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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ROBERT PEREZ, and TROY GEAR, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, vs. GO CAR WASH MANAGEMENT CORP., a Delaware corporation; GO CAR WASH CALIFORNIA LLC, a Delaware limited liability company; and DOES 1-50, Inclusive Defendants	Case No. CIVSB2333340 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: February 11, 2026 Time: 8:30am Judge: Hon. Jeffrey R. Erickson Dept.: S14

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I. INTRODUCTION

Plaintiffs ROBERT PEREZ ("Plaintiff Perez") and TROY GEAR ("Plaintiff Gear") (collectively "Plaintiffs") seek preliminary approval of the Stipulation of Class Action and PAGA Settlement and Release ("Agreement")[1], which if approved, would provide valuable monetary relief for approximately 353 Class Members. The basic terms of the Agreement provide for the following:

1. The **"Class Members" and "Class Period"** shall mean all current and former hourly-paid or non-exempt employees of Defendants who worked for Defendants within the State of California at any time between December 29, 2019, through March 1, 2025 ("Class Period"). Agreement at ¶ 4. The Settlement Class Members are all Class Members who have not submitted a timely and valid request for exclusion. *Id*.

2. The **"PAGA Members"** and **"PAGA Period"** shall mean all current or former hourly-paid or non-exempt employees of Defendants who worked for Defendants within the State of California at any time during the of December 29, 2022, through March 1, 2025. Agreement at ¶¶ 23, 24.

3. The "**Gross Settlement Amount**" is Four Hundred Thousand Dollars and Zero Cents ($400,000.00). Agreement at ¶ 15. The Gross Settlement Amount is non-reversionary and includes the following:

a. A "**Service Award**" in the amount of $10,000.00 to each Plaintiff (totaling $20,000.00) for their services on behalf of the Class Members. Agreement at ¶ 54(d);

b. A payment of "**Attorneys' Fees**" consisting of attorneys' fees not to exceed one-third of the Gross Settlement Amount, or $133,333.33, which shall be split 50% to JCL Law Firm, APC and 50% to Zakay Law Group, APLC. Agreement at ¶ 54(a);

c. A payment for "**Attorneys' Costs**" for reimbursement of actually-incurred litigation costs of up to Thirty Thousand Dollars and Zero Cents ($30,000.00), to be paid to Class Counsel. Agreement at ¶ 54(b);

d. A "**PAGA Payment**" of $20,000.00 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004.

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

The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment ($15,000.00) to the California Labor and Workforce Development Agency. Twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the PAGA Members by the Settlement Administrator. Agreement at ¶ 54(d); and

e. "**Settlement Administration Costs**" not to exceed $7,850.00 payable to the Settlement Administrator, ILYM Group, Inc., for, *inter alia,* the administration of the Notice Packet and Settlement Payments. Agreement at ¶ 54(c).

4. The "**Net Settlement Amount**" of approximately $188,816.67 (Gross Settlement Amount less Attorneys' Fees, Attorneys' Costs, Service Award, PAGA Payment, and Settlement Administration Costs) which will be allocated to all Settlement Class Members based on the respective Workweeks for each Class Member divided by the total Workweeks for all Class Members. The Net Settlement Amount will be paid to all Settlement Class Members who do not opt out of the Settlement Class resulting in an average Settlement Payment of ***$534.89***. Agreement at ¶ 18; SCJ Dec., ¶ 5.

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 Settlement Class. The relief offered by the Settlement is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases (*see infra).* Indeed, by settling now rather than proceeding to trial, Settlement 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. SCJ Dec., ¶ 5.

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Settlement Payment to the Settlement Class meets or exceeds awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement. SCJ Dec., ¶ 6.

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II. FACTS AND PROCEDURE

A. Overview of the Litigation and Mediated Settlement

Defendants operate car wash facilities in California, including the county of San Bernardino, where Plaintiffs worked. Plaintiff Perez was employed by Defendants as a non-exempt employee, paid on an hourly basis, from July of 2022 to April of 2023. Plaintiff Gear was employed by Defendants as a non-exempt employee, paid on an hourly basis from April 2024 through October 2024. At all times during Plaintiffs' employment, they were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout Plaintiffs' employment, Plaintiffs were subject to Defendants' written policies and procedures contained in, among other documents, the "Teammate Handbook." SCJ Dec., ¶ 7; Declaration of Robert Perez ("RP Dec.") at ¶¶ 4-5; Declaration of Troy Gear ("TG Dec.") at ¶ 4.

On December 29, 2023, Plaintiff Perez served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Perez's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq. ("PAGA"). SCJ Dec., ¶ 8.

On December 29, 2023, Plaintiff Perez filed the instant Class Action Complaint in the San Bernardino Superior Court alleging eight (8) causes of action against Defendants 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 & 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 & 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 Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. (the "Action"). SCJ Dec., ¶ 9.

On March 8, 2024, Plaintiff Perez filed a First Amended Complaint alleging an additional cause of action for violations of PAGA. SCJ Dec., ¶ 10.

On December 23, 2024, Plaintiff Perez filed a Second Amended Complaint ("Operative Complaint") which added Plaintiff Gear as a named Plaintiff. SCJ Dec., ¶ 10.

Generally, Plaintiffs claim that Defendants failed to properly calculate the regular rate of pay for purposes of overtime, double time, meal period premiums, and sick pay, failed to provide them with legally compliant meal and rest breaks, failed to pay employees for all time worked, failed to reimburse for required business expenses, failed to provide accurate itemized wage statements, and failed to timely pay wages due upon separation of employment. Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, payment of all wages at the correct regular rate of pay, facially compliant meal and rest period polices, reimbursement to its employees for business expenses, provided compliant wage statements, and timely payment of all wages due upon separation of employment. SCJ Dec., ¶ 11.

The Parties agreed relatively early in the litigation to attend private mediation. To facilitate settlement negotiations, Defendants agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time and payroll data in full, and pertinent written wage and hour policies. As discussed *infra,* Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. SCJ Dec., ¶ 12.

On January 29, 2025, the Parties mediated the Action with Tripper Ortman, a mediator of class and PAGA actions. The Parties engaged in arms-length settlement negotiations with Mediator Ortman's assistance. Specifically, Mediator Ortman 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 Mediator Ortman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement. The agreement was subsequently memorialized in the form of a Memorandum of Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

SCJ Dec., ¶ 13.

B. Class Counsel Thoroughly Investigated the Factual and Legal Issues

Months before filing the Action, Class Counsel began its pre-filing investigation into Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment, including, among other things, copies of their wage statements, time records, handbooks, and separation documents. At the conclusion of the interviews, Class Counsel determined that each of Plaintiffs' complaints justified further inquiry. SCJ Dec., ¶ 14.

Class Counsel subsequently requested Plaintiffs' employee file from Defendants. In response, Defendants produced documents, including but not limited to, Plaintiffs' hiring and separation documents, payroll records, and time records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiffs' claim that Defendants failed to, among other things, properly calculate the regular rate of pay for purposes of overtime, double time, meal period premiums, and sick pay, pay employees for all time worked, provide them with proper meal and rest breaks, reimburse for required business expenses, provide accurate itemized wage statements, and timely pay wages upon termination. SCJ Dec., ¶ 15.

To prepare for mediation, Defendants produced the complete sets of Class Member time and payroll records, aggregate workweek and pay period data, and copies of applicable policies, and agreements containing, *inter alia,* compensation, timekeeping and meal and rest period policies. In total, Defendants produced more than 4 million unique cells of time and payroll data for Class Counsel to analyze. SCJ Dec., ¶ 16.

Class Counsel then retained the statisticians and economists at 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. Stated differently, BCG is uniquely qualified to analyze Defendants' time and payroll data. SCJ Dec., ¶ 17.

BCG analyzed Defendants' time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods during the Class Period, and the average length of shift and average number of hours worked per week and per pay period during the Class Period. BCG also estimated the amount of meal and rest period premiums paid during the Class Period, the amount of unreimbursed business expenses, the amount of unpaid wages owed, and the amount of off-the-clock work performed by the Class Members during the Class Period. SCJ Dec., ¶ 18.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. SCJ Dec., ¶ 19.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of 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 Plaintiffs' claims and estimating Defendants' 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. SCJ Dec., ¶ 20.

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. <u>The Composition of the Class</u>

The proposed Class consists of all current and former hourly-paid or non-exempt employees of Defendants who worked for Defendants within the State of California at any time between December 29, 2019 through March 1, 2025. The Settlement Class excludes any person who submits a timely and valid request for exclusion. Agreement at ¶ 4. In the data exchanged for mediation, there were approximately 353 Class Members that worked an estimated 11,500 workweeks during the Class Period. Agreement at ¶ 54(g).

2. <u>The Settlement Consideration</u>

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $400,000.00. The Gross Settlement Amount includes: (1) Settlement Payments to the Settlement Class; (2) a Service Award of $10,000.00 to each Plaintiff for their services on behalf of the Settlement Class; (3) a PAGA Payment in the amount of $20,000.00; (4) Settlement Administration Costs estimated at $7,850.00; (5) Attorneys' Fees in the amount of $133,333.33 equal to one-third of the Gross Settlement Amount estimated to be $133,333.33; and (6) Attorneys' Costs up to the amount of $30,000.00 for actually incurred litigation expenses. *See* generally Agreement at ¶ 54.

Subject to the Court approving the Service Award, Attorneys' Fees, Attorneys' Costs, PAGA Payment, and the Settlement Administration Costs, the Net Settlement Amount will be distributed to each participating member of the Settlement Class. *See* generally Agreement at ¶ 54(h). There is no reversion to Defendants and Defendants must separately pay for their share of the employer payroll taxes. Agreement at ¶ 15.

3. <u>Formula for Calculating Settlement Payments</u>

Each Settlement Class Member will receive a Settlement Payment. The Settlement Payment will be proportional to the number of Workweeks each Settlement Class Member worked for Defendants in California during the Class Period. The Net Settlement Amount will be divided by the total Workweeks Worked by all Settlement Class Members during the Class Period as reflected in Defendants' records. All Settlement Class Members shall be paid an amount equal to their individual Workweeks Worked during the Class Period, multiplied by the Workweek Rate. Agreement at ¶ 54(h).

Each Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Settlement Payments allocated to Class Members who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis based on their respective Payment Ratios. Agreement at ¶ 59.

Given that there are approximately 353 Settlement Class Members, <u>***the average gross recovery is approximately $534.89***</u> (Net Settlement Amount divided by Settlement Class Members). SCJ Dec., ¶ 5. This average net recovery exceeds many wage and hour class action settlements approved by

California state and federal courts. (See, e.g., *Shachno et al. v. KT Hotels, LLC*, et al., San Diego Superior Court Case No. 37-2018-00043601 (average net recovery of $283.35); *Almanza v. The Express Group Inc*., San Bernardino Superior Court Case No. CIVDS1722542 (average net recovery $174.68); *Macaspac v. San Antonio Regional Hospital*, San Bernardino Superior Court Case No. CIVDS1512625 (average net recovery $715.97) and *Crawford et al. v. Outlook Amusements, Inc*., Los Angeles Superior Court Case No. BC617160 (average net recovery $333.98).

4. <u>Release by Class Members</u>

Generally, as of the Funding Date, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from the Settled Claims. Agreement at ¶ 32.

5. <u>PAGA Release by Plaintiffs and the PAGA Members</u>

Generally, upon the Funding Date, Plaintiffs, acting as the representative of the State of California, on behalf of the PAGA Members, will release the Released Parties from the Settled PAGA Claims. Agreement at ¶ 33.

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of $400,000.00 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 participated in mediation with Tripper Ortman, an experienced mediator of wage and hour class and PAGA actions. Mediator Ortman managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig,* No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v.*

Deutsche Bank (2d. Cir. 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.").) At all times, the Parties' negotiations were at an arm's length, adversarial and non-collusive. The matter was resolved only after Mediator Ortman heard arguments, reviewed evidence, evaluated the Parties' respective claims and defenses. SCJ Dec., ¶ 21.

Once the Parties agreed to a settlement, the Parties engaged in protracted negotiations regarding the written terms of the class action and PAGA settlement. The Parties maintained the arm's length, non-collusive and adversarial negotiations while arriving at the final terms of the Settlement. The Agreement is the final product of these mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the claims at issue. SCJ Dec., ¶ 22.

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

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 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 the claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. SCJ Dec., ¶¶ 14-22.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of 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. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. SCJ Dec., ¶ 23.

3. <u>The Settlement Falls Within the Recognized Range of Reasonableness.</u>

The Gross Settlement Amount of $400,000.00 is within the range of a reasonable settlement for preliminary approval. 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. 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. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.

The Gross Settlement Amount of $400,000.00 is well within the range of reasonableness considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. SCJ Dec., ¶ 21. 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.*) 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).)

Class Counsel retained BCG to develop economic damage models measuring Defendants' potential liability exposure with respect to the Class and PAGA claims. The damage models were informed by Class Counsel's investigation, including the analysis of the time and payroll data Defendants produced. Regarding Defendants' liability for class claims, Class Counsel projected Defendants' liability exposure (excluding penalties) at $792,255.15 ("Conservative Model") and Defendants' *total* exposure for class claims (including waiting time and wage statement penalties, but exclusive of PAGA penalties) at $1,640,798.40 ("Aggressive Model"). Thus, the Gross Settlement Amount of $400,000.00 represents approximately 50.49% of Defendants' *total* liability exposure and 24.38% of Defendants' *maximum* class-wide exposure. SCJ Dec., ¶ 24.

(1) Estimated Exposure for Regular Rate Violations

One of Plaintiffs' primary claims in the Action was that Plaintiffs alleged that Defendants miscalculated the regular rate of pay for purposes of overtime, double-time, meal period premiums, and redeemed sick pay. Specifically, Plaintiffs allege that Class Members received commissions and other non-discretionary incentive compensation labeled on wage statements as "Commission," "Commissions FL," "Referral Bonus," Additional Earnings Com Commi" payments, which were not properly calculated into the regular rate of pay for purposes of overtime, double time, meal period premiums, and redeemed sick pay. The regular rate of pay, which can change from pay period to pay

[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").

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. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" *Id.* at 553. California law also requires meal period premiums and rest 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.). Plaintiffs' expert determined that Defendants' miscalculation of the regular rate of pay affected approximately 170 employees out of the 353 Class Members. SCJ Dec., ¶ 25.

Defendants asserted that the incentive payments identified by Plaintiffs were discretionary in nature and otherwise not required to be included in the regular rate of pay for purposes of calculating overtime, double time, meal period premiums, or redeemed sick pay. Defendants contend that these payments fell outside the scope of compensation subject to regular rate calculations under applicable California law and dispute that any miscalculation occurred. In light of the above, Plaintiffs applied a 50% discount to this claim and estimated Defendants' exposure ranged between $10,266.00 and $20,532.00. SCJ Dec., ¶ 26.

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

Plaintiffs also alleged that Defendants failed to provide compliant meal periods. Specifically, Plaintiffs' expert determined that approximately 14.9% of meal periods were short, late, or missed. Further, Defendant's did not have in place a legally compliant written meal period policy applicable to Class Members during the Class Period. Moreover, approximately 50% of the meal periods were rounded to exactly thirty (30) minutes, which Plaintiffs argue creates a presumption of a meal period violation. SCJ Dec., ¶ 27.

Defendants contend that they fully complied with California meal period laws and maintained compliant meal period policies and waivers. Defendants also argued that they paid meal period premiums throughout the Class Period. Defendants also argued that it did not engage in rounding meal period start and end times and provided all its employees, i.e., Class Members and PAGA Members, with the opportunity to take compliant meal periods. Thus, Defendants argued that there was no potential liability for Plaintiffs' alleged meal period violations and any claimed violations required a highly individualized inquiry not suitable to class procedures. SCJ Dec., ¶ 28.

In light of the foregoing, and considering Defendants' defenses, Plaintiffs applied a 50% discount and estimated that Defendants' exposure ranged from $13,375.78 to $26,751.56. SCJ Dec., ¶ 29.

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

Plaintiffs also alleged that Defendants failed to provide compliant rest periods. Specifically, Plaintiffs alleged that because of their rigorous work schedules, Plaintiffs, Class Members, and PAGA Members were not able to take timely and duty-free rest periods. Similar to the absence of a legally compliant written meal period policy, Defendants also lacked a legally complaint written rest period policy. While Defendants paid some meal period premiums, they did not pay a single rest period premium during the Class Period. SCJ Dec., ¶ 32.

Again, Defendants denied liability and asserted that it maintained legally compliant practices concerning rest periods throughout the Class Period. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing 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 would have 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, Plaintiffs' evidence that Defendants 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, Plaintiffs' own evidence confirms that the written policy does not generate uniform practices"). Accordingly, Plaintiffs' Conservative Model applied a 50% discount to the rest break claim. Plaintiffs estimated the range of potential outcome for this claim was between approximately $13,375.78 to $26,751.56. SCJ Dec., ¶ 31.

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(4) Estimated Exposure for Failure to Reimburse for Mandatory Business Expenses

Plaintiffs also alleged that Defendants failed to reimburse Class Members for mandatory business expenses. Specifically, Plaintiffs alleged that Defendants required employees to use their personal cell phones to clock in and out for their shifts and meal periods. Cal. Labor Code § 2802, provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer…" Based on Plaintiffs' testimony BCG assumed a reasonable $10 per month of unreimbursed business expenses. SCJ Dec., ¶ 32.

Defendants again denied any liability, maintaining that all employees received reimbursement for required business expenses. Defendants also asserted that tablets were made available for employees to record their time and that use of their cell phones was voluntary. Moreover, Defendants argued that, even if the claim were successful, it would result in only minimal actual damages to the Class Members. Thus, Plaintiffs applied a 75% discount to the unreimbursed business expense claim and estimated Defendants' exposure ranged from $281.80 to $1,127.00. SCJ Dec., ¶ 33.

(5) Estimated Exposure for Wage Statement Violations

Plaintiffs also alleged that Defendants failed to furnish their employees with accurate itemized wage statements. Specifically, Plaintiffs allege that as a result of Defendants' failure to provide meal and rest periods as required by the California Labor Code and pay for all wages, Plaintiffs and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo, supra,* 15 Cal.App.1056 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Defendants argued that this claim would fail because the underlying claims would fail and that, even if it failed to furnish accurate wage statements, Plaintiffs could not establish the injury requirement on a class-wide basis. Considering Defendants' defenses and the fact that all of Defendants' wage statement violations were all derivative, Plaintiffs discounted this claim 75% to account for this risk. Plaintiffs estimated that Defendants' exposure on this claim ranged between $209,637.50 and $838,550.00. SCJ Dec., ¶ 34.

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(6) Estimated Exposure for Waiting Time Penalties

Plaintiffs also alleged that the Defendants' labor code violations resulted in derivative liability for waiting time penalties. However, this is Plaintiffs' most uncertain claim. Specifically, Defendants argued that Plaintiffs could not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203. Additionally, for the reasons stated above, *Naranjo, supra,* 15 Cal.App.1056, creates difficulty in Plaintiffs succeeding in a purely derivative waiting time penalty claim. Notwithstanding the uncertain nature of the claims, Plaintiffs discounted the waiting time penalty claim by 90% and estimated Defendants' exposure for these claims ranged between $545,325.75 and $727,101.00. SCJ Dec., ¶ 35.

(7) Defendants' PAGA Exposure

Class Counsel's damage models also estimate Defendants' exposure for PAGA penalties arising from the aforementioned violations. At the time of mediation, Plaintiffs conservatively estimated Defendants' PAGA exposure to be approximately $42,635.00 and aggressively estimated $179,150.00. SCJ Dec., ¶ 36.

Here, the Parties negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA penalties. Seventy-Five percent (75%) of the PAGA Payment ($15,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($5,000.00) will be distributed to the PAGA Members, which is within the range of PAGA penalties approved by courts and should be approved. SCJ Dec., ¶ 37.

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%. Thus, the PAGA claims likewise face significant uncertainty. SCJ Dec., ¶ 45. There is a risk that the Court would consider the maximum civil penalty available to be confiscatory. *Id.*

For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable. SCJ Dec., ¶ 38.

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 *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also 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). SCJ Dec., ¶ 39.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also 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."). SCJ Dec., ¶ 40.

Finally, even if a class is certified and Defendants is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and decertification of the class. These post-certification risks 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). SCJ Dec., ¶ 41.

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. SCJ Dec., ¶ 42.

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

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

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

Finally, continuing to litigate this action would require continued and extensive resources coupled with significant Court time to proceed through trial and post-trial motions; which can often take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra,* 999 F.3d 668, the risk of an appeal and subsequent reversal is real. SCJ Dec., ¶ 43. "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 $400,000.00 that is between 24.38% and 50.49% of Defendants' liability exposure for class 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. SCJ Dec., ¶ 44.

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.)[3]

The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class Members of their rights and remedies. The Settlement Administrator will first verify addresses, then mail the proposed Notice Packet to all Class Members. The Notice Packet will include information regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class

[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.

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 Settled Claims. Agreement at ¶ 5. 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. SCJ Dec., ¶ 45.

Accordingly, both the method of disseminating the Notice Packet and content of the Notice Packet satisfy due process and the requirements of California law. (*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 of the options open to dissenting class members.").) SCJ Dec., ¶ 46.

C. The Court Should Preliminarily Approve the Service Award

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

Approximately 353 Class Members will share in the Net Settlement Amount due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement provides for a Service Award of $10,000.00 for each Plaintiff. The service award is fair and reasonable compensation for the Plaintiffs' efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. SCJ Dec., ¶ 47.

Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated Service Award. SCJ Dec., ¶ 48.

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

The purpose of a payment of the Attorneys' Fees and Attorneys' Costs 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 Plaintiffs' claims. As discussed *supra*, the estimated average Settlement Payment illustrates the demonstrably positive outcome for the Class Members. The Agreement provides for a payment of Attorneys' Fees and in the amount of up to one-third of the Gross Settlement Amount ($133,333.33) and Attorneys' Costs in an amount not to exceed $30,000.00. Agreement ¶ 54(a)-(b). Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys' Fees and Attorneys' Costs is fair and reasonable. Plaintiffs will file a formal motion for the negotiated Attorneys' Fees and Attorneys' Costs once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated attorneys' fees. SCJ Dec., ¶ 49.

E. Provisional Certification for Settlement Purposes Is Appropriate

For Settlement, Plaintiffs contend, and Defendants do not dispute, that provisional certification of the Class is appropriate. SCJ Dec., ¶ 50.

1. The Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" (*Cal.Civ.Proc*. Code § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." (*Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufil v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.)

2. The Proposed 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. SCJ Dec., ¶ 51.

The California statutes relating to each of Plaintiffs' claims apply with equal force and effect to the entire Settlement 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 Settlement Class. SCJ Dec., ¶ 52.

Plaintiffs' wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Settlement Class. Plaintiffs allege that they were injured by the same company-wide practices to which the proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to ensure that it is fair. SCJ Dec., ¶ 53.

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. SCJ Dec., ¶ 54.

Additionally, Plaintiffs are represented by competent Class Counsel who have extensive experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued, certified, and gained state court settlement approval of the same class-wide causes of action that are at issue in this case. Class Counsel's wage and hour class action experience establishes that they are well qualified to represent the interests of this Class. SCJ Dec., ¶¶ 55-58; Declaration of Jean-Claude Lapuyade at ¶¶ 3-8; Declaration of Shani O. Zakay at ¶ 3.

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IV. CONCLUSION

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

Dated: November 12, 2025

JCL LAW FIRM, APC

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