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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SARINA YUAN JONG LAI, an individual,
on behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

v.

SUNMERRY CALIFORNIA INC., a
California corporation; SUNMERRY
GARDENA LLC, a California limited
liability company; SUNMERRY
MONTEREY PARK LLC, a California
limited liability company; SUNMERRY
SANTA ANITA LLC, a California limited
liability company; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 22CVSTCV12086

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

Date: January 17, 2024

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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I. INTRODUCTION

Plaintiff SARINA YUAN JONG LAI (“Plaintiff”) respectfully submits this memorandum in support of the motion for preliminary approval of the Class Action Complaint (*Sarina Yuan Jong Lai v. Sunmerry California Inc., et al.*, Case No. 22STCV12086 filed on or about April 8, 2022) (the “Action”) with Defendant SUNMERRY CALIFORNIA INC., SUNMERRY GARDENA LLC, SUNMERRY MONTEREY PARK LLC, and SUNMERRY SANTA ANITA LLC (“Defendants”), and seeks 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 Plaintiff’s motion for final approval of the settlement and entry of the Judgment, and Plaintiff’s 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. Plaintiff requests 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 Four Hundred Seventy-Five Thousand Dollars (\$475,000). The Gross Settlement Amount consists of the following elements: (1) the Individual Class Payments to Participating Class Members, (2) Individual PAGA Payments, (3) LWDA PAGA Payment, (4) Class Counsel Fees Payment, (5) Class Counsel Litigation Expenses Payment, (6) Class Representative Service Payment to Plaintiff, and (7) Administration Expenses Payment. (Agreement at § 1.23.) 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 ¶ 12.)

After Final Approval and the Judgment becoming final (the “Effective Date”), Defendants will fund the Gross Settlement Amount in one lump sum payment within fourteen (14) calendar

1 days (the “Funding Date”). (Agreement at § 4.3.) Within fourteen (14) calendar days after the
2 Funding Date, the Settlement Administrator will pay: all Individual Class Payments, all Individual
3 PAGA Payments, the LWDA Payment, the Administration Expenses Payment, Class Counsel Fees
4 Payment, Class Counsel Litigation Expenses Payment, and the Class Representative Service
5 Payment, all as determined by the Court at the Final Approval Hearing. (Agreement at § 4.4.) (Decl.
6 Zakay at ¶ 14.)

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

18 Class Members will have forty-five (45) calendar days after the mailing of the Class Notice
19 to exclude themselves or submit written objections. The deadlines will be extended an additional
20 fourteen (14) calendar days for Class Members whose notice is re-mailed. (Agreement at § 1.46.)
21 All Class Members who do not “opt out” will be deemed Participating Class Members and will be
22 bound by the Settlement. The Notice will advise the Class Members of their right to object to the
23 Settlement. (Agreement at § 1.38.) (Decl. Zakay at ¶ 15.)

24 Prior to mailing the Class Notice to the Class, the Settlement Administrator will perform a
25 search on the National Change of Address Database to update the Class Members’ addresses. The
26 Settlement Administrator will perform a skip-trace search and re-mail all Class Notices that are
27 returned on or before the Response Deadline. (Agreement at § 1.11.) If an Individual Class Payment
28 or Individual PAGA Payment check is not cashed within 180 days after the Settlement

1 Administrator's last mailing to the Participating Class Member, the funds from such uncashed check
2 will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Class
3 member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
4 Procedure Section 384, subd. (b). (Agreement at § 4.4.3.) (Decl. Zakay at ¶ 16.)

5 The Parties have agreed to use Apex Class Action, LLC as the Settlement Administrator.
6 (Agreement at § 1.2.) Payment of the expenses of the Settlement Administrator from the Gross
7 Settlement Amount shall be made for the expenses of effectuating and administering the Settlement.
8 The Settlement Administrator shall receive payment for services at an amount not to exceed
9 \$11,700. (Agreement at § 3.2.3.) (Decl. Zakay at ¶ 17.) A declaration from Apex Class Action,
10 LLC outlining its qualifications and providing for the estimated administration costs is filed
11 concurrently with this Motion.

12 Subject to Court approval, the Agreement provides for Class Counsel to be awarded (a) a
13 Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is
14 currently estimated to be \$158,333.33, and (b) a Class Counsel Expenses Payment of up to \$25,000.
15 (Agreement at § 3.2.2.) In support of this request, Class Counsel will provide evidentiary support,
16 including lodestar method calculations. Subject to Court approval, the Agreement provides for
17 payment of a Class Representative Service Payment to Plaintiff of no more than \$10,000.¹
18 (Agreement at § 3.2.1.) Defendants will not oppose a motion for approval of attorneys' fees, costs
19 and a Class Representative Service Payment consistent with the Agreement. (Agreement at §§ 3.2.1,
20 3.2.2.) (Decl. Zakay at ¶ 18.)

21 Subject to Court approval, \$25,000 will be paid for settlement of civil penalties under
22 PAGA, Labor Code Section 2698 *et seq.* (Agreement at § 3.2.5.) Pursuant to the requirements of
23 Labor Code §2699(i), the PAGA Penalties shall be allocated \$18,750.00 (75%) to the LWDA (the
24 "LWDA Payment") as the LWDA's share of the settlement of civil penalties and \$6,250.00 (25%)
25 will be paid to the Aggrieved Employees. (Agreement at § 3.2.5.) (Decl. Zakay at ¶ 19.)
26
27

28 ¹ Plaintiff will address the reasonableness of this award when filing her 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).

III. CASE BACKGROUND

On April 8, 2022, Plaintiff filed a Notice of Violations with the LWDA and served the same on Defendants and filed a class action complaint in this Court, asserting claims for: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide required meal breaks; (5) failure to provide required rest breaks; (6) failure to provide accurate itemized wage statements; (7) failure to provide wages when due; and (8) failure to reimburse employees for required expenses. On June 30, 2022, Plaintiff filed the operative First Amended Complaint to add a cause of action for violation of the Private Attorney General Act (“PAGA”) (the “Action”). (Decl. Zakay at ¶ 7.)

Plaintiff seeks to represent a putative class of all current and former non-exempt California employees who worked for Defendants at any time during the Class Period. (Agreement at § 1.5.) The Class Period is the period from June 30, 2018 through April 17, 2023. (Agreement at § 1.13.) The Complaint generally alleges the causes of action listed above. The Action seeks unpaid wages and premiums, statutory and PAGA penalties, attorneys’ fees, and litigation costs.² (Decl. Zakay at ¶ 8.)

Prior to mediation, the Parties engaged in investigation and the exchange of documents and information in connection with the Action. As part of this process, Defendants provided a significant sample of time records and payroll records, as well as other documents and information, to Class Counsel to review and analyze. On February 9, 2023, the Parties participated in an all-day mediation presided over by the Honorable Peter D. Lichtman (Ret.), a respected jurist and mediator of wage and hour class actions. Defendants argued that they have financial limitations that restrict their ability to pay a class settlement, and the Parties agreed to use a forensic accountant’s review of Defendants’ financial records to advise on Defendants’ ability to fund a settlement. Plaintiff subsequently retained Creal & Creal, an accountancy corporation that regularly performs litigation support and forensic accounting services, including providing opinions related to solvency. Defendants sent Kenneth Creal, CPA, of Creal & Creal a number of financial documents including tax returns from recent years, balance sheets, and profit and loss summaries. Kenneth Creal also

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

1 performed an investigation into the assets owned by Defendants and their owners. Following his
2 review, Kenneth Creal advised Plaintiffs via a written opinion that in his professional opinion, a
3 settlement in an amount of up to \$500,000 would be fair and not destroy Defendants' business.
4 Thereafter, Judge Lichtman issued a mediator's proposal. The Parties accepted and reached a
5 settlement based on Judge Lichtman's mediator's proposal and executed a binding Memorandum
6 of Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement
7 Agreement, which was signed by the Parties and is now presented to this Court for preliminary
8 approval. (Decl. Zakay at ¶ 9.)

9 Although a resolution has been reached, Defendants deny that they have violated any
10 applicable law, committed any wrong against Plaintiff or any other current or former employee, or
11 that they have otherwise damaged Plaintiff or any other current or former employee in any way.
12 Further, Defendants contend that class certification would be inappropriate for any reason other
13 than settlement. Plaintiff contends that Defendants violated California wage and hour laws. Plaintiff
14 further contends that the Action is appropriate for class certification on the basis that the Plaintiff's
15 claims meet the requirements for certification. Without admitting that class certification is proper,
16 Defendants have stipulated that the above Class may be certified for settlement purposes only. The
17 Parties agree that certification for settlement purposes is not an admission that certification would
18 be proper if the class certification issues were litigated. Further, the Agreement is not admissible in
19 this or any other proceeding as evidence that the Class could be certified absent a settlement. Solely
20 for purposes of settling the Action, the Parties stipulate and agree that the requirements for
21 establishing class certification with respect to the Class are satisfied. (Decl. Zakay at ¶ 10.)

22 Class Counsel has conducted a thorough investigation into the facts of the action and
23 diligently evaluated the Class Members' claims against Defendants. Prior to the mediation, counsel
24 for Defendants provided Class Counsel with access to the necessary data and information to
25 evaluate the claims by the Class. Class Counsel reviewed the production of documents and
26 conducted an extensive review of a significant sample of time records and data with the assistance
27 of an expert (Berger Consulting Group). Based on the foregoing and their own independent
28 investigation, evaluation and experience, Class Counsel believe that the Settlement is fair,

1 reasonable, and adequate and is in the best interest of the Class considering all known facts and
2 circumstances, including the risk of significant delay, defenses asserted by Defendants, and
3 potential appellate issues. (Decl. Zakay at ¶ 11.)

4 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT** 5 **TO GRANT PRELIMINARY APPROVAL**

6 When a proposed class-wide settlement is reached, the settlement must be submitted to the
7 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
8 p.11-87.) California “[p]ublic policy generally favors the compromise of complex class action
9 litigation.” (*Nordstrom Comm’n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
10 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
11 approved where the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor*
12 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
13 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983).)

14 The primary question presented on an application for preliminary approval of a proposed
15 class action settlement is whether the settlement is “within the range of possible approval.” (*Manual*
16 *for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
17 1982).) Preliminary approval is the prerequisite to giving notice so that “the proposed settlement...
18 may be submitted to members of the prospective Class for their acceptance or rejection.”
19 (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp.
20 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3
21 (C.D. Cal. 2010).) There is an initial presumption of fairness when a proposed settlement, which
22 was negotiated at arm’s length by counsel, is presented for court approval. (*Newberg*, 3d Ed., §11.41,
23 p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) [citation omitted]; see
24 also *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial
25 court’s determination that settlement was “fair, reasonable and adequate” where the settlement
26 “provided valuable benefits to the class ... that were ‘particularly valuable in light of the risks
27 plaintiff would have faced if she proceeded to litigate her case.’”).) However, the ultimate question
28

1 of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the
2 settlement is given to the Class Members and a final settlement hearing is held by the Court.

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

4 Approval of a proposed settlement of a class action suit is a matter within the broad
5 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at 1794.)
6 In considering a potential settlement for preliminary approval purposes, the trial court does not have
7 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
8 dispute, and need not engage in a trial on the merits. (*Wershba*, *supra*, 91 Cal. App. 4th at 239-40;
9 *Dunk*, *supra*, 48 Cal. App. 4th at 1807.) The Ninth Circuit explains, “the very essence of a settlement
10 is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice*
11 *v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).) The question
12 whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and
13 evaluation by the attorneys for the parties based upon a comparison of “the terms of the
14 compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d
15 Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of*
16 *TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)).) Thus, when analyzing the
17 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
18 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628.) With
19 regard to class action settlements, the opinions of counsel should be given considerable weight both
20 because of counsel’s familiarity with this litigation and previous experience with cases such as
21 these. (*Id.* at 625.) “The recommendations of plaintiffs’ counsel should be given a presumption of
22 reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979).) As a result, courts
23 hold that the recommendation of counsel is entitled to significant weight. (*Nat’l Rural Telecomms.*
24 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).)

25 **B. Factors To Be Considered In Granting Preliminary Approval**

26 In determining whether to grant preliminary approval, the court considers whether the “(1)
27 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations,
28 (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class

1 representatives or segments of the class, and (4) falls within the range of possible approval.” (*In re*
2 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007).) No one factor should be
3 determinative. Here, the Settlement meets the criteria for preliminary approval.

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

6 This Settlement is the result of extensive and hard-fought litigation and negotiations before
7 an experienced mediator. Defendants denied and continue to deny any wrongdoing or legal liability
8 arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it
9 is beneficial to the Class Members to put to rest the Released Class Claims.³ (Decl. Zakay at ¶ 20.)
10 Plaintiff and Class Counsel recognize the expense involved in continuing to litigate and ultimately
11 trying the Action against Defendants through possible appeals, which could take several years.
12 Class Counsel have also considered the uncertain outcome and risk of litigation, especially in
13 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
14 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
15 their evaluation, Plaintiff and Class Counsel have determined that the Settlement is in the best
16 interest of the Class Members. (Decl. Zakay at ¶ 20.)

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

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

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

28 ³ Released Class Claims is defined in the Settlement Agreement at § 5.2 and is limited to claims asserted in the Action.

1 Defendants' total potential exposure for the alleged violations at the time this Settlement
2 was negotiated was calculated by Berger Consulting Group, Plaintiff's damage expert. For the
3 Class, Plaintiff estimates that Defendants potentially could be subject to maximum liability for
4 damages in the amount of \$1,725,392.60 consisting of \$24,753.60 for unpaid wages due to off-the-
5 clock work, \$765,282 for rest periods, \$765,282 for meal periods, and \$170,075 for unreimbursed
6 business expenses. In addition, Plaintiff's expert calculated \$721,960 in waiting time penalties and
7 \$555,150 for wage statement penalties.⁴ Consequently, the Settlement of \$475,000 represents
8 approximately 27.53% of the maximum estimated labor code *damages*, and 15.82% of the
9 maximum combination of labor code damages and penalties to the Class, assuming these amounts
10 could be proved at trial (excluding PAGA Penalties). Given the amount of the Settlement compared
11 to the potential value of claims in this case and taking into consideration the defenses and
12 contentions raised by Defendants, the Settlement is fair and reasonable. The goal of this litigation
13 – to provide compensation to Class Members for allegedly unpaid time and for allegedly missed
14 meal and rest breaks – has been met. (Decl. Zakay at ¶ 6.)

15 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
16 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
17 amount constituted roughly 10% of the estimated actual damages to the class, determining it was
18 fair, reasonable, and adequate. Here, the settlement consideration exceeds the percentage approved
19 in *Stovall-Gusman*, and as a result, is entitled to preliminary approval.

20 Moreover, where both sides face significant uncertainty, the attendant risks favor settlement.
21 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) Here, several defenses asserted by
22 Defendants presented serious threats to the claims of the Plaintiff and the other Class Members. For
23 instance, Defendants asserted that the employment practices complied with all applicable Labor
24 Laws. Specifically, Defendants argued that the Supreme Court decision in *Brinker v. Superior*
25

26 ⁴ While Plaintiff alleged claims for statutory penalties, they recognize that this claim is subject to various defenses
27 asserted by Defendant. Plaintiff's claims pursuant to Labor Code Section 226 and various PAGA penalties are also
28 subject to a good faith defense as to whether any premium wages 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... [therefore,
defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements").)

1 *Court*, 53 Cal. 4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims on liability, value,
2 and class certifiability as to the meal and rest period claims. Before and during the mediation,
3 Defendants argued that they adopted and strictly enforced lawful policies and afforded Plaintiff and
4 the Class Members compliant meal and rest breaks, and that employees like the Plaintiff *chose* not
5 to take compliant breaks. Defendants argued, therefore, that under the *Brinker* decision they have
6 no liability for the missed breaks whatsoever. Defendants additionally contend that the underlying
7 merits of Plaintiffs' wage and hour claims are deficient because, among other reasons, there is
8 insufficient evidence to prove that: (1) any of the underlying violations actually occurred, (2) any
9 of the putative class members were entitled to expense reimbursement, (3) Defendants' wage
10 statements fully complied with the law, and (4) Defendants compensated all putative class members
11 for all the time they spent performing work for, or were under the control of, Defendants. (Decl.
12 Zakay at ¶ 21.)

13 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
14 to obtain class certification and thereby not recover on behalf of any employee other than herself.
15 Defendants argued that the individual experience of each employee varied with respect to the
16 alleged claims. While other cases have approved class certification of wage and hour claims, class
17 certification in this action would have been hotly disputed and was not a foregone conclusion,
18 because, among other reasons, Defendants contend that: (1) Plaintiff will not be able to identify
19 sufficiently pervasive patterns and practices to justify class claims, (2) Defendants policies and
20 procedures as set forth in their employee materials complied with all California laws, and (3)
21 Plaintiff herself did not suffer all of the alleged violations for which she seeks to be class
22 representative. Even if class certification was successful, as demonstrated by the California
23 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
24 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
25 (Decl. Zakay at ¶ 22.)

26 Here, the risk of further litigation is substantial. After arm's-length negotiations between
27 experienced and informed counsel, the Parties recognized the potential risks and agreed on the
28 Settlement.

1 Finally, Plaintiff's expert calculated that Defendants could be liable for PAGA penalties in
2 an amount of \$1,907,850. However, Courts have considerable discretion to reduce the penalty
3 award. Some trial courts have awarded no civil penalties, even when Labor Code violations are
4 established. *See In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award
5 of \$0 in PAGA penalties in a wage and hour class action). To recover any PAGA penalties, Plaintiff
6 would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v.*
7 *McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) Here, Plaintiff
8 would need to prove that each Aggrieved Employee suffered a violation for each pay period the
9 employee worked. Again, Defendants raised several defenses that present serious threats to the
10 claims of the Plaintiff and the Aggrieved Employees. In all, Plaintiff's PAGA liability exposure is
11 hotly contested. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of
12 PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial
13 court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith
14 attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such
15 reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff prevailed at
16 trial, and even then, the PAGA penalties were reduced by 90%. (Decl. Zakay at ¶ 23).

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

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

24 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration
25 for her service, and for the risks undertaken on behalf of the Class. Plaintiff performed her duties
26 admirably by working with Class Counsel. The Plaintiff's requested payment of \$10,000 is well
27 within the accepted range of awards for purposes of preliminary approval. (*See* Decl. Zakay at ¶
28 24.)

1 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
2 **Preliminary Approval Of The Settlement**

3 The stage of the proceedings at which this Settlement was reached supports preliminary
4 approval and ultimately, final approval of the Settlement. Class Counsel has conducted a thorough
5 investigation into the facts of the class action, including before this action was filed. Prior to the
6 mediation, Class Counsel performed significant review and analysis of Defendants' documents,
7 time records and pay records via both formal and informal discovery. Class Counsel engaged in a
8 thorough research and analysis of the relevant claims and data. Class Counsel are experienced with
9 the claims at issue here, as Class Counsel previously litigated and settled similar claims in numerous
10 other actions. Accordingly, the Settlement did not occur until Class Counsel possessed sufficient
11 information to make an informed judgment regarding the likelihood of success on the merits and
12 results that could be obtained through further litigation. (Decl. Zakay at ¶ 25.)

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

14 Plaintiff contends that the proposed Settlement meets all the requirements for class
15 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
16 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
17 should conditionally certify the Class for settlement purposes only, defined as follows:

18 The "Class" or "Class Members" includes:

19 **"All current and former non-exempt California employees who worked for**
20 **Defendants at any time during the period between June 30, 2018 and April 17,**
21 **2023. (Agreement at § 1.5.)**

22 The Parties estimate that there are 23,319 workweeks worked by 496 Class Members. (Decl. Zakay
23 at ¶ 27.)

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

25 Plaintiff seeks certification of this Class for settlement purposes under California Code of
26 Civil Procedure section 382. Although Defendants dispute that the Plaintiff can satisfy these
27 requirements for any reason other than for purposes of settlement, in the interest of resolving the
28 Action, Defendants will not dispute that the proposed Class should be certified for purposes of
settlement only.

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

2 Here, the approximately 496 current and former employees that comprise the Class are
3 sufficiently numerous for class certification. (*See Bowles v. Superior Court*, 44 Cal.2d 574 (1955)
4 (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934
5 (1981) (class of 48 members satisfies numerosity requirement.)) All of these employees are
6 ascertainable because the Class Members can readily be determined through examination of
7 Defendants’ employment files. (Decl. Zakay at ¶ 27(a).) For purposes of settlement only,
8 Defendants will not oppose a finding of numerosity.

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

10 Predominance of common issues of law or fact does not require that the common issues be
11 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
12 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992).) “Predominance is a comparative
13 concept, and ‘the necessity for class members to individually establish eligibility and damages does
14 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334.) Commonality exists
15 if there is a predominant common legal question regarding how an employer’s policies impact its
16 employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1536 (2008) (“[T]he
17 common legal question remains the overall impact of Diva’s policies on its drivers.”).) Whether
18 Plaintiff is likely to prevail on her theory of recovery is irrelevant at the certification stage since the
19 question is “essentially a procedural one that does not ask whether an action is legally or factually
20 meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).)

21 Here, Plaintiff contends that common questions of law and fact are present. Specifically: (i)
22 whether Defendants failed to pay Class Members for all hours worked; (ii) whether Defendants
23 failed to provide meal and rest periods to Class Members; (iii) whether Defendants failed to timely
24 furnish accurate, itemized and legal wage statements; (iv) whether Defendants subjected Class
25 Members to unfair business practices; (v) whether Defendants failed to reimburse Class Members
26 for required business expenses; (vi) whether Defendants are liable for attorneys’ fees and costs.
27 (Decl. Zakay at ¶ 27(b).) Defendants will not oppose a finding of commonality for purposes of
28 settlement only.

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

2 “The typicality requirement is met when the claims of the Plaintiff [] arise from the same
3 event or are based on the same legal theories.” (*Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th
4 Cir. 1983).) In *Hanlon v. Chrysler Co.*, 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
5 “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably
6 coextensive with those of absent class members; they need not be substantially identical.” (50 F.3d
7 at 1020.) Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like every
8 other member of the Class was employed by Defendants and is a member of the Class. Plaintiff was
9 subject to the same employment practices, meal and rest periods, and received similar wage
10 statements. Thus, the claims of the Plaintiff and the Class Members arise from the same course of
11 conduct by the Defendants, involve the same employment policies, and are based on the same legal
12 theories. (Decl. Zakay at ¶ 27(c).) For purposes of settlement only, Defendants will not oppose
13 typicality.

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

15 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
16 not have any conflicts of interest with other Class Members, and (b) will prosecute the case
17 vigorously on behalf of the class. (*See Hanlon*, 150 F.3d at 1020.) Plaintiff is well aware of her
18 duties as a representative of the Class and has actively participated in the prosecution of this case
19 to date. First, Plaintiff effectively communicated with Class Counsel, provided documents to them
20 and participated investigation and negotiations in the Action. Second, Plaintiff retained competent
21 counsel who are experienced in employment class actions. Third, there is no antagonism between
22 the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek
23 monetary relief under the same set of facts and legal theories. (Decl. Zakay at ¶ 27(d).)

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

25 To certify a class, the Court must determine that a class action is superior to other available
26 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
27 common issues will reduce litigation costs and promote greater efficiency, a class action may be
28 superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th

1 Cir. 1996).) Here, a class action is the superior mechanism for resolution of the claims as pled by
2 the Plaintiff. Defendants will not dispute such a finding for purposes of this settlement only.

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

4 The Court has broad discretion in approving a practical notice program. The Parties have
5 agreed upon procedures for providing the Class Members with written notice of the Settlement like
6 those approved and utilized in hundreds of class action settlements. The Class Notice, drafted jointly
7 and agreed upon by the Parties through their respective counsel and to be approved by the Court,
8 includes all relevant information. (See Exhibit A to the Agreement.) The Class Notice will state that
9 the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to
10 them to request exclusion or to submit an objection. The Class Members will be given an
11 opportunity to object to the terms of the Agreement and/or the request for attorneys' fees and costs
12 and to participate at the final approval hearing. Class Members will be instructed to contact the
13 Settlement Administrator and/or Class Counsel, not the Court. This notice program was designed
14 to meaningfully reach the Class Members and advise them of all pertinent information concerning
15 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
16 process, is the best notice practicable under the circumstances, and constitutes due and sufficient
17 notice to all persons entitled thereto. The Class Notice provides information on the terms and
18 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
19 time, and place of the final settlement approval hearing; and the procedure and deadline for
20 submitting comments, objections, and requests for exclusion. The Class Notice complies with Rules
21 of Court 3.766 and 3.769(f). (Decl. Zakay at ¶ 29.)

22 **VII. CONCLUSION**

23 Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement
24 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
25 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
26 Preliminary Approval.

27 DATED: December 20, 2023

ZAKAY LAW GROUP, APLC

28 By: 
Shani O. Zakay, Esq.