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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

BRAD KLEIN, an individual, on behalf of himself
and on behalf of all persons similarly situated,

Plaintiff,

v.

REDZONE SECURITY INC., a California
Corporation; and DOES 1-50, Inclusive;

Defendants.

Case No. CVRI2202841

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

Date: April 29, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

Reservation #: 804963484303

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1 I. INTRODUCTION

2 Plaintiff BRAD KLEIN (“Plaintiff”) seeks preliminary approval of the Stipulation of Settlement
3 of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for approximately 338 Class Members who collectively worked
5 approximately 10,000 Workweeks. The basic terms of the Agreement provide for the following:

6 1. The “**Class Members**,” “**Settlement Class**” and “**Class Period**” all persons who are or
7 previously were employed by Redzone Security Inc. (“Defendant”) as a non-exempt employee in
8 California (“Class Member”) during the period between July 11, 2019, through January 11, 2024 (“Class
9 Period”). Agreement at §§ I(H) and (I). The “Settlement Class” excludes any Class Member that
10 submitted a valid and timely request for exclusion. Agreement at §I(KK).

11 a. The “**Settlement Class Members**” means all Class Members who have not
12 submitted a timely and valid request for exclusion as provided in the Agreement. Agreement at §
13 I(KK).

14 b. The “**Class Size**” is comprised of 338 individuals who collectively worked
15 approximately 10,000 Workweeks during the Class Period as estimated by Defendant at the time of
16 mediation. Agreement at § III(A)(2).

17 2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean all non-exempt
18 employees who are or previously were directly employed by Defendant and performed work in
19 California (“Aggrieved Employees”) during the period between May 5, 2021, to January 11, 2024
20 (“PAGA Period”). Agreement at § I(B); I(Y). Aggrieved Employees do not have the ability to opt-out
21 of the PAGA portion of the settlement. Agreement at § III(L)(7). At the time of mediation, there were
22 approximately 338 Aggrieved Employees who worked approximately 4,550 pay periods during the
23 PAGA Period.

24 3. The “**Gross Settlement Amount**” is Two Hundred Thousand Dollars and Zero Cents
25 (\$200,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes
26 the following:

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. A **“Class Representative Service Award”** of not more than \$10,000 to Plaintiff
2 in recognition of his efforts and risks in assisting with the prosecution of the Action. Agreement at §§
3 III(L)(9).

4 b. A **“Class Counsel Award”** in the amount not to exceed one third of the Gross
5 Settlement Amount for attorney’s fees, currently estimated to be \$66,666.67 **and** litigation expenses
6 not to exceed \$15,000, to be paid to Class Counsel. Agreement at § III(L)(10);

7 c. A **“PAGA Payment”** of Ten Thousand Dollars (\$10,000) shall be allocated from
8 the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys
9 General Act of 2004. The Settlement Administrator shall pay seventy-five (75%) of the PAGA
10 Payment (\$7,500) to the Labor and Workforce Development Agency (“LWDA Payment”). Twenty-
11 five percent (25%) of the PAGA Payment (\$2,500) will be distributed to the Aggrieved Employees
12 (“Aggrieved Employee Payment”). Agreement at §§ I(C); I(R); I(V); III(L)(11). The average
13 Aggrieved Employee Payment is approximately \$7.39. The estimated range of Aggrieved Employee
14 Payments will be provided in Plaintiff’s motion for final approval; and

15 d. **“Settlement Administration Expenses”** not to exceed \$10,000 payable to the
16 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Class
17 Notice and Settlement Administration Expenses. Agreement at §§ I(II), III(L)(12). Class Counsel
18 requested bids from three (3) settlement administration companies and received the lowest bid from
19 Apex Class Action LLC. JCL Dec., ¶ 5.

20 4. The **“Net Settlement Amount”** of approximately \$88,333.33 (Gross Settlement Amount
21 less the requested Class Counsel Award, Class Representative Service Award, PAGA Payment, and
22 Settlement Administration Expenses) which will be allocated to all Settlement Class Members on a
23 pro-rata basis according to the number of Workweeks each Settlement Class Member worked during
24 the Class Period. Agreement at § III(L)(1). The entire Net Settlement Amount will be paid to all
25 Settlement Class Members who do not opt out of the Settlement resulting in an average Individual
26 Settlement Payment of **\$261.34**. The range of settlement awards will be provided when Plaintiff moves
27 for final approval of the Settlement. JCL Dec., ¶ 7.

28 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the

1 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm's length.
2 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
3 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
4 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
5 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
6 denied or of Defendant prevailing at trial. JCL Dec., ¶ 7.

7 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
8 approval and falls within the range of reasonableness. The average Individual Settlement Payment to
9 the Settlement Class meets awards in similar wage and hour class actions. Moreover, the proposed
10 Settlement Class is appropriate for provisional certification. Accordingly, Plaintiff respectfully requests
11 the Court grant preliminary approval of the Settlement. JCL Dec., ¶ 8.

12 II. FACTS AND PROCEDURE

13 A. Overview of the Litigation

14 Defendant provides event security services in Riverside County, where Plaintiff worked.
15 Plaintiff worked for Defendant in California from September 2021 to October 2021. During his
16 employment, Plaintiff claims that he was denied legally compliant meal and rest periods, and
17 minimum wages and overtime compensation. Throughout his employment, Plaintiff was subject to
18 Defendant's written policies and procedures. Declaration of Brad Klein ("Klein Dec.") at ¶¶ 1-5; JCL
19 Dec., ¶ 9.

20 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
21 failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish
22 accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further,
23 Defendant asserts that it fully complied with all applicable employment laws and raised several other
24 significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained
25 facially compliant meal and rest period policies, paid their employees for all hours worked, and properly
26 reimbursed all necessary business expenses. JCL Dec., ¶ 10.

27 On May 5, 2022, Plaintiff served Defendant and the Labor and Workforce Development Agency
28 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts

1 and theories supporting Defendant’s alleged violations of various provisions of the California Labor
2 Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue
3 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et*
4 *seq* (“PAGA”). JCL Dec., ¶ 11.

5 On July 11, 2022, Plaintiff filed a class action complaint in the Riverside County Superior Court,
6 Case No. CVRI2202841 (“Action”). The Action alleged nine causes of action against Defendant for:
7 (1) Unfair Competition in violation of Bus. and Prof. Code §§ 17200; (2) Failure to Pay Minimum
8 Wages in Violation of California Labor Code §§ 1194, 1197, and 1197.1; (3) Failure to Pay Overtime
9 Wages in Violation of California Labor Code §§ 510; (4) Failure to Provide Required Meal Periods in
10 Violation of California Labor Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in
11 Violation of California Labor Code §§ 226.7 and 512; (6) Failure to provide Accurate Itemized Wage
12 Statements in violation of California Labor Code § 226 (7) Failure to Provide Wages When Due in
13 Violation of California Labor Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for
14 Required Expenses in Violation of California Labor Code § 2802; and (9). Violation of the Private
15 Attorneys General Act in violation of California Labor Code sections 2698, *et seq*. JCL Dec., ¶ 12.

16 After Plaintiff commenced written discovery, the Parties agreed to mediate this action on
17 February 24, 2023, with retired jurist and mediator Hon. Brian C. Walsh (Ret.). To prepare for
18 mediation, the Parties agreed to informally exchange additional documents and data points subject to
19 the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll
20 data points. JCL Dec., ¶ 13.

21 The Parties subsequently cancelled mediation due to Defendant’s inability to engage in
22 settlement negotiations. Specifically, Defendant’s sole owner had been stricken with a grave,
23 debilitating illness that precluded the parties from proceeding to mediation in February 2023.² Further,
24 Defendant raised the possibility that it would be unable to satisfy a larger class-wide settlement due to
25 the sole owner’s illness and its financial condition. Accordingly, counsel for Defendant offered a class-
26 wide settlement of \$200,000.00. Class Counsel retained Certified Public Accountant, Kenneth L. Creal,
27 to review and analyze Defendant’s 2022 tax return. Based on Mr. Creal’s review, he determined that
28

² Defendant has filed a declaration with the court supporting the same for in camera review.

1 Defendant could not afford a larger settlement than the one contemplated here. JCL Dec., ¶ 14.

2 Thus, the Parties agreed upon the Gross Settlement Amount of \$200,000.00, which was
3 subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties
4 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.
5 JCL Dec., ¶ 15.

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

7 Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiff's
8 complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As
9 part of the interview process, the Plaintiff produced documents related to his employment. At the
10 conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further
11 inquiry. JCL Dec., ¶ 16.

12 Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response,
13 Defendant produced several documents, including but not limited to, copies of Plaintiff's hiring
14 documents and payroll and time records, schedules, and various company policies. Class Counsel
15 reviewed and analyzed the documents and determined the documents appeared to substantiate
16 Plaintiff's claims that Defendant failed to, among other things, provide compliant meal and rest periods,
17 and failed to pay for all hours worked, failed to reimburse necessary business expenses, and failure to
18 furnish accurate itemized wage statements. JCL Dec., ¶ 17.

19 To prepare for mediation, Defendant produced time and payroll records for the Class Members,
20 aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the
21 Class Members, average hourly rate for the Class Members, average shift length for Class Members,
22 number of current Class Members, number of former Class Members who were employed during the
23 Class Period, and copies of applicable handbooks, policies, and agreements. In total, Class Counsel
24 reviewed hundreds of pages of documents of time and payroll data. JCL Dec., ¶ 18.

25 Class Counsel analyzed Defendant's time and payroll data to assist in the development of various
26 damage models. Among other things, Class Counsel estimated the approximate amount of unpaid
27 wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts
28 and average number of hours worked per week. Class Counsel also estimated the number of missed,

late, or truncated meal and rest periods, the amount of off-the-clock work, and the amount of missed meal and rest period premiums paid during the Class Period. JCL Dec., ¶ 19.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's 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 Settlement Class's time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. 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. JCL Dec., ¶ 20.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their 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 Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JCL Dec., ¶ 21.

C. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Settlement Class consists of all persons who are or previously were employed by Defendant as a non-exempt employee in California during the Class Period during the period between July 11, 2019 through January 11, 2024. Agreement at I(I). The Settlement Class excludes any person who submits a timely and valid request for exclusion. At the time of mediation, Defendant estimated that the Settlement Class was comprised of 338 individuals that worked approximately 10,000 workweeks during the Class Period. Agreement at § III(A)(2).

///

1 2. The Settlement Consideration

2 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
3 Amount of \$200,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to
4 the Settlement Class; (2) a Class Representative Service Award of not more than \$10,000 to Plaintiff
5 for his services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of \$10,000; (4)
6 Settlement Administration Expenses estimated at \$10,000; (5) Class Counsel Award in the amount of
7 \$131,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
8 to be \$116,666.67 and an estimated \$15,000 for actually incurred litigation expenses. See generally
9 Agreement at § III(L).

10 Subject to the Court approving the Class Representative Service Award, Class Counsel Award,
11 PAGA Payment, and the Settlement Administration Expenses, the Net Settlement Amount will be
12 distributed to each participating member of the Settlement Class Member. Agreement at § I(S). There
13 is no reversion to Defendant and Defendant must separately pay for its share of the employer payroll
14 taxes. Agreement at § III(A)(1).

15 3. The Funding Date

16 Assuming there are no objectors, and no appeal is filed, Defendant will fund the Gross Settlement
17 Amount within sixty (60) calendar days of the Court's entry of the order granting final approval of this
18 Settlement. Agreement at § I(O).

19 4. Formula for Calculating Individual Settlement Payments

20 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
21 Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member
22 worked for Defendant in California during the Class Period. The Class Data provided by Defendant to
23 the Settlement Administrator will include the information required to calculate the number of
24 Workweeks for each Class Member and the number of PAGA Pay Periods worked during the PAGA
25 Period. Agreement at § I(G). Each Settlement Class Member's final Individual Settlement Payment will
26 be calculated by using a fraction, the numerator of which is the Settlement Class Member's total number
27 of Workweeks, and the denominator of which is the total number of Workweeks of all Settlement Class
28 Members. Each Individual Settlement Payment will be reduced by any legally mandated employee tax

1 withholdings (e.g., employee payroll taxes, etc.). Individual Settlement Payments for members of the
2 Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement
3 Class Members who do not submit valid and timely requests for exclusion on a pro rata basis.
4 Agreement at § III(L)(1).

5 Given that there are approximately 338 Settlement Class Members, the average gross recovery
6 is approximately \$261.34 (Net Settlement Amount divided by Settlement Class Members). The range
7 of settlement awards will be provided when Plaintiff moves for final approval of the Settlement. JCL
8 Dec., ¶ 7.

9 For tax purposes, Individual Settlement Payments shall be allocated and treated as follows: 20%
10 as wages (“Wage Portion”); 80% as penalties and interest (“Non-Wage Portion”). The Wage Portion is
11 subject to wage withholdings and shall be reported on IRS Form W-2. The Non-Wage Portion shall not
12 be subject to wage withholdings and shall be reported on IRS Form 1099. Agreement at §III(L)(3). In
13 calculating Defendant’s total damages exposure, Class Counsel determined that the vast majority of
14 damages are for meal and rest premiums, which can be classified as penalties and not wages. Therefore,
15 with the uncertainty regarding how meal and rest premiums would be classified, the Parties agreed that
16 an allocation of 20% as wages and 80% as penalties and interest is far and reasonable. JCL Dec., ¶ 22.

17 5. Formula for Calculating Individual Payments to the Aggrieved Employees

18 Each Aggrieved Employee will receive an Aggrieved Employee Payment. Using the Class Data,
19 each Aggrieved Employee’s final Aggrieved Employee Payment will be calculated by using a fraction,
20 the numerator of which is the Aggrieved Employee’s total number of PAGA Pay Periods, and the
21 denominator of which is the total number of PAGA Pay Periods of all Aggrieved Employees.
22 Agreement at §III(L)(2). For tax purposes, Aggrieved Employee Payments shall be allocated and
23 treated as 100% penalties and shall be reported on IRS Form 1099. Agreement at §III(L)(4).

24 6. Mailing of Individual Settlement Payments and Aggrieved Employee Payments

25 The Settlement Administrator will mail the Individual Settlement Payments and Aggrieved
26 Employee Payments by regular First-Class U.S. Mail to Settlement Class Members’ and/or Aggrieved
27 Employees’ last known mailing address no later than fifteen (15) calendar days after the Funding Date.
28 Agreement at § III(L)(7). Any checks issued to Settlement Class Members and Aggrieved Employees

1 shall remain valid and negotiable for one hundred and eighty (180) days from the date of their issuance.
2 If a Settlement Class Member and/or Aggrieved Employee does not cash his or her settlement check
3 within 90 days, the Settlement Administrator will send a letter to such persons, advising that the check
4 will expire after the 180th day, and invite that Settlement Class Member and/or Aggrieved Employee
5 to request reissuance in the event the check was destroyed, lost or misplaced. Agreement at § III(L)(8).
6 In the event an Individual Settlement Payment and/or Aggrieved Employee's individual share of the
7 PAGA Payment check has not been cashed within one hundred and eighty (180) days, the check will
8 be voided and the Settlement Class Member and/or Aggrieved Employee will remain bound by the
9 Settlement. The funds from any such uncashed checks will be reallocated and redistributed by the
10 Settlement Administrator to those Settlement Class Members and/or Aggrieved Employees who cashed
11 their Individual Settlement Payment checks through a second distribution using the same allocation as
12 the first distribution. Agreement at § III(L)(8).

13 7. Release by Settlement Class Members

14 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to
15 release the Released Parties from the Released Class Claims. Agreement at § III(B). The Released
16 Class Claims are class claims which are alleged in the operative complaint, which occurred during the
17 Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
18 termination, unemployment insurance, disability, social security, workers' compensation, and class
19 claims outside of the Class Period. Agreement at § I(DD).

20 8. PAGA Release by Plaintiff and the State of California

21 Generally, as of the Funding Date, Plaintiff and the State of California will release the Released
22 Parties from the Released PAGA Claims. Agreement at § III(C). The Released PAGA Claims are all
23 PAGA claims which are alleged in the operative complaint and Plaintiff's PAGA notice to the LWDA
24 which occurred during the PAGA Period, and expressly excluding all other claims, including claims
25 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
26 workers' compensation, and PAGA claims outside of the PAGA Period. Agreement at § I (EE).

27
28 ///

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$200,000.00 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 California Rules 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 Settlement was reached as a result of arms-length negotiations by the Parties and assistance
12 of Mr. Creal. Specifically, Mr. Creal reviewed Defendant’s relevant financial documents and provided
13 a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative*
14 *Litig.* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s
15 participation weighs considerably against any inference of a collusive settlement); *D’Amato v.*
16 *Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification
17 settlement negotiations helps to ensure that the proceedings were free of collusion and undue
18 pressure.”).) After Mr. Creal’s review of Defendant’s financial documents, the Parties reached an
19 agreement in light of Defendant’s financial condition and its owner’s illness. JCL Dec., ¶ 23.

20 Once the Parties reached a settlement, they engaged in protracted negotiations regarding the
21 written terms of the class action settlement. The Parties maintained the arm’s length, non-collusive and
22 adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final
23 product of these settlement negotiations. Objectively, the Settlement terms are fair, adequate and
24 represent a reasonable compromise of the claims at issue. JCL Dec., ¶ 24.

25 2. The Settlement Falls Within the Recognized Range of Reasonableness.

26 The Gross Settlement Amount of \$200,000.00 is within the range of reasonableness. To
27 determine whether a settlement is fair and reasonable, the court should “consider enough information
28 about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to

1 make an independent assessment of the reasonableness of the terms to which the parties have agreed.”
2 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination,
3 the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the
4 ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such
5 explicit statement of value; [they] require[] a record which allows an understanding of the amount that
6 is in controversy and the realistic range of outcomes of the litigation. ” (*Munoz v. BCI Coca-Cola*
7 *Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a
8 settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might
9 have received if they had succeeded at trial.³ Indeed, “[t]he determination whether a settlement is
10 reasonable does not involve the use of a ‘mathematical equation yielding a particularized sum.’ ” (*Frank*
11 *v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 FRD. 174, 186 (quoting *In re Michael Milken and Assoc.*
12 *Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

13 **a. The Gross Settlement Amount Meets the Recognized Range of**
14 **Reasonableness.**

15 The Gross Settlement Amount of \$200,000.00 is fair and reasonable considering the nature and
16 magnitude of the claims being settled and the various potential impediments to recovery. Prior to
17 settlement, Class Counsel developed economic damage models measuring Defendant’s liability
18 exposure while accounting for the uncertainties of continued litigation. The various models were
19 informed by Class Counsel’s investigation, including the analysis of a significant sample of time and
20 payroll data. Class Counsel projected Defendant’s liability exposure for *class claims* (excluding PAGA
21 Payment) ranged between \$359,776.25 (“Realistic Damages”) and \$1,984,615.00 (“Maximum
22 Damages”) if successful at trial. This range reflects the uncertainty regarding several of the claims.

23 ³ 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 Thus, the Total Settlement Amount represents a recovery of between 55.59% (“Realistic Damages”) and 10.08% (“Maximum Damages”)⁴ of Defendant’s class-wide exposure – well within the recognized
2 range of reasonableness. The following summarizes Defendant’s liability exposure: JCL Dec., ¶ 25.

3
4 (1) Defendant’s Estimated Exposure for Unpaid Wages

5 Plaintiff primary claim in this Action alleges that Defendant failed to properly record and
6 maintain records of the actual hours worked by their employees. Specifically, the records provided by
7 Defendant show that 100% of all time entries were rounded to quarter-hour intervals. Defendant argued
8 that the Class Members were instructed to accurately record all time worked using the timekeeping
9 services provided at each venue Plaintiff and Class Members were staffed. Thus, Defendant argued that
10 it did not employ a rounding system, and to the extent time was in fact rounded, was done so by the
11 employees themselves. JCL Dec., ¶ 26.

12 Additionally, Defendant argued that this claim was not suitable for class treatment because
13 individualized issues predominated. For example, assuming Plaintiff performed work while off-the-
14 clock, the tasks performed and time spent would vary from class member to class member that it could
15 not be established by common proof. Due to Plaintiff’s position that Defendant failed to keep accurate
16 timekeeping records, Plaintiff only applied a 25% discount for this claim. As a result, Plaintiff estimated
17 Defendant’s exposure for unpaid wages ranged from approximately \$32,812.50 to approximately
18 \$43,750.00. JCL Dec., ¶ 27.

19 (2) Defendant’s Estimated Exposure for Meal Period Violations

20 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,
21 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and
22 Aggrieved Employees were not able to take timely and duty-free meal periods. Further, Plaintiff alleges
23 that Defendant failed to record the actual time that Class Members worked. As a result, all of the meal
24 periods were rounded to exactly thirty (30) minutes. Because Defendant produced mostly rounded time
25 records, a majority of the time records reflect compliant meal periods. Thus, Plaintiff reasonably
26 assumed that meal period violations occurred approximately 25% of the time. JCL Dec., ¶ 28.

27
28 ⁴ The large difference in percentages is a result of the Maximum Damages model accounting for 203 penalties at a 100% violation rate.

1 Defendant argued, among other things, that it did not engage in meal rounding and provided all
2 its employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant
3 meal periods. Defendant also argued that it maintained facially compliant meal period policies,
4 including enforceable on-duty meal period waivers applicable to its security guards. Thus, Defendant
5 argued that there was no potential liability for Plaintiff's alleged meal period violations and any claimed
6 violations required a highly individualized inquiry not suitable to class treatment. Consequently,
7 Plaintiff applied a 50% discount to this claim and estimated Thus, Plaintiff estimated the damages for
8 this claim ranged from approximately \$54,687.50 to approximately \$109,375.00. JCL Dec. ¶ 29.

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

10 Plaintiff alleged that Defendant unlawfully required all non-exempt security guards, including
11 Plaintiff, to remain at their post and on-call or on-duty during their 10-minute rest breaks. JCL Dec., ¶
12 30. Specifically in the context of security guards, the California Supreme Court's decision in *Augustus*
13 *v. ABM Security Services, Inc.*, held that "employers . . . must relinquish control over how employees
14 spend their time" during rest periods. 2 Cal. 5th 257, 259 (2016). Moreover, Lab. Code § 226.7(c)
15 provides that "if an employer fails to provide an employee a meal or rest or recovery period in
16 accordance with a state law, including ... an ... order of the Industrial Welfare Commission, the
17 employer shall pay the employee one additional hour of pay at the employee's regular rate of
18 compensation for each workday that the meal or rest or recovery period is not provided."

19 Here, Defendant maintained a written on-duty meal period policy that stated that there are some
20 positions/sites that prevent an employee from being relieved for a meal break. Plaintiff alleged that
21 off-duty rest periods could not be provided under the same circumstances that required on-duty meal
22 periods. Plaintiff was also unable to find any evidence of an attempt by Defendant to apply to the
23 Department of Industrial Relations for an exemption from the provision of the Industrial Welfare
24 Commission requiring off-duty breaks. Defendant argued that Plaintiff's rest break claim would have
25 mainly relied on the testimony of putative Class Members, making it a riskier claim. JCL Dec., ¶ 31.

26 Establishing liability likely would have entailed competing testimony stating either rest breaks
27 were taken, or rest breaks were voluntarily waived. See, e.g., *Ordonez v. Radio Shack, Inc.* (C.D. Cal.
28 Jan. 17, 2013) 2013 WL 210223, at *11 ("Because of the competing testimony before the Court,

1 plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this
2 Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D.
3 Cal. Nov. 13, 2012) 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the
4 written policy does not generate uniform practices."). JCL Dec., ¶ 32.

5 Accordingly, Plaintiff's damage model mirrored the same discount as applied to Class Members'
6 meal periods. Plaintiff estimated Defendant's exposure for this claim ranged from approximately
7 \$54,687.50 to approximately \$109,375.00. JCL Dec., ¶ 33.

8 (4) Defendant's Estimated Exposure for Unreimbursed Business Expenses

9 Plaintiff alleges that Defendant failed to reimburse its employees for mandatory business
10 expenses. Specifically, Plaintiff alleges that he and other Class Members were required to use their own
11 personal cellular phones as a result of and in furtherance of their job duties reimbursed for the cost
12 associated with the use of their personal cellular phones. JCL Dec., ¶ 34. Cal. Labor Code § 2802,
13 provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or
14 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or
15 her obedience to the directions of the employer..."

16 Plaintiff alleges he and other Class Members were required to use their personal cell phones in
17 order to, among other things, communicate with Defendant's supervisors during and after their shifts.
18 Defendant denies these claims, and also notes that the Class is comprised of all non-exempt employees,
19 and even if these claims were true, they would affect only a small subset of that Class. Further,
20 Defendant argued that it paid reimbursements throughout the Class Period for cell phone use.
21 Considering these defenses, Plaintiff applied an 85% discount to this claim. Plaintiff estimated
22 Defendant's exposure for this claim ranged from approximately \$8,628.75 to approximately
23 \$34,515.00. JCL Dec., ¶ 35.

24 (5) Defendant's Estimated Exposure for Wage Statement Violations

25 Plaintiff alleged that Defendant failed to provide accurate itemized wage statements that include
26 all items required by Labor Code § 226(a)(1)-(9). As a result of the failure to pay employees for all
27 time worked, and failure to pay for all premiums owed, the wage statements issued by Defendant do
28 not indicate the correct number of hours worked, the amount of gross wages earned, or net wages

1 earned during each pay period. Plaintiff's expert estimated that Defendant could be liable for
2 \$67,000.00 to approximately \$268,000.00 in *derivative* penalties as a result of these violations. JCL
3 Dec., ¶ 36.

4 (6) Defendant's Estimated Exposure for Waiting Time Penalties

5 Plaintiff alleges that Defendant's alleged violations resulted in derivative violations of Labor
6 Code section 203. Defendant contends that Plaintiff could not prove the "willful" prong needed to
7 obtain waiting time penalties under Labor Code section 203. As this claim is legally precarious, Plaintiff
8 applied a 90% discount. Plaintiff estimated Defendant's exposure for these claims to be approximately
9 \$8,628.75 to approximately \$34,515.00. JCL Dec., ¶ 37.

10 (7) Defendant's PAGA Exposure

11 "Under PAGA, a plaintiff may bring a representative action as an aggrieved employee on behalf
12 of herself and other current or former employees and may seek civil penalties for Labor Code violations."
13 *Wilner v. Manpower, Inc.*, 35 F.Supp.3d 1116 (N.D. Cal. 2014). Thus, Plaintiff sought penalties for
14 unpaid wages (including unpaid overtime), non-compliant or no meal periods, noncompliant or no rest
15 periods, and unreimbursed business expenses. The PAGA Period is the period between May 5, 2021 to
16 January 11, 2024, and there are approximately 338 Aggrieved Employees who worked a total of 4,550
17 pay periods. JCL Dec., ¶ 38.

18 Plaintiff's claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
351, 510, 558, 1194 and 1197 (unpaid wages)	338	\$100	4,550	100% of total pay periods	\$455,000
512 and 226.7 (meal period violations)	338	\$50	4,550	50% of total pay periods	\$113,750
512 and 226.7 (rest period violations)	338	\$50	4,550	50% of total pay periods	\$113,750
2802 (unreimbursed business expenses)	338	\$100	4,550	100% of total pay periods	\$455,000

226 (wage statements)	338	\$100	4,550	100% of total pay periods	\$455,000
TOTAL					\$1,592,500

JCL 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 Payment 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 of amounts for PAGA Payment 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 Payment in the amount of \$10,000 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) will be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 39.

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

6, 2016) (PAGA penalties denied after trial).

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

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

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

1 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
2 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
3 certification of driver meal and rest period claims based on the predominance of individual issues).
4 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
5 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
6 settlement. JCL Dec., ¶ 40.

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

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

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

17 Finally, continuing to litigate this action would require continued and extensive resources
18 coupled with significant Court time to proceed through trial and post-trial motions; which can often
19 take years. Furthermore, wage-and-hour litigation is complex and expensive, as it often necessitates
20 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
21 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that
22 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
23 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 41. “Avoiding such a trial and the
24 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
25 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
26 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
27 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

28 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$200,000.00 that is

roughly between approximately 10.08% and 55.59% of Defendant's *class-wide* liability exposure for damages and statutory penalties, and between 5.85% and 52.28% of Defendant's maximum class wide liability exposure for damages and penalties, including PAGA Penalties. Given the amount of the settlement here, as compared to potential value of the claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable. JCL Dec., ¶ 42.

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

The Settlement Class is entitled to the best practical notice under the circumstances. (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290; *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)⁵

The Parties jointly drafted the 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 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 requests for exclusions or objections to the Settlement, the date for the final approval hearing, the formula used to calculate settlement payments, and the terms and scope of the Released Claims. Agreement at § I(T). The Parties negotiated this method to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 43.

The Class Notice includes an exclusion form that Class Members can fill out in order to exclude

⁵ Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod* (7th Cir. 1987) 826 F.2d 729, 732.

1 themselves from the Settlement, and an Objection Form that Class Members can fill out in order to
2 object to the terms of the Settlement. The Class Notice informs Class Members of where they can find
3 the full text of the settlement agreement, the court address, and court website address. See Ex. A to the
4 Agreement.

5 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
6 satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d 460,485
7 (the class notice must “fairly apprise the class members of the terms of the proposed compromise and
8 of the options open to dissenting class members.”).) JCL Dec., ¶ 44.

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

10 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee*
11 *Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
12 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
13 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
14 UCLA L. Rev. 1303 (2006).) Service Awards “are intended to compensate class representatives for
15 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
16 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
17 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
18 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
19 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
20 (2009) 175 Cal.App.4th 785.)

21 The Settlement provides for a Class Representative Service Award of \$10,000⁶ for Plaintiff. The

22 ⁶ The amount of the requested enhancement payment-\$10,000-is reasonable by reference to the amounts that California
23 courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Baker*
24 *v. LA. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments
25 to three of the named plaintiffs); *Blue v. Codwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct.
26 Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County
27 Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiff); *Coleman v. Estes Express Lines,*
28 *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 &*

1 service award is fair and reasonable compensation for the Plaintiff's efforts bringing the action,
2 assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on
3 the status of his case and the strategies for prosecuting the claims, and reviewing the proposed
4 Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL
5 Dec., ¶ 45.

6 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Class
7 Representative Service Award once preliminary approval of the Settlement is granted. Such motion
8 will be accompanied by a declaration from Plaintiff that describes the services he performed to
9 prosecute this action, includes an estimate of time incurred by Plaintiff in performing these services,
10 the risks he assumed or benefits he received in prosecuting this action, and identify any adverse
11 consequences he suffered in prosecuting this action. Plaintiff has **not** negotiated any settlement of
12 individual claims with Defendant separate from the settlement at bar. Klein Dec., ¶ 10; JCL Dec. ¶ 46.

13 Plaintiff respectfully submits that the above showing is sufficient for preliminary approval of the
14 negotiated Class Representative Service Award. JCL Dec., ¶ 47.

15 **D. The Court Should Preliminarily Approve the Class Counsel Award**

16 The purpose of a Class Counsel Award in class action litigation is to reward counsel who took
17 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
18 California courts routinely award attorneys' fees equaling one-third or more of the potential value of

19
20 *Commercial Operations, LLC*, No. BC375967 (L.A. County Super. Ct. June 24, 2010) (awarding \$15,000 enhancement
21 payments to the named plaintiffs); *Nevarez v. Trader Joe's Co.*, No. BC373910 (L.A. County Super. Ct. Jan. 29, 2010)
22 (awarding \$10,000 enhancement payment); *Ordaz v. Rose Hills Mortuary, LP.*, No. BC386500 (L.A. County Super. Ct. Mar.
23 19, 2010) (awarding 10,000 enhancement payments to the named plaintiffs); *Sheldon v. AHMC Monterey Park Hospital LP*,
24 No. BC440282 (L.A. County Super. Ct. Feb. 22, 2013) (awarding \$10,000 enhancement payment); *Silva v. Catholic Moray*
25 *Services, Inc.*, No. BC408054 (L.A. County Super. Ct. Feb. 8, 2011) (awarding \$10,000 enhancement payments to the named
26 plaintiffs); *Weisbarth v. Banc West Investment Services, Inc.*, No. BC422202 (L.A. County Super. Ct. May 24, 2013)
27 (awarding \$10,000 enhancement payment); *Zamora v. Balboa Life & Casualty LLC*, No. BC360026 (L.A. County Super. Ct.
28 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 (CD. 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).

1 the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.* (2008) 162
2 Cal.App.4th 43, 66 n.11 (“Empirical studies show that regardless whether the percentage method or the
3 lodestar method is used, fee awards in class actions average around one-third of the recovery.”);
4 Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical*
5 *Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of
6 class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent
7 with market rates).)

8 Class Counsel took this matter on a contingency fee basis and invested significant time and
9 expense successfully prosecuting Plaintiff’s claims. As discussed *supra*, the estimated average
10 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
11 Members. Considering the positive outcome for the Settlement Class Members, and in light of the
12 supporting authority, the proposed Class Counsel award is fair and reasonable. JCL Dec., ¶ 48.

13 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
14 approval of the Settlement is granted. Such motion will be accompanied by a declaration that provides
15 evidence of the total amount of time spent by Class Counsel, a description of the work performed, and
16 the reasonableness of the fees charged. Such declaration will also include a detailed description of the
17 costs actually incurred. Such declaration will include details related to fee splitting between Class
18 Counsel, and Plaintiff’s written notice of such. Plaintiff respectfully submits that the above showing is
19 sufficient for preliminary approval of the negotiated attorneys’ fees. JCL Dec., ¶ 49.

20 **E. Provisional Certification for Settlement Purposes Is Appropriate**

21 For Settlement purposes, Plaintiff contends, and Defendant does not dispute, that provisional
22 certification of the Class is appropriate. JCL Dec., ¶ 50.

23 1. The Standard for Class Certification

24 Class actions are statutorily authorized “when the question is one of common or general interest,
25 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
26 court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class
27 certification is appropriate when there is an “ascertainable class and a well-defined community of
28 interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment

1 is appropriate even if class members at some point may be required to make an individual showing as
2 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
3 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

19 Because all Class Members are Defendant’s current and former employees, the class is readily
20 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 51.

21 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
22 Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s
23 liability can be determined by facts common to all members of the class. The wage and hour issues are
24 both numerous and substantial, and a class action is the most advantageous method of dealing with the
25 claims of the Settlement Class. JCL Dec., ¶ 52.

26 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
27 from the same factual basis and are based on the same legal theories applicable to the other Class
28 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Settlement

1 Class. Plaintiff alleges that she was injured by the same company-wide practices to which the proposed
2 Class Members were subject to and seek the same relief. Plaintiff has already demonstrated his ability
3 to advocate for the interests of the Class Member by initiating this litigation, undertaking extensive
4 class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 53.

5 Additionally, Plaintiff is represented by competent Class Counsel who have extensive experience
6 in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and
7 gained state court settlement approval of the same class-wide causes of action that are at issue in this
8 case. Class Counsel's wage and hour class action experience establishes that they are well qualified to
9 represent the interests of this Class. JCL Dec., ¶¶ 55-60, Declaration of Shani Zakay, ¶¶ 1-3.

10 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
11 each individual claim, the Class Members likely have little incentive to litigate their claims on an
12 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
13 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
14 adjudication. JCL Dec., ¶ 54.

15 IV. CONCLUSION

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

19
20 Dated: April 4, 2024

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.
23 Attorney for Plaintiff
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