27 for her services on behalf of the Settlement Class; (3) a PAGA Settlement in the amount of \$37,500;
28 (4) Settlement Administration Costs estimated at \$16,000; (5) Class Counsel Award in the amount of

1 \$270,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
2 to be \$250,000 and an estimated \$20,000 for actually incurred litigation expenses. See generally
3 Agreement at § III(M).

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

9 3. The Funding Date

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

13 4. Formula for Calculating Individual Settlement Payments

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

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

27 Given that there are approximately 630 Settlement Class Members, **the average gross recovery**
28 **is approximately \$661.11** (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. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the

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

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

20 1. Preliminary Approval of the Settlement Based on the Shortened Class Period Will
21 Not Prejudice any Class Members outside or within the Shortened Class Period

22 Plaintiff’s original Motion represented that given approximately 711 Class Members who
23 worked for Defendants during the original Class Period of September 16, 2017 to October 17, 2022,
24 the average net recovery for each Class Member would be **\$585.79** (Net Settlement Amount divided
25 by Settlement Class Members). Further, since the Class Data Defendants provided to the Settlement
26 Administrator showed there were actually 762 Class Members who worked for Defendants during the
27 original Class Period, the average net recovery for each Class Member would have been **\$546.58**.
28 Here, given there are 630 Class Members who worked for Defendants during the shortened Class

1 Period of September 16, 2017 to May 28, 2021, the average net recovery for each Class Member would
2 be **\$661.11**, an increase from what they would have received pursuant to the original Class Period.
3 Therefore, the overall workweek value of the Settlement was maintained at a higher rate and the 630
4 Class Members who received the initial Class Notice would receive more than they would have under
5 the original Class Period. JCL Dec., ¶ 27.

6 Importantly, there is no prejudice to the 132 Class Members who worked for Defendants
7 outside of the shortened Class Period because they did not receive the Class Notice. Further, the Parties
8 did not engage in the *Belaire-West* process here such that any Class Member received notice of the
9 lawsuit generally. Accordingly, no Class Members who worked for Defendants outside of the
10 shortened Class Period received notice of this lawsuit and relied upon it to their detriment. Indeed, the
11 132 Class Members who worked for Defendants outside of the shortened Class Period (from May 29,
12 2021 to present) are not releasing any claims against Defendants and are within the statute of
13 limitations to bring their individual Labor Code claims against Defendants. JCL Dec., ¶ 28.

14 2. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by
15 Experienced Counsel.

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

21 The Parties participated in mediation with highly respected mediator Steven Rottman, Esq.
22 Mediator Rottman managed the Parties’ expectations and provided a useful, neutral analysis of the
23 issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No. C 06-4128 JF (HRL),
24 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs
25 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.
26 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps to
27 ensure that the proceedings were free of collusion and undue pressure.”).) After a full day of mediated
28 negotiations, the Parties reached an agreement and the mediation session concluded with a settlement.

1 JCL Dec., ¶ 25.

2 Once the Parties memorialized the settlement in the form of a Memorandum of Understanding,
3 the Parties engaged in negotiations regarding the written terms of the class action settlement. The
4 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
5 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 25.

6 3. Class Counsel's Thorough Investigation Provided an Objective Measurement of
7 the Settlement's Reasonableness.

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

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

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

24 The Gross Settlement Amount of \$750,000.00 is within the range of reasonableness. To
25 determine whether a settlement is fair and reasonable, the court should "consider enough information
26 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
27 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
28 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,

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

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

12 The Gross Settlement Amount of \$750,000.00 is fair and reasonable considering the nature and
13 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
14 mediation, Class Counsel retained Berger Consulting Group to develop economic damage models
15 measuring Defendants’ liability exposure while accounting for the uncertainties of continued
16 litigation. The various models were informed by Class Counsel’s investigation, including the analysis
17 of a significant sample of time and payroll data. Class Counsel projected Defendants’ liability
18 exposure for *class claims* (excluding PAGA Penalties) at \$4,131,730 dollars. Thus, the Gross
19 Settlement Amount of \$750,000 represents approximately 18.15% of Defendants’ *class-wide* liability
20 exposure. The following summarizes Defendants’ estimated exposure. JCL Dec., ¶ 29.

21 (1) Defendants’ Estimated Exposure of Rest Period Violations

22 Plaintiff’s primary claim in this action alleges that Defendants failed to provide compliant rest

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 periods. Specifically, Defendants had in place a written rest period policy that was silent on whether
2 employees could leave the premises during rest periods in violation of *Augustus v. ABM Security*
3 *Services, Inc.*, (2016) 2 Cal. 5th 257. Consequently, Plaintiff alleged that she is owed rest period
4 premiums for rest period violations that occurred during the Class Period. JCL Dec., ¶ 30.

5 Again, Defendants denied liability and asserted that they maintained legally compliant rest
6 period policies and practices throughout the Class Period. Defendants argued that some evidence of
7 a uniform unlawful policy does not show that Defendants had a *practice* of denying rest breaks. (See
8 *Cacho v. Eurostar, Inc.* (2019) 256 Cal.Rptr.3d 547 at 569 (providing that “the existence of a uniform
9 unlawful policy does not necessarily mean the employer has liability for violations that can be
10 demonstrated with common proof.”). Moreover, Plaintiff recognizes the evidentiary burdens
11 establishing this claim. Establishing Plaintiff’s rest period claim would rely, almost entirely, on Class
12 Member testimony, making it a riskier claim at class certification and liability stages. Certification
13 likely would have required depositions of Class Members who provided declarations, and Defendants
14 surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks
15 were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL
16 210223, at *11 (“Because of the competing testimony before the Court, plaintiff’s evidence that
17 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
18 common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13,
19 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the written policy
20 does not generate uniform practices.”). Accordingly, Plaintiff estimated Defendants’ exposure for rest
21 period claims at \$1,749,691. JCL Dec., ¶ 31.

22 (2) Estimated Damages for Meal Period Violations

23 Further, Plaintiff alleged that Defendants failed to provide compliant meal periods.
24 Specifically, Plaintiff alleged that because of her rigorous work schedules, Plaintiff, Class Members,
25 and Aggrieved Employees were unable to take timely and duty-free meal periods. Conversely,
26 Defendants argued, among other things, that they provided all their employees, i.e., Class Members
27 and Aggrieved Employees, with the opportunity to take compliant meal periods. Defendants also
28 argued that they maintained facially compliant meal period policies and paid meal period premiums

1 throughout the Class Period. Thus, Defendants argued that any missed meal periods were voluntarily
2 and did not trigger liability for premium payments. Similarly, Defendants argued that any divergence
3 from these written policies were not systematic and, if they existed at all, were location specific. Thus,
4 Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations.
5 In total, Class Counsel estimated Defendants' exposure for meal period claims at \$357,829. JCL Dec.,
6 ¶ 32.

7 (3) Defendants' Estimated Exposure for Off-the-Clock Work

8 Additionally, Plaintiff alleged that Defendants failed to pay their employees for all hours
9 worked. Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent
10 responding to COVID-19 questionnaires. Defendants vigorously denied liability for this claim.
11 Defendants argued that all Class Members were properly paid minimum and overtime compensation
12 for all hours worked and that Class Members were instructed not to work off-the-clock. In total, Class
13 Counsel estimated Defendants' exposure for this claim at \$169,120. JCL Dec., ¶ 33.

14 (4) Exposure for Unreimbursed Business Expenses

15 Plaintiff further alleged that Defendants required the Class Members to regularly pay out-of-
16 pocket to launder their work uniforms. California law requires "[a]n employer shall indemnify his or
17 her employee for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of his or her duties, or of his or her obedience to the directions of the employer..."
19 (See *Cal. Labor Code* § 2802(a).) Class Counsel estimated Defendants' exposure for this claim at
20 \$84,660 or \$10 per month for each member of the Class during the Class Period. Defendants deny
21 they owe any unpaid reimbursements to Class Members. JCL Dec., ¶ 34.

22 (5) Defendants' Estimated Exposure for Miscalculation of Regular Rate of Pay

23 Plaintiff also alleged that Defendants failed to calculate certain non-discretionary compensation
24 into the regular rate of pay for purposes of paying overtime wages and redeemed sick pay. Based on
25 the review of the Class Members' time and payroll data, BCG estimated Defendants underpaid the
26 Class Members approximately \$1,199. Defendants vigorously denied liability and asserted that
27 employees were paid all wages owing and that all incentive compensation was either properly
28 calculated into the regular rate of pay or properly excluded as discretionary compensation. JCL Dec.,

¶ 35.

(6) Defendants' Estimated Exposure for Wage Statement Violations

Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Further, Defendants argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. Class Counsel estimated that Defendants' exposure for this claim at \$620,400. JCL Dec., ¶ 36.

(7) Defendants' Estimated Exposure for Waiting Time Penalties

Plaintiff also alleged that the Defendants' labor code violations resulted in derivative liability for waiting time penalties. Although these *penalties* represented one of Defendants' largest dollar amount of exposure, this is Plaintiff's most uncertain claim. Specifically, Defendants argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Notwithstanding the uncertain nature of the claims, Class Counsel's estimated Defendants' exposure for this claim at \$1,148,831. JCL Dec., ¶ 37. Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA Settlement. At the time of mediation, Plaintiff estimated Defendants' PAGA exposure to be \$2,935,400 if successful at trial. JCL Dec., ¶ 38. 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 Settlement 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 Settlement 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

1 (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
2 PAGA claim settlements in the range of zero to two percent of the total settlement).

3 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$37,500 which is
4 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
5 Settlement. Seventy-Five percent (75%) of the PAGA Settlement (\$7,500.00) will be paid to the
6 LWDA ("LWDA PAGA Settlement") with the remaining twenty-five percent (25%) of the PAGA
7 Settlement (\$2,500.00) will be distributed to the Aggrieved Employees, which is within the range of
8 PAGA Settlement approved by courts and should be approved. JCL Dec., ¶ 39.

9 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
10 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
11 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
12 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
13 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
14 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
15 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
16 6, 2016) (PAGA penalties denied after trial).

17 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims.
18 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
19 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
20 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
21 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
22 penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment
23 after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA
24 penalties awarded in this case could be less than Plaintiff's calculation, even had Plaintiff prevailed on
25 the PAGA claim. Here, multiplying the number of pay periods (approximately 6,410) by \$5 results in
26 a total potential liability of \$32,050. JCL Dec., ¶ 40.

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

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

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

7 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
8 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
9 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and remanded a \$110
10 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
11 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
12 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
13 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
14 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
15 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
16 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting
18 to having taken meal and rest breaks demonstrated that individualized inquiries were required to show
19 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
20 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to
21 lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88
22 (denying certification of driver meal and rest period claims based on the predominance of individual
23 issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation.
24 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
25 risk factor favoring settlement. JCL Dec., ¶ 41.

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

1 inherently perilous regardless of the strengths of merits of the claims:

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

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

8 Finally, continuing to litigate this action would require continued and extensive resources
9 coupled with significant Court time to proceed through trial and post-trial motions; which can often
10 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
11 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
12 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
13 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
14 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 42. “Avoiding such a trial and
15 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
16 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
17 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
18 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

19 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that is
20 approximately 18.15% of Defendants’ *class-wide* liability exposure for damages and statutory
21 penalties, and approximately 10.61% of Defendants’ maximum class wide liability exposure for
22 damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as
23 compared to potential value of the claims, offset by the various inherent risks to continued litigation,
24 the settlement is fair and reasonable. JCL Dec., ¶ 43.

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

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

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

7 The Parties jointly drafted the amended Class Notice which fairly and neutrally informs the
8 Class Members of their rights and remedies. The Settlement Administrator will first verify addresses,
9 then mail the proposed Class Notice to all Class Members. The Notice will include information
10 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
11 definition, the procedure, and time period within which to requests for exclusions or objections to the
12 Settlement, the date for the final approval hearing, the formula used to calculate settlement payments,
13 and the terms and scope of the Released Claims. Agreement at § I(S). The Parties negotiated this
14 method to ensure delivering the most reasonable method of notice to the Class Members while
15 ensuring cost effective administration of the Settlement. JCL Dec., ¶ 44.

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

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

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

27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain
28 to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 representatives for work done on behalf of the class, to make up for financial or reputational risk
2 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
3 attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or
4 incentive awards to named plaintiffs is that they should be compensated for the expense or risk they
5 have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential*
6 *Services LLC* (2009) 175 Cal.App.4th 785.)

7 The Settlement provides for a Class Representative Service Award of \$10,000 for Plaintiff. The
8 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
9 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
10 the status of her case and the strategies for prosecuting the claims, and reviewing the proposed
11 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL
12 Dec., ¶ 46.

13 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
14 Representative Service Award once preliminary approval of the Settlement is granted. Plaintiff
15 respectfully submits that the above showing is sufficient for preliminary approval of the negotiated
16 Class Representative Service Award. JCL Dec., ¶ 47.

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

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

28 Class Counsel took this matter on a contingency fee basis and invested significant time and

1 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
2 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
3 Members. Considering the positive outcome for the Class Members, and in light of the supporting
4 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 48.

5 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
6 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient
7 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 49.

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

9 For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification
10 of the Class is appropriate. JCL Dec., ¶ 50.

11 1. The Standard for Class Certification

12 Class actions are statutorily authorized "when the question is one of common or general interest,
13 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
14 court" (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
15 certification is appropriate when there is an "ascertainable class and a well-defined community of
16 interest among class members." (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class
17 treatment is appropriate even if class members at some point may be required to make an individual
18 showing as to eligibility for recovery. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th
19 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

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

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

27 The community of interest requirement embodies three factors: (1) predominant common
28 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3)

1 a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* §
2 382.)

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

8 Because all Class Members are Defendants’ current and former employees, the class is readily
9 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 51.

10 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
11 Settlement Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’
12 liability can be determined by facts common to all members of the class. The wage and hour issues
13 are both numerous and substantial, and a class action is the most advantageous method of dealing with
14 the claims of the Settlement Class. JCL Dec., ¶ 52.

15 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
16 from the same factual basis and are based on the same legal theories applicable to the other Class
17 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement
18 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
19 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability
20 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
21 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 53.

22 Additionally, Plaintiff is represented by competent Class Counsel who have extensive
23 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
24 certified, and gained state court settlement approval of the same class-wide causes of action that are
25 at issue in this case. Class Counsel’s wage and hour class action experience establishes that they are
26 well qualified to represent the interests of this Class. JCL Dec., ¶¶ 55-64, Declaration of Shani Zakay,
27 ¶¶ 1-3.

28 A class action is superior to a multitude of individual lawsuits. Given the size and amount of

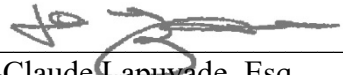
1 each individual claim, the Class Members likely have little incentive to litigate their claims on an
2 individual basis because the out-of-pocket expense and personal commitment necessary to litigate
3 each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-
4 by-case adjudication. JCL Dec., ¶ 54.

5 IV. CONCLUSION

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

9
10 Dated: April 1, 2024

JCL LAW FIRM, APC

11 By: 
12 Jean-Claude Lapuyade, Esq.