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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

MICHAEL MCGEE, WAEL KANAFANI, DAVID URIBE, ZACHARY MCGORDON, and IMMANUEL PASCUAL, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. MITRA VI, LLC, an Arizona limited liability company; DENALI MIDCO 2 LLC, a Delaware limited liability company; and DOES 1-50,	Case No: 37-2022-00044660-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: September 19, 2025 Time: 9:30 a.m. Judge: Hon. Gregory W. Pollack

Inclusive, Defendants.	Dept.: C-71

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I. INTRODUCTION

Plaintiffs Wael Kanafani ("Plaintiff Kanafani"), David Uribe ("Plaintiff Uribe"), Michael McGee ("Plaintiff McGee"), Immanuel Pascual ("Plaintiff Pascual"), Zachary McGordon ("Plaintiff McGordon"), Katie Rosas ("Plaintiff Rosas"), and Teresa Rau ("Plaintiff Rau") (collectively, "Plaintiffs") seek preliminary approval of the Joint Stipulation of Class and PAGA Representative Action Settlement and Release ("Agreement" or "Settlement Agreement")[1], which if approved, would provide valuable monetary relief for approximately 1,747 Class Members and 1,375 PAGA Employees.[2] The basic terms of the Agreement provide for the following:

1. The **"Class Members"** or **"Class"** means collectively all members of the Misclassification and Non-Exempt Employee Subclasses defined below:

a. **"Misclassification Subclass"** means all current and former California employees of Defendants classified as exempt Site Managers during the Class Period; and

b. **"Non-Exempt Employee Subclass"** means all current and former California employees of Defendants classified as non-exempt hourly employees during the Class Period. Agreement at § 1.7.

2. The **"Class Period"** means the period from November 4, 2018, through February 13, 2025.[3] Agreement at § 1.8.

3. **"Participating Class Member"** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. Agreement at § 1.17.

4. The "**Class Size**" and **"Escalator"** is comprised of 1,747 individuals who collectively worked approximately 36,032 Workweeks during the Class Period. In the event the total Workweeks worked by Class Members exceeds 10% over 36,032 (i.e., 39,635) and at the end of the Class/PAGA Period, Defendants may, at their sole discretion either: (1) elect to increase the Total Settlement Amount

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[1] The Agreement is attached as Ex "1" to the Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

[2] These figures are as of the date of the parties' mediation. Agreement § 4.2.5.4.

[3] As noted below, based on the Escalator Clause in paragraph 4.2.5.4 of the Settlement, the end date of the Class Period may be adjusted to the end of the workweek ending date when Class Members collectively worked a number of workweeks closest to 37,500 workweeks if the Escalator Clause of the Settlement Agreement is triggered and Defendant elects not to pay a prorated increase in the settlement amount.

by an amount equal to a pro-rata increase of the Net Distribution Fund to address an increase in Workweeks above 39,635, or (2) have the Class/PAGA Period end the date when Class Members collectively worked a number of workweeks closest to 37,500 Workweeks. Agreement at § 4.2.5.4.

5. **"PAGA Employees"** and **"PAGA Period"** means all members of the Misclassification and Non-Exempt Subclasses who were employed by Defendants ("PAGA Employees") during the period from November 4, 2021, through February 13, 2025 ("PAGA Period"). Agreement at §§ 1.13-1.14. PAGA Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 1.13, 4.2.4, 4.2.5.1(b), 5.1, 8.1. At the time of mediation, there were approximately 1,375 PAGA Employees during the PAGA Period. SCJ Dec., ¶ 6.

6. The "**Total Settlement Amount**" is Eight Hundred Sixty Thousand Dollars and Zero Cents ($860,000.00). Agreement at §§ 1.31, 4. The Total Settlement Amount is non-reversionary, Agreement at § 4.2.5, and includes the following:

a. "**Service Awards**" of not more than $10,000 to each Plaintiff ($70,000 total) for their efforts in assisting with the persecution of the Action and as consideration for executing the Agreement and agreeing to a general release of all claims against Defendants. Agreement at § 1.25.

b. **"Class Counsel Fees Award**" of one-third of the Total Settlement Amount for attorney's fees, currently estimated to be $286,666.67. Agreement at §1.3.

c. "**Class Counsel Costs Award**" of actually incurred litigation expenses not to exceed $30,000.00 (**"Class Counsel Costs Award"**), to be paid to Class Counsel. Agreement at §1.5;

d. A "**PAGA Award**" of Forty-Three Thousand Dollars and Zero Cents ($43,000.00) of the Total Settlement that the Parties have allocated to PAGA penalties, 75% of which ($32,250.00) will be remitted to the Labor and Workforce Development Agency ("LWDA") and 25% ($10,750.00) of which will be distributed to the PAGA Employees. Agreement at § 1.12; and

e. "**Settlement Administration Costs**" means the reasonable and necessary costs incurred by the Settlement Administrator which may not to exceed Seventeen Thousand Dollars and Zero Cents ($17,000.00), payable to the Settlement Administrator, Apex Class Action LLC ("**Settlement Administrator"**), for, *inter alia,* the administration of the Class Notice (including Spanish translations) and costs associated with administration of the settlement. Agreement at §§ 1.27-

1.28.

7. The "**Net Distribution Fund**" of approximately $413,333.33 (Total Settlement Amount less the requested Class Counsel Award, PAGA Award, Service Awards, and Settlement Administration Costs) which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. Agreement at § 4.2.5.1(a). The entire Net Distribution Fund will be paid to all Participating Class Members resulting in an estimated average Individual Settlement Payment of ***$236.60***. SCJ 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 Class Members. 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, Settlement 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. SCJ 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 Participating Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. SCJ Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants own, operate, and/or manage carwashes throughout California, including San Diego County, where Plaintiffs worked. SCJ Dec., ¶ 8. Plaintiff McGee has been employed by Defendants since April 2017 as a Traveling Sales Trainer and represents the Non-Exempt Employee Subclass. Declaration of Michael McGee ("McGee Dec.") at ¶ 4. Plaintiff Kanafani has been employed by Defendants since October 2017 as an Assistant Manager and represents the Non-Exempt Employee Subclass. Declaration of Wael Kanafani ("Kanafani Dec.") at ¶ 4. Plaintiff Uribe was employed by

Defendants from November 2016 to July 2022 as a General Manager and represents the Misclassification Subclass. Declaration of David Uribe ("Uribe Dec.") at ¶ 4. Plaintiff McGordon has been employed by Defendants since 2019 as a Salesman and represents the Non-Exempt Employee Subclass. Declaration of Zachary McGordon ("McGordon Dec.") at ¶ 4. Plaintiff Rosas was employed by Defendants from March 2021 to July 2022 as a Car Wash Associate and represents the Non-Exempt Employee Subclass. Declaration of Katie Rosas ("Rosas Dec.") at ¶ 4. Plaintiff Rau was employed by Defendants from July 2021 to July 2022 as a Car Wash Associate and represents the Non-Exempt Employee Subclass. Declaration of Teresa Rau ("Rau Dec.") at ¶ 4. Plaintiff Pascual was employed by Defendants from March 2017 to February 2022 as a Salesperson, Hourly Manager, and General Manager, and represents the Misclassification Subclass. Declaration of Immanuel Pascual ("Pascual Dec.") at ¶ 4. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. McGee Dec., ¶ 4; Kanafani Dec., ¶ 4; Gordon Dec., ¶ 4; Rosas Dec., ¶ 4; Rau Dec., ¶ 4. At times during their employment, Plaintiff Uribe and Plaintiff Pascual worked as allegedly misclassified exempt employees. Uribe Dec ¶ 6; Pascual Dec. ¶ 6. Throughout their employment, Plaintiffs were subject to Defendants' policies and procedures. SCJ Dec., ¶ 8; McGee Dec., ¶ 6-7; Kanafani Dec., ¶ 6-7; Uribe Dec., ¶ 6-7; Gordon Dec., ¶ 6-7; Rosas Dec., ¶ 6-7; Rau Dec., ¶ 6-7; Pascual Dec., ¶ 6-7.

Generally, Plaintiffs claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime, meal period premiums, and sick pay at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, failed to timely pay all wages during employment, failed to pay all wages upon separation, and misclassified certain Site Manager employees as exempt employees. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, providing compliant meal and rest periods, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due during and upon separation of employment, and properly classified employees as exempt. SCJ Dec., ¶ 9.

On August 23, 2022, Plaintiff Kanafani and Plaintiff Uribe served Defendants and the Labor and

Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Kanafani and Plaintiff Uribe'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 noticed their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). SCJ Dec., ¶ 10.

On August 25, 2022, Plaintiff Rosas and Plaintiff Rau served Defendant and the LWDA with their own PAGA Notice. Plaintiff Rosas and Plaintiff Rau's PAGA Notice set forth similar facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable IWC Wage Order and noticed their intent to pursue claims under PAGA. SCJ Dec., ¶ 11.

On November 4, 2022, Plaintiff Kanafani and Plaintiff Uribe filed a class action complaint in the San Diego County Superior Court, Case No. 37-2022-00044660-CU-OE-CTL (the "Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods; (6) Failure to Reimburse for Required Business Expenses; (7) Failure to Provide Wages When Due; (8) Failed to Provide Accurate Itemized Wage Statements; and (9) Violations of the PAGA. SCJ Dec., ¶ 12.

On November 18, 2022, Plaintiff Rosas and Rau filed a representative PAGA action complaint in San Diego County Superior Court, Case No. 37-2022-00046807 alleging only violations of the PAGA. SCJ Dec., ¶ 13.

On July 10, 2023, Plaintiffs' cases were consolidated by the Court, with Plaintiff Kanafani and Plaintiff Uribe's case being the lead case. SCJ Dec., ¶ 14.

On January 20, 2023, Plaintiff McGee and Plaintiff Pascual served Defendants and the LWDA with a PAGA Notice. Plaintiff McGee and Plaintiff Pascual's PAGA Notice set forth similar facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable IWC Wage Order and noticed their intent to pursue claims under PAGA. SCJ Dec., ¶ 15.

On May 18, 2023, Plaintiff Kanafani and Plaintiff Uribe served Defendants and the LWDA with an amended PAGA Notice for the purpose of adding Plaintiff McGordon as a named Plaintiff in the Action. SCJ Dec., ¶ 16.

On July 11, 2023, Plaintiff Kanafani and Plaintiff Uribe filed a first amended complaint for the purpose of adding Plaintiff McGee, Plaintiff McGordon, and Plaintiff Pascual as named plaintiffs in the Action. SCJ Dec., ¶ 17.

After engaging in written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally exchange documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra,* Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. SCJ Dec., ¶ 18.

On October 30, 2024, the Parties participated in an all-day private mediation presided over by Tripper Ortman, Esq. (the "Mediator"), an experienced mediator of wage and hour class and PAGA actions. At the mediation reached the settlement which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec., ¶ 19.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including portions of their payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiffs' complaints justified further inquiry. SCJ Dec., ¶ 20.

Class Counsel subsequently requested Plaintiffs' employee files from Defendants. In response, Defendants produced hundreds of pages of documents, including but not limited to, copies of Defendants' written policies and Plaintiffs' hiring documents and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime, meal period premiums, and sick pay at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, failed to timely pay all wages during employment, failed to pay all wages upon separation, and misclassified employees as exempt. SCJ Dec., ¶ 21.

To prepare for mediation, Defendants produced time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In sum, Class Counsel obtained more than 1.2 million unique cells of time and payroll data and hundreds of pages of policy material. SCJ Dec., ¶ 22.

Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields. SCJ Dec., ¶ 23.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and rest period premiums paid during the Class Period. SCJ Dec., ¶ 24.

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

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiffs' claims. Based on its 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. SCJ Dec., ¶ 26.

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. The Composition of the Settlement Class

The proposed Class consists of all members of the Misclassification and Non-Exempt Employee Subclasses. Agreement at § 1.7. The Misclassification Subclass consists of all current and former California employees of Defendants classified as exempt Site Managers during the Class Period. Agreement at § 1.7.1. The Non-Exempt Employee Subclass consists of all current and former California employees of Defendants classified as non-exempt hourly employees during the Class Period. Agreement at § 1.7.2. The Class Period is the period from November 4, 2018, through February 13, 2025[4]. Agreement at §§ 1.8, 4.2.5.4. The Participating Class Members are the Class Members who do not submit a timely Request for Exclusion from the Settlement. Agreement at § 1.17. At the time of mediation, Defendants estimated that the Class was comprised of comprised of 1,747[5] individuals who collectively worked approximately 36,032 Workweeks during the Class Period. SCJ Dec., ¶ 6.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Total Settlement Amount of Eight Hundred Sixty Thousand Dollars and Zero Cents ($860,000.00). The Total Settlement Amount includes: (1) the Class Counsel Fees Award of $286,666.67; (2) the Class Counsel Costs Award of up to $30,000.00; (3) the Service Awards for Plaintiffs in the amount of up to $10,000.00 to each Plaintiff (or $70,000.00 total); (4) the PAGA Award of $43,000.00; (5) the Settlement

[4] Unless the Escalator Clause of the Settlement Agreement is triggered and Defendant elects not to pay a prorated increase in the settlement amount, in which case the end of the Class Period will be slightly earlier when the 37,500 workweek threshold was reached as noted above.

[5] The Class is comprised of 1,694 members of the Non-Exempt Employee Subclass, and 53 members of the Misclassification Subclass.

Administration Costs up to $17,000.00; and (6) Individual Settlement Payments to the Participating Class Members. *See generally* Agreement at § 4.2.

Subject to the Court approving the Class Counsel Fees Award, the Class Counsel Costs Award, Plaintiff's Service Awards, the Settlement Administration Costs, and the PAGA Award, the Net Distribution Fund will be distributed to each Participating Class Member. Agreement at § 1.9.

3. The Funding Date

Defendants will fund the Settlement by providing the Total Settlement Amount to the Settlement Administrator, within fifteen (15) calendars following the Effective Date. Agreement at § 10.1.2. Assuming there are no objectors, and no appeal is filed, the Effective Date is the date when the Court's Final Approval Order becomes binding and the 60-day appeal deadline has run. Agreement at § 1.5.

4. Formula for Calculating Individual Class Payments

Defendants will identify the number of Workweeks each of the Class Members worked during the Class Period ("Total Class Pay Workweeks"). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Distribution Fund by the number of Workweeks worked by all Participating Class Members during the Class Period ("Class Workweek Value"). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will multiply the individual's Total Class Workweeks by the Class Workweek Value. Each Participating Class Member's Workweeks will be calculated by rounding up to the nearest Workweek. Agreement at § 4.2.5.1(a).

Given that there are estimated to be approximately 1,747 Class Members, ***the average gross recovery is estimated to be approximately $236.60*** (Net Distribution Fund divided by Class Members). SCJ Dec., ¶ 6.

5. Release by Participating Class Members

Generally, as of the Effective Date, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims for the duration of the Class Period. Agreement at § 5.1.

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6. <u>PAGA Release by the State of California and Plaintiffs on behalf of the PAGA Employees</u>

Generally, as of the Effective Date, Plaintiff, the PAGA Employees, and the State of California (acting through Plaintiffs as its authorized PAGA representatives) will release the Released Parties from the Released PAGA Claims for the duration of the PAGA Period. *Id.*

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of $860,000.00 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 proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions,* §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation. . . . ." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California's public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation").)

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

1. <u>The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.</u>

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

The Parties participated in mediation with an experienced and well regarded class and PAGA mediator Tripper Ortman, Esq. (the "Mediator"). The Mediator managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*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) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) After a full day of mediated negotiations, the Parties eventually reached an agreement. SCJ Dec., ¶ 27.

Once the Parties agreed to the key terms of a settlement with Mediator Ortman's assistance, the Parties engaged in negotiations regarding the written terms of the Settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SCJ Dec., ¶ 28.

2. <u>Class Counsel's Thorough Investigation Provided an Objective Measurement of the Settlement's Reasonableness.</u>

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to formal and informal discovery, document review, data analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no two cases are identical, this research provided Class Counsel with a marker to inform settlement discussions and, ultimately, to measure this settlement against. The investigation allowed Class Counsel to realistically assess the value of Plaintiffs' claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SCJ Dec., ¶ 29.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Total Settlement Amount of $860,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.' " (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[6] Indeed, "[t]he determination whether a settlement is

[6] Federal district courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to 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

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

a. <u>The Total Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Total Settlement Amount of $860,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for class claims (excluding PAGA Penalties) ranged between $2,788,567.12 ("Realistic Damages") and $6,137,557.89 ("Maximum Damages") if successful at trial. This range reflects the uncertainty regarding several of the claims. Thus, the Total Settlement Amount represents a recovery of between 31.12% ("Realistic Damages") and 14.09% ("Maximum Damages") of Defendants' potential class-wide exposure based on Plaintiffs' alleged claims – well within the recognized range of reasonableness. SCJ Dec., ¶ 30. The following summarizes Defendants' liability exposure for the Non-Exempt Employee Subclass. The theories of liability, defenses, risk factors and damages calculation are each detailed in the concurrently filed declaration of Sydney Castillo-Johnson.

Labor Code Section	**Maximum Damages**	**Discount Applied**	**Realistic Damages**
226.7 & 512 (Meal Periods)	$746,344.00	25%	$559,758.00
226.7 & 512 (Rest Periods)	$528,840.68	25%	$396,630.51
246, 510 (Regular Rate of Pay)	$145,203.00	25%	$108,902.25
2802 (Unreimbursed Business Expenses)	$155,865.00	90%	$15,865.00
510 (Off-the-Clock Work)	$136,247.00	50%	$68,123.50

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").

226 (Wage Statements)	$2,505,850	75%	$626,462.50
203 (Waiting Time Penalties)	$1,331,166.00	50%	$665,583.00
TOTAL	**$5,549,515.68**		**$2,441,046.26**

SCJ Dec., ¶¶ 31-54.

Plaintiffs also estimated Defendants' exposure for the Misclassification Subclass, which is summarized below. The full discussion of Defendants' alleged liability is discussed in detail in the concurrently filed declaration of Sydney Castillo-Johnson.

Labor Code Section	**Maximum Damages**	**Discount Applied**	**Realistic Damages**
226.7 & 512 (Meal Periods)	$158,349.75	25%	$118,762.31
226.7 & 512 (Rest Periods)	$158,349.75	25%	$118,762.31
246, 510 (Regular Rate of Pay)	$3,567.55	25%	$2,675.66
2802 (Unreimbursed Business Expenses)	$12,855.00	90%	$1,285.50
510 (Off-the-Clock Work)	$6,091.56	50%	$3,045.78
226 (Wage Statements)	$85,700.00	75%	$21,425.00
203 (Waiting Time Penalties)	$163,128.60	50%	$81,564.30
TOTAL	**$588,042.21**		**$347,520.86**

SCJ Dec., ¶ 55-57.

The full discussion of Defendants' alleged PAGA liability is discussed in detail in the concurrently filed declaration of Sydney Castillo-Johnson. SCJ Dec., ¶ 58-59 For the aforementioned reasons, the PAGA allocation of the Total Settlement Amount is fair, just, and reasonable.

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*

Stores, L.P., (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). SCJ Dec., ¶ 60.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."). SCJ Dec., ¶ 61.

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). SCJ Dec., ¶ 62.

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. SCJ Dec., ¶ 63.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 64. "Avoiding such a trial and the subsequent appeals in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

In this matter, Class Counsel negotiated a Total Settlement Amount of $860,000.00 that is roughly between approximately 31.12% of Defendants' *class-wide* liability exposure for damages, and approximately 7.64% of Defendants' maximum class wide liability exposure for damages and statutory penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. SCJ Dec., ¶ 65.

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

The Class Members are entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass,* 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)[7]

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the subclass definitions, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims and Released PAGA Claims. *See generally* Agreement at § 7. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. SCJ Dec., ¶ 66.

Accordingly, both the method of disseminating the Class Notice and content of the Notice Packet satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi* Strauss (1986) 41 Cal.3d 460,485 (the class notice must "fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.").) SCJ Dec., ¶ 67.

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

C. The Court Should Preliminarily Approve the Service Awards

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

The Settlement provides for Service Awards of $10,000 to each Plaintiff (or $70,000 total). The Service Awards are fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Participating Class Members, and agreeing to provide Defendants a general release of all claims arising out of their employment. SCJ Dec., ¶ 68.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards with the final approval motion after preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. SCJ Dec., ¶ 69.

D. The Court Should Preliminarily Approve the Class Counsel Fees Award and Class Counsel Costs Award

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

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiffs' claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Participating Class Members, and in light of the supporting authority, the proposed Class Counsel Fees Award and Class Counsel Costs Award is fair and reasonable. SCJ Dec., ¶ 70.

Plaintiffs will file a formal motion for the negotiated Class Counsel Fees Award and Class Counsel Costs Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees and expenses. SCJ Dec., ¶ 71.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes only, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 72.

1. <u>The Standard for Class Certification</u>

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

Sav-On, 34 Cal.4th at 333.)

2. <u>The Proposed Participating Class is Ascertainable and there is a Well-Defined Community of Interest Among the Class Members.</u>

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

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

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

Because all Class Members are Defendants' current and former employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. SCJ Dec., ¶ 73.

The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide and Defendants' alleged liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Participating Class Members. SCJ Dec., ¶ 74.

Plaintiffs' wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SCJ Dec., ¶ 75.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SCJ Dec., ¶¶ 76, 78-80; Declaration of Jean-Claude Lapuyade ("JCL Dec.") ¶¶ 1-8; Declaration of Shani O. Zakay, ¶¶ 1-3; Declaration of Eric K. Yaeckel ("Yaeckel Dec."), ¶¶ 12-19.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. SCJ Dec., ¶ 77. Furthermore, while Defendants have disputed that class certification is appropriate outside the context of this Settlement, Defendants agree that class certification is appropriate for settlement purposes. Agreement at § 3.1.

IV. CONCLUSION

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

Dated: August 22, 2025

JCL LAW FIRM, APC

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