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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JANENE CARACAUS, an individual, on behalf of herself, and on behalf of all persons similarly situated, Plaintiff, vs. DANNY'S HOME HEALTHCARE, INC., a California Corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 37-2022-00020531-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: November 1, 2024 Time: 9:00am Judge: Hon. James A. Mangione Department: C-75 Trial Date: N/A Action Filed: May 31, 2022

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I. INTRODUCTION

Plaintiff JANENE CARACAUS ("Plaintiff") seeks preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 113 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class Members," "Class,"** and **"Class Period"** shall mean all non-exempt employees who are or previously were employed by Danny's Home Health Care, Inc., (hereinafter "Defendant") and performed worked in California during the period between May 31, 2018, to August 1, 2024 ("Class Period"). Agreement at § I(I). The Class is comprised of approximately 113 individuals who collectively worked approximately 6,547 Workweeks during the Class Period. Agreement at §III(A)(2).

2. The **"Settlement Class Members"** or **"Settlement Class"** means all Class Members who have not submitted a timely and valid request for exclusion by the Response Deadline. Agreement at § I(OO).

3. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean all non-exempt employees who are or previously were employed by Danny's Home Health Care, Inc., (hereinafter "Defendant") and performed worked in California during the period between March 25, 2021, to August 1, 2024 ("PAGA Period"). Agreement at §§ I(C), (Z). At the time of mediation, there were approximately 128 Aggrieved Employees during the PAGA Period.

4. The "**Gross Settlement Amount**" is $265,000.00. Agreement at § I(Q). Defendant will pay the Gross Settlement Amount in 18 equal monthly installments (each payment of $14,722.22) with the initial payment due on Effective Date (60 days after the final approval order) and every payment thereafter will be due on the 1st of each month. Agreement at §III(A)(4). The Gross Settlement Amount is all-in with no reversion to Defendant and includes the following:

a. A "**Service Award**" in the amount of $10,000.00 or in an amount that the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement Payment and her Individual

[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.

Aggrieved Employee Payment, in recognition of her efforts and risks in assisting with the prosecution of the Action. Agreement at §§ I(LL); III(L)(9);

b. An award of "**Attorneys' Fees**" and "**Attorneys' Expenses**" consisting of attorneys' fees not to exceed one-third of the Gross Settlement Amount, currently estimated to be $88,333.33 paid to Class Counsel and attorneys' expenses up to $25,000.00. Agreement at §§ I(E-F) and III(L)(10);

c. A "**PAGA Payment**" of $10,000.00 to be allocated from the Gross Settlement Amount, with 25% of the payment going to the Aggrieved Employees ("Aggrieved Employee Payment") and 75% of the payment going to the Labor and Workforce Development Agency ("LWDA Payment"). Agreement at §§ I(AA) and III(L)(11); and

d. "**Claims Administration Expenses**" not to exceed $5,490.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice Packet and Individual Settlement Payments. Agreement at §§ I(F) and III(L)(12).

5. The "**Net Settlement Amount**" means the Gross Settlement Amount, less Attorneys' Fees and Attorneys' Expenses, Service Award, Claim Administration Expenses and PAGA Payment. Agreement at § I(T). The Net Settlement Amount is approximately $126,176.67 which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately ***$1,116.61***. JCL Dec., ¶ 6.

6. The "**Released Class Claims"** means all claims alleged, or reasonably could have been alleged based on the facts alleged, in the operative complaint in the *Caracaus v. Danny's Home Health Care, Inc.,* 37-2022-00020531-CU-OE-CTL Action, including (1) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 et seq.); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512, 516 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 et seq.); (7) Failure to Provide Wages

When Due (Labor Code §§ 201, 202, 203, 204); (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802); and (9) Violation of the Private Attorneys General Act (Labor Code §§ 2698 et seq.), which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, unemployment insurance, disability, social security, worker's compensation, wrongful termination and class claims outside of the Class Period. Agreement §§I(HH) and III(B).

7. The **"Released PAGA Claims"** means all PAGA claims alleged in the operative complaint in the *Caracaus v. Danny's Home Health Care, Inc.,* 37-2022-00020531-CU-OE-CTL Action and Plaintiff's PAGA notice to the LWDA, including (1) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 et seq.); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512, 516 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226 and 226.2 et seq.); (7) Failure to Provide Wages When Due (Labor Code §§ 201, 202, 203, 204); (8) Failure to Reimburse Employees for Required Expenses (Labor Code § 2802); and (9) Violation of the Private Attorneys General Act (Labor Code §§ 2698 et seq.), which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, unemployment insurance, disability, social security, workers' compensation, wrongful termination, and PAGA claims outside of the PAGA Period. Agreement §§ I(II) and III(C).

An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length. The Settlement confers substantial benefits to the Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra),* and Defendant's financial difficulties in this case. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial. JCL Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

On March 25, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). JCL Dec., ¶ 10.

On May 31, 2022, Plaintiff filed the original Complaint, alleging nine separate wage and hour claims. JCL Dec., ¶ 11.

B. Class Counsels' Investigation

Class Counsel thoroughly investigated the claims and damages. The investigation included, among other things, time and payroll records for a sample of Class Members, aggregate workweek and pay period data, and copies of applicable handbooks, policies, and procedures. JCL Dec., ¶¶ 12-14.

C. The Parties' Settlement Negotiations

On June 26, 2023, the Parties participated in a full day mediation with Hon. Steven R. Denton (Ret.) an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without a settlement. Thereafter, Defendant produced financial records and statements to Kenneth L. Creal, who provided his opinion of Defendant's financial state and what he believed Defendant could pay in terms of a settlement. Using the opinion of Mr. Creal, the Parties continued settlement negotiations until an agreement was reached, which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU"). JCL Dec., ¶ 15. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 16.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $265,000.00, meets the standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases,* 180 Cal.App.4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

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

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

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

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

The Parties participated in mediation with highly respected mediator Hon. Steven R. Denton (Ret.). Judge Denton managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) The mediation concluded without a settlement. Thereafter, Defendant produced financial records and statements to Kenneth L. Creal, who provided his opinion of Defendant's financial state and what he believed Defendant could pay in terms of a settlement. Using the opinions of Mr. Creal, the Parties continued settlement negotiations until an agreement was reached. At all times, the Parties' negotiations were at an arm's length, adversarial, and non-collusive. After reaching an agreement in the principle, the Parties drafted and negotiated a long-form settlement which is the subject of the instant motion. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 15-16.

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

Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. The 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. Based on this investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, Defendant's financial state, and the various defenses asserted by Defendant, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶¶ 12-14.

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

The Gross Settlement Amount of $265,000 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.'" (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

The Gross Settlement Amount of $265,000 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to mediation, Class Counsel retained Berger Consulting Group ("BCG") to develop economic damage models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Class Counsel projected Defendant's liability exposure

[2] Courts recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein* (2d. Cir. 2002) 464 F.2d 689, 693.

for *class claims* (excluding PAGA penalties) at $526,686.00 and Defendant's *maximum* exposure (including waiting time and wage statement penalties and PAGA penalties) at $2,094,186. Thus, the Gross Settlement Amount of $265,000 represents approximately 50.31% of Defendants' *class-wide* liability exposure and 12.65% of Defendant's *maximum* exposure. The following summarizes Defendant's estimated exposure. JCL Dec., ¶ 17.

(a) Estimated Damages for Failure to Pay for All Hours Worked

Plaintiff's primary claim in this action is that Defendant failed to pay its employees for all hours worked. Specifically, Plaintiff asserted Defendant failed to separately compensate Plaintiff and Class Members for all non-productive time, including but not limited to, time spent traveling between visits and time spent filling out patient charts before and after visits and preparing treatment plans. As a result, Defendant failed to compensate Plaintiff and Class Members for all minimum and overtime wages owed and failed to provide accurate itemized wage statements. JCL Dec., ¶ 18. Further, Defendant's written policy provided that Plaintiff and Class Members were entitled to compensation in the form of an hourly rate and piece-rate. However, the wage statements issued to Plaintiff exemplified Defendant's failure to follow its own written policy to pay an hourly rate in addition to a piece-rate. Plaintiff was never compensated an hourly rate for any of the work she performed during non-productive time. All of Plaintiff's paystubs evidence that she was only paid a pre-determined piece-rate for each task pursuant to her compensation plan set by Defendant. JCL Dec., ¶ 18.

Defendant vigorously denied liability for this claim. Defendant argued that all Class Members were properly paid minimum and overtime compensation for all hours worked. Plaintiff estimated Defendant's exposure for this claim at $438,309. JCL Dec., ¶ 19.

(b) Estimated Damages for Rest Period Violations

Plaintiff also alleged that Defendant consistently violated the law by failing to provide compliant rest periods. Plaintiff and Class Members were often provided late, short, and interrupted rest periods and sometimes were required to work through their rest periods. Notably, Defendant's business model of scheduling one care person per client made it impossible for Plaintiff and Class Members to be relieved of their duties in order to take rest periods. JCL Dec., ¶ 20.

Defendant argued, *inter alia*, that it provided Class Members with compliant rest periods and maintained facially complaint rest period policies. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal and rest period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. Plaintiff estimated Defendant's exposure for this claim at $98,616. JCL Dec., ¶ 21.

(c) Estimated Damages for Failure to Reimburse Necessary Business Expenses

Plaintiff alleged that Defendant required the Settlement Class Members to use their personal cell phone and personal vehicles as a result of and in furtherance of their job duties as employees for Defendant but were not reimbursed or indemnified by Defendant for the cost associated with their cell phone or vehicle use. JCL Dec., ¶ 22. Plaintiff and Class Members were required to use personal electronic devices to communicate with fellow employees and to receive work-related calls, emails and text messages. Separately, Plaintiff and Class Members were also required to use their personal vehicles and incur additional expenses for gas to travel between various locations for work. Defendant did not reimburse Plaintiff for any necessary business expenses. Plaintiff estimated Defendant's exposure for this claim at $104,938. JCL Dec., ¶ 23.

(d) Exposure for Wage Statement Violations and Waiting Time Penalties

Plaintiff also alleged that Defendant's labor code violations resulted in derivative liability for wage statement violations and waiting time penalties. Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses. Specifically, Defendant argued that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendant argued that Plaintiff could not show that Class Members suffered an "injury" because of wage statement violations, as required by Labor Code section 226. (*Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 927.) Notwithstanding the uncertain nature of the claims, Plaintiff estimated Defendant's exposure for these penalties to be approximately $675,600. JCL Dec., ¶ 24.

(e) Defendant's PAGA Exposure

Class Counsel's damage models also estimated Defendant's exposure for PAGA Payment. At the time of mediation, Plaintiff estimated Defendant's PAGA exposure to be approximately $891,900 if successful at trial. JCL Dec., ¶ 25-26.

The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. JCL Dec., ¶ 27.

Here, the Parties negotiated a good faith PAGA Payment in the amount of $10,000 which is 3.77% of the Gross Settlement Amount. This amount falls within the range of approved PAGA Payment. 75% of the PAGA Payment ($7,500.00) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining 25% of the PAGA Payment ($2,500.00) being distributed to the PAGA Class Members, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 28-29.

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of $0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with 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.

4. <u>Inherent Risks of Continued Litigation Support Preliminary Approval.</u>

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). Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶ 30-31.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions, which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶¶ 32. "Avoiding such a trial and the subsequent appeal in this complex case strongly militates in favor of settlement rather than further protracted and uncertain litigation." (*Nat'l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, "unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*Id*. at 526.)

Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 33.

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

The Class is 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 Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the procedure, and time 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 § III(K). 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., ¶¶ 34. Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet satisfy due process. JCL Dec., ¶¶ 35.

[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.

C. The Court Should Preliminarily Approve the Service Award

Enhancement payments "are fairly typical in class action cases." (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of $10,000).) Enhancement payments "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez,* 563 F.3d at 958-59.)

The Settlement provides for a Service Award of $10,000.00 for Plaintiff. JCL Dec., ¶¶ 36-37. Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 38.

D. The Court Should Preliminarily Approve the Attorneys' Fees and Attorneys' Expenses

The purpose of the attorneys' fees in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equaling one-third or more of the potential value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").)

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 Settlement Payment illustrates the demonstrably positive outcome for the Class Members. Considering the positive outcome, and considering the supporting authority, the proposed Attorneys' Fees and reimbursement of Attorneys' Expenses are fair and reasonable. JCL Dec., ¶ 39.

Plaintiff will file a formal motion for the Attorneys' Fees and Attorneys' Expenses 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., ¶ 40.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 41.

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. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

2. The Proposed Class is Ascertainable and there is a Well-Defined Community of Interest Among the 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 Defendant's current and former non-exempt employees, the class is readily ascertainable from Defendant's regular business records. JCL Dec., ¶ 42. The statutes relating to each of Plaintiff's claims apply with equal force and effect to the entire Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability, if any, 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. JCL Dec., ¶ 43.

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. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed Class Members were subject to and seeks the same relief. Plaintiff has already demonstrated her ability to advocate for the interests of the Class Members by initiating this litigation, providing documents and information, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 44.

Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. JCL Dec., ¶¶ 5, 46-53; Declaration of Shani Zakay, ¶¶ 1-4.

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual claim, the Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. JCL Dec., ¶ 45.

IV. CONCLUSION

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

Dated: October 9, 2024

JCL LAW FIRM, APC

By: ______________________________

Jean-Claude Lapuyade, Esq.