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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Maria Vazquez v. MT Collision Centers, Inc., Los Angeles County Court Case No. 22STCV34689 *Arturo Basulto v. MT Collision Centers, LLC,* Orange County Court Case No. 30-2023-01340093-CU-OE-CXC *Jose Maravilla v. Crash Champions, LLC,* Los Angeles County Superior Court Case No. 24STCV00728 *Jose Maravilla v. Crash Champions, LLC,* Los Angeles County Superior Court Case No. 24STCV07635 *Anthony Rodarte v. Crash Champions, LLC,* Santa Clara County Superior Court Case No. 24CV432852	Judicial Counsel Coordination Proceeding No. JCCP5340 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: May 5, 2026 Time: 10:00am Judge: Hon. Timothy Patrick Dillon Dept.: 15

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/ / /

TABLE OF CONTENTS

/ / /

TABLE OF AUTHORITIES

CASES

STATUTES, RULES AND CODES

/ / /

SECONDARY SOURCES

I. INTRODUCTION

Plaintiffs Maria Vazquez, Arturo Basulto, Jose Maravilla, and Anthony Rodarte ("Plaintiffs") seek preliminary approval of the Joint Stipulation of Class and PAGA Settlement and Release ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 2,735 Class Members and 2,290 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **"Class Member"** means all persons who are employed or have been employed by Crash Champions, LLC, MT Collision Centers, Inc., or MT Collision Centers, LLC ("Defendants") as a non-exempt employee, including non-exempt employees of entities acquired by Defendants who worked for Defendants, in the State of California between October 31, 2018, and up to and including the date the Court grants preliminary approval of the Long Form Settlement Agreement. ("**Class Period**"). Agreement at §§ A(2); A(6), A(8).

   a. The **"Settlement Class" or "Settlement Class Members"** means all Class Members who does not submit a timely Request for Exclusion from the Settlement. Agreement at § A(10).

   b. The "**Class Size**" is comprised of approximately 2,735 individuals who collectively worked approximately 230,000 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § P (77).

2. The **"Aggrieved Employees"** (labeled as "PAGA Recipients" in the Agreement) means all persons who are employed or have been employed by Defendants in the state of California as a non-exempt employee during the period beginning on August 24, 2021, and up to and including the date the Court grants preliminary approval of the Long Form Settlement Agreement (the "**PAGA Period**"). Agreement at §§ A(7), A(9). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the Settlement. Agreement at § M. At the time of mediation, there were approximately 2,290 Aggrieved Employees who worked an estimated total of 134,999 pay periods during the PAGA Period. SOZ Dec., ¶ #.

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[1] The Agreement is attached as Ex "1" to the Declaration of Shani O. Zakay ("SOZ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

3. The "**Gross Settlement Amount**" is Four Million Two Hundred and Fifty Thousand Dollars and Zero Cents (**$4,250,000.00**). Agreement at § B(11). The following will be paid from the Gross Settlement Amount:

a. "**Representative Enhancement Awards**" of not more than $10,000.00 to each Class Representative (labeled as "Named Plaintiffs" in the Agreement) in recognition of their efforts and risks in assisting with the prosecution of the Action. Agreement at § B(15).

b. **"Attorneys' Fees"** in an amount not to exceed 1/3 of the Gross Settlement Amount, which is currently estimated to be One Million Four Hundred and Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents ($1,416,666.67). Agreement at § B(13);

c. **"Attorneys' Costs"** in an amount not to exceed Sixty Thousand Dollars and Zero Cents ($60,000.00). Agreement at § B(14);

d. A "**PAGA Settlement Fund**" in the amount of Two Hundred Thousand Dollars and Zero Cents ($200,000.00) which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ($50,000.00) and the 75% to LWDA ($150,000.00) in settlement of Named Plaintiffs' PAGA claims. Agreement at §§ B(12), C(25), C(26); and

e. "**Settlement Administration Costs**" not to exceed $20,430.00 payable to the Settlement Administrator, Apex Class Action LLC, for, *inter alia,* the administration of the Notice of Settlement of Class and Representative Action ("Class Notice") and costs associated with administration of the settlement. Agreement at §§ B(16), D(36).

4. The "**Net Settlement Amount**" of approximately $2,512,903.33 (Gross Settlement Amount less the PAGA Settlement Fund, Representative Enhancement Awards, Attorneys' Fees, Attorneys' Costs, and the Settlement Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis according to the number of Workweeks each Settlement Class Member worked during the Class Period. Agreement at §§ C(24), O(75). The entire Net Settlement Amount will be paid to all Class Members who do not opt out of the Settlement resulting in an average Individual Class Payment of ***$918.79***. SOZ Dec., ¶ 8.

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 Members. 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. SOZ Dec., ¶ 8.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Settlement Class Members exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Named Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. SOZ Dec., ¶ 9.

II. FACTS AND PROCEDURE

A. Overview of the Litigation

This action is comprised of the following five separate actions that were coordinated under the title of "Crash Champions Wage and Hour Cases (Judicial Council Coordination Proceeding No. 5340") before the Los Angeles County Superior Court:

1. <u>*Vazquez* Class and PAGA Action</u>. A putative class and PAGA action filed on October 31, 2022 in Los Angeles Superior Court, Case No. 22STCV34689 by Plaintiff Maria Vazquez. The case was filed against Crash Champions, LLC along with MT Collision Centers, Inc., and MT Collision Centers, LLC. It asserts nine causes of action for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, et seq.; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, et seq.; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; and (9) Violation of the Private Attorneys General Act [Labor

Code §§ 2698, et seq.]. Plaintiff Vazquez propounded formal discovery in September 2023. SOZ Dec., ¶ 10.

2. *Basulto* Class and PAGA Action. A putative class and PAGA action filed on August 3, 2023 in Orange County Superior Court, Case No. 30-2023-01340093-CU-OE-CXC by Plaintiff Arturo Basulto. The case was filed against MT Collision Centers, LLC and MT Collision Centers, Inc. This case was originally filed as a putative class action, and Plaintiff Basulto filed an amended complaint on October 12, 2023 in order to add a PAGA cause of action. The First Amended Complaint is the operative complaint. It asserts nine causes of action for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Paid Rest Periods; (3) Failure to Pay Wages; (4) Failure to Timely Pay Wages at Termination/Separation; (5) Failure to Timely Pay Vacation Wages at Termination; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Reimburse Business Expenses; (8) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, et seq.; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698, et seq.].

3. *Maravilla* Class Action. A putative class action filed on January 10, 2024 in Los Angeles County Superior Court, Case No. 24STCV00728 by Plaintiff Jose Maravilla. The case was filed against Crash Champions, LLC. It asserts seven causes of action for: (1) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194 and 1197; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 and 1194; (3) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512; (4) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7; (5) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (6) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (7) Unfair Competition in Violation of Cal. Bus. & Prof. Code § 17200, et seq. Declaration of James Clark, ¶ 4.

4. *Maravilla* PAGA Action. A PAGA action filed on March 26, 2024 in Los Angeles County Superior Court, Case No. 24STCV07635 by Plaintiff Jose Maravilla. The complaint asserts a single cause of action for violations of the Private Attorney General Act Pursuant to Labor Code Sections 2698 *et seq* ("PAGA") and is brought on behalf of all other current and former employees of Crash Champions, LLC who worked as hourly non-exempt employees in California. The *Maravilla* PAGA

Action is predicated on the same underlying California Labor Code violations alleged in the *Maravilla* Class Action. Declaration of James Clark, ¶ 6.

5. *Rodarte* Class Action. A putative class action filed on March 11, 2024 in Santa Clara County Superior Court, Case No. 24CV432852, against Crash Champions, LLC by Plaintiff Anthony Rodarte. The complaint asserts nine causes of action for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194, 1198 & 510); (3) Failure to Authorize or Permit Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4)) Failure to Authorize or Permit Rest Periods (Cal. Lab. Code §§ 226.7); (5) Failure to Provide Sick Pay (Cal. Lab. Code § 246); (6) Failure to Timely Pay Earned Wages During Employment (Cal. Lab. Code § 204); (7) Failure to Timely Pay All Earned Wages and Final Paychecks Due At Time of Separation (Cal. Lab. Code §§ 201, 202 and 203); (8) Failure to Provide Complete and Accurate Wage Statements (Cal. Lab. Code §226); and (9) Unfair Business Practices (Class Claim; Business and Professions Code § 17200 *et seq*.) Declaration of David Lavi, ¶ 4.

On April 24, 2024, the Parties to all five of the above-named actions participated in a full day mediation with the Hon. Brian C. Walsh (Ret.) mediating. Mediation concluded without a settlement. In July of 2024, Named Plaintiffs subsequently moved to consolidate the five separate cases. On August 1, 2024, the Parties again participated in mediation with Judge Walsh, and again, were unable to reach a settlement. SOZ Dec. at ¶ 11.

On October 8, 2024, the court ordered the cases coordinated under the title Crash Champions Wage and Hour Cases (Judicial Council Coordination Proceeding No. 5340). SOZ Dec. at ¶ 12. The Parties subsequently continued settlement negotiations with the aid of the mediator, the Hon. Brian C. Walsh (Ret.), and reached a global settlement of the coordinated five actions. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. SOZ Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the five separate actions, Class Counsel began their pre-filing investigations into the Named Plaintiffs' complaints. SOZ Dec., ¶ 14. In anticipation of mediation, Defendants produced a sample of time and payroll records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. SOZ Dec., ¶ 15.

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

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate amount of unpaid wages, amount of unpaid overtime wages, number of workweeks, number of pay periods, average length of shifts and average number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal periods, the amount of unpaid overtime, and the amount of missed meal period premiums, and the amount of potential missed rest period premiums paid during the Class Period. SOZ Dec., ¶ 17.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining the Named Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analysis of their employment files; (2) evaluating all of Named Plaintiffs' potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Named Plaintiffs' claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation briefs; and (9) participating in the mediations. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. SOZ Dec., ¶ 18.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Named Plaintiffs' claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. SOZ Dec., ¶ 19. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

C. The Parties Settled after Two Mediations

On April 24, 2024, the Parties conducted a full day of mediation with the Hon. Brian C. Walsh (Ret.) as mediator. Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. However, the mediation concluded without a settlement. The Parties participated in a second mediation with Judge Walsh on August 1, 2024. Once again, the mediation concluded without a settlement, however Judge Walsh continued to communicate with the Parties following the second mediation. Through these subsequent mediated negotiations, the Parties were able to reach a settlement. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 20.

D. The Proposed Settlement Fully Resolves Named Plaintiffs' Claims

1. The Composition of the Class Members

The proposed Class consists of all persons who are employed or have been employed by Defendants as a non-exempt employee, including non-exempt employees of entities acquired by Defendants who worked for Defendants, in the State of California during the Class Period. Agreement at §§ A(6), A(8). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at §§ A(10), K(61). At the time of mediation, Defendants estimated that the Class was comprised of 2,735 individuals that worked approximately 230,000 Workweeks during the Class Period. SOZ Dec., ¶ 21.

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $4,250,000.00. The Gross Settlement Amount includes: (1) Individual Class Payments to the Settlement Class Members; (2) Representative Enhancement Awards of not more than $10,000.00 to each Class Representative for their services on behalf of the Class and for a general release of claims; (3) a PAGA Settlement Fund in the amount of $200,000.00; (4) Settlement Administration Costs estimated at $20,430.00; (5) Attorneys' Fees comprised of up to 1/3 of the Gross Settlement Amount, estimated to be $1,416,666.67; and (6) Attorneys' Costs in an amount not to exceed $60,000.00 for actually incurred litigation expenses. See generally Agreement at §§ B(11) - (16).

Subject to the Court approving the Representative Enhancement Awards, Attorneys' Fees and Attorneys' Costs, PAGA Settlement Fund, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement Class Member. Agreement at §§ C(24), C(27). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at §§ G(46), Q (78), R(84).

3. The Funding Date

Assuming there are no objectors, and no appeal is filed, Defendants shall fully fund the Gross Settlement Amount within fourteen (14) calendar days of the Effective Date. Defendants shall also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Settlement Administrator within thirty (30) calendar days of the Effective Date and Defendants' receipt of the necessary calculations from the Settlement Administrator. Agreement at §§ G(46)-(48).

4. Formula for Calculating Individual Class Payments

Settlement Class Members will receive an Individual Class Payment. The Individual Class Payment will be proportional to the number of Workweeks each Class Member worked as a non-exempt hourly employee for Defendants in California during the Class Period. Agreement at § O(75). The Class List provided by Defendants to the Settlement Administrator will include the number of Workweeks for each Class Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at § C(21). The Settlement Administrator will calculate each Settlement Class Member's final Individual Class Payment by dividing the Net Settlement Amount by the total number of

Workweeks worked by all Settlement Class Members during the Class Period and multiply the result by each Settlement Class Member's Workweeks worked during the Class Period. Agreement at §§ C(30), O(75). Given that there are approximately 2,735 Class Members, ***the average gross recovery is approximately $918.87*** (Net Settlement Amount divided by Settlement Class Members). SOZ Dec., ¶ 8.

5. Release by Settlement Class Members

As of the Effective Date, Named Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at § F(43).

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

As of the Effective Date, Named Plaintiffs, the Aggrieved Employees, and the State of California will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at § F(44).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $4,250,000.00 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. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by Experienced Counsel.

"[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 reached a settlement only after mediated negotiations following two separate unsuccessful mediations. (*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.").) Once the Parties reached a settlement, the Parties engaged in negotiations regarding the written terms of the class action settlement. The Agreement is the final product of the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SOZ Dec., ¶ 22.

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

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

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Named Plaintiffs' claims. 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. SOZ Dec., ¶ 24. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement.

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

The Gross Settlement Amount of $4,250,000.00 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.[2] Indeed, "[t]he determination whether a settlement is reasonable does not involve the use of a 'mathematical equation yielding a particularized sum.' " (*Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

a. <u>The Gross Settlement Amount Meets the Recognized Range of Reasonableness</u>.

The Gross Settlement Amount of $4,250,000.00 is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Prior to the mediations, Class Counsel retained 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 of a significant sample of time and payroll data. Class Counsel projected Defendants' liability exposure for *class claims* (excluding PAGA Penalties) would be approximately $15,139,982.80 if successful at trial. Thus, the Gross Settlement Amount represents a recovery of approximately 28% of Defendants' class-wide exposure – well within the recognized range of reasonableness. The following summarizes Defendants' liability exposure. SOZ Dec., ¶ 25.

(1) <u>Defendants' Estimated Exposure for Regular Rate Violations</u>

Named Plaintiffs alleged that Defendants failed to include certain non-discretionary compensation when calculating the regular rate of pay when paying overtime wages, meal period

[2] Federal district 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; *see In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; *see also Nat'l Rural Telecomm. Coop. v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("well settled law that a proposed settlement may be acceptable even though it amounts to 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").

premiums, and redeemed sick pay. Specifically, Defendants paid Class Members non-discretionary incentive compensation including shift differentials, commissions, and other bonuses that were not properly calculated into the regular rate of pay for purposes of overtime, meal period premiums, and redeemed sick pay. SOZ Dec., ¶ 26. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552-554. California law requires meal period premiums to be paid at an employee's regular rate of pay. *See Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) 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, 552-554. 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. Cal. Labor Code § 246(1)(1)-(2). Defendants contended that some of the payments identified by Named Plaintiffs were discretionary and thus properly excluded from the regular rate of pay. Defendants further argued that only some Class Members received the bonuses identified by Named Plaintiffs, thus the claim is a highly individualized inquiry unsuitable for class treatment. Taking Defendants' defenses into account, Named Plaintiffs estimated Defendants' exposure for this claim to be approximately $6,280,362.20. This number was calculated by adding together the underpayment of overtime, meal period premiums and redeemed sick pay that were paid during the same pay period in which a Class Member earned additional compensation that Named Plaintiffs believe were discretionary, and applying a 30% discount to account for Defendants' defenses. SOZ Dec., ¶ 27.

(2) <u>Defendants' Estimated Exposure for Meal Period Violations</u>

Named Plaintiffs allege that Defendants failed to provide compliant meal periods, and that Class Members were required to forego compliant meal periods as a result of rigorous work schedules and understaffing. Named Plaintiffs' expert found over 11% of shifts in which a first meal period was taken after the fifth hour. Named Plaintiffs' expert found that 38% of shifts between 5-6 hours did not include a meal period, 88% of shifts between 10-12 hours did not include a recorded second meal break and 82% of shifts greater than 12 hours did not include a second meal break. Moreover, Named Plaintiffs allege Defendants did not produce any meal break waivers. Named Plaintiffs also allege that they and Class Members were required to receive and/or respond to work-related communications on their personal cell phone during meal breaks related to things like deliveries, payments, checks, and insurance. SOZ Dec., ¶ 28. Defendants denied these claims, and contended they provided all Class Members and Aggrieved Employees with the opportunity to take compliant meal periods. Defendants argued that its policies were compliant, that Class Members and Defendants both consented to waiving a first meal periods in instances in which a shift was 6 hours or less, and a second meal period when the shift was 10-12 hours, and that in instances in which a compliant meal period was not offered, that they paid meal period premiums. Defendants also argued that any claimed violations required a highly individualized inquiry not suitable to class treatment. SOZ Dec., ¶ 29. Taking Defendants' defenses into account, Named Plaintiffs estimated Defendants' exposure for this claim to be approximately $324,193.50. This number was calculated by adding up the short, late and missed meal periods recorded during the Class Period that could not be waived, and for which Class Members were not compensated a meal period premium, and applying a 25% discount to account for Defendants' defenses. SOZ Dec., ¶ 30

(3) <u>Defendants' Estimated Exposure for Rest Period Violations</u>

Named Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically, Named Plaintiffs alleged that because of their rigorous work schedules, Named Plaintiffs, Class Members, and Aggrieved Employees were not able to take compliant, duty-free rest periods. SOZ Dec., ¶ 31. Additionally, Named Plaintiffs also alleged that Defendants paid certain Class Members according to a piece-rate compensation plan that violated California minimum wage and overtime laws because it failed to separately compensate the Class Members for rest periods. For example, Plaintiff Basulto alleges he was paid on a piece-rate basis for his work on cars, with different amounts assigned to different makes and models of cars. However, Mr. Basulto was not provided with, nor paid for, separate rest periods. SOZ Dec., ¶ 32.

Again, Defendants denied liability and asserted that the workload is not such that it prevented employees from taking a break. Moreover, Named Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing Named Plaintiffs' rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendants argued that they obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc*. (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence that Defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc*. (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices"). Taking this into account, Named Plaintiffs estimated Defendants' exposure for this claim to be approximately $324,195.50. This number was calculated by mirroring the meal period violation damages, as Named Plaintiffs alleged that rest periods were missed for the same reasons that meal periods were missed, late, or short. SOZ Dec., ¶ 33.

(4) <u>Defendants' Estimated Exposure for Mandatory Business Expenses</u>

Named Plaintiffs allege that Defendants required Class to use their personal cell phones for work purposes. Specifically, Named Plaintiffs allege that Class Members were required to use their personal cell phones to clock in and out using the ADP app, and for work-related communications, including contacting car rental companies, insurance companies, co-workers, and supervisors. Named Plaintiffs also allege that some Class Members were required to purchase their own tools for work-related use. Named Plaintiffs allege that Defendants failed to reimburse Class Members for these expenses. Named Plaintiffs estimated Defendants' total exposure for this claim was approximately $1,111,750 in damages. This was calculated by assuming each Class Member should have been reimbursed $25 per month. SOZ Dec., ¶ 34.

(5) <u>Defendants' Estimated Exposure for Waiting Time Penalties</u>

Named Plaintiffs alleged that Defendants' aforementioned violations resulted in a derivative violation of California Labor Code sections 203. Class Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses, including potential obstacles in proving the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Although the Class arguably could have seen a significant payout for these penalties if Named Plaintiffs prevailed on the underlying claims, Named Plaintiffs would not recover any derivative penalties if they failed to prove the underlying claims. Moreover, Named Plaintiffs would have to establish class certification to prove the Class deserved the penalties. *See, e.g., Howard v. CVS Caremark Corp*., 2014 U.S. Dist. LEXIS 172406 (C.D. Cal. Dec. 9, 2014) (denying class certification for the same penalty claims); *Alonzo v. Maximus, Inc*., 832 F. Supp. 2d 1122, 1134-1137 (C.D. Cal. 2011) (finding insufficient evidence of bad faith or actual injury). In light of the above, Named Plaintiffs estimated Defendants' exposure for waiting time penalties to be $3,563,483.60. This was calculated by assuming that each of the 1,430 separated employees would be eligible for Labor Code section 203 penalties for the full 30-days allowed under the statute, and then applying a 60% discount to account for the obstacles listed above. SOZ Dec., ¶ 35.

(6) Defendants' Estimated Exposure for Wage Statement Penalties

Named Plaintiffs also alleged that Defendants failed to furnish employees with accurate itemized wage statements as required by California Labor Code section 226. Specifically, Named Plaintiffs alleged that as a result of Defendants' failure to accurately pay for non-productive time, provide meal and rest period premiums, and calculate the regular rate of pay correctly, the wage statements issued to Named Plaintiffs and Class Members were inaccurate. SOZ Dec., ¶ 36. Defendants denied liability for the underlying claims, and also argued that Named Plaintiffs could not establish the "knowing and intentional" element or the injury requirement on a class-wide basis. Defendants asserted that to the extent any wage statement deficiencies resulted from inadvertent errors rather than intentional violations, which would preclude penalty awards. In light of the above, Named Plaintiffs estimated Defendants' exposure for wage statement penalties to be $3,536,000. This was calculated by assuming that each of the wage statements issued by Defendants within the statutory period were deficient. Named Plaintiffs then applied a 60% discount to account for the obstacles listed above. SOZ Dec., ¶ 37.

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(7) Defendants' PAGA Exposure

Class Counsel's damage models also estimated Defendants' exposure for PAGA penalties. At the time of mediation, Named Plaintiffs estimated Defendants' PAGA exposure to be approximately $7,585,742.50. SOZ Dec., ¶ 38. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount was the result of self-interest at the expense of class members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.,* No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, the Parties negotiated a good faith PAGA Settlement Fund in the amount of $200,000.00 which is 4.7% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA payments. Seventy-Five percent (75%) of the PAGA Settlement Fund ($150,000.00) will be paid to the LWDA with the remaining twenty-five percent (25%) of the PAGA Settlement Fund ($50,000.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA payments approved by courts, and should be approved.

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

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

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

b. Inherent Risks of Continued Litigation Support Preliminary Approval.

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *a.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 settlement.

"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 coordinated 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 Named Plaintiffs are successful at trial, Named Plaintiffs are acutely aware that a judgment does not end the litigation. Named 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. SOZ Dec., ¶ 39. "Avoiding such a trial and the subsequent appeals 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.)

In this matter, Class Counsel negotiated a Gross Settlement Amount of $4,250,000.00 that is roughly 28% of Defendants' *class-wide* liability exposure for damages. 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. SOZ Dec., ¶ 40.

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

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

The Parties jointly drafted the Class Notice which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Class Notice to all Class Members. The Class Notice will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the procedure and time period within which to request exclusion or object 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 Claims. Agreement at Exhibit A. 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. SOZ Dec., ¶ 41

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

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

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

C. The Court Should Preliminarily Approve the Representative Enhancement Awards

Enhancement 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); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study,* 53 UCLA L. Rev. 1303 (2006).) Enhancement 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.) "[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 Representative Enhancement Award of up to $10,000.00 to each Named Plaintiff. The Representative Enhancement Awards are fair and reasonable compensation for the Named Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of their 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 Class Members, and agreeing to provide Defendants a general release of all claims arising out of their employment. SOZ Dec., ¶ 42.

Class Counsel on behalf of Named Plaintiffs will file a formal motion for the Representative Enhancement Awards once preliminary approval of the Settlement is granted. Named Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Class Representative Payment. SOZ Dec., ¶ 43.

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

The purpose of payment of 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."); 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 Named Plaintiffs' claims. As discussed *supra*, the estimated average Individual Class 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 requested Class Counsel's Attorney's Fees and Costs is fair and reasonable. Plaintiffs will file a formal motion for the negotiated Class Counsel's Attorney's Fees and Costs once preliminary approval of the Settlement is granted. Named Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SOZ Dec., ¶ 44.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement purposes, Named Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. SOZ Dec., ¶ 45.

1. <u>The Standard for Class Certification</u>

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 Settlement 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 employees, the class is readily ascertainable from Defendants' regular business records, i.e., payroll records. SOZ Dec., ¶ 46.

The statutes relating to each of Named Plaintiffs' claims apply with equal force and effect to the entire Class. Factually, Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Class Members. SOZ Dec., ¶ 47.

Named 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, Named Plaintiffs' interests are entirely coextensive with the interests of the Class. Named 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. Named Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure that it is fair. SOZ Dec., ¶ 48.

Additionally, Named 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. SOZ Dec., ¶¶ 6, 65; Declaration of Jean-Claude Lapuyade, ¶¶ 3-8; Declaration of Haik Hacopian, ¶¶ 2-6; Declaration of Zorik Mooradian ¶¶ 2-7; Declaration of James Clark, ¶¶ 12-14; Declaration of David Lavi, ¶¶ 14- 16.

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. SOZ Dec., ¶ 50.

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: March 18, 2026

ZAKAY LAW GROUP, APLC

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Jaclyn Joyce, Esq.