

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel N. Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

JAMAL SHABAZZ and JOSEPH
CASTANEDA, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MANN & COMPANY, INC., a California
Corporation; and DOES 1 through 50,
Inclusive,

Defendants

Case No. 22CV02669

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

Date: September 25, 2024

Time: 9:00 AM

Judge: Hon. Tamara Mosbarger

Dept.: 1

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I. INTRODUCTION

Plaintiffs Jamal Shabazz and Joseph Castaneda (“Plaintiffs”) seek preliminary approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 1,070 Class Members. The basic terms of the Agreement provide for the following:

1. The “**Class Members**” and “**Class Period**” shall mean “all persons who are or previously were employed by Mann & Company, Inc. in California and classified as non-exempt employees at any time during the period beginning November 14, 2018 to February 15, 2024 (“Class Period”). Agreement at §§ I(E), I(I). The Settlement Class Members exclude any Class Member who submitted a valid and timely request for exclusion. Agreement at § I(NN).

2. The “**Aggrieved Employees**” and “**PAGA Period**” shall mean “all current and former non-exempt California employees employed by Mann & Company, Inc during the period beginning September 6, 2021 to February 15, 2024. Agreement at §§ I(C), I(Y). Aggrieved employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(M)(7).

3. The “**Gross Settlement Amount**” is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00). Agreement at § I(O). The Gross Settlement Amount is non-reversionary and includes the following:

a. A “**Service Award**” in the amount of \$10,000 to each Plaintiff for their services on behalf of the Class Members. Agreement at § III(N)(9);

b. A payment of “**Attorneys’ Fees and Attorneys’ Expenses**” in the amount not to exceed one-third of the Gross Settlement Amount for Attorney’s Fees, currently estimated to be \$250,000.00 *and* Attorneys’ Expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement at § III(N)(10);

c. A “**PAGA Penalties**” of \$30,000.00 shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the Private Attorneys General Act of 2004 (“PAGA Amount”). The Settlement Administrator shall pay 75% of the PAGA Penalties to the Labor

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 and Workforce Development Agency (“LWDA Payment”). The Settlement Administrator shall
2 distribute 25% of the PAGA Amount to the Aggrieved Employees (“Aggrieved Employee Payment”).
3 Agreement at § III(N)(11); and

4 d. “**Settlement Administration Costs**” not to exceed \$14,500.00 payable to the
5 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice
6 Packet and Individual Settlement Payments. Agreement at § III(N)(12).

7 4. The “**Net Settlement Fund**” of approximately \$410,500.00 (Gross Settlement Amount
8 minus the requested Service Award, Attorneys’ Fees and Attorneys’ Expenses, PAGA
9 Penalties and Settlement Administration Costs) which will be allocated to all Settlement
10 Class Members on a pro-rata basis according to the number of Pay Periods each
11 Settlement Class Member worked during the Class Period. The Net Settlement Amount
12 will be paid to all Settlement Class Members who do not opt out of the Settlement Class
13 resulting in an average Individual Settlement Share of **\$383.64**. Agreement at §
14 III(N)(1);

15 5. Dec., ¶ 5.

16 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
17 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
18 The Settlement confers substantial benefits to the Settlement Class. The relief offered by the Settlement
19 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
20 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
21 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
22 denied or of Defendant prevailing at trial. JCL Dec., ¶ 5.

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

28 ///

II. FACTS AND PROCEDURE

A. Overview of the Litigation

Defendant owns, operates, and manages a chain of Wingstop franchised restaurants in the state of California, including in Butte County. This action asserts claims on behalf of all persons who are or previously were employed by Defendant and classified as non-exempt employees in California during the period beginning November 14, 2018 to February 15, 2024. At all times during their employment, Plaintiffs were classified by Defendant as non-exempt employees, paid on an hourly basis, and were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 7; Declaration of Jamal Shabazz ("JS Dec.") at ¶¶ 4-5; Declaration of Joseph Castaneda ("JC Dec.") at ¶¶ 4-5.

On September 6, 2022, Plaintiff Jamal Shabazz ("Shabazz") served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Shabazz's PAGA Notice set forth the facts and theories supporting Defendant's 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"). JCL Dec., ¶ 8.

On November 16, 2022, Plaintiff Shabazz filed a class action complaint in the Butte Superior Court, Case Number 22CV02669 ("Class Action"). The Class Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Violation of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] JCL Dec., ¶ 9.

1 On June 26, 2024, Plaintiff Shabazz filed the operative First Amended Complaint for purposes
2 of effectuating the settlement, which added another named Plaintiff, Joseph Castaneda. JCL Dec., ¶ 10.

3 Generally, Plaintiffs claim that Defendant failed to pay employees for all time worked, including
4 overtime, failed to provide them with proper meal and rest breaks, failed to reimburse for required
5 business expenses, and failed to issue accurate itemized wage statements. Defendant forcefully denies
6 liability for each of the Plaintiffs' claims. Further, Defendant asserts that it fully complied with all
7 applicable employment laws and raised several other significant defenses to Plaintiffs' claims,
8 including but not limited to, the existence of facially compliant meal and rest period policies, records of
9 payment of minimum wages and overtime wages, the existence of a policy whereby it reimbursed its
10 employees for business expenses, the existence of compliant wage statements, and the existence of a
11 practice whereby it timely paid all wages due upon separation of employment. JCL Dec., ¶ 11.

12 Plaintiff Shabazz commenced written discovery in March of 2023. The Parties later agreed to
13 attend private mediation with the Honorable Brian C. Walsh (Ret.) on February 15, 2024. JCL Dec., ¶
14 12.

15 To facilitate settlement negotiations, the Parties agreed to informally produce documents and
16 data points subject to the mediation privilege, including but not limited to, a statistically reliable
17 sampling of the Class Members' time and payroll data, and pertinent written wage and hour policies.
18 As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group
19 ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 13.

20 The Parties' engaged in arms-length settlement negotiations with Judge Walsh's help and came
21 to an agreement on February 15, 2024. The Parties' agreement was subsequently memorialized in the
22 form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
23 and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec.,
24 ¶ 14.

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

26 Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff
27 Shabazz's complaints. Class Counsel's investigation started with several lengthy interviews with the
28 Plaintiff Shabazz. As part of the interview process, Plaintiff produced documents related to his

1 employment, including, among other things, copies of his wage statements. At the conclusion of the
2 interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶
3 15.

4 Class Counsel subsequently requested Plaintiff Shabazz's employee file from Defendant. In
5 response, Defendant produced documents, including but not limited, Plaintiff's payroll and time
6 records. Class Counsel reviewed and analyzed the documents and determined the documents appeared
7 to substantiate Plaintiff's claim that Defendant failed to, among other things, pay for all time worked
8 and failed to provide compliant meal and rest periods. JCL Dec., ¶ 16.

9 Class Counsel conducted a similar investigation prior to adding Plaintiff Castaneda to the Action.

10 Considering the many anticipated factual disputes, the Parties agreed that it would be in the best
11 interest of both Parties to mediate the matter. To prepare for mediation, Class Counsel requested
12 documents and data points to further evaluate Plaintiffs' claims and Defendant's liability exposure to
13 the Class Members. In response to Class Counsel's request, Defendant produced a sampling of Class
14 Member time and payroll records, aggregate workweek and pay period data, and copies of applicable
15 policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and rest period
16 policies. In total, Defendant produced over 300 pages of pertinent documents and over 180,000 unique
17 cells of time and payroll data for Class Counsel to analyze. JCL Dec., ¶ 17.

18 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
19 Members' payroll and time data. BCG provides data analysis and damage modeling consulting services
20 specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed
21 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
22 differently, the BCG is uniquely qualified to analyze Defendant's time and payroll data. JCL Dec., ¶
23 18.

24 BCG analyzed Defendant's time and payroll data to assist in the development of various damage
25 models. Among other things, BCG determined the approximate number of work shifts, workweeks,
26 pay periods, average length of shift and average number of hours worked per week and pay periods
27 during the Class Period. BCG also estimated the amount of paid missed meal period premiums paid
28 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. JCL Dec., ¶ 19.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JCL Dec., ¶ 20.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiffs' suitability as putative class representatives through interviews, background investigations, and analysis of their 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' 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 Plaintiffs' 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., ¶ 21.

C. The Parties Settled after Serious, Informed and Arm's Length Negotiations

On February 15, 2024, the Parties participated in a full day of mediation with the honorable Brian C. Walsh (Ret.), an experienced jurist and mediator of wage and hour class and PAGA actions. Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After a full day of arm's length and adversarial negotiations, the mediation concluded with a settlement in principle, which was subsequently memorialized in the form of a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 23.

1 **D. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

2 1. The Composition of the Class

3 The proposed Class consists of all persons who are or previously were employed by Mann &
4 Company Inc. in California and classified as non-exempt employees at any time during the period
5 beginning November 14, 2018 to February 15, 2024. The Settlement Class excludes any person who
6 submits a timely and valid request for exclusion. Agreement at § I(E), I(I), I(NN). In the data exchanged
7 for mediation, there were approximately 1,070 Class Members who worked an estimated 9,500 Pay
8 Periods during the Class Period. Agreement at § III(A)(2).

9 2. The Settlement Consideration

10 The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement
11 Amount of \$750,000.00. The Gross Settlement Amount Fund: (1) Individual Settlement Payments to
12 the Settlement Class; (2) a Service Award of \$10,000.00 to each Plaintiff for their services on behalf
13 of the Settlement Class; (3) PAGA Penalties in the amount of \$30,000.00; (4) Settlement
14 Administration Costs estimated at \$14,500.00; (5) Attorneys' Fees and Attorneys' Expenses in the
15 amount of \$275,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
16 estimated to be \$250,000.00 and an estimated \$25,000.00 for actually incurred litigation expenses. *See*
17 generally Agreement at § III(N).

18 Subject to the Court approving the Service Award, Attorneys' Fees and Attorneys' Expenses,
19 PAGA Penalties, and the Settlement Administration Costs, the Net Settlement Amount will be
20 distributed to each participating member of the Settlement Class Member. Agreement at § III(N)(1).
21 There is no reversion to Defendant and Defendant must separately pay for its share of the employer
22 payroll taxes. Agreement at § III(A)(1).

23 3. Formula for Calculating Individual Settlement Payments

24 Each Settlement Class Member will receive an Individual Settlement Payment. The Individual
25 Settlement Payment will be proportional to the respective number of Pay Periods for each Settlement
26 Class Member during the Class Period. Using the Class Data, the Settlement Administrator shall add
27 up the total number of Pay Periods for all Class Members. The respective Pay Periods for each Class
28 Member will be divided by the total Pay Periods for all Class Members, resulting in the Payment Ratio

for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement at § III(N)(1).

Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Individual 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 § III(N)(1).

Given that there are approximately 1,070 Settlement Class Members, *the average gross recovery is approximately \$383.64* (Net Settlement Amount divided by Settlement Class Members). JCL 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); and *Crawford et al. v. Outlook Amusements, Inc.*, Los Angeles Superior Court Case No. BC617160 (average net recovery \$333.98).

4. Release by Participating Settlement Class Members

Generally, as of the full payment of the Gross Settlement Amount by Defendant, Plaintiffs and the Settlement Class Members will agree to release the Released Parties from all class claims alleged, or that reasonably could have been alleged based on the facts alleged, in the Operative Complaint in the Action, which occurred during the Class Period, including but not limited to the failure to pay minimum wages, the failure to pay overtime wages, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to maintain records, the failure to provide accurate itemized statements, the failure to reimburse, and other claims whatsoever that were alleged in this case or which arise out of such facts actually pled in the complaint, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code section 1700 *et seq.*, conversion, liquidated damages, punitive damages, penalties, statutory penalties, and

expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period. Agreement at §§ I(FF); III(B).

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

Generally, as of the full payment of the Gross Settlement Amount by Defendant, Plaintiffs, acting as the representatives of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from all PAGA claims alleged in the Action and Plaintiff Shabazz's PAGA notice to the LWDA which occurred during the PAGA Period, including but not limited to civil penalties under the Labor Code Private Attorneys General Act of 2004 for violations of Labor Code 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside the PAGA Period. Agreement at §§ I(GG); III(C).

III. ARGUMENT

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

The proposed Settlement, including a Gross Settlement Amount of \$750,000.00 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

1 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
2 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
3 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
4 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
5 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
6 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
7 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
8 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
9 Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
10 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
11 action litigation”).)

12 Additionally, in reviewing the fairness of a class action settlement, due regard should be given
13 to what is “otherwise a private consensual agreement between the parties.” (*Cellphone Termination
14 Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the extent necessary
15 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
16 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable
17 and adequate to all concerned.” (*Id.*)

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

20 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
21 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
22 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
23 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
24 § 11.51.)

25 The Parties participated in mediation with the honorable Brian C. Walsh (Ret.) an experienced
26 jurist and mediator of wage and hour class and PAGA actions. Judge Walsh managed the Parties’
27 expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*In re Apple
28 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. After Judge Walsh heard arguments, reviewed evidence, and evaluated the Parties’ respective claims and defenses, the Parties agreed on a settlement based on Judge Walsh’s recommendation. JCL Dec., ¶ 23.

Once the Parties agreed to the settlement in principle, 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. JCL Dec., ¶ 23.

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

As set forth in greater detail above, Class Counsel conducted a very thorough investigation into the factual and legal issues in dispute. In addition to 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. JCL Dec., ¶¶ 15-22.

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 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., ¶ 22.

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

The Gross Settlement Amount of \$750,000.00 is within the range of reasonable settlement for preliminary approval.

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

The Gross Settlement Amount of \$750,000.00 is well within the range of reasonableness considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. JCL Dec., ¶ 24. 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).)

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”).

1 Class Counsel retained BCG to develop economic damage models measuring Defendant's
2 potential liability exposure with respect to the Class and PAGA claims. The damage models were
3 informed by Class Counsel's investigation, including the analysis of the time and payroll data
4 Defendant produced. Class Counsel projected Defendant's liability exposure for *class claims*
5 (excluding penalties) at \$1,481,758 and Defendant's *maximum* exposure (including waiting time and
6 wage statement penalties) at \$3,067,367. Thus, the Gross Settlement Amount of \$750,000.00 represents
7 approximately 50.6% of Defendant's *class-wide* liability exposure to damages, and 24.4% of
8 Defendant's *maximum* exposure. The following summarizes Defendant's estimated exposure. JCL
9 Dec., ¶ 24.

10 (1) Estimated Damages for Meal Period Violations

11 Plaintiffs alleged that Defendant failed to provide compliant meal periods. Labor Code section
12 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal
13 period within the first five hours of work. Moreover, an employee who works more than ten (10) hours
14 per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.
15 Pursuant to Labor Code § 512, an employer may not employ an employee for a work period of more
16 than ten (10) hours, without providing the employee with a second meal period of not less than thirty
17 (30) minutes. Moreover, the second meal period may not be waived if the total hours worked is more
18 than twelve (12) hours. California Lab. Code § 226.7(c) provides that "if an employer fails to provide
19 an employee a meal or rest or recovery period in accordance with a state law, including ... an ... order
20 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
21 at the employee's regular rate of compensation for each workday that the meal or rest or recovery period
22 is not provided." JCL Dec., ¶ 25.

23 Plaintiffs alleged that Defendant's rigorous work requirements caused Plaintiffs and Class
24 Members to forego compliant meal periods. Defendant contends that it fully complied with California
25 meal period laws and maintained compliant policies and practices. Similarly, Defendant argued that it
26 encouraged employees to take all meal periods and neither instructed nor required that employees
27 perform any work during their off-duty meal period. In light of the foregoing, and considering
28 Defendant's defenses, Plaintiffs estimated Defendant's potential exposure for this claim to be

1 \$489,298. JCL Dec., ¶ 26.

2 (2) Estimated Damages for Rest Period Violations

3 Plaintiffs also alleged that Defendant failed to provide compliant rest periods. Specifically,
4 Plaintiffs alleged that because of their rigorous work schedules, Plaintiff and Class Members were not
5 able to take timely and duty-free rest periods. Class Members recorded their rest breaks via Defendant's
6 time clock, and Plaintiff's expert found over 50,000 unique rest break violations. However, the data
7 indicates that Defendant did not pay any rest break premiums. Defendant disputed these findings and
8 contend the following: Rest periods do not need to be recorded by Defendant's employees. Some
9 employees chose to use the point-of-sale computer terminal to track their break, which some employees
10 utilized. The existence of these entries is merely evidence that an employee took a rest break on such
11 occasions, but it is not evidence that Defendant failed to authorize and permit rest periods if entries
12 were not reflected for breaks. Nevertheless, Plaintiffs estimated Defendant's exposure for this claim at
13 \$840,531. JCL Dec., ¶ 27.

14 (3) Exposure for Off-The-Clock Violations resulting in unpaid minimum,
15 straight, and overtime wages.

16 One of Plaintiffs' primary claims in the Action was that Defendant failed to pay for all hours
17 worked. Specifically, Plaintiffs alleged that they were required to undergo several hours of onboarding
18 training and were not paid for their time. Plaintiffs further allege that at the beginning of their
19 employment, Defendant input rounded time for Plaintiffs because they were not yet registered in
20 Defendant's timeclock system, thus resulting in underpayment to the Plaintiffs. Plaintiffs contend that
21 the unpaid onboarding training and rounded time records were Defendant's standard practice.
22 Defendant denied liability and asserted that its employees were paid for all time worked. Defendant
23 argued that it had a facially compliant policy regarding timekeeping. Furthermore, Defendant argued
24 that, even if successful, this claim resulted in minimal actual damage to the Class Members. Assuming
25 a conservative two hours of unpaid work per Class Member, Plaintiffs estimated Defendant's exposure
26 for this claim to be approximately \$31,792. JCL Dec., ¶ 28

27 (4) Exposure for Wage Statement Violations and Waiting Time Penalties

28 Plaintiffs also alleged that the Defendant's labor code violations resulted in derivative liability

1 for wage statement violations and waiting time penalties. Class Counsel considered the arguable
2 presence of various penalties and weighed the potential recoveries against probable defenses.
3 Specifically, Defendant argued that Plaintiffs could not prove the “willful” prong needed to obtain
4 waiting time penalties under Labor Code section 203. Additionally, Defendant argued that Plaintiffs
5 could not show that Class Members suffered an “injury” because of wage statement violations, as
6 required by Labor Code section 226. Defendant could also argue that that meal and rest period
7 violations do not entitle employees like Plaintiffs and the Class Members to pursue the derivative
8 waiting time and itemized wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.*
9 (2023) 88 Cal.App.5th 927. Plaintiffs could not give the penalty claims great weight given that they
10 depended on proving the underlying claims, which had their own risks. As such, Plaintiffs applied a
11 50% discount. Plaintiffs estimated Defendant’s exposure for these penalties to be approximately
12 \$1,585,609 (\$1,160,859 for Labor Code section 203 penalties and \$424,750 for Labor Code section
13 226 penalties). JCL Dec., ¶ 29.

14 (5) Exposure for Unreimbursed Business Expenses

15 Plaintiffs alleged that Defendant required Class Members to incur personal expenses for the use
16 of their own personal cellular phones. Specifically, Defendant communicated with Plaintiffs and Class
17 Members via their personal cell phones through calls and texts both during work hours and after work
18 hours. California employers who require employees to incur personal business expenses for work
19 purposes must reimburse the employee for the cost incurred. (*See* Cal. Lab. Code § 2802(a), providing
20 that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses
21 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
22 obedience to the directions of the employer....”). JCL Dec., ¶ 30.

23 Again, Defendant denied any liability for this claim. Defendant argued that most of its
24 employees did not use cellphones as part of the performance of their duties and on the rare occasion
25 where employees did incur business expenses, these expenses were fully reimbursed. Plaintiffs
26 estimated Defendant’s exposure for this claim at \$120,137. JCL Dec., ¶ 31.

27 ///

28 ///

1 (6) Defendant's PAGA Exposure

2 Class Counsel's damage models also estimate Defendant's exposure for PAGA penalties arising
3 from the aforementioned violations. At the time of mediation, Plaintiffs estimate Defendant's PAGA
4 exposure at approximately \$1,887,500. JCL Dec., ¶ 32. The proposed PAGA allocation of the Gross
5 Settlement Amount is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
6 77. Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no indication
7 that this amount was the result of self-interest at the expense of class members," such amounts are
8 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
9 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
10 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
11 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
12 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
13 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
14 PAGA claim settlements in the range of zero to two percent of the total settlement).

15 Here, the Parties negotiated a good faith settlement for the PAGA Penalties in the amount of
16 \$30,000 which is 4% of the Gross Settlement Amount. This amount falls well within the range of
17 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$22,500.00) will be
18 paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the
19 PAGA Penalties (\$7,500.00) will be distributed to the Aggrieved Employees, which is within the range
20 of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 33.

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
22 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
23 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
24 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
25 civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186
26 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
27 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
28 6, 2016) (PAGA penalties denied after trial).

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

7 For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair,
8 just, and reasonable. JCL Dec., ¶ 34.

9 **b. Inherent Risks of Continued Litigation Support Preliminary Approval.**

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Magadia v. Walmart Associates, Inc.*
17 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
18 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
19 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
20 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
21 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
22 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
23 reason, if any, that employees might not take their breaks were predominantly individualized questions
24 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
25 (affirming denial of certification because employees’ declarations attesting to having taken meal and
26 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
27 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
28 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);

1 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
2 meal and rest period claims based on the predominance of individual issues). Collectively, the
3 examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of
4 obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL
5 Dec., ¶ 35.

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

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

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

16 Finally, continuing to litigate this action would require continued and extensive resources
17 coupled with significant Court time to proceed through trial and post-trial motions; which can often
18 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
19 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs are successful
20 at trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect
21 that Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d
22 668, the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 36. “Avoiding such a trial and
23 the subsequent appeals in this complex case strongly militates in favor of settlement rather than further
24 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
25 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
26 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

27 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$750,000.00 that is
28 roughly 50.6% Defendant’s 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. JCL Dec., ¶ 37.

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 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 Class Claims. Agreement at § III(M)(2)(a). This method was negotiated by the Parties to ensure delivering the most reasonable method of notice to the Class Members while ensuring cost effective administration of the Settlement. JCL Dec., ¶ 38.

Accordingly, both the method of disseminating the Class Notice and content of the Class Notice 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.”).) JCL Dec.,

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.

¶ 39.

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

Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement 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 1,070 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 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 their case and the strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. JCL Dec., ¶ 40.

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. JCL Dec., ¶ 41.

D. The Court Should Preliminarily Approve the Payment of Attorneys’ Fees and Attorneys’ Expenses

The purpose of a payment of Attorneys’ Fees and Attorneys’ Expenses 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

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

8 Class Counsel took this matter on a contingency fee basis and invested significant time and
9 expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
10 Individual Settlement Payment illustrates the demonstrably positive outcome for the Class Members.
11 The Agreement provides for a payment of Attorneys’ Fees and Attorneys’ Expenses and in the amount
12 of one-third of the Gross Settlement Amount (\$250,000.00) and reimbursable litigations costs in an
13 amount not to exceed \$25,000. Agreement § III(N)(10). Considering the positive outcome for the Class
14 Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Attorneys’
15 Expenses are fair and reasonable. Plaintiffs will file a formal motion for the negotiated Attorneys’ Fees
16 and Attorneys’ Expenses once preliminary approval of the Settlement is granted. Plaintiffs respectfully
17 submit that the above showing is sufficient for preliminary approval of the negotiated attorneys’ fees.
18 JCL Dec., ¶ 42.

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

20 For Settlement, Plaintiffs contend, and Defendant does not dispute, that provisional certification
21 of the Class is appropriate. JCL., ¶ 43.

22 1. The Standard for Class Certification

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

1 to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207;
2 *Sav-On*, 34 Cal.4th at 333.)

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

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

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

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

18 Because all Class Members are Defendant’s current and former employees, the class is readily
19 ascertainable from Defendant’s regular business records, i.e., payroll records. JCL Dec., ¶ 44.

20 The California statutes relating to each of Plaintiffs’ claims apply with equal force and effect to
21 the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and
22 Defendant’s liability can be determined by facts common to all members of the class. The wage and
23 hour issues are both numerous and substantial, and a class action is the most advantageous method of
24 dealing with the claims of the Settlement Class. JCL Dec., ¶ 45.

25 Plaintiffs’ wage and hour claims are typical of the proposed Settlement Class because they arise
26 from the same factual basis and are based on the same legal theories applicable to the other Class
27 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Settlement
28 Class. Plaintiffs allege that they were injured by the same company-wide practices to which the

1 proposed Class Members were subject to and seek the same relief. Plaintiffs have already demonstrated
2 their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking
3 extensive class discovery, and evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶
4 46.

5 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
6 each individual claim, the Class Members likely have little incentive to litigate their claims on an
7 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
8 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
9 adjudication. JCL Dec., ¶ 47.

10 Additionally, Plaintiffs are represented by competent Class Counsel who have extensive
11 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
12 certified, and gained state court settlement approval of the same class-wide causes of action that are at
13 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
14 qualified to represent the interests of this Class. JCL Dec., ¶¶ 48-54; Declaration of Shani O. Zakay at
15 ¶ 3.

16 IV. CONCLUSION

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

20
21 Dated: August 28, 2024

ZAKAY LAW GROUP, APLC

22 By: Rachel Newman

23 Rachel Newman, Esq.