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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KAREEM COLES, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

v.

CAREFUSION RESOURCES, LLC, a Delaware
Limited Liability Company; BECTON
DICKINSON AND COMPANY, a New Jersey
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No: 37-2022-00048696-CU-OE-CTL

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

Date: October 20, 2023

Time: 10:30 a.m.

Judge: Hon. Loren Freestone

Dept.: C-64

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I. INTRODUCTION

Plaintiff Kareem Coles (“Plaintiff”) seeks 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 1,609 Class Members and 1,558 Aggrieved Employees. The basic terms of the Agreement provide for the following:

1. The **“Class”** and **“Class Period”** shall mean all non-exempt employees who worked for CareFusion in California and/or all non-exempt employees employed by BD who worked for CareFusion in California (“Class”) during the period beginning October 2, 2020 through November 15, 2023, or the date of preliminary approval of the settlement, whichever occurs first (“Class Period”). Agreement at §§ I(E), I(J).

a. The **“Settlement Class Members”** means a Class Member who does not submit a timely and valid Request for Exclusion from the Settlement. Agreement at § I(MM).

b. The **“Class Size”** is comprised of 1,609 individuals who collectively worked approximately 181,114 Workweeks during the Class Period as estimated by Defendants at the time of mediation. Agreement at § III(A)(2).

2. The **“Aggrieved Employees”** and **“PAGA Period”** means all non-exempt employees who worked for CareFusion in California and/or all non-exempt employees employed by BD who worked for CareFusion in California (“Aggrieved Employees”) during the period beginning September 16, 2021, through November 15, 2023 (“PAGA Period”). Agreement at §§ I(C), I(Z). Aggrieved Employees do not have the ability to opt-out of the PAGA portion of the settlement. Agreement at § III(N). At the time of mediation, there were approximately 1,558 Aggrieved Employees during the PAGA Period. JCL Dec., ¶ 6.

3. The **“Gross Settlement Amount”** is One Million, Nine Hundred Fifty Thousand Dollars and Zero Cents (\$1,950,000.00). Agreement at § I(P). The Gross Settlement Amount is non-reversionary and includes the following:

a. A **“Service Award”** of not more than \$7,500.00 to Plaintiff in recognition of his

¹ The Agreement is attached as Ex “1” 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 efforts and risks in assisting with the prosecution of the Action. Agreement at § III(P)(9).

2 b. **“Class Counsel Award”** in the amount not of not more than \$675,000.00,
3 comprised of one-third of the Gross Settlement Amount for attorney’s fees, currently estimated to be
4 \$650,000.00 *and* litigation expenses not to exceed \$25,000.00, to be paid to Class Counsel. Agreement
5 at §§ III(P)(10);

6 c. A **“PAGA Payment”** of Eighty-Five Thousand Dollars and Zero Cents
7 (\$85,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil
8 penalties under the Private Attorneys General Act of 2004 (“PAGA Payment”). The Settlement
9 Administrator shall pay seventy-five (75%) of the PAGA Payment (\$63,750.00) to the Labor and
10 Workforce Development Agency (“LWDA Payment”). Twenty-five percent (25%) of the PAGA
11 Payment (\$21,500.00) will be distributed to the Aggrieved Employees (“Aggrieved Employee
12 Payment”). Agreement at §§ III(P)(11); and

13 d. **“Settlement Administration Costs”** not to exceed \$17,000.00 payable to the
14 Settlement Administrator, Apex Class Action LLC, for, *inter alia*, the administration of the Notice of
15 Pendency of Class and PAGA Representative Action Settlement and Final Hearing Date (“Notice
16 Packet”) and costs associated with administration of the settlement. Agreement at §§ I(LL), III(P)(12).

17 4. The **“Net Settlement Amount”** of approximately \$1,165,500.00 (Gross Settlement
18 Amount less the requested Class Counsel Award, Service Award, PAGA Payment, and Settlement
19 Administration Costs) which will be allocated to all Settlement Class Members on a pro-rata basis
20 according to the number of Workweeks each Settlement Class Member worked during the Class Period.
21 Agreement at §§ III(P)(1). The entire Net Settlement Amount will be paid to all Settlement Class
22 Members who do not opt out of the Settlement resulting in an average Individual Settlement Payment
23 of **\$724.36**. JCL Dec., ¶ 6.

24 An objective evaluation of the Settlement confirms that the relief negotiated on behalf of the
25 Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
26 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
27 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
28 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will

1 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
2 denied or of Defendants prevailing at trial. JCL Dec., ¶ 6.

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

8 **II. FACTS AND PROCEDURE**

9 **A. Overview of the Litigation**

10 Defendants provide medical technology and services which aims to reduce medication errors
11 and prevent healthcare associated infections throughout California, including San Diego county,
12 where Plaintiff worked. Plaintiff was employed by Defendants from 2008 to approximately June of
13 2022, as a non-exempt employee. Declaration of Kareem Coles (“Coles Dec.”) at ¶ 4. Plaintiff allege
14 that he was denied legally compliant meal and rest periods, and minimum wages and overtime
15 compensation at all times during his employment. Throughout his employment, Plaintiff was subject
16 to Defendants’ written policies and procedures contained in, among other documents, the “BD
17 Corporate Policy.” JCL Dec., ¶ 8.

18 Generally, Plaintiff claim that Defendants failed to provide compliant meal and rest periods,
19 failed to pay for all time worked, including time spent undergoing covid-19 screenings, failed to pay
20 overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized
21 wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon
22 separation. Defendants denies liability for each of Plaintiff’s claims. Further, Defendants asserts that it
23 fully complied with all applicable employment laws and raised several other significant defenses to
24 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
25 compliant wage statements, compliant reimbursement practices, and it timely paid all wages due upon
26 separation of employment. JCL Dec., ¶ 9.

27 On September 16, 2022, Plaintiff Coles served Defendants and the Labor and Workforce
28 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA

1 Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions
2 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order
3 and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal.
4 Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 10.

5 On September 16, 2022, Plaintiff filed a class action complaint in the San Diego County Superior
6 Court, Case No. 37-2022-00037343-CU-OE-CTL (“Class Action”). The Class Action alleged eight
7 causes of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code
8 §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197,
9 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure
10 to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
11 IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7
12 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse for Required Expenses in
13 violation of Cal. Lab. Code § 2802; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code
14 §§ 201, 202, and 203; and (8) Failure to Provide Accurate Itemized Wage Statements in violation of
15 Cal. Lab Code §226. JCL Dec., ¶ 11.

16 On December 2, 2022, Plaintiff filed a separate representative action complaint in the San Diego
17 County Superior Court, Case No. 37-2022-00048696-CU-OE-CTL (“Action”) alleging a single cause
18 of action for violations of PAGA. JCL Dec., ¶ 12.

19 On November 9, 2022, Defendant filed a notice of removal in the Class Action removing the
20 case to the Southern District Court, asserting diversity jurisdiction pursuant to 28 U.S.C. sections 1332,
21 1441, and 1446. On July 21, 2023, the Parties stipulated to dismiss the Class Action to proceed with a
22 global settlement in the instant Action. JCL Dec., ¶ 13.

23 The Parties participated in formal discovery at the beginning of the case, including the exchange
24 of initial disclosures with potential witness and other information and documents pertinent to each
25 side’s claims and defenses. Plaintiff also propounded written discovery in January of 2023. After the
26 initial round of discovery, the Parties agreed to mediate the Action. The Parties also agreed to continue
27 discovery, but on an informal basis, to prepare for mediation. Such discovery included production of
28 additional documents and data points subject to the mediation privilege, including but not limited to,

1 the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's counsel
2 retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and
3 payroll data. JCL Dec., ¶ 14.

4 On June 15, 2023, the Parties participated in a full day mediation with wage and hour and PAGA
5 mediator Louis Marlin, Esq. The mediation concluded with a settlement after both sides agreed to a
6 Mediator's proposal which was subsequently memorialized in the form of a Memorandum of
7 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
8 is the subject of the instant motion. JCL Dec., ¶ 15.

9 On August 1, 2023, Plaintiff filed a First Amended Complaint for the purpose of adding the
10 claims asserted in the Class Action to the instant Action. JCL Dec., ¶ 16.

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

12 Months before filing the Action, Class Counsel began its pre-filing investigation into the
13 Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with
14 Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment,
15 including portions of his time and payroll records. At the conclusion of the interviews, Class Counsel
16 determined that Plaintiff's complaints justified further inquiry. JCL Dec., ¶ 17.

17 Class Counsel subsequently requested Plaintiff's employee files from Defendants. In response,
18 Defendants produced hundreds of pages of documents, including but not limited to, copies of
19 Defendants' written policies and Plaintiff's hiring documents and payroll and time records. Class
20 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
21 Plaintiff's claim that Defendants' failed to, among other things, provide compliant meal and rest
22 periods, to provide accurate wage statements, to compensate overtime wages at the correct regular rate
23 of pay, and to reimburse for mandatory business expenses. JCL Dec., ¶ 18.

24 To prepare for mediation, Defendants produced the time and payroll records for the Class
25 Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums
26 paid to the Class Members, average hourly rate for the Class Members, and copies of applicable
27 handbooks, policies, and agreements. In total, Class Counsel reviewed more than 2,000 pages of
28 documents and more than 6 million unique cells of time and payroll data. JCL Dec., ¶ 19.

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

6 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
7 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
8 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
9 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
10 and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of
11 unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and
12 rest period premiums paid during the Class Period. JCL Dec., ¶ 21.

13 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
14 Plaintiff's suitability as a putative class representative through interviews, background investigations,
15 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
16 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
17 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants'
18 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
19 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
20 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
21 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
22 claims being settled, as well as the impediments to recovery, such as to make an independent
23 assessment of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 22.

24 Class Counsel only agreed to enter the Settlement following this thorough investigation and
25 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace
26 for similar settlements, and considering the risk of significant delay and uncertainty associated with
27 litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this
28 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., ¶ 23.

C. The Parties Settled at Mediation

On June 15, 2023, the Parties conducted a full day of mediation with Louis Marlin, Esq. Mediator Marlin 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 Marlin'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, after both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶¶ 24-25.

D. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. The Composition of the Settlement Class Members

The proposed Class consists of all non-exempt employees who worked for CareFusion in California and/or all non-exempt employees employed by BD who worked for CareFusion in California during the period beginning October 2, 2020 through November 15, 2023. Agreement at § I(E). The Settlement Class Members excludes any person who submits a timely and valid request for exclusion. Agreement at § I(MM). At the time of mediation, Defendants estimated that the Class was comprised of 1,609 individuals that worked approximately 181,114 Workweeks during the Class Period. Agreement at § III(A)(2).

2. The Settlement Consideration

The Parties agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$1,950,000. The Gross Settlement Amount includes: (1) Individual Settlement Payments to the Settlement Class Members; (2) a Service Award of not more than \$7,500.00 to Plaintiff for his services on behalf of the Class; (3) a PAGA Payment in the amount of \$85,000.00; (4) Settlement Administration Costs estimated at \$17,000.00; (5) Class Counsel Award in the amount of \$675,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$650,000.00 and an estimated \$25,000.00 for actually incurred litigation expenses. See generally Agreement at § III(P).

1 Subject to the Court approving the Service Award, Class Counsel Award, PAGA Payment, and
2 the Settlement Administration Costs, the Net Settlement Amount will be distributed to each Settlement
3 Class Member. Agreement at §§ I(P), I(T). There is no reversion to Defendants and Defendants must
4 separately pay for their share of the employer payroll taxes. Agreement at § I(P).

5 3. The Funding Date

6 Assuming there are no objectors, and no appeal is filed, Defendants will fund the Gross
7 Settlement Amount within twenty-one (21) calendar days of the Effective Date. Agreement at § I(O).

8 4. Formula for Calculating Individual Settlement Payments

9 Settlement Class Members will receive an Individual Settlement Payment. The Individual
10 Settlement Payment will be proportional to the number of Workweeks each Class Member worked for
11 Defendants in California during the Class Period. Agreement at § III(P)(1). The Class Data provided
12 by Defendants to the Settlement Administrator will include the number of Workweeks for each Class
13 Member and the number of PAGA Pay Periods worked during the relevant periods. Agreement at §
14 I(H). The Settlement Administrator will calculate each Class Member's final Individual Settlement
15 Payment by dividing a particular Class Member's total number of Workweeks by the total number of
16 Workweeks for all Class Members, resulting in a Class Payment Ratio for each Class Member.
17 Agreement at § III(P)(1). Each Class Member's Class Payment Ratio will then be multiplied by the
18 Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment.
19 Each Individual Settlement Payment will be reduced by any legally mandated employee tax
20 withholdings (e.g., employee payroll taxes, etc.). *Id.* Individual Settlement Payments for members of
21 the Settlement Class Members who submit valid and timely requests for exclusion will be redistributed
22 to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata
23 basis. Agreement at § *Id.*

24 Given that there are approximately 1,609 Class Members, the average gross recovery is
25 approximately \$724.36 (Net Settlement Amount divided by Settlement Class Members). JCL Dec., ¶

26 6.

27 5. Release by Settlement Class Members

28 Generally, as of the Funding Date, Plaintiff and the Settlement Class Members will agree to

1 release the Released Parties from the Released Class Claims that accrued during the Class Period.
2 Agreement at § III(B).

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

4 Generally, as of the Funding Date, Plaintiff, the Aggrieved Employees, and the State of
5 California will release the Released Parties from the Released PAGA Claims that accrued during the
6 PAGA Period. Agreement at § III(C).

7 **III. ARGUMENT**

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

9 The proposed Settlement, including a Gross Settlement Amount of \$1,950,000.00 meets the
10 standards for preliminary approval. Pre-trial settlement of complex class actions is a judicially favored
11 remedy. (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625 (“Voluntary
12 conciliation and settlement are the preferred means of dispute resolution.”).) Class action settlement
13 approval requires an early “preliminary” review by the trial court and a subsequent “final” review after
14 notice of the settlement has been distributed to class members for their comments and objections.
15 (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the
16 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to
17 inquire into the fairness of the proposed settlement”).)

18 Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the
19 proposed settlement, preliminary approval is warranted if the settlement falls within a “reasonable
20 range.” (*See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th
21 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).)
22 Reasonableness and fairness are presumed where: (1) the settlement is reached through “arms-length
23 bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to act
24 intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford Motor Co.* (1996)
25 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with California’s public policy
26 goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 (“the law wisely
27 favors settlements”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (“public
28 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*

1 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and
2 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
3 action litigation”).)

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

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

12 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
13 settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.) Courts presume the
14 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
15 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. (Newberg,
16 § 11.51.)

17 The Parties participated in mediation the mediator Louis Marlin, Esq. Mediator Marlin managed
18 the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides.
19 (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195
20 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any inference of a
21 collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d 78, 85 (a “mediator’s
22 involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free
23 of collusion and undue pressure.”).) After a full day of mediated negotiations, the Parties reached an
24 agreement and the mediation session concluded with a settlement. JCL Dec., ¶ 26.

25 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations regarding
26 the written terms of the class action settlement. The Agreement is the final product of the mediated
27 negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
28 compromise of the claims at issue. JCL Dec., ¶ 27.

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 Plaintiff’s claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. JCL Dec., ¶ 28.

Class Counsel only agreed to enter the Settlement following their thorough investigation and evaluation of Plaintiff’s 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. JCL Dec., ¶ 29.

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

The Gross Settlement Amount of \$1,950,000.00 is within the range of reasonableness. To determine whether a settlement is fair and reasonable, the court should “consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In making this determination, the court is “not to try the case” but rather “satisfy itself that the class action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.* (emphasis added).) For this analysis, courts do “not require any such explicit statement of value; [they] require[] a record which allows an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal citation omitted).) The reasonableness of a settlement is not dependent upon its actual value approaching the potential recovery plaintiffs might

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

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

6 The Gross Settlement Amount of \$1,950,000.00 is fair and reasonable considering the nature
7 and magnitude of the claims being settled and the various potential impediments to recovery. Prior to
8 mediation, Class Counsel retained Berger to develop economic damage models measuring Defendants’
9 liability exposure while accounting for the uncertainties of continued litigation. The various models
10 were informed by Class Counsel’s investigation, including the analysis of a significant sample of time
11 and payroll data. Class Counsel projected Defendants’ liability exposure for *class claims* (excluding
12 PAGA Penalties) ranged between \$4,337,349.72 (“Realistic Damages”) and \$14,133,618.53
13 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty regarding several of
14 the claims. Thus, the Gross Settlement Amount represents a recovery of between 44.96% (“Realistic
15 Damages”) and 13.80% (“Maximum Damages”) of Defendants’ class-wide exposure – well within the
16 recognized range of reasonableness. The following summarizes Defendants’ liability exposure. JCL
17 Dec., ¶ 30.

18 (1) Estimated Damages for Meal Period Violations

19 Plaintiff’s primary claim in this Action alleges that Defendants failed to provide compliant meal
20 periods. In analyzing this claim, Plaintiff’s expert found that Defendants had a low violation rate with
21 respect to first meal periods. On average, approximately 2.3% of first meal periods were short, late, or
22 missed. Moreover, many Class Members signed written meal period waivers for shifts that were six

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

1 (6) hours or less. While Defendants had a low violation rate with respect to first meal periods,
2 Plaintiff's expert found that 68.5% of shifts between ten (10) and twelve (12) hours were without a
3 recorded second meal period. Additionally, Plaintiff's expert found that approximately 69% of all meal
4 periods were rounded to exactly 30 minutes. Consequently, Plaintiff alleges that he is owed meal period
5 premiums for meal period violations that occurred during the Class Period. JCL Dec., ¶ 31.

6 Conversely, Defendants argued, among other things, that it provided all their employees, i.e.,
7 Class Members and Aggrieved Employees, with the opportunity to take compliant meal periods,
8 including second meal periods during shifts longer than ten (10) hours. Specifically, Defendant argued
9 that of the 790,082 shifts that qualified for a meal period, i.e., shifts greater than six (6) hours, less than
10 1% of those shifts (4,354 shifts) qualified for a second meal period. Although there appears to be a
11 high violation rate for second meal period, the damages were minimal considering that less than 1% of
12 shifts qualified for a second meal period. Moreover, Defendants had an overall unique meal period
13 violation rate of only 9.7%. Defendant also argued that, with respect to Plaintiff's meal rounding
14 claims, it had attestations from its employees verifying that they took compliant meal periods, albeit
15 exactly 30 minutes in length. JCL Dec., ¶ 32.

16 Defendants also argued that it maintained facially compliant meal period policies, had
17 attestations from its employees that they took compliant meal periods, and that it paid more than
18 \$620,000 in meal period premiums throughout the Class Period. Thus, Defendants argued that there
19 was no potential liability for Plaintiff's alleged meal period violations and any claimed violations
20 required a highly individualized inquiry not suitable to class treatment. JCL Dec., ¶ 33.

21 Consequently, Plaintiff applied a 50% discount to this claim to account for the modest violation
22 rate, facially compliant policies, and payment of meal period premiums. Plaintiff estimated that the
23 damages for this claim ranged from approximately \$778,634.32 to approximately \$1,557,268.64. JCL
24 Dec., ¶ 34.

25 (2) Defendants' Estimated Exposure of Rest Period Violations

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

1 BCG assumed an identical 9.7% violation rate for rest periods based on Plaintiff's testimony and
2 investigation. JCL Dec., ¶ 35.

3 Again, Defendants denied liability and asserted that it maintained legally compliant rest period
4 policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the evidentiary
5 burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely,
6 on Class Member testimony, making it a riskier claim at class certification and liability stages.
7 Certification likely would have required depositions of Class Members who provided declarations, and
8 Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or
9 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
10 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
11 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
12 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
13 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
14 generate uniform practices."). Accordingly, Plaintiff's Realistic Damage model applied a 50% discount
15 to the rest break claim. Plaintiff estimated the range of potential outcomes for this claim was between
16 approximately \$995,099.46 to approximately \$1,910,198.91. JCL Dec., ¶ 36.

17 (3) Defendants' Estimated Exposure for Unpaid Wages

18 Plaintiff also alleged that Defendants failed to pay its employees for all hours worked.
19 Specifically, Plaintiff asserted that Defendants failed to pay employees for time spent undergoing
20 COVID-19 screenings before the start of their shifts. Based on Plaintiff's testimony and Class
21 Counsel's investigation, BCG estimated that Class Members performed approximately five (5) minutes
22 of unpaid work undergoing COVID-19 screenings before every shift. As a result, Plaintiff, Class
23 Members, and Aggrieved Employees forfeited compensation, including overtime wages, for all the
24 time they spent working under Defendants' control. JCL Dec., ¶ 37.

25 Defendants vigorously denied liability for this claim. Further, Defendants asserted that it had
26 in place a written policy requiring its employees to accurately record all their time worked daily and
27 argued that such written policies and procedures directed its employees not to work while off the
28 clock. Further, Defendants argued that the off-the-clock claim was not suitable to class treatment

1 because individualized issues predominated. For example, even assuming Plaintiff performed work
2 while off-the-clock, which Defendants dispute, the time spent would vary drastically from class
3 member to class member that it could not be established by common proof. Defendants also argued
4 that to the extent COVID-19 screenings were conducted off-the-clock, these screenings took less than
5 one (1) minute to complete. JCL Dec., ¶ 38.

6 Plaintiff recognized the risks and uncertainties of certifying this claim. Consequently, Plaintiff's
7 Realistic Damage model applied a 50% discount to this claim. Plaintiff estimated Defendants'
8 exposure for this claim ranged between \$754,149.99 and \$1,508,299.98. JCL Dec., ¶ 39.

9 (4) Defendants' Estimated Exposure for Unreimbursed Business Expenses

10 Plaintiff alleged that Defendants required Class Members and Aggrieved Employees to use their
11 personal cellular phones as a result of and in furtherance of their job duties but were not reimbursed by
12 Defendants. California employers who require employees to incur personal business expenses for work
13 purposes must reimburse the employee for the cost incurred. (*See* Cal. Labor Code § 2802(a), providing
14 that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred
15 by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience
16 to the directions of the employer..."). Specifically, Plaintiff, Class Members, and Aggrieved
17 Employees were required to use their cell phone to send and receive work-related communications.
18 BCG estimated a reasonable \$15 monthly reimbursement rate for Class Members for the use of their
19 personal cell phones. JCL Dec., ¶ 40.

20 Again, Defendants denied any liability for this claim. Defendants argued that its written policies
21 provide for reimbursement to employees for necessary business expenses incurred in the discharge of
22 the employees' duties or at Defendants' direction. Further, Defendants argued that any practice that
23 required its employees to use their own personal cell phones ceased in or around 2018. Thus,
24 Defendants argued that even if Plaintiff were successful in this claim only a small number –
25 approximately half – of the Settlement Class Members would be entitled to relief. This claim was also
26 heavily discounted by 85% based on Defendants' defenses. Plaintiff estimated Defendants' exposure
27 for this claim ranged between approximately \$12,783.75 and approximately \$51,135. JCL Dec., ¶ 41.

28 ///

1 (5) Defendants’ Estimated Exposure for Regular Rate Violations

2 Plaintiff alleges that Defendants failed to include certain non-discretionary bonuses and
3 commissions when calculating the regular rate of pay when paying overtime wages and meal period
4 premiums. Specifically, Defendants paid Class Members non-discretionary incentive compensation in
5 the form of “Employee Referral,” “SARA,” “Employee Bonus Plan EBP (Annual),” and “SARA type
6 award (Monthly)” payments, which were not properly calculated into the regular rate of pay for
7 purposes of overtime and meal period premiums. JCL Dec., ¶ 42. The regular rate of pay, which can
8 change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among
9 other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any
10 non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp. of California*
11 (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a 50 percent premium
12 on top of his or her regular rate of pay[.]” *Id.* at 553. California law also requires meal period premiums
13 and rest period premiums to be paid at an employee’s regular rate of pay. See *Ferra v. Lowes Hollywood*
14 *Hotel, LLC* (2021) 11 Cal.5th 858.)

15 Conversely, Defendants denied liability and asserted it paid retro payments to Class Members
16 that trued up the correct rate of pay for purposes of overtime wages and meal period premiums. Plaintiff
17 estimated the range of outcomes for this claim was between \$2,382 and \$4,764. JCL Dec., ¶ 43.

18 (6) Defendants’ Estimated Exposure for Wage Statement Violations

19 Plaintiff also alleged that Defendants failed to furnish its employees with accurate itemized wage
20 statements. Specifically, Plaintiff alleges that as a result of Defendants’ failure to provide meal and rest
21 periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to
22 derivative wage statement penalties. (See *Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93
23 (concluding that meal premiums are “wages” entitling employees to derivative wage statement
24 penalties). Further, Defendants argued that even if it failed to furnish accurate wage statements,
25 Plaintiff could not establish the injury requirement on a class-wide basis. As a result, Plaintiff
26 discounted this claim 50% to account for this risk. Plaintiff estimated that Defendants’ exposure on
27 this claim ranged between \$1,540,175 and \$6,160,700. JCL Dec., ¶ 44.

28 ///

1 (7) Defendants’ Estimated Exposure for Waiting Time Penalties

2 Plaintiff also alleged that the Defendants’ labor code violations resulted in derivative liability for
3 waiting time penalties. Although these *penalties* represented Defendants’ largest dollar amount of
4 exposure, this is Plaintiff’s most uncertain claim. Specifically, Defendants argued that Plaintiff could
5 not prove the “willful” prong needed to obtain waiting time penalties under Labor Code section 203.
6 Notwithstanding the uncertain nature of the claims, Class Counsel’s Realistic Model discounted the
7 waiting time penalty claim by 90% and estimated Defendants’ exposure for these claims ranged
8 between \$294,125 and \$2,941,252. JCL Dec., ¶ 45.

9 (8) Defendants’ PAGA Exposure

10 Class Counsel’s damage models also estimated Defendants’ exposure for PAGA penalties. At
11 the time of mediation, Plaintiff estimated Defendants’ PAGA exposure ranged between \$311,930 and
12 \$10,178,400. JCL Dec., ¶ 46. The proposed PAGA allocation of the Gross Settlement Amount is fair,
13 just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements
14 “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was
15 the result of self-interest at the expense of class members,” such amounts are generally considered
16 reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal.
17 Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two
18 percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire*
19 *Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a
20 PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
21 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
22 in the range of zero to two percent of the total settlement).

23 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$85,000.00 which is
24 4.3% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA
25 Payment. Seventy-Five percent (75%) of the PAGA Payment (\$63,750.00) will be paid to the LWDA
26 (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$21,500.00)
27 will be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the
28 range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 47.

1 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
2 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
3 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
4 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
5 civil penalties, even when Labor Code violations are established. See *In re Nordstrom Com. Cases*, 186
6 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class
7 action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr.
8 6, 2016) (PAGA penalties denied after trial).

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

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

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

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

23 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
24 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
25 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded a \$110
26 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
27 trial court to enter judgement in favor of the employer. See also *O'Conner v. Uber Technologies, Inc.*
28 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); see also

1 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
2 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
3 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
4 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
5 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
6 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
7 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
8 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
9 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
10 certification of driver meal and rest period claims based on the predominance of individual issues).
11 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
12 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
13 settlement. JCL Dec., ¶ 48.

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

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

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

24 Finally, continuing to litigate this action would require continued and extensive resources
25 coupled with significant Court time to proceed through trial and post-trial motions; which can often
26 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
27 extensive expert testimony, particularly with regards to damages. But even if Plaintiff is successful at
28 trial, Plaintiff is acutely aware that a judgment does not end the litigation. Plaintiff fully expects that

1 Defendants would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
2 the risk of an appeal and subsequent reversal is real. JCL Dec., ¶ 49. “Avoiding such a trial and the
3 subsequent appeals in this complex case strongly militates in favor of settlement rather than further
4 protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop v. DirecTV* (C.D. Cal. 2004) 221
5 F.R.D. 523, 527.) Thus, “unless the settlement is clearly inadequate, its acceptance and approval are
6 preferable to lengthy and expensive litigation with uncertain results.” (*Id.* at 526.)

7 In this matter, Class Counsel negotiated a Gross Settlement Amount of \$1,950,000.00 that is
8 roughly between approximately 44.96% of Defendants’ *class-wide* liability exposure for damages, and
9 approximately 13.80% of Defendants’ maximum class wide liability exposure for damages and
10 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
11 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.
12 JCL Dec., ¶ 50.

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

14 The Settlement Class Members are entitled to the best practical notice under the circumstances.
15 (*Kass v. Young* (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members
16 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
17 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed Savings & Loan Assn.*
18 (1975) 48 Cal. App. 3d 143, 151-52.) The notice must advise class members “that they may be excluded
19 from the class if they so request and that they will be bound by the judgment, whether favorable or not,
20 if they do not request exclusion.” (*Kass*, 67 Cal.App.3d at 106.) Authorities generally require service
21 of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.* (1962) 58 Cal.2d 275, 290;
22 *Cart v. Super. Ct.* (1975) 50 Cal.App.3d 960, 972.)³

23 The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
24 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
25 mail the proposed Notice Packet to all Class Members. The Notice will include information regarding
26

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

1 the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class definition, the
2 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
3 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
4 and scope of the Released Claims. Agreement at § III(K)(2). The Parties negotiated this method to
5 ensure delivering the most reasonable method of notice to the Class Members while ensuring cost
6 effective administration of the Settlement. JCL Dec., ¶ 51.

7 Accordingly, both the method of disseminating the Notice Packet and content of the Notice
8 Packet satisfy due process. (See C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41 Cal.3d
9 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
10 compromise and of the options open to dissenting class members.”).) JCL Dec., ¶ 52.

11 **C. The Court Should Preliminarily Approve the Service Award**

12 Service awards “are fairly typical in class action cases.” (*Cellphone Termination Fee Cases*
13 (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000); *Rodriguez v. West*
14 *Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class Actions (4th ed. 2002)
15 § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
16 UCLA L. Rev. 1303 (2006).) Service awards “are intended to compensate class representatives for
17 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
18 the action, and, sometimes, to recognize their willingness to act as a private attorney general.”
19 (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale for making enhancement or incentive awards to
20 named plaintiffs is that they should be compensated for the expense or risk they have incurred in
21 conferring a benefit on other members of the class.” (*Clark v. American Residential Services LLC*
22 (2009) 175 Cal.App.4th 785.)

23 The Settlement provides for a Service Award of \$7,500.00 to Plaintiff. The service award is fair
24 and reasonable compensation for the Plaintiff’s efforts bringing the action, assisting Class Counsel with
25 the litigation and settlement, regularly conferring with Class Counsel on the status of his case and the
26 strategies for prosecuting the claims, reviewing the proposed Settlement to ensure that its terms are fair
27 and provide adequate relief for the Settlement Class Members, and agreeing to provide Defendants a
28 general release of all claims arising out of his employment. JCL Dec., ¶ 53.

1 Class Counsel on behalf of Plaintiff will file a formal motion for the negotiated Service Award
2 once preliminary approval of the Settlement is granted. Plaintiff respectfully submit that the above
3 showing is sufficient for preliminary approval of the negotiated Service Award. JCL Dec., ¶ 54.

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

5 The purpose of a payment of a Class Counsel Award in class action litigation is to reward counsel
6 who took the risk of non-payment and invested in a case that achieved a substantial positive result for
7 the class. California courts routinely award attorneys' fees equaling one-third or more of the potential
8 value of the common fund, the amount requested under this settlement. (*See Chavez v. Netflix, Inc.*
9 (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that regardless whether the percentage
10 method or the lodestar method is used, fee awards in class actions average around one-third of the
11 recovery."); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An*
12 *Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent
13 studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is
14 consistent with market rates).)

15 Class Counsel took this matter on a contingency fee basis and invested significant time and
16 expense successfully prosecuting Plaintiff's claims. As discussed *supra*, the estimated average
17 Individual Settlement Payment illustrates the demonstrably positive outcome for the Settlement Class
18 Members. Considering the positive outcome for the Class Members, and in light of the supporting
19 authority, the proposed Class Counsel Award is fair and reasonable. JCL Dec., ¶ 55.

20 Plaintiff will file a formal motion for the negotiated Class Counsel Award once preliminary
21 approval of the Settlement is granted. Plaintiff respectfully submit that the above showing is sufficient
22 for preliminary approval of the negotiated attorneys' fees. JCL Dec., ¶ 56.

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

24 For Settlement purposes only, Plaintiff contends, and Defendants do not dispute, that provisional
25 certification of the Class is appropriate. JCL Dec., ¶ 57.

26 1. The Standard for Class Certification

27 Class actions are statutorily authorized "when the question is one of common or general interest,
28 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the

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

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

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

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

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

22 Because all Class Members are Defendants’ current and former employees, the class is readily
23 ascertainable from Defendants’ regular business records, i.e., payroll records. JCL Dec., ¶ 58.

24 The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire
25 Class. Factually, Defendants’ policies and practices apply class-wide and Defendants’ liability can be
26 determined by facts common to all members of the class. The wage and hour issues are both numerous
27 and substantial, and a class action is the most advantageous method of dealing with the claims of the
28 Settlement Class Members. JCL Dec., ¶ 59.

1 Plaintiff's wage and hour claims are typical of the proposed Class because they arise from the
2 same factual basis and are based on the same legal theories applicable to the other Class Members.
3 Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff allege
4 that she was injured by the same company-wide practices to which the proposed Class Members were
5 subject to and seek the same relief. Plaintiff has already demonstrated his ability to advocate for the
6 interests of the Class Member by initiating this litigation, undertaking extensive class discovery, and
7 evaluating the proposed settlement to assure that it is fair. JCL Dec., ¶ 60.

8 Additionally, Plaintiff are represented by competent Class Counsel who have extensive
9 experience in litigating wage and hour class action cases. Class Counsel successfully briefed, argued,
10 certified, and gained state court settlement approval of the same class-wide causes of action that are at
11 issue in this case. Class Counsel's wage and hour class action experience establishes that they are well
12 qualified to represent the interests of this Class. JCL Dec., ¶¶ 62-69, Declaration of Shani Zakay, ¶¶ 1-
13 3.

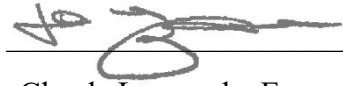
14 A class action is superior to a multitude of individual lawsuits. Given the size and amount of
15 each individual claim, the Class Members likely have little incentive to litigate their claims on an
16 individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
17 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
18 adjudication. JCL Dec., ¶ 61.

19 IV. CONCLUSION

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

23
24 Dated: September 21, 2023

JCL LAW FIRM, APC

25 By: 
26 Jean-Claude Lapuyade, Esq.