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Attorneys for Plaintiff MAICHEL BENTTON,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MAICHEL BENTTON individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SEVITA HEALTH, formerly known as
Mentor Network, Inc.; MENTOR
MANAGEMENT, INC., a business form
unknown; THE MENTOR NETWORK, INC.,
a business form unknown; FIRST STEP
INDEPENDENT LIVING PROGRAM, INC.,
a California Corporation; and DOES 1-50,
inclusive,

Defendants.

Case Nos. 22STCV06236
ASSIGNED FOR ALL PURPOSES TO:
Hon. Elihu M. Berle
Dept. 6

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF PAGA
AND CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of PAGA and
Class Action Settlement; Declaration of Plaintiff
Maichel Bentton; [Proposed] Order filed
concurrently herewith]

Date: August 1, 2023
Time: 9:00 a.m.
Dept.: 6

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on August 1, 2023 at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 6 of the above-captioned court, located at 312
4 N Spring St, Los Angeles, CA 90012, the Honorable Elihu M. Berle presiding, Plaintiff
5 MAICHEL BENTTON will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Stipulation of Settlement ,
7 (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of James Hawkins;
8 2. Conditionally certify the proposed Settlement Classes;
9 3. Appoint MAICHEL BENTTON as the representative for the Settlement Class;
10 4. Appoint James Hawkins, APLC as Class Counsel;
11 5. Approve distribution of the proposed Notice of Pendency of Class Action and Proposed
12 Settlement (“Settlement” or “Settlement Agreement”, attached as Exhibit A to the Declaration of James
13 Hawkins.
14 6. Appoint CPT Group Class Action Administrators as the Settlement Administrator; and
15 7. Set a hearing date for final approval of the settlement.

16 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
17 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA claims
18 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Plaintiff MAICHEL
19 BENTTON; (5) the Settlement Agreement; (6) the [Proposed] Order Granting Preliminary Approval of
20 Class Action Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such
21 other documentary and oral evidence or argument as may be presented to the Court at or prior to the
22 hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page
23 limit requirement set by California Rules of Court, Rule 3.1113(5).

24 Dated: June 14, 2023

Respectfully submitted,

25 By: _____

26 James R. Hawkins
27 Gregory Mauro
28 Michael Calvo
Lauren Falk
Ava Issary
JAMES HAWKINS, APLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

MAICHEL BENTTON is the named plaintiff (“Plaintiff”) in this action who brought claims against Defendants FIRST STEP INDEPENDENT LIVING PROGRAM, INC and MENTOR MANAGEMENT, INC. (“Defendants”) (collectively with Plaintiff, the “Parties”) for wage and hour violations. Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Tripper Ortman, Esq., an experienced mediator of wage and hour actions. With Mr. Ortman’s guidance, the Parties were able to negotiate a gross settlement of the Action for \$600,000.00 after a full day of mediation.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Stipulation of Settlement (hereinafter Settlement Agreement). If approved, the Settlement would provide considerable monetary relief for approximately 480 class members (James Hawkins Decl. “Hawkins Decl.” ¶7) of Defendants. The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes (Settlement Agreement I). It is estimated there are approximately 480 total class members.

(2) A Maximum Settlement Amount of \$600,000.00. (Settlement Agreement ¶3).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Mr. Ortman, and the Settlement confers substantial benefits to Class Members. The Net Settlement Fund is estimated to be approximately \$316,500.00. This relief—averages **approximately \$660** per Class Member after fees and costs- and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal. (Hawkins Decl. ¶¶ 15-36).

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement

1 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff
2 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

3 **II. FACTS AND PROCEDURE**

4 **A. Brief Overview of the Litigation**

5 On February 17, 2022 Plaintiff files a putative class action complaint entitled *Maichel*
6 *Bentton v. Sevita Health et al.*, Los Angeles County Superior Court No. 22STCV06236
7 seeking damages for Defendants' alleged failure to: (a) failure to pay wages including overtime,
8 (b) failure to provide meal periods for every work period exceeding more than five (5) or ten (10)
9 hours per day and failure to pay an additional hour's of pay accurately pay an additional hour's of
10 pay in lieu of providing a meal period, (c) failure to provide rest breaks for ever four hours or
11 major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
12 additional hour's of pay in lieu of providing a rest period, (d) failure to pay all wages earned and
13 owed upon separation from Defendants' employ, (e) failure to provide accurate itemized wage
14 statements, (f) failure to reimburse necessary business expenses, and (g) violation of Business &
15 Professions Code section 17200, et seq. (Hawkins Decl. ¶¶ 3-6).

16 On April 26, 2022 Plaintiff on behalf of the general public as private attorney general filed
17 a PAGA representative action entitled *Maichel Bentton v. Sevita Health et al.*, Los Angeles
18 County Superior Court No. 22STCV13818 seeking damages for Defendants' alleged (a) failure to
19 pay wages including overtime, (b) failure to provide meal periods for every work period exceeding
20 more than five (5) or ten (10) hours per day and failure to pay an additional hour's of pay
21 accurately pay an additional hour's of pay in lieu of providing a meal period, (c) failure to provide
22 rest breaks for ever four hours or major fraction thereof worked and failure to pay an additional
23 hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest period, (d)
24 failure to pay all wages earned and owed upon separation from Defendants' employ, (e) failure to
25 provide accurate itemized wage statements, and (f) failure to reimburse necessary business
26 expenses. *Id.*

27 As a result of the investigations, and subsequent settlement discussions and the
28 resultant settlement and scope of claims, the parties intend to file a joint stipulation

consolidate the Class and PAGA claims. (Id.)

B. The Parties Settled After Mediation and Expert Analysis

On March 8, 2023, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Tripper Ortman. Prior to mediation, Plaintiff requested and Defendants produced informal discovery including employee handbooks/written policies that were applicable during the class and PAGA Period, the number of Class Members and PAGA Employees, Job descriptions, and a 20% sampling of payroll records and time records for the Class. In short, Defendants provided discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case. As a result of settlement efforts, the Parties agreed to settle this matter for the Maximum Settlement Amount of \$600,000.00 for approximately 480 class members and the terms of which are fully memorialized in the Settlement Agreement (Hawkins Decl. ¶ 4-12, Ex. 1.)

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

The "Settlement Class" is defined as all current and former non-exempt employees employed by Defendants in their California facilities at any time from February 17, 2018 through [the earlier date of either preliminary approval of settlement or July 8, 2023] (the "Class Period").. Defendants represent there are approximately 480 Class Members as of the date of mediation, March 8, 2023. (Settlement Agreement I). All Settlement Class members (regardless of whether they opt out) who worked for Defendants at any time from February 17, 2021 through [the earlier date of either preliminary approval of settlement or July 8, 2023] ("PAGA Period") are "Aggrieved Employees" and shall release all claims for civil penalties under PAGA arising during the PAGA Period ("the PAGA Released Claims"). (Settlement Agreement I. ¶2(B))

2. Settlement Consideration

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Maximum Settlement Amount of \$600,000.00. The Maximum Settlement Amount includes: (1) attorneys' fees in the amount of \$200,000.00 and reimbursement of reasonable litigation costs and

1 expenses in the amount of up to \$30,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) Class
2 Representative’s Service Award to Plaintiff in the amount of up to \$7,500.00 (“Class Representative’s
3 Service Award”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator
4 in an amount not to exceed \$16,000.00 (“The Settlement Administrator”); (4) \$30,000.00 (“PAGA
5 Payment”) with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement
6 Sum that will be distributed to Class Members in the PAGA Group in the amount of \$7,500.00; (5) the
7 seventy-five percent (75%) share of PAGA Penalties in the amount of \$22,500.00 to the California Labor
8 and Workforce Development Agency (“LWDA”); and the remainder to of the Net Settlement Fund to the
9 Settlement Class Members. (Settlement Agreement ¶ 3).

10 3. Formula for Calculating Payments from the Net Settlement Fund

11 The Settlement Administrator shall first deduct from the Maximum Settlement Amount the
12 amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses,
13 Plaintiff’s Class Representative Service Award, the Settlement Administrator’s fees and expenses for
14 administration, and the total amount designated as PAGA civil penalties. The remaining amount shall be
15 known as the “Net Settlement Fund” (“NSF”). (Settlement Agreement ¶4(A)). The Net Settlement
16 Amount estimated at \$316,500.00. (Hawkins Decl. ¶ 16-28) Given that there are approximately 480 Class
17 Members, each can expect to receive on average approximately \$660, with a high payment of up to \$2,589
18 and a low payment of \$19.18. there are approximately 269 PAGA employees who will each receive
19 approximately \$27.88 per PAGA member. (Hawkins Decl. ¶¶ 16, 25-29.)

20 This average net recovery is in line with many other wage and hour class action settlements
21 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
22 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
23 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
24 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
25 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
26 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
27 No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
28 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately

1 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net
2 recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
3 (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-
4 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
5 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

6 4. Release by the Settlement Class

7 The release is narrowly tailored to release the claims litigated in the complaints in
8 exchange for the Maximum Settlement Amount. Settlement Class members, except those who
9 opt out, will release all claims and causes of action, alleged or which could have reasonably been
10 alleged based on the allegations in the Actions, including claims for: (i) failure to pay wages
11 including overtime; (ii) failure to provide meal periods; (iii) failure to authorize and permit rest
12 periods; (iv) waiting time penalties; (v) failure to provide accurate itemized wage statements; (vi)
13 failure to reimburse expenses; (vii) unlawful business practices; and (viii) declaratory relief that
14 could have been premised on the claims, causes of action or legal theories pleaded in
15 the Actions; and (x) all damages, penalties, interest, costs (including attorneys' and
16 expert/consultants' fees) and other amounts recoverable under said claims or causes of action as to
17 the facts and/or legal theories alleged in the Actions (collectively, the "Released Claims").
18 (Settlement Agreement ¶ 2(A)).

19 In addition, all Settlement Class members (regardless of whether they opt out) who worked for
20 Defendants at any time from February 17, 2021 through [the earlier date of either preliminary approval of
21 settlement or July 8, 2023] ("PAGA Period") are "Aggrieved Employees" and shall release all claims for
22 civil penalties under PAGA arising during the PAGA Period ("the PAGA Released Claims"). The period
23 of the Release shall extend to the limits of the PAGA Period. The *res judicata* effect of the judgment will
24 be the same as that of the Release. (Settlement Agreement ¶ 2(B)).

1 **IV. ARGUMENT**

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

4 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair,
5 Adequate, and Reasonable

6 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
7 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
8 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their
9 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
10 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final
11 approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary
12 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
13 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of
14 attorneys’ fees. *Id.* at 3.769(b).

15 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to (1)
16 schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to
17 the class of the hearing and “an explanation of the proposed settlement.” The court must also approve a
18 procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final approval
19 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

20 Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement,
21 preliminary approval is warranted if the settlement falls within a “reasonable range.” *See North County*
22 *Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte &
23 Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

24 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
25 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to
26 act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is
27 small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802
28

1 (1996).¹ Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and Legal Issues
2 and were thus able to objectively assess the settlement's reasonableness.

3 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated
4 by Plaintiffs' claims, and were able to objectively assess the settlement's reasonableness. For example,
5 prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing
6 their respective actions against Defendants for Labor Code violations. Plaintiff was intimately familiar with
7 Defendants' labor policies and practices, and over the course of multiple interviews, knowledgeably
8 summarized those policies and practices to Plaintiffs' Counsel. During those conversations, Plaintiff's
9 Counsel explained how the policies and practices were instituted and provided valuable insight into how
10 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's
11 Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendants
12 and in preparation for drafting the complaint, Plaintiff's Counsel conducted their own independent
13 preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
14 examination of Plaintiff's personnel files and associated records. (Hawkins Decl. ¶¶ 7-12.)

15 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
16 included: (1) determining Plaintiff's suitability as private attorneys general and class representative through
17 interviews, background investigations, and analyses of their employment files and related records; (2)
18 evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class
19 actions as to the claims brought, the nature of the positions, and the type of employer and Defendants' prior
20 class action settlement; (4) analyzing employees' time and wage records; (5) reviewing Defendants'

21 ¹ The presumption of fairness is consistent with California's public policy goal of favoring
22 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors
23 settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy
24 generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair
25 Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and
26 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex
27 class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992)
28 ("public policy strongly discourages litigation and encourages settlement [because settlements]
can produce peace and goodwill in the community while reducing the expense and persistency of
litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should
be given to what is "otherwise a private consensual agreement between the parties." *Cellphone
Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry "must be limited to the extent
necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned." *Id.* at 1118.

1 employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's
2 claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and
3 (9) participating in the mediation. (Id.)

4 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
5 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
6 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
7 known facts and circumstances, including the risk of significant delay and uncertainty associated with
8 litigation, and various defenses asserted by Defendants. (Hawkins Decl. ¶¶ 14-37.)

9 2. The Settlement Was Reached Through Arm's-Length Bargaining in which
10 All Parties Were Represented by Experienced Counsel

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

15 As explained above, the Parties settled this matter with the assistance of an experienced wage and
16 hour class and PAGA action mediator. Mr. Krivis helped to manage the Parties' expectations and provided
17 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
18 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
19 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S.
20 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
21 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
22 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
23 were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
24 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion
25 that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
26 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that
27 the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-
28 collusive. (Hawkins Decl. ¶ 13)

1 The Parties were represented by experienced class action counsel throughout the negotiations
2 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ
3 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
4 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 36.)

5 Defendants is represented by Delfino Madden O'Malley Coyle & Koewler LLP, a respected
6 defense firm.

7 3. The Consideration Provided for the Class Claims Is Fair and Reasonable in
8 Light of the Amount in Controversy Discounted by the Risks of Continued
9 Litigation

10 In seeking approval, a settling party must provide sufficient information to "enable the court to
11 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
12 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement
13 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
14 unfair." *See Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628
15 (9th Cir. 1982). "The proposed settlement is not to be judged against a hypothetical or speculative measure
16 of what might have been achieved by the negotiators." *Id.* at 625. "Estimates of a fair settlement figure are
17 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
18 delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
19 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
20 claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled
21 claims for risks such as changes in the law, the probability of success, and other factors.²

22
23 ² Federal district courts also recognize that there is an inherent "range of reasonableness"
24 in determining whether to approve a settlement "which recognizes the uncertainties of law and fact
25 in any particular case and the concomitant risks and costs necessarily inherent in taking any
26 litigation to completion." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F.
27 Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*, 221
28 F.R.D. 523, 527 (C.D. Cal. 2004) ("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., 225 F.R.D. 436, 461 (S.D.N.Y. 2004) ("settlement amount's ratio to the
maximum potential recovery need not be the sole, or even dominant, consideration when assessing
settlement's fairness"); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D.
Pa. 2000) ("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 Just. v. Civ. Serv. Comm'n of City &*

1 Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar**
2 **does not ... require any such explicit statement of [maximum] value**; it requires a record which allows
3 ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the
4 litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*,
5 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether
6 a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against
7 the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As
8 explained in detail below, the Maximum Settlement Amount is within the range of reasonableness in light
9 of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

10 As explained in detail below and in the Hawkins Declaration, the Maximum Settlement Amount is
11 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
12 various potential impediments to recovery. (Hawkins Decl. ¶¶ 12-29.)

13 Defendants deny all allegations pled, along with all allegations intended to be pled in the operative
14 complaints. Defendants contend they implemented written policies and maintained practices that complied
15 with the requirements of the California Labor Code and applicable California Wage Orders. Defendants
16 contends all employees were provided meal periods and authorized rest periods, were paid all wages, and
17 were timely paid wages in compliance with California law and applicable California Wage Orders. In
18 addition, an individualized investigation into the circumstances surrounding any missed meal and rest
19 breaks is warranted because such claims can only be decided on a case-by-case basis, common issues do
20 not predominate and class certification is neither superior nor proper. (*Id.*)

21 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
22 that a settlement amounting to \$600,000.00 was fair and reasonable, and accounts for an approximate 26%-
23 of total possible recovery and courts have routinely approved settlements that provided a similar discounted
24 range of the maximum potential recovery. (Hawkins Decl. ¶¶ 25-29). *See, e.g., In re Warfarin Sodium*
25 *Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount
26 can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp.

27
28 *Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were
2 approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
3 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21,
4 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of
5 possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued
6 litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving
7 settlement of 6% to 8% of estimated damages).³ (Id.)

8 **B. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In**
9 **Light of the Amount in Controversy Discounted by the Risks of Continued**
10 **Litigation**

11 Pursuant to the Settlement Agreement, \$30,000.00 from the Maximum Settlement Amount shall
12 be allocated to the resolution of the PAGA claim, of which 75% (\$22,500.00) will be paid directly to the
13 LWDA, and the remaining 25% (\$7,500.00) will be paid to PAGA Members who worked during the
14 PAGA Period beginning February 17, 2021 through the earlier date of either preliminary approval of
15 settlement or July 8, 2023. (Settlement Agreement ¶2(B); Hawkins Decl. ¶¶ 26-29.)).

16 However, a number of courts have found that the “subsequent” penalty under PAGA applies only
17 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
18 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
19 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the

20 ³ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS
21 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action
22 settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards,
23 was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
24 02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting
25 preliminary approval to class action settlement representing “8.1% of the full verdict value” with
26 net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v.*
27 *W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015)
28 (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential
maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5
(N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented
8.6% of the maximum potential recovery from the class claims and estimated amount distributable
to class after accounting for attorneys’ fees and other deductions represented approximately 6.1%
of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL
3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed
settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—
even before any reduction thereof for attorney’s fees and costs.”).

1 employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor
2 Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200
3 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuyse v.*
4 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
5 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
6 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
7 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
8 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
9 employers are not subject to heightened penalties for subsequent violations unless and until a court or
10 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
11 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

12 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
13 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
14 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
15 penalties, courts have considered issues including whether the employees suffered actual injury from the
16 violations, whether the Defendants was aware of the violations, and the employer’s willingness to fix the
17 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
18 only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
19 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
20 12, 2011).

21 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
22 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or**
23 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
24 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
25 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
26 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
27 under PAGA. *Id.* at 529.

28 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000

1 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
2 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
3 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
4 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
5 trial court decision denying any civil penalties where violations had been proven, remanding for the trial
6 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
7 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
8 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
9 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-
10 00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
11 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

12 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
13 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
14 by California courts.⁴ Where PAGA penalties are negotiated in good faith and “there is no indication
15 that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are
16 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
17 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579

18 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
19 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
20 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
21 SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
22 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
23 No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million
24 settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R.*
25 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
26 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
27 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
28 BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of
approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA
penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18,
2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v.*
Vallarta Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge
William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was
allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No.
BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement
fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA
penalties).

(2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

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

Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) ¶ 11:38, 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*, 175 Cal. App. 4th 785, 806 (2009).

Approximately 480 current and former employees will share a \$600,000.00 settlement fund due entirely to the effort and commitment of Plaintiff and each class member will receive on average \$660. . (Hawkins Decl. ¶ 28.) Subject to Court approval, therefore, the Settlement provides for Class Representative Service Award of \$7,500.00 to the Class Representative⁵ The Class Representative

⁵ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No.

1 Service Award is fair and reasonable compensation for Plaintiff's effort in pursuing the action, assisting
2 counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and
3 the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are
4 fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 29; *see also generally*, Bentton
5 Decl. filed concurrently herewith.)

6 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
7 **Costs**

8 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the
9 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
10 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
11 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
12 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
13 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
14 class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
15 approval of attorneys' fees of \$200,000.00 (one-third of the Maximum Settlement Amount) and litigation
16 costs and expenses not to exceed \$30,000.00 which are currently approximately \$21,269.10.

17 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

18 1. The California Standard for Class Certification

19 Class actions are statutorily authorized "when the question is one of common or general interest, of
20

21 BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to
the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct.
22 Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*
Coldwell Banker Residential Brokerage Co., No. BC417335 (L.A. County Super. Ct. Mar. 21,
23 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795
(L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named
24 plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3,
2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No.
25 BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment);
Hickson v. South Coast Auto Insurance Marketing, Inc., No. BC390395 (L.A. County Super. Ct.
26 Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to
27 the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County
Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs);
28 *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21,
2011) (awarding \$15,000 enhancement payment).

1 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.”
2 Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification
3 is appropriate when there is an “ascertainable class and a well-defined community of interest among class
4 members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is
5 appropriate even if class members at some point may be required to make an individual showing as to
6 eligibility for recovery. *Bufl v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-*
7 *On*, 34 Cal. 4th at 333.

8 Conditional certification of the proposed Settlement Classes is particularly warranted here given
9 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
10 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
11 settlement cases).⁶ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
12 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
13 class for purposes of litigation:

14
15 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
16 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
17 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*
18 *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators
19 (Newberg & Conte, *supra*, ¶ 11.28 at p. 11–58), which allow a lesser standard of scrutiny for
20 settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23
21 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep
22 the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class
23 members. The first purpose is inapposite in the settlement context, and the second, as it relates
24 to commonality of issues, only makes a difference if the non-representative class members
25 would do much better by litigating on their own or in their own jurisdiction. The second
26 category concerns are protected by the trial court’s fairness review of the settlement. *Id.* at
27 n19.

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⁶ See also Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal
class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class
certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV-
01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme
Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train*
Derailment in Philadelphia, Pennsylvania, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa.
Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous analysis
than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-
MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage,
“the Court must determine whether the proposed class should be conditionally certified, and leave
the final certification decision for the Fairness Hearing.”).

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

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

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

In April of 2012, the California Supreme Court expounded on the element of predominance:

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.”

Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

The proposed Settlement Class consists of the individual Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as All current and former non-exempt employees employed by Defendants in their California facilities at any time from February 17, 2018 through [the earlier date of either preliminary approval of settlement or July 8, 2023]. Defendants represent there are approximately 480 Class Members as of March 8, 2023. Because all Class Members are either current or former employees of Defendants, subject to the same policies and practices, the class is readily ascertainable from Defendants’ regular business records. (Hawkins Decl. ¶¶ 31-33).

Here, common issues of fact and law predominate because the California statutes relating to each of Plaintiff’s claims, and Defendants’ defenses thereto, apply with equal force and effect to all Class Members. Factually, Plaintiff contends that Defendants’ policies and practices apply class-wide and Defendants’ liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. (*Id.*).

Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise

1 from the same factual bases and are based on the same legal theories applicable to the other Class
2 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff
3 maintains that Plaintiff was injured by the same company-wide practices to which the proposed Settlement
4 Class was subject and seek the same relief. Plaintiff has already demonstrated the ability to advocate for the
5 interests of the Class by initiating this litigation, undertaking representative investigation and discovery, and
6 evaluating the proposed settlement to assure that it is fair. (*Id.*)

7 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
8 litigating wage and hour class action cases. (Hawkins Decl. ¶ 36.) Plaintiff's Counsel has successfully
9 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide
10 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
11 expertise establishes that they are well qualified to represent the interests of this Class.

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

17 3. The Proposed Notice Properly Informs Class Members about the Case and
18 the Settlement

19 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
20 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
21 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
22 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).
23 The notice must advise class members "that they may be excluded from the class if they so request and that
24 they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67
25 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
26 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*

1 Ct., 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁷

2 The Parties have jointly drafted the Notice of Class Action settlement (“Class Notice”) which fairly
3 and neutrally informs Class Members of their rights and remedies in this action. (Settlement Agreement,
4 Exhibit A; Hawkins Decl. ¶¶ 34, 35.)

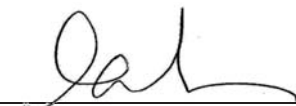
5 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
6 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi*
7 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class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

9 **V. CONCLUSION**

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

13
14 Dated: June 14, 2023

JAMES HAWKINS APLC

15
16 By: 

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Attorneys for Plaintiff MAICHEL
BENTTON, individually and on behalf of all
others similarly situated.

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27 ⁷ Due process does not require that each Class Member actually receive a notice, but rather
28 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, 826 F.2d 729, 732 (7th Cir. 1987).

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On June 14, 2023, I served on the interested parties in this action the following document(s) entitled:

[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

SERVICE LIST

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Alma Chavarin
Alma Chavarin

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