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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CESAR CANDO, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ACADEMY VALET PARKING SERVICE,
INC., a California Corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No. 22STCV21833

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

Date: January 10, 2024

Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept.: 17

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220

1 I. INTRODUCTION

2 Plaintiff CESAR CANDO (“Plaintiff”) seeks preliminary approval of the Class Action and
3 PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary
4 relief for approximately 169 Class Members and 68 Aggrieved Employees. The basic terms of the
5 Agreement provide for the following:

6 1. The “**Class**” and “**Class Period**” shall mean “all current and former non-exempt, hourly
7 paid employees who worked for Defendant Academy Valet Parking Service, Inc. and/or Academy Valet
8 Parking LLC in California (“Class”) at any time during the period commencing July 6, 2018, through
9 June 23, 2023 (“Class Period”). Agreement at §§ 1.7, 1.12. As of the date of the Agreement, there were
10 approximately 169 Class Members who worked approximately 8,076 Workweeks during the Class
11 Period. Agreement at § 8.

12 2. The “**Participating Class Member**” refers to all Class Members who do not file a timely
13 and valid Request for Exclusion. Agreement at § 1.36.

14 3. The “**Aggrieved Employees**” and “**PAGA Period**” refers to all current and former non-
15 exempt, hourly paid employees who worked for Defendant Academy Valet Parking Service, Inc. and/or
16 Academy Valet Parking LLC in California (“Aggrieved Employee”) during the period between April
17 28, 2021, through June 23, 2023. Agreement at §§ 1.4, 1.32. Aggrieved employees do not have the
18 ability to opt-out of the PAGA portion of the settlement. Agreement at §§ 7.5.4; 5.1. As of the date of
19 the Agreement, there were approximately 68 Aggrieved Employees who worked approximately 1,359
20 pay periods during the PAGA Period. Agreement at § 8.

21 4. The “**Gross Settlement Amount**” is One Hundred Fifty Thousand Dollars and Zero Cents
22 (\$150,000.00). Agreement at §§ 1.23, 3.1. The Gross Settlement Amount is non-reversionary and
23 includes the following:

24 a. A “**Class Representative Payment**” in the amount of \$10,000 to Plaintiff for his
25 services on behalf of the Class Members. Agreement at §§ 1.14, 3.2.1;

26 ///

27
28 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

1 b. A payment of “**Attorneys’ Fees and Litigation Costs**” in the amount not to
2 exceed one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be
3 \$50,000.00 *and* litigation costs and expenses not to exceed \$20,000.00, to be paid to Class Counsel.
4 Agreement at §§ 1.5, 3.2.2. The Attorneys’ Fees shall be divided between Class Counsel as follows:
5 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement at § 1.5. Plaintiff has
6 reviewed the terms of the Agreement, including the monetary terms and releases, and executed the
7 Agreement. Declaration of Cesar Cando (“Cando Dec.”) at ¶ 10;

8 c. A “**PAGA Payment**” in the amount of \$5,000.00 shall be set aside from the Gross
9 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act
10 of 2004. Agreement at § 1.35. The Administrator, Apex Class Action, LLC (“Administrator”) shall pay
11 \$3,750.00 representing 75% of the PAGA Payment to the Labor and Workforce Development Agency
12 (“LWDA Payment”). Agreement at §§ 1.3, 1.28, 1.35. The Administrator shall distribute \$1,250.00
13 representing 25% of the PAGA Payment to the Aggrieved Employees (“Individual PAGA Payment”).
14 Agreement at §§ 1.25, 1.35; and

15 d. “**Administration Expenses Payment**” not to exceed \$7,000.00 payable to the
16 Administrator for, *inter alia*, the administration of the Class Notice and Individual Class Payments.
17 Agreement at § 3.2.3.

18 3. The “**Net Settlement Amount**” means the Gross Settlement Amount less the PAGA
19 Payment, Class Representative Payment Attorneys’ Fees and Litigation Costs, and the Administration
20 Expenses Payment, in the amount approved by the Court. Agreement at § 1.29. The Net Settlement
21 Amount is approximately \$58,000.00 which will be allocated to all Participating Class Members on a
22 pro-rata basis according to the number of Workweeks each Participating Class Member worked during
23 the Class Period. Agreement at § 1.24, 3.2.4. The entire Net Settlement Amount will be paid to all
24 Participating Class Members who do not opt out of the Settlement resulting in an average Individual
25 Class Payment of approximately **\$343.19**. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 8.

26 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
27 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
28 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement

1 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
2 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Participating Class
3 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
4 certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 8.

5 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
6 approval and falls within the range of reasonableness. The average Individual Class Payment to the
7 Class Members meets or exceeds awards in similar wage and hour class actions. Moreover, the
8 proposed Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
9 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 9.

10 II. FACTS AND PROCEDURE

11 A. Overview of the Litigation

12 Defendants provide valet parking and shuttle services throughout California, including Los
13 Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendants' current
14 and former non-exempt employees employed in California at any time during the Class Period.
15 Plaintiff worked for Defendants as a non-exempt employee in California from 2017 to June of 2021.
16 At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally
17 compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
18 Throughout his employment, Plaintiff was subject to Defendants' policies and procedures. JCL Dec.,
19 ¶ 10; Cando Dec. at ¶¶ 1-5.

20 Generally, Plaintiff claims that Defendants failed to pay for all time worked, including, time
21 spent donning and doffing and undergoing mandatory covid-19 health questionnaires, failed to provide
22 compliant meal and rest periods, failed to pay vacation wages, failed to furnish accurate itemized wage
23 statements, and failed to pay all wages upon separation. Defendants forcefully deny liability for each
24 of Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable employment
25 laws and raised several other significant defenses to Plaintiff's claims, including but not limited to,
26 asserting that it paid employees for all hours worked, maintained facially compliant meal and rest
27 period policies, issued compliant wage statements, and timely paid all wages due upon separation of
28 employment. JCL Dec., ¶ 11.

1 On April 28, 2022, Plaintiff served Defendant Academy Valet Parking Service, Inc. and the
2 Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
3 Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of
4 various provisions of the California Labor Code and applicable Industrial Welfare Commissions
5 (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys
6 General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 12.

7 On July 6, 2022, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case
8 Number 22STCV21833 (“Action”). The Action alleged nine causes of action against Defendant
9 Academy Valet Parking Services, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof.
10 Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194,
11 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4)
12 Failure to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the
13 Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab
14 Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized
15 Statements in Violation Of Cal. Lab. Code § 226; (7) Failure to Pay Wages When Due in Violation Of
16 Cal. Labor Code §§ 201, 202 and 203; (8) Failure to Pay Vacation Wages When Due in Violation Of
17 California Labor Code section 227.3; and (9) Violation of the Private Attorneys General Act [Labor
18 Code §§ 2698 *et seq.*]. JCL Dec., ¶ 13.

19 The Parties agreed relatively early to mediate the Action. On June 23, 2023, the Parties
20 participated in a full day mediation with retired jurist and mediator Hon. Brian C. Walsh (Ret.). After
21 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
22 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
23 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
24 14.

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

26 Months before filing the Action, Class Counsel began their pre-filing investigation into
27 Plaintiff’s complaints. Class Counsel’s investigation started with several lengthy interviews with
28 Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment,

1 including his wage statements and handwritten timesheets. At the conclusion of the interviews and
2 review of documents, Class Counsel determined that each Plaintiff's complaints justified further
3 inquiry. JCL Dec., ¶ 15.

4 Class Counsel subsequently requested Plaintiff's employee file from Defendants. In response,
5 Defendants produced various documents, including but not limited to, copies of Plaintiff's time and
6 payroll records. Class Counsel reviewed and analyzed the documents and determined the documents
7 appeared to substantiate Plaintiff's claim that Defendants failed to, among other things, record time,
8 pay for all time worked, issue accurate itemized wage statements, and provide compliant meal and rest
9 periods. JCL Dec., ¶ 16.

10 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
11 interest of both Parties to mediate the matter. To prepare for mediation, Defendants agreed to produce
12 a sample of time and payroll records. Class Counsel requested a sample that would provide between
13 85% and 90% confidence factor with a margin of error equal to or less than 10%. Based on this
14 criterion, Class Counsel ultimately accepted a sample of time and payroll records for 100% of the Class
15 Members for one-third of the pay periods during the Class Period for purposes of determining
16 Defendants' liability at the time of mediation. In arriving at these statistical parameters, Class Counsel
17 prioritized fairness to the Class Members by balancing the need for a statistically meaningful sample
18 to evaluate Defendants' liability at this early stage of litigation against preserving the settlement funds
19 for distribution to the Class Members. To obtain a statistical sampling with a greater confidence
20 factor/interval with a small margin of error would have greatly increased the investigative costs in this
21 matter. Specifically, the cost associated with manually converting handwritten timesheet and payroll
22 documents would have been reimbursed from the common fund settlement thereby reducing the Net
23 Settlement Amount to be allocated to the Class Members. Pursuant to the Parties agreement,
24 Defendants produced hundreds of pages of time and payroll data for Class Counsel to analyze. JCL
25 Dec., ¶ 17.

26 While Plaintiff's Counsel acknowledges that the industry standard for admissible extrapolation
27 is typically based on a confidence interval/factor of 95% with a margin of error of less than 3%, courts
28 throughout California have admitted statistical samples with a lesser confidence factor/interval and a

greater margin of error. See *e.g.*, *Ratanasen v. State of California, Department of Health and Human Service* (9th Cir. 1993) 11 F.3d 1467 (affirmed use of 3% random sample to prove damages). Class Counsel ultimately determined that in this case – where Defendants failed to utilize a timekeeping system and only maintained handwritten timecards – that the benefits to the Class Members of a one-third random sample of time and payroll data for all of the Class Members, i.e., preserving settlement funds for the Class Members, outweighed the need for manually converting handwritten timecards and driving up the cost of an expert report at this stage of the litigation. JCL Dec., ¶ 18.

Class Counsel then retained the statisticians and economists at Berger Consulting Group (“BCG”) to evaluate the Class Members’ payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG’s team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze Defendants’ time and payroll data. JCL Dec., ¶ 19.

BCG analyzed Defendants’ time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift, and average number of hours worked per workweek and pay periods during the Class Period. BCG also estimated the number of meal and rest period violations, the amount of unpaid wages, and the amount of off-the-clock work performed by the Class Members during the Class Period. JCL Dec., ¶ 20.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel’s models calculated Defendants’ potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 21.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff’s suitability as a putative class representative through interviews, background investigations, and analysis of his employment file; (2) evaluating all of Plaintiff’s potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Members’ time and payroll records; (5) analyzing Defendants’

labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 22.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 23.

C. The Parties Settled at Mediation

On June 23, 2023, the Parties conducted a full day of mediation with Hon. Brian C. Walsh (Ret.), a respected jurist and mediator of wage and hour class and representative actions. Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Participating Class Members

The Participating Class Members consist of all current and former non-exempt, hourly paid employees who worked for Defendant Academy Valet Parking Services, Inc., and/or Academy Valet Parking LLC in California at any time during the period commencing July 6, 2018, through June 23, 2023, who do not file a timely and valid Request for Exclusion. Agreement at §§ 1.7, 1.12, 1.36. At the time the Agreement was executed, there were approximately 169 Class Members that worked

1 approximately 8,076 Workweeks. Agreement 4.1.

2 2. The Settlement Consideration

3 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
4 Amount of \$150,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the
5 Participating Class Members; (2) a Class Representative Payment of \$10,000.00 to Plaintiff for his
6 services on behalf of the Participating Class Members; (3) a PAGA Payment in the amount of
7 \$5,000.00; (4) Administration Expenses Payment estimated at \$7,000.00; (5) Attorneys' Fees and
8 Litigation Costs in the amount of \$70,000.00, comprised of attorneys' fees equal to one-third of the
9 Gross Settlement Amount estimated to be \$50,000.00 and an estimated \$20,000.00 for actually incurred
10 litigation expenses. *See generally* Agreement at § 3.2.

11 Subject to the Court approving the Class Representative Payment, Attorneys' Fees and Litigation
12 Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount will be
13 distributed to each participating member of the Participating Class Member. Agreement at § 1.29.
14 There is no reversion to Defendants and Defendants must separately pay for their share of the employer
15 payroll taxes. Agreement at § 3.1.

16 3. The Funding Date and Installment Plan

17 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$150,000.00
18 Gross Settlement Amount in two (2) equal installments of \$75,000. The first installment shall be paid
19 on the later of June 23, 2024, or 30 days after the Court's Final Approval of the Settlement. The second
20 installment shall be paid the later of September 23, 2024, or within 120 days after the Court's Final
21 Approval of the Settlement. *See generally* Agreement at 4.3.

22 During the litigation, Defendants raised the possibility that it would be unable to satisfy a class-
23 wide settlement due to its financial condition. Class Counsel retained Certified Public Accountant,
24 Kenneth L. Creal, to review Defendants' tax returns for 2019, 2020, and 2021, which included
25 Defendants' balance sheet and income and expense figures for Defendants' business. Declaration of
26 Kenneth L. Creal ("Creal Dec.") at ¶ 3. Based on a review of Defendants' financial documents, Mr.
27 Creal determined that Defendants could not afford a settlement larger than the one contemplated here.
28 Id., ¶ 7. Moreover, the payment plan contemplated by the Agreement is appropriate here because it

allows for Defendants to work toward accumulating the settlement funds. *Id.*, ¶ 8.

4. Formula for Calculating Individual Class Payments

Each Participating Class Member will receive an Individual Class Payment. The Class Data provided by Defendants to the Administrator will include the number of eligible Workweeks for each Participating Class Member. The Individual Class Payments will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4. Each Individual Class Payments will be reduced by any legally mandated employee tax withholdings (*e.g.*, employee payroll taxes, etc.).

Given that there are approximately 169 Class Members, *the average gross recovery is approximately \$343.19* (Net Settlement Amount divided by Participating Class Members). JCL Dec., ¶ 9.

5. Release by Participating Class Members

Generally, as of the Funding Date, Plaintiff and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.40; 5.2.

6. PAGA Release by 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 §§ 1.41; 5.3.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$150,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement approval requires an early “preliminary” review by the trial court and a subsequent “final” review after notice of the settlement has been distributed to class members for their comments and objections.

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

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

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

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

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

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

3 The Parties participated in mediation with the highly respected mediator and retired judge Hon.
4 Brian C. Walsh (Ret.). Judge Walsh managed the Parties' expectations and provided a useful, neutral
5 analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-
6 4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation
7 weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d.
8 Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps
9 to ensure that the proceedings were free of collusion and undue pressure.")). At all times, the Parties'
10 negotiations were at an arm's length, adversarial, and non-collusive. Judge Walsh only arrived at his
11 proposal after hearing arguments, reviewing evidence, and evaluating the Parties' respective claims
12 and defenses. JCL Dec., ¶ 25.

13 Once the Parties agreed to the Mediator's proposal, the parties subsequently executed a binding
14 and enforceable Memorandum of Understanding. The Agreement is the final product of these mediated
15 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
16 compromise of the claims at issue. JCL Dec., ¶ 26.

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

19 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
20 the factual and legal issues in dispute. In addition to informal discovery, document review, data
21 analysis and legal research, Class Counsel also researched similar wage and hour actions. Although no
22 two cases are identical, this research provided Class Counsel with a marker to inform settlement
23 discussions and, ultimately, to measure this settlement against. The investigation allowed Class
24 Counsel to realistically assess the value of the claims and intelligently engage defense counsel in
25 settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶
26 27.

27 Class Counsel only agreed to enter the Settlement following their thorough investigation and
28 evaluation of Plaintiff's claims. Based on an investigation of the facts, applicable law, and marketplace

1 for similar settlements, and considering the risk of significant delay, uncertainty associated with
2 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this
3 Agreement to be in the best interests of the Class Members. Because the Settlement’s terms are fair,
4 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 28.

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

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

21
22 ///

23 ² Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to approve a
24 settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs
25 necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693; see *In re*
26 *Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop. v. Directv. Inc.* (C.D.
27 Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable even though it amounts to
28 only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.* (S.D.N.Y 2004) 225 F.R.D. 436,
460 (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration
when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.* (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“the
fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself,
weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
Justice v. Civil Serv. Comm. (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole rather than the
individual component parts, that must be examined for overall fairness”).

1 **a. The Gross Settlement Amount Meets the Recognized Range of**
2 **Reasonableness.**

3 The Gross Settlement Amount of \$150,000.00 is fair and reasonable considering the nature and
4 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
5 mediation, Class Counsel retained BCG to develop economic damage models measuring Defendants'
6 liability exposure while accounting for the uncertainties of continued litigation. The various models
7 were informed by Class Counsel's investigation, including the analysis of a significant sample of time
8 and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding
9 PAGA penalties) ranged between \$522,004.40 dollars ("Conservative Model") and \$1,325,773.15
10 dollars ("Aggressive Model") if successful at trial. This range reflects the uncertainty regarding several
11 of the claims, together with the uncertainty surrounding derivative liability for inaccurate wage
12 statements and waiting time penalties. Thus, the Gross Settlement Amount of \$150,000.00 represents
13 approximately between 11.31% ("Aggressive Model") and 28.74% ("Conservative Model") of
14 Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. The
15 following summarizes Defendants' estimated exposure. JCL Dec., ¶ 29.

16 (1) Estimated Exposure for Unpaid Wages

17 Plaintiff's primary claim in this Action alleges that Defendant failed to pay its employees for all
18 hours worked. Specifically, throughout the Class Period, Defendants failed to utilize a timekeeping
19 system. Instead, Defendants kept handwritten and rounded time records that artificially reflected
20 employees' schedules rather than the time they actually spent working. Based on Plaintiff's testimony
21 and Class Counsel's investigation, BCG estimated that Class Members and Aggrieved Employees spent
22 a total of 5 minutes of unpaid work every shift completing work-related tasks such as, among other
23 things, Covid-19 questionnaires, donning and doffing, and completing reports. As a result, Plaintiff,
24 Class Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all
25 the time they spent working under Defendants' control. JCL Dec., ¶ 30.

26 Defendants vigorously denied liability for this claim. Defendants argued, among other things,
27 that employees filled in their timesheets themselves and signed acknowledgments confirming the
28 accuracy of their timesheets. Further, Defendants argued that it instructed its employees to complete

1 reports during their shifts and that the Covid-19 questionnaires were not required by Defendants, but
2 rather optional questionnaires at the locations where employees were staffed. Finally, Defendants also
3 argued that employees had a set schedule and worked by themselves, unsupervised at Defendants'
4 client's locations, and therefore, rounding practices were permissible under these circumstances. Based
5 on these arguments, Plaintiff discounted this claim 75% and estimated Defendants' exposure for this
6 claim ranged from \$13,540.50 and approximately \$54,162.00. JCL Dec., ¶ 31.

7 (2) Estimated Exposure for Meal Period Violations.

8 Plaintiff also alleges that Defendants failed to provide compliant meal periods. Specifically,
9 Plaintiff alleges that as a result of their single-staffed shifts, Plaintiff, Class Members, and Aggrieved
10 Employees were not able to take timely and duty-free meal periods. Notably, Defendants did not
11 produce a single meal period waiver or on-duty meal period agreement applicable to Plaintiff, Class
12 Members, or Aggrieved Employees during the Class Period. Additionally, as stated above, 100% of the
13 Class Members' time and payroll data provided to Class Counsel showed all meal periods taken during
14 the Class Period were rounded to exactly thirty (30) minutes. Consequently, Plaintiff alleges that he is
15 owed meal period premiums for meal period violations that occurred during the Class Period. JCL
16 Dec., ¶ 32.

17 Conversely, Defendants argued that it provided Class Members and Aggrieved Employees with
18 the opportunity to take compliant meal periods. Thus, Defendants argued that there was no potential
19 liability for Plaintiff's alleged meal period violations and any claimed violations required a highly
20 individualized inquiry not suitable to class treatment. Consequently, Plaintiff applied a 50% discount
21 to this claim and estimated Defendants' exposure for this claim ranged from \$224,649.88 to
22 approximately \$449,299.75. JCL Dec., ¶ 33.

23 (3) Estimated Exposure for Rest Period Violations

24 Plaintiff also alleged that Defendants failed to provide compliant rest periods. On many
25 occasions, Plaintiff was the only employee scheduled to work during a particular shift. As a result,
26 Plaintiff's rest periods were often on-premises, on-duty, and/or on call, and often interrupted. Again,
27 Defendants denied liability and asserted that they maintained legally compliant rest period practices
28 throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary burdens establishing this

claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendants may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). Accordingly, Plaintiff's Conservative Model applied a 50% discount to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between approximately \$234,104.63 dollars to approximately \$374,567.40. JCL Dec., ¶ 34.

(4) Defendant's Exposure for Unpaid Vacation Wages

Plaintiff also alleged that Defendant failed to pay vacation wages. The California Supreme Court in *Suastez v. Plastic Dress-Up Co.*, concluded that "[t]he right to a paid vacation, when offered in an employer's policy or contract of employment, ***constitutes deferred wages for services rendered. . . . Once vested, the right is protected from forfeiture by section 227.3***" (*Suastez v. Plastic Dress-Up Co.* (1982) 21 Cal.3d 774, 784) (emphasis added.) Accordingly, section 227.3 and *Suastez* prohibit any forfeiture of a private employee's vested vacation time. While investigating this claim, Class Counsel found that Defendants did not have in place a policy that provided for accrual of vacation time. Additionally, Plaintiff's expert determined that there was no accrual or forfeiture of vacation wages during the Class Period. Accordingly, Plaintiff could not give any value to this claim and determined that Defendants' incurred no liability for this claim. However, Plaintiff provided a release for this claim because Plaintiff alleged that Defendants failed to pay vacation wages in the operative complaint. JCL Dec., ¶ 35.

(5) Estimated Exposure for Wage Statement Violations and Waiting Time Penalties

1 Plaintiff alleges that Defendants' alleged violations resulted in derivative violations of Labor
2 Code sections 203 and 226(a). Class Counsel considered the arguable presence of various penalties
3 and weighed the potential recoveries against probable defenses. Specifically, Defendants could argue
4 that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor
5 Code section 203. Additionally, Defendants could argue that Plaintiff could not show that Class
6 Members suffered an "injury" because of wage statement violations, as required by Labor Code section
7 226. Defendants could also argue that that meal and rest period violations do not entitle employees
8 like Plaintiff and the Class Members to pursue the derivative waiting time and itemized wage statement
9 penalties. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927). Plaintiff could not
10 give the penalty claims great weight given that they depended on proving the underlying claims, which
11 had their own risks. Plaintiff estimated Defendants' exposure for this claim to be between \$49,709.40
12 and approximately \$447,744.00. JCL Dec., ¶ 36.

13 (6) Defendants' PAGA Exposure

14 In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged between
15 \$2,140 ("Conservative Model") and \$183,700.00 ("Aggressive Model") if successful at trial. JCL Dec.,
16 ¶ 39. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.
17 *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith
18 amount" for PAGA Payment and "there is no indication that this amount was the result of self-interest
19 at the expense of class members," such amounts are generally considered reasonable. *Hopson v.*
20 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts
21 routinely approve of amounts for PAGA Payment in the range of zero to two percent of the settlement.
22 *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683
23 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of
24 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5
25 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of
26 zero to two percent of the total settlement).

27 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$5,000 which is 3.33%
28 of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment.

1 The LWDA Payment of \$3,750.00 represents seventy-five percent (75%) of the PAGA Payment and
2 will be paid to the LWDA. The Aggrieved Employee Payment of \$1,250 represents the remaining
3 twenty-five percent (25%) of the PAGA Payment, which shall be distributed to the Aggrieved
4 Employees and is within the range of PAGA Payment approved by courts and should be approved. JCL
5 Dec., ¶ 40.

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

14 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the
15 underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS
16 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on
17 behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the
18 defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for
19 each pay period the employee worked. Again, Defendants raised several defenses that presented serious
20 threats to the claims of the Plaintiff and the Aggrieved Employees. In addition to those arguments
21 discussed, *supra*, Defendants also argued that the Court of Appeals decision in *Cacho v. Eurostar, Inc.*
22 (2019) 43 Cal.App.5th 885, weakened Plaintiff's claims, on liability, value, and manageability as to the
23 rest period claims. JCL Dec., ¶ 41.

24 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, illustrates the risk of PAGA claims.
25 In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
26 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with
27 the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539.

Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

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

1 settlement. JCL Dec., ¶ 40.

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

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

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

12 Finally, continuing to litigate this action would require continued and extensive resources
13 coupled with significant Court time to proceed through trial and post-trial motions; which can often
14 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
15 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
16 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
17 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
18 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 41. “Avoiding such a trial and the
19 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
20 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
21 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
22 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

23 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$150,000.00 that is
24 roughly between 11.31% (“Aggressive Model”) and 28.74% (“Conservative Model”) of Defendants’
25 maximum class wide liability exposure for damages and statutory penalties. Given the amount of the
26 settlement here, as compared to potential value of the claims, offset by the various inherent risks to
27 continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 42.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Administrator will first verify addresses, then mail the proposed Class Notice in English and Spanish to all Class Members. The Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the procedure, and time period within which to requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Class Claims. Agreement at § 7.4. The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶¶ 44-45.

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

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

1 **C. The Court Should Preliminarily Approve the Class Representative Payment**

2 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
3 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
4 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
5 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
6 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
7 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
8 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
9 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
10 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
11 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
12 (2009) 175 Cal.App.4th 785.)

13 The Settlement provides for a Class Representative Payment of \$10,000.00 for Plaintiff. The
14 service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action,
15 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
16 the status of his case and the strategies for prosecuting the claims, and reviewing the proposed
17 Settlement to ensure that its terms are fair and provide adequate relief for the Class Members. JCL
18 Dec., ¶ 45; Cando Dec., ¶ 6-10.

19 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
20 Representative Payment once preliminary approval of the Settlement is granted. Plaintiff respectfully
21 submits that the above showing is sufficient for preliminary approval of the negotiated Class
22 Representative Payment. JCL Dec., ¶ 46.

23 **D. The Court Should Preliminarily Approve the Attorneys’ Fees and Litigation Costs**

24 The purpose of a payment to Class Counsel for Attorneys’ Fees and Litigation Costs in class
25 action litigation is to reward counsel who took the risk of non-payment and invested in a case that
26 achieved a substantial positive result for the class. California courts routinely award attorneys’ fees
27 equaling one-third or more of the potential value of the common fund, the amount requested under this
28 settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies show

that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Litigation Costs payment is fair and reasonable. JCL Dec., ¶ 47.

Plaintiff will file a formal motion for the negotiated Attorneys’ Fees and Litigation Costs, including arguments and lodestar information in support of the request, once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 48.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 49.

1. The Standard for Class Certification

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

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

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

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

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

Because all Class Members are Defendants’ current and former employees, the class is readily ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 50.

The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. JCL Dec., ¶ 51.

Plaintiff’s wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class Members. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive class discovery,

1 and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 52.

2 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
3 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
4 gained state court settlement approval of the same class-wide causes of action that are at issue in this
5 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
6 represent the interests of this Class. JCL Dec., ¶¶ 53, 56-62, Declaration of Shani Zakay ("SOZ Dec."),
7 ¶¶ 1-3.

8 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
9 each individual claim, the Class Members likely have little incentive to litigate their claims on an
10 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
11 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
12 adjudication. JCL Dec., ¶ 54. Finally, Class Counsel is not aware of any other pending matters or
13 actions asserting claims that will be extinguished or adversely affected by the Settlement. JCL Dec., ¶
14 55; SOZ Dec., ¶ 4.

15 IV. CONCLUSION

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

19 Dated: September 28, 2023

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.