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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

KALIYAH MARTIN, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

BLEND LABS, INC. a Delaware Corporation;
BLEND OPERATIONS, INC., a Delaware
Corporation; BLEND TITLE INSURANCE
AGENCY, INC., a Delaware Corporation; BLEND
INSURANCE AGENCY, INC., a Delaware
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. CGC-22-600420

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

Date: January 4, 2024
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Dept.: 302

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1 I. INTRODUCTION

2 Plaintiff Kaliyah Martin (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement
3 of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for approximately 170 Class Members and 186 Aggrieved
5 Employees². The basic terms of the Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” means all non-exempt employees who are or previously
7 were employed by Defendants and performed work in California (“Class” or “Class Members”) during
8 the period between August 30, 2018 to the earlier of Preliminary Approval or the date on which the
9 number of workweeks during the Class Period exceeds 14,300, excluding employees who entered into
10 release agreements with Defendants. (“Class Period”). Agreement at §§ I(G), I(J).

11 a. The “**Settlement Class Members**” means all Class Members who have not
12 submitted a timely and valid request for exclusion from the Settlement. Agreement at § I(LL).

13 b. The “**Class Size**” is comprised of 170 individuals who collectively worked
14 approximately 13,000 Workweeks during the Class Period as estimated by Defendants at the time of
15 mediation. Agreement at § III(A)(2).

16 2. The “**Aggrieved Employees**” and “**PAGA Period**” means all non-exempt employees
17 who are or previously were employed by Defendants and performed work in California (“Aggrieved
18 Employees”) during the period between April 21, 2021 to the earlier of Preliminary Approval or the date
19 on which the number of workweeks during the Class Period exceeds 14,300 (“PAGA Period”).
20 Agreement at §§ I(C), I(Y). Aggrieved Employees do not have the ability to opt-out of the PAGA
21 portion of the settlement. Agreement at § III(K). At the time of mediation, there were approximately
22 186 Aggrieved Employees during the PAGA Period. JCL Dec., ¶ 6.

23 3. The “**Gross Settlement Amount**” is Three Hundred Fifty Thousand Dollars and Zero
24 Cents (\$350,000.00). Agreement at § I(Q). The Gross Settlement Amount is non-reversionary and
25

26 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
27 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.

28 ² The number of Aggrieved Employees is higher than the number of Class Members because approximately 75 Class
Members entered into settlement agreements and releases as part of a mass layoff by Defendants. The settlement agreements
and releases entered into by these 75 individuals did not affect their rights pursuant to PAGA.

includes the following:

a. An “**Enhancement Award**” means an award of not more than \$5,000 for Plaintiff in recognition of her efforts and risks in assisting with the prosecution of the Action and in exchange for executing a General Release. Agreement at §§ I(O), III(L)(9);

b. “**Attorneys’ Fees and Expenses**” in the amount not of not more than \$141,666.67, comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be \$116,666.67 *and* litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at §§ I(E), I(F), III(L)(10);

c. A “**PAGA Penalties Payment**” of Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Penalties”). The Settlement Administrator shall pay seventy-five (75%) of the PAGA Payment (\$37,500.00) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA Payment (\$12,000.00) will be distributed to the Aggrieved Employees (“Aggrieved Employee Payments”). Agreement at §§ I(Z), III(L)(11); and

d. “**Settlement Administration Costs**” not to exceed \$6,000.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class Notice and Settlement Administration Costs. Agreement at § III(L)(12).

4. The “**Net Settlement Amount**” of approximately \$147,333.33 (Gross Settlement Amount less the requested Attorneys’ Fees and Expenses, Enhancement Award, PAGA Penalties Payment 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 §§ I(S), III(L)(1)-(12). 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 **\$866.67**. 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 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, 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 Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 7.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants design and develop software offering a platform that focuses on mortgages, consumer loans and deposit accounts to its customers in the state of California, including in San Francisco, where Plaintiff worked. Plaintiff was employed by Defendants from July of 2020 to September of 2021 as a non-exempt employee. Declaration of Kaliyah Martin (“KM Dec.”) at ¶ 4. Plaintiff alleges that she was denied legally compliant meal and rest periods, and minimum wages and overtime compensation at all times during her employment. Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, Defendants’ Employee Handbook. JCL Dec., ¶ 8.

Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 9.

On April 21, 2022, Plaintiff served Defendants and the Labor and Workforce Development

1 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
2 the facts and theories supporting Defendants’ alleged violations of various provisions of the California
3 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of their intent
4 to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
5 2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

6 On June 28, 2022, Plaintiff filed a class action complaint in the San Francisco County Superior
7 Court, Case No. CGC-22-600420 (“Action”), alleging a single cause of action for Violation of the
8 Private Attorneys General Act (Labor Code §§ 2698, *et seq.*). On August 30, 2022, Plaintiff filed a
9 separate action in Los Angeles County Superior Court (the “LASC Class Action”), alleging eight causes
10 of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§
11 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197,
12 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.* (4) Failure to
13 Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC
14 Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 &
15 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements
16 in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code
17 §§ 201, 202, and 203; (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
18 § 2802. On March 28, 2023, Plaintiff filed the operative First Amended Complaint in this Action,
19 adding the eight causes of action alleged in the LASC Class Action. On April 19, 2023, the LASC Class
20 Action was dismissed in its entirety, without prejudice. JCL Dec., ¶ 11.

21 The Parties agreed relatively early to mediate this action. To prepare for mediation, Defendants
22 agreed to informally produce additional documents and data points subject to the mediation privilege,
23 including but not limited to, the Class Members’ time data and certain payroll data points. As discussed
24 *infra*, Plaintiff’s counsel retained the forensic consultants at EconOne Research, Inc. (“Econ One”) to
25 analyze Defendants’ time and payroll data. JCL Dec., ¶ 12.

26 On May 24, 2023, the Parties participated in a full day mediation with Steven Rottman, Esq., an
27 experienced wage and hour and PAGA mediator. The mediation concluded with a settlement, which
28 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. JCL Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to her employment, including portions of Defendants' handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response, Defendants produced over a hundred pages of documents, including but not limited, copies of Plaintiff's personnel documents and payroll and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, provide accurate wage statements and to provide compliant meal and rest periods. JCL Dec., ¶ 15.

To prepare for mediation, Defendants produced the time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of pages of documents and nearly 300,000 unique cells of time and payroll data. JCL Dec., ¶ 16.

Class Counsel then retained the statisticians and economists at Econ One to evaluate the Class Members' payroll and time data. Econ One provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. Econ One's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. JCL Dec., ¶ 17.

Econ One analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, Econ One determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts and

1 average number of hours worked per week. Econ One also estimated the number of missed, late, or
2 truncated meal and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses,
3 the amount of unpaid overtime, the amount of unreimbursed business expenses, and the amount of
4 missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 18.

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

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

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

23 On May 24, 2023, the Parties conducted a full day of mediation with Steven Rottman, Esq. Mr.
24 Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of the issues
25 and risks to both sides. The Parties made substantial progress with Mr. Rottman's assistance. Namely,
26 the Parties exchanged information regarding their respective claims and defenses, including their
27 respective evaluation of the damages. The mediation concluded with a settlement. The complete and
28 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that

the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 21.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all non-exempt employees who are or previously were employed by Defendants and performed work in California during the Class Period (the period between August 30, 2018 to the earlier of Preliminary Approval or the date on which the number of workweeks during the Class Period exceeds 14,300), excluding employees who entered into release agreements with Defendants. Agreement at §§ I(G), I(J). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(LL). At the time of mediation, Defendants estimated that the Class was comprised of 170 individuals who worked approximately 13,000 workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$350,000.00. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) an Enhancement Award of not more than \$5,000.00 to Plaintiff for her services on behalf of the Class and, equally important, for a general release of claims; (3) a PAGA Penalties Payment in the amount of \$50,000.00; (4) Settlement Administration Costs estimated at \$6,000.00; (5) Attorneys' Fees and Expenses in the amount of \$141,666.67, comprised of one-third of the Gross Settlement Amount for attorney's fees, currently estimated to be \$116,666.67 and litigation expenses not to exceed \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § III(L).

Subject to the Court approving the Enhancement Award, Attorneys' Fees and Expenses, PAGA Penalties Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at § I(S). There is no reversion to Defendants and Defendants must separately pay for its share of the employer payroll taxes. Agreement at § III(A)(1).

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1 3. The Funding Date

2 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
3 Settlement Amount within thirty (30) days of the Court's entry of the order granting final approval of
4 this Settlement. Agreement at § III(P).

5 4. Formula for Calculating Individual Settlement Payments

6 Settlement Class Members will receive an Individual Settlement Payment. The Individual
7 Settlement Payment will be proportional to the number of Workweeks each Class Member worked for
8 Defendants in California during the Class Period. Agreement at § III(L)(1). The Class Data provided
9 by Defendants to the Settlement Administrator will include the number of Workweeks for each Class
10 Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at §
11 III(I). Each Class Member's final Individual Settlement Payment for purposes of payment will be
12 calculated by using a fraction, the numerator of which is the Class Member's total number of
13 Workweeks, and the denominator of which is the total number of Workweeks of all Class Members.
14 Agreement at § III(L)(1). For purposes of these calculations, a Workweek shall mean the number of
15 weeks of employment during the Class Period that each Class Member performed work for Defendants
16 in California. Agreement at § I(MM). Each Individual Settlement Payment will be reduced by any
17 legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement
18 Payments for members of the Settlement Class Members who submit valid and timely requests for
19 exclusion will be redistributed to Settlement Class Members who do not submit valid and timely
20 requests for exclusion on a pro rata basis. Agreement at § III(L)(1).

21 Given that there are approximately 170 Settlement Class Members, the average gross recovery
22 is approximately \$866.67 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
23 ¶ 6.

24 5. Release by Settlement Class Members

25 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
26 release the Released Parties from the Released Class Claims that accrued during the Class Period.
27 Agreement at §§ I(EE), III(B).

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

Generally, as of the Funding Date, Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ I(FF), III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$350,000.00 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

1 action litigation”).)

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

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

10 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
11 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
12 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
13 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
14 § 11.51.)

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

23 Once the Parties finalized and executed the terms of the Memorandum of Understanding, the
24 Parties engaged in negotiations regarding the written terms of the class action settlement. The
25 Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair,
26 adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 21.

27
28 ///

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

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 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 Plaintiff’s claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶¶ 14-19.

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

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

The Gross Settlement Amount of \$350,000.00 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

1 have received if they had succeeded at trial.³ Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
3 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
4 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

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

6 The Gross Settlement Amount of \$350,000.00 is fair and reasonable considering the nature and
7 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained Econ One to develop an economic damage model measuring
9 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
10 damage model was informed by Class Counsel’s investigation, including the analysis of a significant
11 sample of time and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims*
12 (excluding penalties) was approximately \$805,258.83 if successful at trial. Thus, the Gross Settlement
13 Amount of \$350,000.00 represents approximately 43.46% of Defendants’ *class-wide* liability exposure
14 as estimated by Class Counsel at the time of mediation. The following summarizes Defendants’
15 estimated exposure. JCL Dec., ¶ 22.

16 (1) Exposure for Failure to Correctly Calculate the Regular Rate of Pay for
17 Purposes of Overtime, Meal Break Premiums and Sick Pay

18 Plaintiff’s primary claim in the Action alleged that Defendants failed to include bonuses and
19 incentive compensation payments in the regular rate of pay for purposes of overtime, meal period
20 premiums, and sick pay. JCL Dec., ¶ 23.

21 Defendants vigorously denied liability for this claim. Defendants argued, among other things,
22 that all non-discretionary incentive compensation was properly included into the regular rate of pay.

23 ³ 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 Plaintiff estimated Defendants' exposure for this claim at \$42,577. JCL Dec., ¶ 24.

2 (2) Exposure for Failure to Pay for All Hours Worked

3 Plaintiff alleges that Defendants required its employees to receive and respond to work-related
4 communications and attend meetings before and after their scheduled shifts, in violation of California
5 law requiring employees to be compensated for all time spent under an employer's control. Econ One
6 estimated that Defendants' failure to compensate Plaintiff and the Class Members for off-the-clock
7 work resulted in \$182,420.33 in unpaid wages. Defendant denied liability and asserted that employees
8 were paid all wages and that all work performed by Plaintiff and the Class Members was performed
9 on-the-clock. JCL Dec., ¶ 25.

10 (3) Exposure for Meal Period Violations.

11 Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically,
12 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff and Class Members were not
13 able to take timely and duty-free meal periods. Consequently, Plaintiff alleges that she is owed meal
14 period premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 26.

15 Conversely, Defendants argued, among other things, that they provided all of their employees
16 with the opportunity to take compliant meal periods. Defendants also argued that they maintained
17 facially compliant meal period policies. Further, Defendants argued that they had a system in place to
18 pay, and did pay, meal period premiums such that any liability for meal periods was nonexistent. Thus,
19 Defendants argued that there was no potential liability for Plaintiff's alleged meal period violations and
20 any claimed violations required a highly individualized inquiry not suitable to class treatment. Plaintiff
21 estimated Defendants' exposure for this claim at \$159,733. JCL Dec., ¶ 27.

22 (4) Exposure for Rest Period Violations

23 Plaintiff also alleged that Defendants failed to provide compliant rest periods. Specifically,
24 Plaintiff alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
25 able to take timely and duty-free rest periods. JCL Dec., ¶ 28.

26 Again, Defendants denied liability and asserted that they maintained legally compliant rest
27 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the
28 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely,

1 almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability
2 stages. Certification likely would have required depositions of Class Members who provided
3 declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks
4 were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal.
5 Jan. 17, 2013) 2013 WL 210223, at *11 (“Because of the competing testimony before the Court,
6 plaintiff’s evidence that Defendants may have an illegal, written rest break policy is insufficient for this
7 Court to find that common issues predominate.”); *Villa v. United Site Servs. of California, Inc.* (N.D.
8 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 (“Indeed, Plaintiff’s own evidence confirms that the
9 written policy does not generate uniform practices.”). Notwithstanding the credible defenses, Plaintiff
10 assumed a 100% violation rate and estimated Defendants’ exposure for this claim at \$353,237. JCL
11 Dec., ¶ 29.

12 (5) Exposure for Unreimbursed Business Expenses

13 Plaintiff alleged that Defendants required Class Members to incur personal expenses for the use
14 of their own personal cellular phones and personal home internet. California employers who require
15 employees to incur personal business expenses for work purposes must reimburse the employee for the
16 cost incurred. (*See* Cal. Lab. Code § 2802(a), providing that “[a]n employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
18 the discharge of his or her duties, or of his or her obedience to the directions of the employer....”).
19 However, Defendants failed to fully reimburse Plaintiff and Class Members for the costs incurred for
20 the use of their personal cellular phones and personal home internet. JCL Dec., ¶ 30.

21 Again, Defendants denied any liability for this claim. Defendants argued that most of their
22 employees did not use cellphones and personal home internet as a part of the performance of their duties
23 and on the rare occasion where employees did incur business expenses, these expenses were fully
24 reimbursed. Plaintiff estimated Defendants’ exposure for this claim at \$67,291.50. JCL Dec., ¶ 31.

25 (6) Exposure for Wage Statement Violations and Waiting Time Penalties

26 Plaintiff alleges that Defendants’ alleged violations resulted in derivative violations of Labor
27 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
28 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue

1 that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Labor
2 Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class
3 Members suffered an “injury” because of wage statement violations, as required by Labor Code section
4 226. Defendants could also argue that that meal and rest period violations do not entitle employees
5 like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement
6 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not
7 give the penalty claims great weight given that they depended on proving the underlying claims, which
8 had their own risks. Plaintiff estimated Defendants’ exposure for these claims at \$1,325,134. JCL Dec.,
9 ¶ 32.

10 (7) Defendants’ PAGA Exposure

11 In all, Class Counsel projected Defendants’ liability exposure for PAGA claims at \$3,039,600 if
12 successful at trial. JCL Dec., ¶ 33. The proposed PAGA allocation of the Gross Settlement Amount is
13 fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
14 “negotiate a good faith amount” for PAGA Payment and “there is no indication that this amount was the
15 result of self-interest at the expense of class members,” such amounts are generally considered
16 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
17 Apr. 3, 2009). Courts routinely approve of amounts for PAGA Payment in the range of zero to two
18 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
19 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
20 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
21 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
22 in the range of zero to two percent of the total settlement).

23 Here, the Parties negotiated a good faith payment for PAGA Penalties in the amount of \$50,000
24 which is 14.3% of the Gross Settlement Amount. This amount falls well within the range of approved
25 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500.00) will be paid to the
26 LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties
27 (\$12,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA
28 Penalties approved by courts and should be approved. JCL Dec., ¶ 34.

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

9 To recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
10 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
11 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
12 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
13 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
14 each pay period the employee worked. Again, Defendants raised several defenses that presented serious
15 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
16 discussed *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
17 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
18 rest period claims. JCL Dec., ¶ 35.

19 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, illustrates the risk of PAGA claims.
20 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
21 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
22 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.
23 Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA
24 penalties were reduced by 90%.

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

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

28 "It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot

1 and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to
2 the extent courts assess this factor, it is to ‘determine whether the decision to settle is a good value for a
3 relatively weak case or a sell-out of an extraordinary strong case.’” (*Misra v. Decision One Mortg. Co.*
4 (C.D. Cal. 2009) 2009 WL 4581276, at *7.)

5 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
6 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
7 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
8 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
9 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
10 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
13 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
14 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
17 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
20 certification of driver meal and rest period claims based on the predominance of individual issues).
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
23 settlement. JCL Dec., ¶ 36.

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

28 [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 Plaintiff are successful at trial, Plaintiff are acutely aware that a judgment does not end the litigation. Plaintiff fully expects 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. JCL Dec., ¶ 37. “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 Gross Settlement Amount of \$350,000.00 that is approximately 43.46% of Defendants’ *class-wide* liability exposure for damages, and approximately 16.43% 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. JCL Dec., ¶ 38.

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

The Settlement 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,

1 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
2 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
3 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁴

4 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
5 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
6 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
7 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
8 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
9 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
10 and scope of the Released Claims. Agreement at § III(K). The Parties negotiated this method to ensure
11 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
12 administration of the Settlement. JCL Dec., ¶ 39.

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

17 **C. The Court Should Preliminarily Approve the Enhancement Award**

18 Enhancement Awards “are fairly typical in class action cases.” (*Cellphone Termination Fee*
19 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
20 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
21 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
22 *UCLA L. Rev.* 1303 (2006).) Enhancement Awards “are intended to compensate class representatives
23 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
24 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
25 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to

26
27 ⁴ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If
appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice.
Fontana v. Elrod (7th Cir. 1987) 826 F.2d 729, 732.

1 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
2 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
3 (2009) 175 Cal.App.4th 785.)

4 The Settlement provides for an Enhancement Award of \$5,000.00 to Plaintiff. The Enhancement
5 Award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class
6 Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of her
7 case and the strategies for prosecuting the claims, and reviewing the proposed Settlement to ensure that
8 its terms are fair and provide adequate relief for the Settlement Class Members. JCL Dec., ¶ 41.

9 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Enhancement
10 Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the
11 above showing is sufficient for preliminary approval of the negotiated Enhancement Award. JCL Dec.,
12 ¶ 42.

13 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Expenses**

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

24 Class Counsel took this matter on a contingency fee basis and invested significant time and
25 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
26 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
27 Members. Considering the positive outcome for the Class Members, and in light of the supporting
28 authority, the proposed Attorneys’ Fees and Expenses are fair and reasonable. JCL Dec., ¶ 43.

1 Plaintiff will file a formal motion for the negotiated Attorneys' Fees and Expenses once
2 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing
3 is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 44.

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

5 For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional
6 certification of the Class is appropriate. JCL Dec., ¶ 45.

7 1. The Standard for Class Certification

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

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

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

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

26 In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate
27 question” the element of predominance presents is whether “the issues which may be jointly tried, when
28 compared with those requiring separate adjudication, are so numerous or substantial that the

1 maintenance of a class action would be advantageous to the judicial process and to the litigants.”
2 (*Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).)

3 Because all Class Members are Defendants’ current and former employees, the class is readily
4 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 46.

5 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
6 Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be
7 determined by facts common to all members of the class. The wage and hour issues are both numerous
8 and substantial, and a class action is the most advantageous method of dealing with the claims of the
9 Settlement Class Members. JCL Dec., ¶ 47.

10 Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the
11 same factual basis and are based on the same legal theories applicable to the other Class Members.
12 Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff alleges
13 that she was injured by the same company-wide practices to which the proposed Class Members were
14 subject to and seek the same relief. Plaintiff has already demonstrated their ability to advocate for the
15 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
16 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 48.

17 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
18 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
19 gained state court settlement approval of the same class-wide causes of action that are at issue in this
20 case. Class Counsel’s wage and hour class action experience establishes that they are well qualified to
21 represent the interests of this Class. JCL Dec., ¶¶ 50-57, Declaration of Shani Zakay, ¶¶ 1-3.

22 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
23 each individual claim, the Class Members likely have little incentive to litigate their claims on an
24 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
25 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
26 adjudication. JCL Dec., ¶ 49.

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Dated: December 4, 2023

By: 
Shani O. Zakay, Esq.