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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DORICK MAHEIA, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CLEAN EARTH ENVIRONMENTAL
SOLUTIONS, INC., a Delaware corporation;
HARSCO CORPORATION, a Delaware
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 22STCV24279

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

Hearing Date: May 1, 2024
Hearing Time: 11:00 a.m.

Judge: Hon. Stuart M. Rice
Dept.: 1

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I. INTRODUCTION

Plaintiffs Dorick Maheia, Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano (collectively “Plaintiffs”) respectfully submit this memorandum in support of their motion for preliminary approval of the Class Action Complaint (*Dorick Maehia v. Clean Earth Environmental Solutions, Inc., et al.*, Case No. 22STCV24279 filed on or about July 27, 2022) (the “Action”) with Defendants CLEAN EARTH ENVIRONMENTAL SOLUTIONS, INC. HARSCO CORPORATION, and Stericycle, Inc. (“Defendants”), and seek entry of an order: (1) preliminarily approving the proposed settlement of the Action with Defendants; (2) approving the form and method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final approval hearing date to consider Plaintiffs’ motion for final approval of the settlement and entry of the Judgment, and Plaintiffs’ motion for approval of attorneys’ fees and litigation expenses.

The Parties have reached a full settlement of the Action, which is embodied in the Class Action and PAGA Settlement Agreement (the “Agreement”). A copy of the executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed herewith. The Settlement is fair, reasonable, and adequate. Plaintiffs request that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount to be paid by Defendants is One Million Three Hundred Fifty Thousand Dollars and Zero Cents (\$1,350,000.00). The Gross Settlement Amount consists of the following elements: (1) the Individual Class Payments to Participating Class Members, (2) Individual PAGA Payments, (3) LWDA Payment, (4) Class Counsel Fees, (5) Class Counsel Litigation Expenses, (6) Class Representative Service Payment to Plaintiffs, and (7) Administration Expenses Payment. (Agreement at § 1.22.) The Gross Settlement Amount does not include Defendants’ share of employer payroll taxes, which Defendants shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to Defendants. (Agreement at § 3.1.) (Decl. Zakay at ¶ 3.)

1 After Final Approval and the Judgment becoming final (the “Effective Date”), Defendants
2 will fund the Gross Settlement Amount in one lump sum payment within thirty (30) calendar days
3 (the “Funding Date”). (Agreement at § 4.3.) Within fourteen (14) calendar days after the Funding
4 Date, the Settlement Administrator will pay: all Individual Class Payments, all Individual PAGA
5 Payments, the LWDA Payment, the Administration Expenses Payment, Class Counsel Fees
6 Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service
7 Payment, all as determined by the Court at the Final Approval Hearing. (Agreement at § 4.4.) (Decl.
8 Zakay at ¶ 6.)

9 The Net Settlement Amount shall equal the amount available for Individual Class Payments
10 after deducting the Court-approved amounts for the Individual PAGA Payment, LWDA PAGA
11 Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel
12 Litigation Expenses, and the Administration Expenses Payment. (Agreement at § 1.29.) The
13 submission of a claim form is not required for a Participating Class Member to be paid an Individual
14 Class Payment, including the PAGA Penalties. (Agreement at § 3.1.) The Individual Class Payment
15 will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked
16 by all Participating Class Members during the Class Period and then multiplying that amount by
17 the total number of workweeks worked by each Participating Class Member during the Class Period.
18 The entire Net Settlement Amount shall be distributed. (Agreement at § 3.2.4.) (Decl. Zakay at ¶
19 7.)

20 Class Members will have forty-five (45) calendar days after the mailing of the Class Notice
21 to exclude themselves or submit written objections. The deadlines will be extended an additional
22 fourteen (14) calendar days for Class Members whose notice is re-mailed. (Agreement at § 8.4.4.)
23 All Class Members who do not “opt out” will be deemed Participating Class Members and will be
24 bound by the Settlement. The Notice will advise the Class Members of their right to object to the
25 Settlement. (Agreement at § 1.36.) Regardless of whether a Class Member “opts out” or objects to
26 the Settlement, they cannot “opt out” of the PAGA portion of the Settlement to the extent that they
27 are entitled to receive any PAGA Penalties. (Decl. Zakay at ¶ 8.)
28

1 Prior to mailing the Class Notice to the Class, the Settlement Administrator will perform a
2 search on the National Change of Address Database to update the Class Members' addresses. The
3 Settlement Administrator will perform a skip-trace search and re-mail all Class Notices that are
4 returned on or before the Response Deadline. (Agreement at § 1.10.) If an Individual Class Payment
5 or Individual PAGA Payment check is not cashed within 180 days after the Settlement
6 Administrator's last mailing to the Participating Class Member, the funds from such uncashed check
7 will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class
8 member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
9 Procedure Section 384, subd. (b). (Agreement at § 4.4.3.) (Decl. Zakay at ¶ 9.)

10 The Parties have agreed to use Apex Class Action LLC as the Settlement Administrator.
11 (Agreement at §§ 1.2; 8.1.) Payment of the expenses of the Settlement Administrator from the Gross
12 Settlement Amount shall be made for the expenses of effectuating and administering the Settlement.
13 The Settlement Administrator shall receive payment for services at an amount not to exceed
14 \$13,500. (Agreement at § 3.2.3.) (Decl. Zakay at ¶ 10.) A declaration from Apex Class Action, LLC
15 outlining its qualifications and providing for the estimated administration costs is filed concurrently
16 with this Motion.

17 Subject to Court approval, the Agreement provides for Class Counsel to be awarded (a) a
18 Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is
19 currently estimated to be \$450,000, and (b) a Class Counsel Expenses Payment of up to \$50,000.
20 (Agreement at § 3.2.2.) The Class Counsel Fees Payment will be divided between Class Counsel
21 as follows: 30% to JCL Law Firm, APC, 30% to Zakay Law Group, APLC, 25% to Lawyers For
22 Justice P.C., and 15% to Azadian Law Group, P.C.ALG. In support of this request, Class Counsel
23 will provide evidentiary support, including lodestar method calculations. Subject to Court approval,
24 the Agreement provides for payment of a Class Representative Service Payments of up to
25 \$10,000.00 each to Plaintiffs Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano
26 and up to \$15,000.00 to Plaintiff Dorick Maheia.¹ (Agreement at § 3.2 (B)) Defendants will not

27 _____
28 ¹ Plaintiffs will address the reasonableness of these awards when filing their final approval papers,
including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 oppose a motion for approval of attorneys’ fees, costs and Class Representative Service Payments
2 consistent with the Agreement. (Agreement at § 3.2.2.) (Decl. Zakay at ¶ 11.)

3 Subject to Court approval, \$80,000 will be paid for settlement of civil penalties under
4 PAGA, Labor Code Section 2698 *et seq.* (Agreement at § 3.2.5.) Pursuant to the requirements of
5 Labor Code §2699(i), the PAGA Penalties shall be allocated \$60,000.00 (75%) to the LWDA (the
6 “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and \$20,000.00 (25%)
7 will be paid to the Aggrieved Employees. (Agreement at §§ 1.3.5; 3.2.5.) (Decl. Zakay at ¶ 12.)

8 III. CASE BACKGROUND

9 The Maheia Action

10 On June 9, 2022, Plaintiff Maheia filed a Notice of Violations with the LWDA and served
11 the same on Defendants Clean Earth Environmental Solutions, Stericycle, and Harsco. On July 7,
12 2022, Plaintiff Maheia filed a class and representative PAGA Action against Defendants Clean
13 Earth Environmental Solutions, Stericycle, and Harsco alleging eight causes of action for 1) Unfair
14 Competition in Violation of Bus. & Prof. Code section 17200, *et seq.*; 2) Failure to Pay Minimum
15 Wages in Violation of California Labor Code sections 1194, 1197 and 1197.1; 3) Failure to Pay
16 Overtime Wages in Violation of California Labor Code section 510, *et seq.*; 4) Failure to provide
17 Required Meal Periods in Violation of California Labor Code sections 226.7 and 512 and the
18 applicable IWC Wage Order; 5) Failure to Provide Required Rest Periods in Violation of California
19 Labor Code sections 226.7 and 512 and the applicable IWC Wage Order; 6) Failure to Provide
20 Accurate Itemized Wage Statements in Violation of California Labor Code section 226; 7) Failure
21 to Provide Wages When Due in Violation of California Labor Code sections 201, 202 and 203; and
22 8) Failure to Reimburse Employees For Required Expenses in Violation of California Labor Code
23 section 2802 (the *Maheia* Action). On October 14, 2022, Plaintiff Maheia filed a first amended
24 complaint in the *Maheia* Action to add a ninth cause of action for Violations of PAGA. On January
25 6, 2023, Plaintiff Maheia sent an amended PAGA notice to the LWDA and to Defendants adding
26 Plaintiff White as a Plaintiff. (Decl. Zakay at ¶ 13.)

27 The Hernandez Actions

28 On August 12, 2022, Plaintiff Hernandez filed a Notice of Violations with the LWDA and

served the same on Defendants Harsco, Clean Earth Environmental Solutions, and Defendant Clean Earth. On October 17, 2022, Plaintiff Hernandez filed a Class Action against Defendants Harsco and Clean Earth Environmental Solutions alleging ten causes of action for 1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); 2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); 3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); 4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); 5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); 6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); 7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); 8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); 9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and 10) Violation of California Business & Professions Code §§ 17200, et seq. (the *Hernandez* Class Action). Also on October 17, 2022, Plaintiff Hernandez filed a separate PAGA Representative Action against Defendants Harsco and Clean Earth Environmental Solutions alleging a single cause of action for Violation of PAGA (the *Hernandez* PAGA Action). (Decl. Zakay at ¶ 14.)

The Montano Action

On October 3, 2022, Plaintiff Montano filed a Notice of Violations with the LWDA and served the same on Defendants Clean Earth Environmental Solutions, Harsco, and Stericycle. On the same day, Plaintiff Montano filed a class action against Defendants Clean Earth Environmental Solutions, Harsco, and Stericycle alleging nine causes of action for 1) Violations of Labor Code § 204, 226.2, 1194, 1197, and wage order (wages); 2) Violations of Labor Code §§ 226.2, 510, 1194, 1198, and wage order (overtime wages); 3) Violations of Labor Code §§ 226.7 and 512 and wage order (meal periods); 4) Violation of Labor Code §§ 226.2, 226.7, 516, 558, and wage order (rest periods); 5) Violations of Labor Code § 2802 (failure to reimburse); 6) Violations of Labor Code § 226(A) (non-compliant wage statements); 7) Violations of Labor Code §§ 201-203 (failure to pay all wages owed upon termination); 8) Violations of Labor Code § 227.3 (failure to pay vacation/PTO wages); and 9) Violations of Business and Professions Code § 17200 (the *Montano* Action). On December 16, 2022, Plaintiff Montano filed a first amended complaint in the *Montano*

1 Action to add a tenth cause of action for Violations of PAGA. (Decl. Zakay at ¶ 15.)

2 The Rainey Action

3 On June 27, 2023, Plaintiff Rainey filed a Notice of Violations with the LWDA and served
4 the same on Defendant Harsco Corporation. Ms. Rainey has not filed a PAGA or class action in
5 civil court against Defendants. (Decl. Zakay at ¶ 16.)

6 On January 9, 2023, this Court found that the *Maheia* Action, the *Montano* Action, the
7 *Hernandez* Class Action, and the *Hernandez* Representative Action are related within the meaning
8 of California Rules of Court, rule 3.300(a), and named the *Maheia* Action as the lead case. On
9 March 25, 2024, the Parties stipulated to the filing of a second amended complaint in the *Maheia*
10 Action for purposes of adding all Plaintiffs, and Stericycle, Inc. as a Defendant to the Action. This
11 stipulation was filed with this Court on April 5, 2024. (Decl. Zakay at ¶ 17.)

12 Plaintiffs seek to represent a putative class of all individuals who worked for Defendants in
13 California as non-exempt employees at any time during the Class Period. (Agreement at § 1.6.) The
14 Class Period is the period from November 28, 2020 to February 9, 2024. (Agreement at § 1.12.)
15 The operative complaint generally alleges the causes of action listed above, in addition to causes of
16 action for failure to keep requisite payroll records, failure to pay vacation wages, and failure to pay
17 prevailing wages. The Action seeks unpaid wages and premiums, statutory and PAGA penalties,
18 attorneys' fees, and litigation costs.² (Decl. Zakay at ¶ 18.)

19 Prior to mediation, the Parties agreed to informally exchange documents and information in
20 connection with the Action. As part of this process, Defendants provided time and pay records for
21 181 employees, approximately 26.6% of the total Class. Plaintiffs' statistician found this to be
22 sufficient to develop a meaningful damages model. Additionally, the 26.6% sample is statistically
23 reliable, resulting in a confidence level of 95% with a margin of error of 6%. In addition to the time
24 and payroll records, Defendants produced relevant policies and agreements. (Decl. Zakay at ¶ 19.)

25 On October 12, 2023, the Parties participated in an all-day mediation presided over by
26 Tripper Ortman, Esq., a respected mediator of wage and hour class actions. Class Counsel then
27

28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with the final approval papers.

1 retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time
2 data. BCG provides data analysis and damage modeling consulting services specializing in wage
3 and hour class actions. BCG's team of financial and data analysts are credentialed and experienced
4 experts in their fields and have provided their expertise on thousands of cases. Stated differently,
5 BCG is uniquely qualified to analyze Defendant's time and payroll data. (Decl. Zakay at ¶ 20.) BCG
6 analyzed Defendant's time and payroll data to assist in the development of various damage models.
7 Among other things, BCG determined the approximate number of work shifts, pay periods, and
8 average number of hours worked per shift during the Class Period. BCG also estimated the number
9 of unpaid overtime hours, the number of meal and rest break violations, as well as the total damages
10 due to unreimbursed business expenses during the Class Period. (Decl. Zakay at ¶ 21.) In advance
11 of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class
12 Counsel's models calculated Defendant's potential liability exposure while accounting for the
13 uncertainties of continued litigation. These damage models informed and guided Class Counsel
14 during the mediated settlement discussions. (Decl. Zakay at ¶ 22.)

15 Mediator Ortman helped manage the Parties' expectations and provided a useful, neutral
16 analysis of the issues and risks to both sides. The Parties made substantial progress with Mr.
17 Ortman's assistance. Namely, the Parties exchanged information regarding their respective claims
18 and defenses, including their respective evaluations of the damages. After a day of arm's length
19 and adversarial negotiations, the mediation concluded with a settlement. The complete and final
20 terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
21 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue.
22 (Decl. Zakay at ¶ 23.)

23 Although a resolution has been reached, Defendants deny that they have violated any
24 applicable law, committed any wrong against Plaintiffs or any other current or former employee, or
25 that they have otherwise damaged Plaintiffs or any other current or former employee in any way.
26 Further, Defendants contend that class certification would be inappropriate for any reason other
27 than settlement. Plaintiffs contend that Defendants violated California wage and hour laws. Plaintiff
28 further contends that the Action is appropriate for class certification on the basis that the Plaintiffs'

1 claims meet the requirements for certification. Without admitting that class certification is proper,
2 Defendants have stipulated that the above Class may be certified for settlement purposes only. The
3 Parties agree that certification for settlement purposes is not an admission that certification would
4 be proper if the class certification issues were litigated. Further, the Agreement is not admissible in
5 this or any other proceeding as evidence that the Class could be certified absent a settlement. Solely
6 for purposes of settling the Action, the Parties stipulate and agree that the requirements for
7 establishing class certification with respect to the Class are satisfied. (Decl. Zakay at ¶ 24.)

8 Class Counsel has conducted a thorough investigation into the facts of the action and
9 diligently evaluated the Class Members' claims against Defendants. Prior to the mediation, counsel
10 for Defendants provided Class Counsel with access to the necessary data and information to
11 evaluate the claims by the Class. Class Counsel reviewed the production of documents and
12 conducted an extensive review of a significant sample of time records and data with the assistance
13 of an expert (Berger Consulting Group). Based on the foregoing and their own independent
14 investigation, evaluation and experience, Class Counsel believe that the Settlement is fair,
15 reasonable, and adequate and is in the best interest of the Class considering all known facts and
16 circumstances, including the risk of significant delay, defenses asserted by Defendants, and
17 potential appellate issues. (Decl. Zakay at ¶ 25.)

18 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT** 19 **TO GRANT PRELIMINARY APPROVAL**

20 When a proposed class-wide settlement is reached, the settlement must be submitted to the
21 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
22 p.11-87.) California "[p]ublic policy generally favors the compromise of complex class action
23 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
24 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
25 approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor*
26 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
27 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

1 The primary question presented on an application for preliminary approval of a proposed
2 class action settlement is whether the settlement is “within the range of possible approval.” *Manual*
3 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
4 1982).) Preliminary approval is the prerequisite to giving notice so that “the proposed settlement...
5 may be submitted to members of the prospective Class for their acceptance or rejection.”
6 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp.
7 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3
8 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed settlement, which
9 was negotiated at arm’s length by counsel, is presented for court approval. (*Newberg*, 3d Ed., §11.41,
10 p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; *see*
11 *also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial
12 court’s determination that settlement was “fair, reasonable and adequate” where the settlement
13 “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks
14 plaintiff would have faced if she proceeded to litigate her case.’”) However, the ultimate question
15 of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the
16 settlement is given to the Class Members and a final settlement hearing is held by the Court.

17 **A. The Role of The Court In Preliminary Approval Of A Class Action Settlement**

18 Approval of a proposed settlement of a class action suit is a matter within the broad
19 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
20 In considering a potential settlement for preliminary approval purposes, the trial court does not have
21 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. (*Wershba*, *supra*, 91 Cal. App. 4th at 239-40;
23 *Dunk*, *supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a settlement
24 is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice*
25 *v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question
26 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and
27 evaluation by the attorneys for the parties based upon a comparison of “the terms of the
28 compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d

1 Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*
2 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
3 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
4 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With
5 regard to class action settlements, the opinions of counsel should be given considerable weight both
6 because of counsel’s familiarity with this litigation and previous experience with cases such as
7 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
8 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
9 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
10 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

11 **B. Factors To Be Considered in Granting Preliminary Approval**

12 In determining whether to grant preliminary approval, the court considers whether the “(1)
13 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
14 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class
15 representatives or segments of the class, and (4) falls within the range of possible approval.” *In re*
16 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be
17 determinative. Here, the Settlement meets the criteria for preliminary approval.

18 **1. The Settlement Is the Product of Serious, Informed and Arm’s Length**
19 **Negotiations by Experienced Counsel**

20 This Settlement is the result of extensive and hard-fought litigation and negotiations before
21 an experienced mediator. Defendants denied and continue to deny any wrongdoing or legal liability
22 arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that
23 it is beneficial to the Class Members to put to rest the Released Class Claims.³ Plaintiff and Class
24 Counsel recognize the expense involved in continuing to litigate and ultimately trying the Action
25 against Defendants through possible appeals, which could take several years. Class Counsel have
26 also considered the uncertain outcome and risk of litigation, especially in complex actions such as
27

28 ³ Released Class Claims is defined in the Settlement Agreement at § 1.39 and is limited to claims asserted in the Action.

1 the one here. Class Counsel are also mindful of, and recognize, the inherent problems of proof
2 under, and asserted defenses to, the claims asserted in the Action. Based upon their evaluation,
3 Plaintiff and Class Counsel have determined that the Settlement is in the best interest of the Class
4 Members. (Decl. Zakay at ¶ 26.)

5 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
6 capable advocacy on both sides. The Parties were represented by experienced counsel who
7 zealously advocated their respective positions with the assistance of an experienced mediator.
8 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
9 vigorously conducted at arms’ length and without any suggestion of undue influence.” *In re Wash.*
10 *Public Power*, 720 F. Supp. at 1392.

11 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of** 12 **Approval**

13 The proposed Settlement has no “obvious deficiencies” and is well within the range of
14 possible approval. All Class Members will receive an opportunity to participate in the Settlement
15 and receive payment if they do not opt out. (Agreement at § 7.5.3.)

16 Defendants’ total potential exposure for the alleged violations at the time this Settlement
17 was negotiated was calculated by Berger Consulting Group, Plaintiff’s damage expert. For the
18 Class, Plaintiff estimates that Defendants potentially could be subject to maximum liability for
19 damages in the amount of \$2,538,821 consisting of \$182,647 in underpayment of wages due to
20 improper calculations of regular rates of pay, \$798,201 for unpaid wages due to off-the-clock work,
21 \$1,492,416 for rest periods, \$440,743 for meal periods, and \$269,200 for unreimbursed business
22 expenses. In addition, Plaintiff’s expert calculated \$1,350,601 in waiting time penalties and
23 \$1,377,550 for wage statement penalties.⁴ Consequently, the Settlement of \$1,350,000 represents

24
25 ⁴ While Plaintiff alleged claims for statutory penalties, they recognize that this claim is subject to
26 various defenses asserted by Defendant. Plaintiff’s claims pursuant to Labor Code Section 226 and
27 various PAGA penalties are also subject to a good faith defense as to whether any premium wages
28 for meal or rest periods or other wages were owed given Defendant’s position that Plaintiff and the
Class were properly compensated. (*See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL
4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment on
claim for failure to provide accurate itemized wage statements “because a good faith dispute exists...

1 approximately 26% of the maximum estimated labor code *damages* plus waiting time penalties and
2 wage statement penalties (excluding PAGA Penalties). Given the amount of the Settlement
3 compared to the potential value of claims in this case and taking into consideration the defenses and
4 contentions raised by Defendants, the Settlement is fair and reasonable. The goal of this litigation
5 – to provide compensation to Class Members for allegedly unpaid time and for allegedly missed
6 meal and rest breaks – has been met. (Decl. Zakay at ¶ 27.)

7 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
8 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
9 amount constituted roughly 10% of the estimated actual damages to the class, determining it was
10 fair, reasonable, and adequate. Here, the settlement consideration exceeds the percentage approved
11 in *Stovall-Gusman*, and as a result, is entitled to preliminary approval.

12 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.
13 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, several defenses asserted by
14 Defendants presented serious threats to the claims of the Plaintiffs and the other Class Members.
15 For instance, Defendants asserted that the employment practices complied with all applicable Labor
16 Laws. Specifically, Defendants argued that the Supreme Court decision in *Brinker v. Superior*
17 *Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims on liability, value,
18 and class certifiability as to the meal and rest period claims. Before and during the mediation,
19 Defendants argued that nearly all members of the class were exempted from California's meal and
20 rest break requirements because they were transporting hazardous waste materials. Defendants
21 additionally contend that the underlying merits of Plaintiffs' wage and hour claims are deficient
22 because, among other reasons, there is insufficient evidence to prove that: (1) any of the underlying
23 violations actually occurred, (2) any of the putative class members were entitled to expense
24 reimbursement, (3) Defendants' wage statements fully complied with the law, and (4) Defendants
25 compensated all putative class members for all the time they spent performing work for, or were
26 under the control of, Defendants. (Decl. Zakay at ¶ 28.)

27
28 [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226]
statements").)

1 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
2 to obtain class certification and thereby not recover on behalf of any employee other than
3 themselves. Defendants argued that the individual experience of each employee varied with respect
4 to the alleged claims. While other cases have approved class certification of wage and hour claims,
5 class certification in this action would have been hotly disputed and was not a foregone conclusion,
6 because, among other reasons, Defendants contend that: (1) Plaintiff will not be able to identify
7 sufficiently pervasive patterns and practices to justify class claims, (2) Defendants policies and
8 procedures as set forth in their employee materials complied with all California laws, and (3)
9 Plaintiffs themselves did not suffer all of the alleged violations for which they seek to be class
10 representative. Even if class certification was successful, as demonstrated by the California
11 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
12 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
13 (Decl. Zakay at ¶ 29.) Here, the risk of further litigation is substantial. After arm's-length
14 negotiations between experienced and informed counsel, the Parties recognized the potential risks
15 and agreed on the Settlement.

16 Finally, Plaintiff's expert calculated that Defendants could be liable for PAGA penalties in
17 an amount of \$2,382,940. However, Courts have considerable discretion to reduce the penalty
18 award. Some trial courts have awarded no civil penalties, even when Labor Code violations are
19 established. See *In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award
20 of \$0 in PAGA penalties in a wage and hour class action). To recover any PAGA penalties,
21 Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. See
22 *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) Here,
23 Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay
24 period the employee worked. Again, Defendants raised several defenses that present serious threats
25 to the claims of the Plaintiff and the Aggrieved Employees. In all, Plaintiffs' PAGA liability
26 exposure is hotly contested. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates
27 the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial,
28 the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good

1 faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
2 reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff prevailed at
3 trial, and even then, the PAGA penalties were reduced by 90%. (Decl. Zakay at ¶ 30).

4 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the**
5 **Class Representative or Segments of The Class**

6 The relief provided in the Settlement will benefit all members of the Class who do not opt
7 out. The Settlement does not improperly grant preferential treatment to the Plaintiffs or segments
8 of the Class in any way. Each Participating Class Member will be entitled to a cash payment based
9 on the plan of allocation described herein. Each Individual Class Payment will be determined based
10 upon the weeks worked by that employee during the prescribed Class Period. (Decl. Zakay at ¶ 4.)

11 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
12 for their service, and for the risks undertaken on behalf of the Class. Plaintiffs performed their duties
13 admirably by working with Class Counsel. The Plaintiffs' requested payments of \$10,000.00 each
14 to Plaintiffs Darrell White, Omar Hernandez, Tyana Rainey, and Arturo Montano and \$15,000.00
15 to Plaintiff Dorick Maheia are well within the accepted range of awards for purposes of preliminary
16 approval. (*See* Decl. Zakay at ¶ 31.)

17 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
18 **Preliminary Approval Of The Settlement**

19 The stage of the proceedings at which this Settlement was reached supports preliminary
20 approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough
21 investigation into the facts of the class action, including before this Action was filed. Prior to the
22 mediation, Class Counsel performed significant review and analysis of Defendants' documents,
23 time records and pay records. Class Counsel engaged in a thorough research and analysis of the
24 relevant claims and data. Class Counsel are experienced with the claims at issue here, as Class
25 Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the
26 Settlement did not occur until Class Counsel possessed sufficient information to make an informed
27 judgment regarding the likelihood of success on the merits and results that could be obtained
28 through further litigation. (Decl. Zakay at ¶ 32.)

1 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

2 Plaintiffs contend that the proposed Settlement meets all the requirements for class
3 certification under the California Code of Civil Procedure Section 382 as demonstrated below, and
4 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
5 should conditionally certify the Class for settlement purposes only, defined as follows:

6 The “Class” or “Class Members” includes:

7 **“All individuals who worked for Defendants in California as non-exempt**
8 **employees during the period between November 28, 2020, to February 9, 2024.**
9 **(Agreement at §§ 1.6; 1.12)**

10 The Parties estimate that there are 42,500 workweeks worked by 680 Class Members. (Decl. Zakay
11 at ¶ 32.)

12 **A. California Code of Civil Procedure §382**

13 Plaintiffs seek certification of this Class for settlement purposes under California Code of
14 Civil Procedure section 382. Although Defendants dispute that the Plaintiffs can satisfy these
15 requirements for any reason other than for purposes of settlement, in the interest of resolving the
16 Action, Defendants will not dispute that the proposed Class should be certified for purposes of
17 settlement only.

18 **B. The Proposed Class Is Ascertainable and Numerous**

19 Here, the approximately 680 current and former employees that comprise the Class are
20 sufficiently numerous for class certification. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
21 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
22 (1981) (class of 48 members satisfies numerosity requirement.). All of these employees are
23 ascertainable because the Class Members can readily be determined through examination of
24 Defendants’ employment files. (Decl. Zakay at ¶ 32(a).) For purposes of settlement only,
25 Defendants will not oppose a finding of numerosity.

26 **C. Common Issues of Law and Fact Predominate**

27 Predominance of common issues of law or fact does not require that the common issues be
28 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
Newberg on Class Actions, Section 4.25 at 4-82, 4-83 (1992).) “Predominance is a comparative

1 concept, and ‘the necessity for class members to individually establish eligibility and damages does
2 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
3 if there is a predominant common legal question regarding how an employer’s policies impact its
4 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) (“[T]he
5 common legal question remains the overall impact of Diva’s policies on its drivers.”).) Whether
6 Plaintiff is likely to prevail on her theory of recovery is irrelevant at the certification stage since the
7 question is “essentially a procedural one that does not ask whether an action is legally or factually
8 meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

9 Here, Plaintiffs contend that common questions of law and fact are present. Specifically:
10 (i) whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
11 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely
12 furnish accurate, itemized and legal wage statements; (iv) whether Defendants subjected Class
13 Members to unfair business practices; (v) whether Defendants failed to reimburse Class Members
14 for required business expenses; (vi) whether Defendants are liable for attorneys’ fees and costs.
15 (Decl. Zakay at ¶ 32(b).) Defendants will not oppose a finding of commonality for purposes of
16 settlement only.

17 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

18 “The typicality requirement is met when the claims of the Plaintiff [] arise from the same
19 event or are based on the same legal theories.” (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th
20 Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
21 “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably
22 coextensive with those of absent class members; they need not be substantially identical.” (50 F.3d
23 at 1020.) Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like every
24 other member of the Class were employed by Defendants and are members of the Class. Plaintiffs
25 were subject to the same employment practices, meal and rest periods, and received similar wage
26 statements. Thus, the claims of the Plaintiffs and the Class Members arise from the same course of
27 conduct by the Defendants, involve the same employment policies, and are based on the same legal
28

1 theories. (Decl. Zakay at ¶ 32(c).) For purposes of settlement only, Defendants will not oppose
2 typicality.

3 **E. The Class Representative Fairly and Adequately Protected the Class**

4 The Class Members are adequately represented because Plaintiffs and Class Counsel (a) do
5 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
6 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiffs are well aware of their
7 duties as representatives of the Class and have actively participated in the prosecution of this case
8 to date. First, Plaintiffs effectively communicated with Class Counsel, provided documents to them
9 and participated in investigation and negotiations in the Action. Second, Plaintiffs retained
10 competent counsel who are experienced in employment class actions. Third, there is no antagonism
11 between the interests of the Plaintiffs and those of the Class. Both the Plaintiffs and the Class
12 Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶
13 32(d).)

14 **F. The Superiority Requirement Is Met**

15 To certify a class, the Court must determine that a class action is superior to other available
16 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
17 common issues will reduce litigation costs and promote greater efficiency, a class action may be
18 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th
19 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
20 the Plaintiffs. Defendants will not dispute such a finding for purposes of this settlement only.

21 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

22 The Court has broad discretion in approving a practical notice program. The Parties have
23 agreed upon procedures for providing the Class Members with written notice of the Settlement like
24 those approved and utilized in hundreds of class action settlements. The Class Notice, drafted jointly
25 and agreed upon by the Parties through their respective counsel and to be approved by the Court,
26 includes all relevant information (*See Exhibit A* to the Agreement.) The Class Notice will state that
27 the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to
28 them to request exclusion or to submit an objection. The Class Members will be given an

1 opportunity to object to the terms of the Agreement and/or the request for attorneys' fees and costs
2 and to participate at the final approval hearing. Class Members will be instructed to contact the
3 Settlement Administrator and/or Class Counsel, not the Court. This notice program was designed
4 to meaningfully reach the Class Members and advise them of all pertinent information concerning
5 the Settlement. The Class Notice will be provided in English and Spanish. The mailing and
6 distribution of the Class Notice satisfies the requirements of due process, is the best notice
7 practicable under the circumstances, and constitutes due and sufficient notice to all persons entitled
8 thereto. The Class Notice provides information on the terms and provisions of the Settlement; the
9 benefits that the Settlement provides for Class Members; the date, time, and place of the final
10 settlement approval hearing; and the procedure and deadline for submitting comments, objections,
11 and requests for exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f).
12 (Decl. Zakay at ¶ 34.)

13 **VII. CONCLUSION**

14 Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement
15 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
16 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
17 Preliminary Approval.

18 DATED: April 8, 2024

ZAKAY LAW GROUP, APLC

19 By: 
20 Shani O. Zakay, Esq.