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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

EDWARD GRAY and JESSICA MUTO, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. SKY HOTELS, INC., a California corporation; MODCO 2, LLC, a California limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. CV-22-004004 [Complaint Filed: September 6, 2022] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: December 16, 2025 Time: 8:30 a.m. Judge: Hon. John D. Freeland Department: 23

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I. INTRODUCTION

Plaintiffs EDWARD GRAY, JESSICA MUTO, TAMMY LALLIER, JONATHAN HARRISON-LIAM OLSON II, and KEILY VILLEDA ("Plaintiffs") seek 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 515 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 employed by Defendants SKY HOTELS, INC. and/or MODCO 2, LLC and/or CY3, LLC and/or J.R.P. HOSPITALITY, INC. and/or NIMESH PATEL and/or SUREKHA PATEL and/or MAHESH PATEL (collectively "Defendants") and performed work in California during the period between September 6, 2018 and February 10, 2024 ("Class Period")[2]. Agreement at §§ I(G)(J). The Class is comprised of approximately 515 individuals who collectively worked approximately 14,263 Workweeks during the Class Period. Agreement at §§III(A)(2).

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

3. The **"Aggrieved Employees"** and **"PAGA Period"** shall mean all non-exempt employees employed by Defendants in the State of California at any time during the period between July 1, 2021 and February 10, 2024 ("PAGA Period")[3]. Agreement at §§ I(B), (X). At the time of mediation, there were approximately 358 Aggrieved Employees during the PAGA Period.

4. The "**Gross Settlement Amount**" is Four-Hundred Eighty-Five Thousand Dollars and Zero Cents ($485,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. "**Service Awards**" in the amount of Ten Thousand Dollars ($10,000.00) to each Plaintiff in recognition of their efforts and risks assumed in assisting with the prosecution of the Action,

[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.

[2] The Class Period may be modified by Defendants in the event the escalator clause is triggered, pursuant to Section III(C)(2) of the Agreement.

[3] The PAGA Period may be modified by Defendants in the even the escalator clause is triggered, pursuant to Section III(C)(2) of the Agreement.

and in exchange for a general release, as well as confidentiality and non-disparagement clauses in favor of Released Parties. Agreement at §§ III(F), III(Y).

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 One Hundred Sixty-One Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($161,666.67) paid to Class Counsel and attorneys' expenses not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00). Agreement at §§ I(D)(E), III(O)(10);

c. A "**PAGA Payment**" of Thirty Thousand Dollars and Zero Cents ($30,000.00) 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. Agreement at § I(V); and

d. "**Claims Administration Expenses**" not to exceed $9,790.00 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)

5. The "**Net Settlement Amount**" refers to the portion of the Gross Settlement Amount less Attorneys' Fees and Attorneys' Expenses, Service Awards, Claims Administration Expenses and the PAGA Payment. Agreement at § I(R). The Net Settlement Amount is approximately $203,543.33 which will be allocated to all Participating Class Members on a pro-rata basis according to the number of Workweeks each Participating Class Member worked during the Class Period. The entire Net Settlement Amount will be paid to all Participating Class Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment of approximately ***$395.23***. JCL Dec., ¶ 6.

6. The "**Released Class Claims"** shall mean and include, but are not limited to all claims alleged by Plaintiffs in any complaints in the Action, or which could have been alleged by Plaintiffs in any complaints in the Action by reason of or in connection with any matter or fact set forth or referred to in the complaints, which include claims for (i) unfair competition in violation of California Business & Professions Code section 17200 et seq., (ii) failure to pay minimum wages in violation of Cal. Labor Code sections 1194, 1197, & 1197.1, (iii) failure to pay overtime wages in violation of Cal. Labor Code sections 510 et seq., (iv) failure to provide required meal periods in violation of Cal. Labor Code

sections 226.7 and 512 and applicable wage order, (v) failure to provide required rest periods in violation of Cal. Labor Code sections 226.7 and 512 and applicable wage order, (vi) failure to reimburse employees for required expenses in violation of Cal. Labor Code sections 2802, (vii) failure to provide accurate itemized statements in violation of Cal. Labor Code section 226, and (viii) failure to provide wages when due in violation of Cal. Labor Code sections 201, 202, and 203, and which also include without limitation any and all claims, debts, liabilities, demands, actions, or causes of action, damages, interest, penalties, wages, and equitable relief arising from or relating to the Released Class Claims during the Class Period as defined herein. Without limiting the foregoing, the Released Class Claims shall also include claims for (i) failure to compensate for all hours worked (California Industrial Welfare Commission Order 4-2001/5-2001, California Code of Regulations Title 8 Section 11040/11050, and California Labor Code section 1198), (ii) failure to pay minimum wages (California Labor Code sections 1194, 1194.2, 1197), (iii) failure to pay overtime wages (California Industrial Welfare Commission Order 4-2001/5-2001, California Code of Regulations Title 8 Section 11040/11050, California Labor Code section 510), (iv) failure to provide accurate itemized wage statements (California Labor Code section 226), (v) failure to pay wages owed every pay period (California Labor Code section 204), (vi) failure to pay wages when employment ends (California Labor Code sections 201, 203), (vii) failure to provide rest breaks/rest periods, (viii) failure to provide meal breaks/meal periods, (ix) failure to reimburse business expenses and failure to indemnify, (x) waiting time penalties, (xi) violation of Cal. Labor Code section 227.3, (xii) failure to pay all wages due upon termination, (xiii) failure to timely pay wages during employment, and (xiv) violation of Business & Professions Code section 17200 and unfair competition, as well as claims for failure to provide unpaid wages, including but not limited to failure to pay minimum wages, straight time compensation, overtime compensation, and interest; failure to timely pay regular and preliminary wages; failure to provide compliant meal, rest, and/or recovery periods; failure to pay premiums at all or at the correct rate for any violation of meal, rest, and recovery period obligations; compensation due by reason of a split shift; reporting time pay; sick time and sick pay claims; claims arising from invalid meal period waivers and on-duty meal period waivers; payment for all hours worked; wage statements and paystubs, including wage statements and paystubs furnished or available in physical, electronic, or other forms; failure to keep accurate records; making unlawful deductions; failing to reimburse business expenses; unfair business practices; any and all related penalties, including recordkeeping penalties, wage statement penalties, minimum wage penalties, and waiting time penalties; and statutory penalties and/or civil penalties associated with any of the foregoing. Such Released Class Claims shall also include, but are not limited to those claims arising under California Labor Code sections 98, 98.6, 200, 201-204, 204b, 206, 210, 212, 213, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5 233, 234, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.3, 248.5, 248.6, 248.7, 400-410, 432, 432.5, 432.6, 432.7, 432.8, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1197.14, 1198, 1198.5 1199, 1527, 2800, 2802, 2804, 2810.5, 2698 et seq., 2699 et seq., 3366, 3457, 6401, 6402, 6403, 6409.6, 6432, 8397.4, and/or those arising under the applicable Industrial Welfare Commission Wage Order(s) (including but not limited to subsections 3, 4, 5, 7, 8, 9, 11, 12, 13, 18, and 20 of the applicable Wage Order(s) [including the provisions of the California Code of Regulations codifying the applicable Wage Order(s)], which may include but are not limited to Wage Orders 1-2001, 7-2001, and/or 9-2001); 8 C.C.R. §3395; California Business and Professions Code section 17200 et seq. (including, without limitation, California Business and Professions Code sections 17200 through 17208, 16600, 16700); the California Civil Code sections 3287, 3289, and 3294; California Code of Civil Procedure sections 1021.5 and 1032; California Government Code section 12952, and any related claims under the Fair Labor Standards Act ("FLSA") (29 U.S.C. §§ 201, et seq.). Agreement at § III(D).

7. The **"Released PAGA Claims"** means and includes, but is not limited to, the PAGA cause of action (and any other claims and corresponding requests for relief) asserted by Plaintiffs on behalf of Plaintiffs and the Aggrieved Employees in the Action, namely all claims, rights, demands, liabilities, allegations, and causes of action arising from PAGA that were pled, alleged, or reasonably could have been alleged based on the facts asserted in any complaints in the Action and based on all Plaintiffs' PAGA notices filed and submitted in connection with this Action, violations of the PAGA (Labor Code sections 2698 et seq.), and any claims for PAGA penalties under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197.1, 1198, and 2802. As a result of these releases, the Plaintiffs and Aggrieved Employees shall be precluded

from bringing claims against Defendants in connection with PAGA and the Released PAGA Claims. Agreement § III(E).

All such releases of claims, and related terms and provisions, are more specifically set forth and/or defined in the Agreement. (See e.g. Agreement, § III(D)-(F)).

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)*. Indeed, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendants Sky Hotels, Inc., Modco 2, LLC, CY3, LLC, J.R.P. Hospitality, Inc., Nimesh Patel, Surekha Patel, and Mahesh Patel own, operate, and/or manage hotels and provide hotel management, consulting, development, and financial services throughout the state of California. Throughout their employment, Plaintiffs, and each of them, were employed as non-exempt employees and subject to Defendants' written policies and procedures. JCL Dec., ¶ 8; Declaration of Edward Gray ("EG Dec.") at ¶ 3; Declaration of Jessica Muto ("JM Dec.") at ¶ 3; Declaration of Tammy Lallier ("TL Dec.") at ¶ 3; Declaration of Jonathan Harrison-Liam Olson II ("JO Dec.") at ¶ 3; Declaration of Keily Villeda ("KV Dec.") at ¶ 3.

On July 1, 2023, Plaintiffs Gray and Muto served Defendants Sky Hotels, Inc. and Modco 2, LLC and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations

("PAGA Notice"). JCL Dec., ¶ 9.

On September 6, 2022, Plaintiffs Gray and Muto filed this class action complaint in the Stanislaus Superior Court, alleging nine causes of action against Defendants for: (1) Unfair competition in violation of Business and Professions Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to reimburse employees for required expenses in violation of California Labor Code section 2802; (7) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (8) Failure to provide wages when due in violation of Cal. Lab. Code sections 201, 202 and 203; (9) Violation of the Private Attorneys General Act [Labor Code section 2698, *et seq*.] against Defendants Sky Hotels, Inc. and Modco 2, LLC. JCL Dec., ¶ 10.

On September 30, 2022, Plaintiff Villeda filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant Sky Hotels, Inc. JCL Dec., ¶11.

On October 5, 2022, Plaintiff Villeda filed a class action in the San Joaquin County Superior Court, alleging claims for (1) Unfair competition in violation of Business and Professions Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (7) Failure to provide wages when due in violation of Cal. Lab. Code sections 201, 202 and 203; (8) Failure to indemnify; and (9) Violation of Cal. Lab. Code section 227.3; and (10) Unfair Competition. JCL Dec., ¶12.

On January 31, 2023, Plaintiff Villeda filed a separate representative action in the San Joaquin County Superior Court, alleging a single cause of action for Violation of the Private Attorneys General Act (Labor Code §§ 2698 *et seq*.). JCL Dec., ¶ 13.

On May 24, 2023, Plaintiffs Gray, Muto, Lallier and Olson filed an Amended Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants Sky Hotels, Inc., Modco 2, LLC, Surekha Patel, and Mahesh Patel. JCL Dec., ¶ 14.

On December 19, 2023, Plaintiff Villeda filed an Amended Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants Sky Hotels, Inc., Modco 2, LLC, CY3, LLC, J.R.P. Hospitality, Inc., and Nimesh Patel. Plaintiff Gray and Muto served formal discovery, and the Parties subsequently agreed to a global mediation. JCL Dec., ¶ 15.

On October 2, 2025, to effectuate the global Settlement reached by the Parties, Plaintiffs Muta, Gray, Villeda, Lallier, and Olson submitted an amended PAGA Notice to the LWDA to consolidate the previously filed PAGA notices. The Amended PAGA Notice also added Defendants J. R.P., Defendant CY3, and Defendant Nimesh. Also on October 2, 2025, the Parties filed a stipulation for leave allowing Plaintiffs Muto and Gray to file a First Amended Complaint in their class and PAGA Action, to add Keily Villega, Tammy Lallier, and Jonathan Harrison-Liam Olson II as additional Plaintiffs, and to add J. R.P. Hospitality, Inc, CY3 LLC, Nimesh Patel, Surekha Patel, and Mahesh Patel as additional Defendants. JCL Dec., ¶ 16.

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., ¶ 17.

C. The Parties Settled at Mediation

On December 12, 2023, the Parties participated in a full day mediation with Hon. Judge Carl J. West (Ret.), a respected jurist and mediator. The mediation concluded with a settlement. JCL Dec., ¶ 18. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 19.

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III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of Four Hundred Eighty-Five Thousand Dollars and Zero Cents ($485,000.00), 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.*)

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 jurist and mediator Hon. Judge Carl J. West (Ret.). Judge West 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 with a settlement. 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., ¶ 20.

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, and the various defenses asserted by Defendants, Class Counsel firmly believes this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

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

The Gross Settlement Amount of $485,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should "consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation. " (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might have received if they had succeeded at trial.[4] 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 $485,000.00 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 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis

[4] 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.

of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA penalties) at $1,675,309.25. Thus, the Gross Settlement Amount of $485,000.00 represents approximately 29% of Defendants' *class-wide* liability exposure. The following summarizes Defendants' estimated exposure. JCL Dec., ¶ 22.

(a) Estimated Damages for Meal and Rest Period Violations

Plaintiffs' primary claim in this action is that Defendants failed to provide compliant meal and rest periods because Class Members were expected to remain on the premises and on-duty during their meal periods and rest breaks. Defendants had in place an "On Duty Meal Period" policy and agreements, however, Plaintiffs contend that the nature of the work they and Class Members were employed to perform did not prevent them from being provided an off-duty meal period nor was there any evidence that Defendants applied to the Department of Industrial Relations for an exemption from the provisions of the Industrial Welfare Commission requiring off-duty rest breaks. Further, Defendants' rest break policy was facially unlawful, requiring that management sign off on Class Members' rest breaks. In total, Class Counsel estimated Defendants' exposure for the meal and rest claims at $770,762.00. JCL Dec., ¶ 23.

Defendants argued, *inter alia*, that it provided the Class Members with compliant meal and rest periods and maintained facially complaint meal and rest period policies, such that any missed meal and rest periods were by choice of each individual Class Member. Thus, Defendants denied all claims and argued that there was no potential liability for Plaintiffs' alleged meal and rest period violations and any claimed violations required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 24.

(b) Estimated Damages for Regular Rate Violations

Plaintiffs allege that Defendants failed to include certain non-discretionary bonuses when calculating the regular rate of pay when paying overtime wages and sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation in the form of "Bonus" and "Incentive" payments, which were not properly calculated into the regular rate of pay. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 553. Further, California Labor Code section

246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either “the regular rate of pay for the workweek in which the employee uses paid sick time” or the regular rate of pay in the 90 days preceding the use of the sick leave. JCL Dec., ¶ 25.

Conversely, Defendants denied liability and asserted they paid Class Members at the correct rate of pay for purposes of overtime wages, meal period premiums, and sick pay. Defendants produced their written bonus policy and made arguments during mediation to demonstrate that bonuses are discretionary. Plaintiffs estimated Defendants’ exposure for this claim to be approximately $2,897.00. JCL Dec., ¶ 26.

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

Additionally, Plaintiffs alleged that Defendants failed to pay their employees for all hours worked. Specifically, Plaintiffs asserted that Defendants failed to pay employees for training and assisting other employees, assisting customers, and answering employee questions while off the clock. Defendants denied liability for this claim. Defendants argued that all Class Members were properly paid minimum and overtime compensation for all hours worked and that Class Members were instructed not to work off-the-clock. Plaintiffs estimated Defendants’ exposure for this claim to be $277,996.00. JCL Dec., ¶ 27.

(d) Defendants’ Exposure for Failure to Reimburse for Mandatory Business Expenses

Plaintiffs allege that Defendants failed to reimburse its employees for mandatory business expenses. Specifically, Plaintiffs and Class Members, as business expenses, were required by Defendants to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for Defendants and were required to purchase and maintain their uniforms at their own expense. Plaintiffs and Class Members were not reimbursed or indemnified by Defendants for the cost associated with the use of their personal cell phone or the purchase and maintenance of work uniforms for Defendants’ benefit.

Defendants denied all these claims and argued that, assuming for argument purposes only Plaintiff’s alleged claims had any merit, the number of affected employees was minimal. Notwithstanding the uncertain nature of the claims, Plaintiffs estimated Defendants’ exposure for unreimbursed business expenses to be approximately $90,600. JCL Dec., ¶ 28.

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

Plaintiffs also alleged that the Defendants' 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, Defendants denied all these claims and additionally argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, Defendants argued that Plaintiffs could not show that Class Members suffered an "injury" because of the alleged 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, Plaintiffs estimated Defendants' exposure for these penalties to be approximately $533,054.25 ($380,979.25 for Labor Code section 203 penalties and $152,075.00 for Labor Code section 226 penalties). JCL Dec., ¶ 29.

(f) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Plaintiffs estimated Defendants' PAGA exposure to be approximately $653,850. JCL Dec., ¶ 30. 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).)

To recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. (*See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiffs cannot recover on behalf of individuals whom the plaintiffs have not proven suffered a violation of the Labor Code by the defendant.").) Here, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for each pay period the employee worked. Again, Defendants denied all claims and raised several defenses that presented serious threats to the claims of Plaintiffs and the Aggrieved Employees. JCL Dec., ¶ 31.

Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 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 the plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

The proposed Settlement allocates $30,000.00 to satisfy the PAGA claims. This amount represents approximately 6.2% of the Gross Settlement Amount. This achieves a fair, reasonable, and adequate resolution of Plaintiffs' PAGA claim. (See *Moniz v. Adecco* (2021) 72 Cal.App.5th 56.) Further, the amount allocated to the satisfaction of Plaintiffs' PAGA claim, is well within the range of reasonableness. (*See, e.g.*, *Nordstrom Comm'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving 0% PAGA allocation); *Berry v. Urban Outfitters* (N.D. Cal. Lead Case No. 13-cv-02628-JSW) (approving 1% PAGA allocation in $5M settlement); *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. 2011) 2011 WL 4899942 * 6 (approving $3,000 PAGA allocation in $1.2M settlement); *Singer v. Becton Dickinson & Co*. (S.D. Cal. 2010) 2010 WL 2196104 *2 (approving $3,000 PAGA allocation in $1M settlement); and *Hopson v. Hanesbrands, Inc* (N.D. Cal. 2009) 2009 WL 928133 * 9 (approving $1,500 PAGA allocation in $1.026M settlement.).) JCL Dec., ¶ 32.

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., ¶ 33.

"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 of 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 Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 34. "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., ¶ 35.

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.)[5]

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(N). 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., ¶ 36.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet 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

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[5] 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.

compromise and of the options open to dissenting class members.").

C. The Court Should Preliminarily Approve the Service Awards

Service awards "are fairly typical in class action cases." (*Cellphone Termination Fee* Cases (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of $10,000).) Service awards "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 Service Awards of $10,000.00 for each Plaintiff. Agreement, § I(DD). Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Awards once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Awards. JCL Dec., ¶¶ 37-39.

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 Plaintiffs' 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., ¶ 40.

Plaintiffs will file a formal motion for the Attorneys' Fees and Attorneys' Expenses once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 41.

E. Provisional Certification for Settlement Purposes Is Appropriate

For settlement purposes, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 42.

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 Defendants' current and former non-exempt employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. JCL Dec., ¶ 43.

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The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide and Defendants' 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., ¶ 44.

Plaintiffs' 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, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class by initiating this litigation, and evaluating the proposed Settlement to ensure that it is fair. JCL Dec., ¶ 45.

Additionally, Plaintiffs are 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., ¶¶ 46, 48-55; Declaration of Shani Zakay, ¶ 3; Declaration of David Bibiyan, ¶¶ 2- 17; Declaration of Harout Messrelian, ¶¶ 2- 5.

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., ¶ 47.

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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 2, 2025

JCL LAW FIRM, APC

By: ______________________________
Jean-Claude Lapuyade, Esq.