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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

ALAN CARRILLO RODRIGUEZ, an individual,
on behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

TITAN WORKFORCE, a California Corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2022-0003036

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

Date: October 23, 2023

Time: 8:45 a.m.

Judge: Hon. Barbara Kronlund

Dept.: 10D

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33		19

1 I. INTRODUCTION

2 Plaintiff ALAN CARRILLO RODRIGUEZ (“Plaintiff”) seeks preliminary approval of the
3 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹ to
4 resolve all claims brought against Defendant Titan Workforce LLC (“Defendant”) in this class and
5 representative action. If approved, the Agreement would provide valuable monetary relief for
6 approximately 943 members of the Class and 516 Aggrieved Employees. The basic terms of the
7 Agreement provide for the following:

8 1. The “**Class Members**” or the “**Class**,” and “**Class Period**,” shall mean all current and
9 former hourly-paid or non-exempt employees employed by Defendant in California (“Class”) from April
10 26, 2018, through May 10, 2023 (“Class Period”). Agreement at §§ I(G), I(H). The Class is comprised
11 of approximately 943 individuals who collectively worked approximately 34,217 Workweeks during
12 the Class Period. Agreement at § III(A)(2).

13 2. The “**Settlement Class Members**” or “**Settlement Class**” means all Class Members who
14 have not submitted a timely and valid request for exclusion by the Response Deadline as provided in the
15 Agreement. Agreement at § I(GG).

16 3. The “**Aggrieved Employees**” and “**PAGA Period**” means all current and former hourly-
17 paid or non-exempt employees employed by Defendant in California (“Aggrieved Employees”) from
18 February 10, 2021, through May 10, 2023 (“PAGA Period”). Agreement at §§ I(B), I(X). Aggrieved
19 Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at §
20 III(L)(2)(a). At the time of mediation, there were approximately 516 Aggrieved Employees during the
21 PAGA Period. JCL Dec., ¶ 21.

22 4. The “**Total Settlement Amount**” is Six Hundred Fifty Thousand Dollars and Zero Cents
23 (\$650,000.00). Agreement at § I(HH). The Total Settlement Amount is non-reversionary and includes
24 the following:

25 a. A “**Class Representative Service Award**” in the amount of up to \$10,000.00, as
26 approved by the Court, to Plaintiff for his services on behalf of the Class Members, and for agreeing to

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

1 a broad release. Agreement at § I(J), III(M)(9);

2 b. A **“Class Counsel Award”** in the amount not to exceed one-third of the Total
3 Settlement Amount for attorney’s fees, currently estimated to be Two Hundred Sixteen Thousand, Six
4 Hundred Sixty-Six Dollars and Sixty-Six Cents (\$216,666.66) and actually incurred litigation costs not
5 to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00), to be paid to Class Counsel.
6 Agreement at §§ I(E); III(M)(10);

7 c. A **“PAGA Penalty Amount”** of \$30,000.00 shall be allocated from the Total
8 Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act
9 of 2004 (“PAGA Penalty Amount”). The Settlement Administrator shall pay seventy-five percent
10 (75%) of the PAGA Penalty Amount to the Labor and Workforce Development Agency (“LWDA
11 Payment”). The Settlement Administrator shall distribute the remaining twenty-five percent (25%) of
12 the PAGA Penalty Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
13 Agreement at § III(M)(11); and,

14 d. **“Settlement Administration Costs”** currently estimated to be \$12,000.00
15 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of
16 the Notice Packet and Individual Settlement Payments. Agreement at §§ I(FF), III(M)(12).

17 5. The **“Net Settlement Amount”** of approximately \$368,333.34 (Total Settlement
18 Amount minus the Class Representative Service Award, Class Counsel Award, Settlement
19 Administration Costs, and the PAGA Penalty Amount) which will be allocated to all Settlement Class
20 Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member
21 worked during the Class Period. Agreement at § III(M)(1). The entire Net Settlement Amount will be
22 paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average
23 Individual Settlement Share of **\$390.59**. JCL Dec., ¶ 6.

24 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
25 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
26 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
27 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
28 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 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 Payments to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Settlement 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

Defendant provides construction staffing solutions for residential and commercial construction projects throughout California, including Manteca, California, where Plaintiff worked. Plaintiff worked for Defendant as a non-exempt employee in California from August of 2021 to November of 2021. Throughout his employment, Plaintiff was classified as a non-exempt employee and was entitled to legally compliant meal and/or rest periods, minimum and regular wages. Additionally, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 8; Declaration of Alan Carrillo Rodriguez ("AR Dec.") at ¶ 4.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wages statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, reimbursement for all required business expenses, and payment of all wages upon separation. JCL Dec., ¶ 9.

On February 10, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
3 2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

4 On April 26, 2022, Plaintiff filed a class action complaint in the San Joaquin County Superior
5 Court, Case Number STK-CV-UOE-2022-3036 (the “Action”). The Action alleged nine causes of
6 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
7 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
8 Failure to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Meal
9 Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure
10 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
11 IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab.
12 Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and
13 203; (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802;
14 and (9) Violations of the Private Attorneys General Act under California Labor Code §§ 2698, *et seq.*
15 JCL Dec., ¶ 11.

16 On July 25, 2023, Plaintiff initiated formal discovery. Prior to answering Plaintiff’s discovery,
17 the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally
18 produce additional documents and data points subject to the mediation privilege, including but not
19 limited to, a sample of the Class Members’ time data and certain payroll data points. As discussed *infra*,
20 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
21 Defendant’s time and payroll data. JCL Dec., ¶ 12.

22 On March 10, 2023, the Parties participated in a full day mediation with Tripper Ortman, an
23 experienced mediator of wage and hour class and PAGA actions. After arms-length negotiations and
24 bargaining, the Parties reached an agreement to settle based on Mediator Ortman’s proposal and signed
25 a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
26 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
27 13.

28 ///

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

2 Months before filing the Action, Class Counsel began their pre-filing investigation into the
3 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
4 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
5 including time and payroll records. At the conclusion of the interviews, Class Counsel determined that
6 each of Plaintiff's complaints appeared to substantiate Plaintiff's claim that Defendant's failed to,
7 among other things, pay for all time worked, failed to provide compliant meal and rest periods, failed
8 to reimburse for all mandatory business expenses, failed to issue accurate itemized wage statements,
9 and failed to pay all wages when due. JCL Dec., ¶ 14.

10 To prepare for mediation, Class Counsel requested documents and data points to further evaluate
11 Plaintiff's claims and Defendant's liability exposure to the Class Members. In response to Class
12 Counsel's request, Defendant produced, among other things, the time and payroll records for all of the
13 Class Members, aggregate workweek and pay period data, and copies of applicable handbooks,
14 policies, and agreements. In total, Defendant produced dozens of pages of pertinent policy documents,
15 time records, and payroll records for Class Members for Class Counsel to analyze. JCL Dec., ¶ 15.

16 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
17 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
18 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
19 and experienced experts in their fields and have provided their expertise on thousands of cases. JCL
20 Dec., ¶ 16.

21 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
22 models. Among other things, BCG estimated the amount of unpaid wages, number of workweeks, pay
23 periods, average length of shifts and average number of hours worked per week. BCG also estimated
24 the amount of unreimbursed business expenses, the amount of unpaid wages due to off-the-clock work,
25 the number of missed, late, or truncated meal and rest periods, and the amount of missed meal and rest
26 period premiums paid during the Class Period. JCL Dec., ¶ 17.

27 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
28 Plaintiff's suitability as a putative class representative through interviews, background investigations,

1 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
2 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
3 of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendant's
4 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
5 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's
6 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
7 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
8 claims being settled, as well as the impediments to recovery, such as to make an independent
9 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 18.

10 Class Counsel only agreed to enter the Settlement following this thorough investigation and
11 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
12 for similar settlements, and considering the risk of significant delay and uncertainty associated with
13 litigation, and the various defenses asserted by Defendant, Class Counsel believe this Agreement to be
14 in the best interest of the Class Members. Because the Settlement's terms are fair, reasonable, and
15 adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 19.

16 **C. The Parties Settled at Mediation**

17 On March 10, 2023, the Parties conducted a full day of mediation with Tripper Ortman, Esq., an
18 experienced wage and hour mediator. Mediator Ortman helped manage the Parties' expectations and
19 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
20 progress with Mediator Ortman's assistance. Namely, the Parties exchanged information regarding
21 their respective claims and defense, including their respective evaluation of the damages. At the
22 conclusion of the mediation, the Parties reached a settlement, which was subsequently memorialized
23 in the form of a Memorandum of Understanding. The complete and final terms of the Parties'
24 settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a
25 fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 20.

26 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

27 1. The Composition of the Settlement Class Members and Aggrieved Employees

28 The proposed Settlement Class consists of all current and former hourly-paid or non-exempt

1 employees employed by Defendant in California during the period between April 26, 2018, through
2 May 10, 2023. The Settlement Class excludes any person who submits a timely and valid request for
3 exclusion. In the data exchanged prior to the Mediation, there were approximately 943 Class Members
4 who worked an estimated 34,217 workweeks through the conclusion of the Class Period. Agreement
5 at § III(A)(2). Additionally, at the time of mediation, Plaintiff's expert estimated that there were
6 approximately 516 Aggrieved Employees who worked approximately 13,692 pay periods during the
7 PAGA Period. JCL Dec., ¶ 21.

8 2. The Settlement Consideration

9 The Parties agreed to settle the underlying class claims in exchange for the Total Settlement
10 Amount of \$650,000.00 The Total Settlement Amount includes: (1) Individual Settlement Payments
11 to the Settlement Class; (2) a Class Representative Award of \$10,000.00 to Plaintiff for his services on
12 behalf of the Settlement Class and, equally important, for a general release of claims; (3) a PAGA
13 Penalty Amount in the amount of \$30,000.00; (4) Settlement Administration Costs estimated to be
14 \$12,000.00; (5) a Class Counsel Award of \$241,666.66, comprised of attorneys' fees equal to one-third
15 of the Total Settlement Amount currently estimated to be \$216,666.66, and an estimated \$25,000.00
16 for actually incurred litigation expenses. See generally Agreement at § I(E).

17 Subject to the Court approving the Class Representative Award, Class Counsel Award, PAGA
18 Penalty Amount, and the Settlement Administration Costs, the Net Settlement Amount will be
19 distributed to each participating member of the Settlement Class. Agreement at § I(Q). There is no
20 reversion to Defendant. *Id.* at § III(A)(1).

21 3. The Funding Date

22 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Total Settlement
23 Amount of \$650,000.00 within ten (10) calendar days of the Court's entry of the order granting final
24 approval of this Settlement. Agreement at § I(O).

25 4. Formula for Calculating Individual Settlement Payments

26 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
27 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
28 worked for Defendant in California during the Class Period.

1 The Class Data provided by Defendant to the Settlement Administrator will include the pay
2 periods worked during the PAGA Period and the workweeks worked during the Class Period for
3 purposes of calculating the Individual Settlement Payments. Agreement at § III(L). Each Settlement
4 Class Member's Individual Settlement Payment for purposes of payment will be calculated by using a
5 fraction, the numerator of which is the Settlement Class Member's total number of Workweeks, and
6 the denominator of which is the total number of Workweeks of all Settlement Class Members, resulting
7 in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be
8 multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual
9 Settlement Payment. Each Individual Settlement Payment will be reduced by any legally mandated
10 employee tax withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for
11 members of the Settlement Class who submit valid and timely requests for exclusion will be
12 redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion
13 on a pro rata basis. Agreement at § III(M)(1).

14 Given that there are approximately 943 Settlement Class Members, the average gross recovery
15 is approximately \$390.59 (Net Settlement Amount divided by Settlement Class Members). JCL Dec.,
16 ¶ 6.

17 5. Release by Participating Settlement Class Members

18 Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement,
19 Plaintiff and the Settlement Class Members, on behalf of themselves and their respective former and
20 present representatives, agents, attorneys, heirs, administrators, successors and assigns, release the
21 Released Parties from the Class Released Claims for the Class Period. Agreement at § III(B).

22 6. PAGA Release by the State of California on behalf of the Aggrieved Employees

23 Generally, as of the Funding Date, in exchange for the consideration set forth in this Agreement,
24 the Plaintiff and the Aggrieved Employees, on behalf of themselves and their respective former and
25 present representatives, agents, attorneys, heirs, administrators, successors and assigns, along with the
26 LWDA and the State of California, release the Released Parties from the PAGA Released Claims for
27 the PAGA Period. Agreement at § III(C).

28 ///

III. ARGUMENT

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

The proposed Settlement, including a Total Settlement Amount of \$650,000.00 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

1 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
3 and adequate to all concerned.” (*Id.*)

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

6 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
7 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
8 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
9 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
10 § 11.51.)

11 The Parties participated in mediation with Tripper Ortman, Esq., an experienced wage and hour
12 class action mediator. Mediator Ortman managed the Parties’ expectations and provided a useful,
13 neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig.* No.
14 C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation
15 weighs considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d.
16 Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations helps
17 to ensure that the proceedings were free of collusion and undue pressure.”).) At all times, the Parties’
18 negotiations were at an arm’s length, adversarial, and non-collusive. The mediation concluded with a
19 settlement, after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in
20 a Memorandum of Understanding (“MOU”). After reaching an agreement in the principle, the Parties
21 drafted and negotiated a long-form settlement which is the subject of the instant motion. The
22 Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are
23 fair, adequate and represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 22.

24 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of the
25 Settlement’s Reasonableness.

26 As set forth in greater detail above, Class Counsel conducted a very thorough investigation into
27 the factual and legal issues in dispute. Overall, Class Counsel thoroughly investigated the claims at
28 issue, including: (1) determining Plaintiff’s suitability as a putative class representative through

1 interviews, background investigations, and analysis of his employment files; (2) evaluating all of
2 Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought,
3 the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and
4 payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in
5 similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating
6 Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the
7 mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to
8 fully assess the nature and magnitude of the claims being settled, as well as the impediments to
9 recovery, such as to make an independent assessment of the reasonableness of the terms to which the
10 Parties have agreed. JCL Dec., ¶ 23.

11 Class Counsel only agreed to enter the Settlement following this thorough investigation and
12 evaluation of Plaintiff's claims. Based on this investigation of the facts, applicable law, and marketplace
13 for similar settlements, and considering the risk of significant delay, uncertainty associated with
14 litigation, and the various defenses asserted by Defendant, Class Counsel firmly believes this
15 Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair,
16 reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 24.

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

18 The Total Settlement Amount of \$650,000.00 is within the range of reasonableness. To
19 determine whether a settlement is fair and reasonable, the court should "consider enough information
20 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to
21 make an independent assessment of the reasonableness of the terms to which the parties have agreed."
22 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
23 the court is "not to try the case" but rather "satisfy itself that the class action settlement is within the
24 'ballpark of reasonableness.'" (*Id.* (emphasis added).) For this analysis, courts do "not require any such
25 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
26 is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola*
27 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
28 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

1 have received if they had succeeded at trial.² Indeed, “[t]he determination whether a settlement is
2 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ”
3 (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and*
4 *Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).) JCL Dec., ¶ 25.

5 a. The Total Settlement Amount Meets the Recognized Range of Reasonableness.

6 The Total Settlement Amount of \$650,000.00 is fair and reasonable considering the nature and
7 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained Berger to develop economic damage models measuring Defendant’s
9 liability exposure while accounting for the uncertainties of continued litigation. The various models
10 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
11 and payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding
12 PAGA Penalties) ranged between \$4,601,100.63 (“Realistic Damages”) and \$11,923,057.00
13 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of
14 the claims. Thus, the Total Settlement Amount represents a recovery of between 14.13% (“Realistic
15 Damages”) and 5.45% (“Maximum Damages”) of Defendant’s class-wide exposure – well within the
16 recognized range of reasonableness. The following summarizes Defendant’s liability exposure. JCL
17 Dec., ¶ 26.

18 (1) Defendant’s Estimated Exposure for Unpaid Wages

19 Plaintiff’s primary claim in this Action alleges that Defendant failed to pay its employees for
20 all hours worked. Specifically, Plaintiff alleges that throughout the entire Class Period, Defendant failed
21 to record the actual time the Plaintiff and Class Members worked. Rather, Plaintiff alleges that
22 Defendant instructed its supervisors to fill in handwritten timecards consistent with the employees’

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

1 schedule, without any regard to the amount of time employees actually worked. Plaintiff contends that
2 the time records produced by Defendant show that 100% of all time entries were rounded to quarter-
3 hour intervals. Defendant argued that this claim was not suitable for class treatment because
4 individualized issues predominated. For example, assuming Plaintiff performed work while off-the-
5 clock, the tasks performed and time spent would vary from class member to class member that it could
6 not be established by common proof. Due to Plaintiff's position that Defendant failed to keep accurate
7 timekeeping records, Plaintiff only applied a 25% discount for this claim. As a result, Plaintiff
8 estimated Defendant's exposure for unpaid wages ranged from approximately \$226,175.63 to
9 approximately \$301,567.50. JCL Dec., ¶ 27.

10 (2) Defendant's Estimated Exposure for Meal Period Violations

11 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
12 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
13 Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently, Plaintiff
14 alleges that he is owed meal period premiums for meal period violations that occurred during the Class
15 Period. Additionally, as stated above, Plaintiff alleges that Defendant failed to record the actual time
16 that Class Members worked. As a result, all of the meal periods were rounded to exactly 30 minutes.
17 JCL Dec., ¶ 28.

18 Conversely, Defendant argued, among other things, that it did not engage in meal rounding and
19 provided all its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take
20 compliant meal periods. Defendant also argued that it maintained facially compliant meal period
21 policies. Thus, Defendant argued that there was no potential liability for Plaintiff's alleged meal period
22 violations and any claimed violations required a highly individualized inquiry not suitable to class
23 treatment. Consequently, Plaintiff applied a 50% discount to this claim and estimated Defendant's
24 exposure for this claim ranged from \$1,809,438.75 to approximately \$3,618,877.50. JCL Dec., ¶ 29.

25 (3) Defendant's Estimated Exposure for Rest Period Violations

26 Plaintiff also alleged that Defendant failed to provide compliant rest periods. Specifically,
27 Plaintiff alleged that because of their rigorous work schedules, Plaintiff, Class Members, and Aggrieved
28 Employees were not able to take timely and duty-free rest periods. Specifically, Plaintiff argued that

1 he was required to work through his rest periods in order to finish work-related tasks. JCL Dec., ¶ 30.

2 Again, Defendant denied liability and asserted that it maintained legally compliant rest period
3 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
4 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
5 on Class Member testimony, making it a riskier claim at class certification and liability stages.
6 Certification likely would have required depositions of Class Members who provided declarations, and
7 Defendant argued that they obtained opposing declarations stating either rest breaks were taken, or rest
8 breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013
9 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that
10 Defendants may have an illegal, written rest break policy is insufficient for this Court to find that
11 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
12 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
13 generate uniform practices."). Accordingly, Plaintiff's Conservative Model applied a 50% discount to
14 the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between
15 approximately \$1,809,438.75 to approximately \$2,895,102.00. JCL Dec., ¶ 31.

16 (4) Defendant's Estimated Damages for Unreimbursed Business Expenses

17 Plaintiff alleged that Defendant required Class Members to incur personal expenses for the use
18 of their own personal cellular phones, personal vehicles, and maintenance of their uniforms. California
19 employers who require employees to incur personal business expenses for work purposes must
20 reimburse the employee for the cost incurred. (See Cal. Lab. Code § 2802(a), providing that "[a]n
21 employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the
22 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the
23 directions of the employer...."). JCL Dec., ¶ 32.

24 Specifically, Plaintiff alleged Defendant required Plaintiff and Class Members use their personal
25 cellular phone to send and receive information from Defendant's supervisors regarding projects,
26 worksite locations, and work assignments. Additionally, Plaintiff and Class Members worked
27 throughout the Bay Area, traveling between locations. Plaintiff contends that as a result, Plaintiff and
28 Class Members were required to pay tolls every time they drove on one of the several bridges located

1 throughout the Bay Area, pay for gas, and incurred mileage on their vehicles. Plaintiff also contends
2 that Plaintiff and Class Members were also required to clean and maintain their work uniforms, use
3 their personal tools, and pay for tools and materials with their own money. Plaintiff alleges that
4 Defendant failed to reimburse Plaintiff and Class Members for these costs in violation of California
5 Labor Code section 2802. JCL Dec., ¶ 33.

6 Again, Defendant denied any liability for this claim. Defendant argued, among other things, that
7 on the rare occasion where employees did incur business expenses, these expenses were fully
8 reimbursed. This claim was heavily discounted based on Defendant's defenses. Plaintiff estimated
9 Defendant's exposure for this claim ranged from \$72,777.50 to approximately \$291,110.00. JCL Dec.,
10 ¶ 34.

11 (5) Defendant's Estimated Exposure for Wage Statement and Waiting Time
12 Violations

13 Additionally, Plaintiff alleges that Defendant's alleged violations resulted in derivative
14 violations of Labor Code sections 203 and 226(a). Class Counsel considered the arguable presence of
15 various penalties and weighed the potential recoveries against probable defenses. Specifically,
16 Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time
17 penalties under Labor Code section 203. Additionally, Defendant could argue that Plaintiff could not
18 show that Class Members suffered an "injury" because of wage statement violations, as required by
19 Labor Code section 226. JCL Dec., ¶ 35.

20 Plaintiff could not give the penalty claims great weight given that they depended on proving the
21 underlying claims, which had their own risks. Plaintiff estimated Defendant's exposure for this claim
22 ranged from approximately \$683,270.00 to approximately \$4,816,400.00. JCL Dec., ¶ 36.

23 (6) Defendant's PAGA Exposure

24 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties. At
25 the time of mediation, Plaintiff estimated Defendant's PAGA exposure ranged between \$75,980.00 and
26 \$4,674,700.00 dollars. JCL Dec., ¶ 37. The proposed PAGA allocation of the Total Settlement Amount
27 is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
28 "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was

1 the result of self-interest at the expense of class members,” such amounts are generally considered
2 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
3 Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two
4 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
5 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
6 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
7 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
8 in the range of zero to two percent of the total settlement).

9 Here, the Parties negotiated a good faith PAGA Settlement Amount in the amount of \$30,000.00
10 which is 4.6% of the Total Settlement Amount. This amount falls well within the range of approved
11 PAGA settlement amounts. Seventy-Five percent (75%) of the PAGA Settlement Amount (\$22,500.00)
12 will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%)
13 of the PAGA Settlement Amount (\$7,500.00) will be distributed to the Aggrieved Employees, which is
14 within the range of PAGA settlement amounts approved by courts and should be approved. JCL Dec.,
15 ¶ 38.

16 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
17 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
18 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
19 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
20 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
21 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
22 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
23 6, 2016) (PAGA penalties denied after trial).

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

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

1 settlement. JCL Dec., ¶ 39.

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

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

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

12 Finally, continuing to litigate this action would require continued and extensive resources
13 coupled with significant Court time to proceed through trial and post-trial motions; which can often
14 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
15 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
16 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
17 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
18 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 40. “Avoiding such a trial and the
19 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
20 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
21 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
22 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

23 Given the amount of the settlement here, as compared to potential value of the claims, offset by
24 the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 41.

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

26 The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v.*
27 *Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient
28 information to decide whether they should accept the benefits offered, opt out and pursue their own

1 remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal.
2 App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded from the class
3 if they so request and that they will be bound by the judgment, whether favorable or not, if they do not
4 request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class
5 notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v.*
6 *Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

7 The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class
8 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
9 mail the proposed Class Notice to all Class Members. The Notice will include information regarding
10 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
11 procedure and time period within which to requests for exclusions or objections to the Settlement, the
12 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
13 and scope of the Released Claims. See generally Agreement at § III(L). The Parties negotiated this
14 method to ensure delivering the most reasonable method of notice to the Class Members while ensuring
15 cost effective administration of the Settlement. JCL Dec., ¶ 42.

16 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
17 satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
18 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
19 of the options open to dissenting class members.”).) JCL Dec., ¶ 43.

20 **C. The Court Should Preliminarily Approve the Class Representative Service Award**

21 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
22 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
23 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
24 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
25 UCLA L. Rev. 1303 (2006).) Enhancement payments “are intended to compensate class representatives
26

27 ³ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to
28 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.

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.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

The Settlement provides for a Class Representative Service Award of up to \$10,000.00⁴ for Plaintiff, subject to the Court’s approval. The service award is fair and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class, and agreeing to provide Defendant and the Released Parties a general release of all claims arising out of his employment. JCL Dec., ¶ 44.

Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class

⁴ The amount of the requested enhancement payment—\$10,000—is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker v. LA. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$ 10,000 to the named plaintiffs along with additional compensation for their general release of claims); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment); *Mares v. BFS Retail & Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement payments to the named plaintiffs); *Nevarez v. Trader Joe’s Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010) (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar. 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*, No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013) (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct. Mar. 7, 2013) (awarding \$25,000 enhancement payments to the named plaintiffs); *Acheson v. Express, LLC*, No. 109CV135335 (Santa Clara County Super. Ct. Sep. 13, 2011) (awarding \$10,000 enhancement payment); *Aguiar v. Cingular Wireless, LLC*, No. CV 06-8197 DDP (AJWx) (C.D. Cal. Mar. 17, 2011) (awarding \$14,767 enhancement payment); *Bejarano v. Amerisave Mortgage Corp.*, No. EDCV 08-00599 SGL (Opx) (C.D. Cal. June 22, 2010) (awarding \$10,000 enhancement payment); *Carbajal v. Sally Beauty Supply LLC*, No. CIVVS 1004307 (San Bernardino Super. Ct. Aug. 6, 2012) (awarding \$10,000 enhancement payments to the named Plaintiffs); *Contreras v. Serco Inc.*, No. 10-cv-04526-CAS-JEMx (C.D. Cal. Sep. 10, 2012) (awarding \$10,000 enhancement payment); *Guerrero v. R.R. Donnelley & Sons Co.*, No. RIC 10005196 (Riverside Super. Ct. July 16, 2013) (awarding \$10,000 enhancement payment); *Kisliuk v. ADT Security Services, Inc.*, No. CV08-0324 DSF (RZx) (C.D. Cal. Jan. 10, 2011) (awarding \$10,000 enhancement payment); *Morales v. BCBG Maxaria Int’l Holdings, Inc.*, No. JCCP 4582 (Orange County Super. Ct. Jan. 24, 2013) (awarding \$10,000 enhancement payment); and *Barrett v. Doyon Security Services, LLC*, Nos. BS900199, BS900517 (San Bernardino County Super. Ct. Apr. 23, 2010) (awarding \$10,000 enhancement payment).

Representative 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 Class Representative Service Award. JCL Dec., ¶ 43.

D. The Court Should Preliminarily Approve Class Counsel's Class Counsel Award

The purpose of an award of Class Counsel's Class Counsel Award 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."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class Members. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed award of Class Counsel Award is fair and reasonable. JCL Dec., ¶ 46.

Plaintiff will file a formal motion for the negotiated award of the Class Counsel Award 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., ¶ 47.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement only, Plaintiff contends, and Defendant does not dispute, that provisional certification of the Class is appropriate. JCL Dec., ¶ 48.

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

1 court” (*Cal.Civ.Proc.* Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
2 certification is appropriate when there is an “ascertainable class and a well-defined community of
3 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment
4 is appropriate even if class members at some point may be required to make an individual showing as
5 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
6 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

22 Because all Class Members are Defendant’s current and former employees, the class is readily
23 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 49.

24 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
25 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
26 liability can be determined by facts common to all members of the class. The wage and hour issues are
27 both numerous and substantial, and a class action is the most advantageous method of dealing with the
28 claims of the Settlement Class. JCL Dec., ¶ 50.

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual basis and are based on the same legal theories applicable to the other Class
3 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Settlement
4 Class. Plaintiff alleges that he was injured by the same company-wide practices to which the proposed
5 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
6 to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive
7 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 51.

8 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
9 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
10 gained state court settlement approval of the same class-wide causes of action that are at issue in this
11 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
12 represent the interests of this Class. JCL Dec., ¶¶ 52, 54-61; Declaration of Shani O. Zakay at ¶ 3.

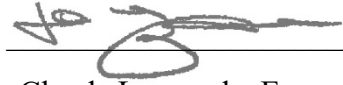
13 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
14 each individual claim, the Class Members likely have little incentive to litigate their claims on an
15 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
16 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
17 adjudication. JCL Dec., ¶ 53.

18 IV. CONCLUSION

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

22 Dated: September 18, 2023

JCL LAW FIRM, APC

24 By: 
25 Jean-Claude Lapuyade, Esq.