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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF MADERA**

16 LI FAN, an individual, and KENNETH
17 CHIARITO, an individual, and on behalf of all
18 others similarly situated,

19 Plaintiffs,

20 v.

21 HOME DEPOT U.S.A. INC., a Delaware
22 Corporation; and DOES 1-50, inclusive,
23 Defendant.

Case No. MCV084871

Assigned to The Honorable Brian W. Enos,
Dept. 45

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

**[Declaration of Class Counsel James Hawkins
and Raul Perez In Support of Motion for
Preliminary Approval of PAGA and Class
Action Settlement; Declaration of :
Declaration of Plaintiff LI FAN; Declaration of
Plaintiff KENNETH CHARITO; [Proposed]
Order filed concurrently herewith]**

Date: December 5, 2024
Time: 8:30 AM
Dept.: 45

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Attorneys for Plaintiff, KENNETH CHIARITO

1
2 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
3 **OF RECORD: PLEASE TAKE NOTICE** that on December 5, 2024 at 8:30 AM., or as soon
4 thereafter as counsel may be heard, in Department 45 of the above-captioned court, the
5 Honorable James E. Oakley presiding, Plaintiffs LI FAN and KENNETH CHIARITO will, and
6 hereby does, move this Court to:

7 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action
8 Settlement and Release of Claims, ("Settlement Agreement"), attached as **Exhibit 1** to the Declaration of
9 James Hawkins;

10 2. Conditionally certify the proposed Class Members;

11 3. Appoint Li Fan and Kenneth Chiarito as the representatives for the Class Members;

12 4. Appoint James Hawkins, APLC and Capstone Law APC as Class Counsel;

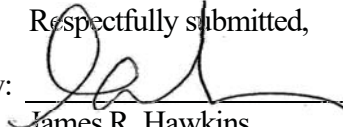
13 5. Approve distribution of the proposed Notice of Class Action Settlement; attached as
14 **Exhibit A** to the Settlement Agreement.

15 6. Appoint ILYM Group, Inc. as the Settlement Administrator; and

16 7. Set a hearing date for final approval of the settlement.

17 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
18 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA claims
19 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Raul Perez; (5) the Declaration
20 of Plaintiff Li Fan; (6) the Declaration of Kenneth Chiarito; (7) the Settlement Agreement; (8) the
21 [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (9) the records, pleadings,
22 and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as
23 may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the
24 Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule
25 3.1113(5).

26 Dated: November 7, 2024

27 Respectfully submitted,
28 By: 
James R. Hawkins
Gregory Mauro

Michael Calvo
Lauren Falk
Ava Issary
JAMES HAWKINS, APLC

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TABLE OF CONTENTS

I.	INTRODUCTION.....	- 1 -
II.	FACTS AND PROCEDURE	3
A.	Brief Overview of the Litigation	3
B.	The Parties Settled After Mediation and Expert Analysis	- 3 -
III.	SUMMARY OF SETTLEMENT TERMS.....	4
A.	The Proposed Settlement Fully Resolves Plaintiffs' Claims	4
1.	Composition of the Class Members	4
2.	Settlement Consideration	- 4 -
3.	Formula for Calculating Payments from the Net Settlement Fund.....	5
4.	Release by the Class Members and PAGA Aggrieved Employees	5
IV.	ARGUMENT	- 7 -
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement.....	- 7 -
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.....	- 7 -
2.	Plaintiffs' Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness ...	- 8 -
3.	The Settlement Was Reached Through Arm's-Length Bargaining in which All Parties Were Represented by Experienced Counsel	- 9 -
4.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation	- 10 -
B.	The Consideration Provided for the PAGA Claim Is Fair and Reasonable In Light of the Amount in Controversy Discounted by the Risks of Continued Litigation	- 13 -
C.	The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Payments.....	- 15 -
D.	The Court Should Preliminarily Approve the Negotiated Class Counsel Fees	- 16 -

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E. California Law Authorizes Provisional Certification for Settlement Purposes - 16 -

1. The California Standard for Class Certification..... - 16 -

2. The Proposed Class Members Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members..... - 17 -

3. The Proposed Notice Properly Informs Class Members about the Case and the Settlement..... 19

V. CONCLUSION - 20 -

TABLE OF AUTHORITIES

Statutes

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	8
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	18
<i>Bufile v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008)	17
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	14
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960 (1975)	19
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010)	7, 8
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010)	15
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275 (1962)	19
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	16
<i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009)	16
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	8,17
<i>Elder v. Schwan Food Co.</i> , No. B223911, 2011 WL 1797254 (Cal. Ct. App. May 12, 2011)	14
<i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977)	19
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	5,10, 11
<i>Laffitte v. Robert Half, Inc.</i> , 1 Cal. 5th 480 (2016)	16
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008)	16,17
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010)	11
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	15
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994)	7
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	16,17
<i>Skulnick v. Roberts Express, Inc.</i> , 2 Cal. App. 4th 884 (1992)	8
<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976)	8
<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986)	9, 19

1	<i>Thurman v. Bayshore Transit Mgmt.</i> , 203 Cal. App. 4th 1112 (2012)	14
2	<i>Trotsky v. Los Angeles Fed. Savings & Loan Assn.</i> , 48 Cal. App. 3d 143 (1975)	19
3		
4	<u>Cases</u>	
5	<i>Aguirre v. Genesis Logistics</i> , No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013).....	14
6	<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21, 2014).....	12
7		
8	<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645 (N.D. Cal Feb. 16, 2011)	15
9	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016)	14
10	<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	9
11	<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal. June 29, 2016).....	15,17
12		
13	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011)	14
14	<i>Fontana v. Elrod</i> , 826 F.2d 729 (7th Cir. 1987)	19
15	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012).....	15
16		
17	<i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	15
18	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016 WL 1359725 (E.D. Pa. Apr. 6, 2016)	17
19		
20	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	9
21	<i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	12
22	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011).....	9
23	<i>In Re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972)	12
24	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....	11
25	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	11
26	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	12
27	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa. Feb. 28, 2014).....	17
28		

1	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002).....	12
2	<i>In re World Trade Ctr. Lower Manhattan Disaster Site Litig.</i> , 66 F. Supp. 3d 477 (S.D.N.Y. 2015)	11
3	<i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL 2236752 (N.D. Cal. June 15, 2012).....	14
4	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	11
5	<i>Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco</i> , 688 F.2d 615 (9th Cir. 1982)	10
6	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D. Cal. 2014)	10
7	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	15
8	<i>Steenhuysen v. UBS Fin. Servs., Inc.</i> , 317 F. Supp. 3d 1062 (N.D. Cal. 2018)	13
9	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012).....	13
10	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09-00261, 2012 WL 5878390 (N.D. Cal. Nov.21, 2012)	9

14 **Rules**

15	Cal. Civ. Proc. Code ¶ 382	16,17,18
16	Cal. Lab. Code ¶ 2699(h)	14
17	Cal. R. Ct. 3.769	7
18	Cal. R. Ct. 3.769(c)	7
19	Cal. R. Ct. 3.769(d)	7
20	Cal. R. Ct. 3.769(e)	7
21	Cal. R. Ct. 3.769(f)	7
22	Cal. R. Ct. 3.769(g)	7
23	Cal. R. Ct. 3.776(e)	19
24	Cal. R. Ct. 3.776(f)	19

26 **Secondary Authorities**

27	Conte & Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002).....	15,17
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I. INTRODUCTION

Li Fan and Kenneth Chiarito are the named Plaintiffs (collectively “Plaintiffs”) in this action brought against Defendant HOME DEPOT U.S.A. INC. (“Defendant”) (collectively with Plaintiffs, the “Parties”) for wage and hour violations. Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in two separate mediation sessions with Louis Marlin, Esq., an experienced mediator of wage and hour actions. With Mr. Marlin’s guidance and continued settlement discussions after both mediation sessions, the Parties were able to negotiate a gross settlement of the Action for \$3,000,000.00.

Plaintiffs accordingly seek preliminary approval of the class action and PAGA settlement, as memorialized in the Joint Stipulation of Class Action Settlement and Release of Claims (hereinafter “SA” or “Settlement Agreement”). If approved, the Settlement would provide reasonable monetary relief for approximately 116,544 class members. (Settlement Agreement ¶ 32) The principal terms of the Settlement provide for the following:

(1) Conditional certification of Class Members. It is estimated there are approximately 116,544 total class members as of the date of mediation.

(2) A Gross Settlement Amount of \$3,000,000.00. (Settlement Agreement ¶18).

An objective evaluation of the Settlement Agreement confirms that the relief negotiated on the Class Members’s behalf is fair, reasonable, and valuable. The Settlement Agreement was negotiated by the Parties at arm’s length with helpful guidance from Louis Marlin, Esq., and the Settlement confers substantial benefits to Class Members. 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 Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal. (James Hawkins Decl. “Hawkins Decl.” ¶¶ 22-35).

This settlement falls on the heels of two recently resolved wage and hour class action settlements against Home Depot U.S.A., Inc. that received final approval with arguably overlapping claims. In *Barragan, et. al. vs Home Depot, U.S.A., Inc.* Case No. 37-2019-00056110 (San Diego Supt. Ct.) – the Court gave final approval of a Class Settlement for a Maximum

1 Settlement Payment in the sum of \$4,000,000 for approximately 225,000 Class Members resulting
2 in an average recovery of approximately \$4.33 per class member. The Class in *Barragan* was
3 defined as all non exempt employees who worked for Defendant Home Depot in California
4 between June 9, 2016 and March 10, 2023.

5 Likewise, in the case of *Utne et. al. v. Home Depot U.S.A., Inc.*, USND Case No. 16-cv-
6 01854-RS (Ca Northern Dist. Ca.) received final approval of a class wide settlement for alleged
7 minimum wage and overtime claims and related penalties covering approximately 272,386 Class
8 Members for a class period of March 8, 2012 through July 28, 2023. Combined these cases
9 covered theories for minimum wage and overtime claims, regular rate claims related to meal and
10 rest period premiums and overtime, for failure to provide meal and rest breaks, rounding, wage
11 statement claims, failure to timely wages and related PAGA penalties.

12 In light of the final approval of these settlements with Defendant, Plaintiffs were able to
13 successfully negotiate and resolve this matter, focusing on claims limited both in time and scope
14 to the class period from March 30, 2020, through March 31, 2022 related to Covid Health Checks.
15 These claims include: (a) failure to pay all regular wages, minimum wages and overtime wages
16 due; (b) failure to provide proper meal periods, and to properly provide premium pay at the regular
17 rate of pay in lieu thereof; (c) failure to provide proper rest periods, and to properly provide
18 premium pay at the regular rate of pay in lieu thereof; (d) failure to provide complete, accurate or
19 properly formatted wage statements; (e) failure to maintain complete and accurate payroll records;
20 (f) failure to timely pay wages during employment; (g) failure to reimburse business expenses; (h)
21 waiting time penalties; (i) unfair business practices that could have been premised on the
22 preceding claims.

23 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
24 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs
25 respectfully requests that this Court grant preliminary approval of the Settlement Agreement
26 presented here.

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

“Action” or “Lawsuit” is defined as the consolidated *Li Fan, et al. v. Home Depot, U.S.A., Inc., et al.*, in Madera County Superior Court (Case No. MCV084871). The Action represents the consolidation of three previously-filed actions, the *Li Fan* Actions (as defined below) and the *Chiarito* Action. (Settlement Agreement ¶I(1)).

On March 30, 2021, *Li Fan v. Home Depot, U.S.A., Inc., et al.*, was originally filed in Madera County Superior Court (Case No. MCV084871), subsequently removed to the United States District Court for the Eastern District of California as Case No. 1:21-cv-01355-WBS-KJN, and was voluntarily remanded to be recommenced in the state court as the instant Action consistent with the terms of the Settlement (“*Li Fan* Class Action”). *Li Fan v. Home Depot, U.S.A., Inc., et al.*, was originally filed in Madera County Superior Court (Case No. MCV085736) (“*Li Fan* PAGA Action”), and will be consolidated with the *Li Fan* Class Action consistent with the terms of the Settlement (collectively, the “*Li Fan* Actions”). *Id.*

Kenneth Chiarito v. Home Depot, U.S.A., Inc., et al., was originally filed in Santa Clara County Superior Court (Case No. 22CV394402), subsequently removed to the United States District Court for the Northern District of California, subsequently transferred to the Central District of California, as Case No. 2:22-cv-04662-GW-(SKx), and will be voluntarily remanded to the state court and consolidated with the Action consistent with the terms of the Settlement (the “*Chiarito* Action”). *Id.*

B. The Parties Settled After Mediation and Expert Analysis

On November 28, 2023, Home Depot and Fan attended a full-day mediation before mediator Louis Marlin. In advance of the mediations, Defendant provided discovery sufficient to enable the Plaintiffs and Class Counsel to evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case. The matters did not settle during the mediations. However, settlement negotiations continued for the next two months, and included additional substantive briefing of the issues, settlement demands, and settlement offers. (Settlement Agreement ¶II(3)).

On January 11, 2024, Home Depot and Chiarito attended a full-day mediation before

mediator Louis Marlin. Similarly, the matter did not settle during mediation. *Id.*

On or around April 17, 2024, the Parties reached a settlement of the Li Fan and Chiarito Actions resolving all actions together. *Id.*

Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in Plaintiffs' Action, the *Li Fan* Actions, and the *Chiarito* Action, disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative action treatment. (Settlement Agreement ¶II(3)).

As a result of settlement efforts, the Parties agreed to settle this matter for the Gross Settlement Amount of \$3,000,000.00 for approximately 116,544 class members and the terms of which are fully memorialized in the Settlement Agreement (Hawkins Decl. ¶ 13, Ex. A.).

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Class Members

"Class Members" means all current and former non-exempt employees of Defendant who worked in California during the Class Period, March 30, 2020 through March 31, 2022. Defendant has estimated that during the Class Period, there were approximately 116,544 Settlement Class Members who worked approximately 5,052,837 workweeks during that same time period. (Settlement Agreement ¶¶4-5).

"PAGA Aggrieved Employees" means all current and former non-exempt employees of Defendant who worked in California during the PAGA Period, November 24, 2020 through March 31, 2022. (Settlement Agreement ¶¶ 24, 26). "Seating Claim PAGA Period" means the period starting on and including December 12, 2020 through July 8, 2024. (Settlement Agreement ¶39).

2. Settlement Consideration

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$3,000,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the amount of \$1,000,000.00 ("Class Counsel Fees") and reimbursement of reasonable litigation costs and expenses in the amount of up to \$50,000.00 to Class Counsel; (2) Class Representative's incentive award to each Plaintiffs in the amount of up to \$25,000.00, for a total of \$50,000.00 ("Class Representative Service

Award”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$340,000.00 (“Settlement Administrator Costs”); (4) \$150,000.00 (“PAGA Payment”) with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Fund that will be distributed to Class Members in the PAGA Group in the amount of \$37,500.00; (5) the seventy-five percent (75%) share of PAGA Penalties in the amount of \$112,500.00 to the California Labor and Workforce Development Agency (“LWDA”); and the remainder to of the Net Settlement Fund to the Class Members. (Settlement Agreement ¶17).

3. Formula for Calculating Payments from the Net Settlement Fund

The “Net Settlement Fund” means the net amount available for payment of claims to Class Members after deducting Class Counsel Fees, Settlement Administrator Costs, Class Representative Service Award, PAGA Settlement Payment. (Settlement Agreement ¶ 21). The Net Settlement Fund is estimated at \$1,410,000.00. (Hawkins Decl. ¶ 21).

Given that there are approximately 116,544 Class Members, each can expect to receive on average approximately **\$12.15** with the highest payment of approximately **\$372.32** and a low payment of **\$3.58** for someone who worked only 1 workweek during the Class Period. (Hawkins Decl. ¶ 27). This average net recovery is in line with other wage and hour class action settlements approved by California state and federal courts given the facts of the instant case. See eg. “In the case ” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,” the settlement resulted in a recovery amount that could be less than \$12 per person, depending on the number of hours worked by each class member; See- *Barragan, et. al. v Home Depot U.S.A., Inc.*, San Diego Super. Ct. Case No. 37-2019-00056110 (average net recovery between \$1.51 and \$7.15).

Given the relatively limited issues in this case, the previous two recent settlements with Home Depot involving overlapping claims, and the lack of evidence of bad faith on behalf of Defendant, this settlement is reasonable and should be approved.

4. Release by the Class Members and PAGA Aggrieved Employees

The release is narrowly tailored to release the claims litigated in the complaints in exchange for the Gross Settlement Amount. Plaintiffs and Participating Class Members will agree to release the Released Claims during the Class Period as follows: the Released Class Claims means any and all claims,

1 causes of action, and factual or legal theories that were alleged in the Complaint or reasonably could have
2 been alleged based on the facts and matters contained therein during the Class Period, including all of the
3 following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due;
4 (b) failure to provide proper meal periods, and to properly provide premium pay at the regular rate of pay in
5 lieu thereof; (c) failure to provide proper rest periods, and to properly provide premium pay at the regular
6 rate of pay in lieu thereof; (d) failure to provide complete, accurate or properly formatted wage statements;
7 (e) failure to maintain complete and accurate payroll records; (f) failure to timely pay wages during
8 employment; (g) failure to reimburse business expenses; (h) waiting time penalties; (i) unfair business
9 practices that could have been premised on the preceding claims; and (j) all related damages, penalties
10 (except PAGA civil penalties, which are subject to the separate Released PAGA Claims), interest and other
11 amounts recoverable under said claims. (Settlement Agreement ¶32).

12 “Released PAGA Claims” means any and all claims, causes of action, and factual or legal theories
13 for PAGA civil penalties that were alleged in the Complaint and the PAGA Notices of the *Li Fan* Actions
14 and the *Chiarito* Action, or reasonably could have been alleged based on the facts and matters therein,
15 during the PAGA Period, including all of the following claims for PAGA civil penalties premised on: (a)
16 failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper
17 meal periods, and to properly provide premium pay at the regular rate of pay in lieu thereof; (c) failure to
18 provide proper rest periods, and to properly provide premium pay at the regular rate of pay in lieu thereof;
19 (d) failure to provide complete, accurate or properly formatted wage statements; (e) failure to maintain
20 accurate payroll records; (f) failure to timely pay wages during employment; (g) failure to reimburse
21 business expenses; and (h) waiting time penalties. The period of the Released PAGA Claims shall extend
22 to the limits of the PAGA Period. Released PAGA Claims do not encompass the Excluded Claims.
23 (Settlement Agreement ¶33).

24 “Released PAGA Seating Claims” means any and all claims under PAGA for civil penalties
25 for failure to provide suitable seating in violation of California Wage Order 5-2001, sec. 14 (A)-(B)
26 that were alleged in the operative complaints and PAGA Notices of the *Li Fan* Actions and the
27 *Chiarito* Action or reasonably could have been alleged based on the facts and matters contained
28 therein. The period of the Released PAGA Seating Claims shall extend to the limits of the Seating Claim

1 PAGA Period. Released PAGA Seating Claims do not encompass the Excluded Claims. (Settlement
2 Agreement ¶34).

3 **IV. ARGUMENT**

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

5 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, 6 Adequate, and Reasonable

7 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
8 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
9 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their
10 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
11 1230, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final
12 approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary
13 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
14 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of
15 attorneys’ fees. *Id.* at 3.769(b).

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

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

25 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
26 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to
27 act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is
28

1 small” (collectively, “*Dunk Factors*”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).¹

2 2. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and
3 Legal Issues and Were Thus Able to Objectively Assess the Settlement’s
4 Reasonableness

5 Plaintiffs’ Counsel conducted a thorough investigation into the factual and legal issues implicated
6 by Plaintiffs’ claims and were able to objectively assess the settlement’s reasonableness. For example, prior
7 to filing the action, Plaintiffs contacted Plaintiffs’ Counsel to discuss the factual bases for pursuing their
8 respective actions against Defendant for Labor Code violations. Plaintiffs were intimately familiar with
9 Defendant’s labor policies and practices, and over the course of multiple interviews, knowledgeably
10 summarized those policies and practices to Plaintiffs’ Counsel. During those conversations, Plaintiffs’
11 Counsel explained how the policies and practices were instituted and provided valuable insight into how
12 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiffs, Plaintiffs’
13 Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendant
14 and in preparation for drafting the complaint, Plaintiffs’ Counsel conducted their own independent
15 preliminary investigations into the factual bases for Plaintiffs’ claims, which entailed, *inter alia*, a careful
16 examination of Plaintiffs’ personnel files and associated records. (Hawkins Decl. ¶¶ 3-15).

17 During the course of the litigation, Defendant produced relevant labor policies and data points, and
18 a sample of time and pay records for approximately 11,687 Class Members. These records were analyzed
19 and provided the groundwork for negotiations. Both prior and during the course of the litigation, Plaintiffs’
20 Counsel performed a thorough investigation into the claims at issue, which included: (1) determining

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 Plaintiffs' suitability as private attorneys general and class representative through interviews, background
2 investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiffs'
3 potential representative claims; (3) researching similar wage and hour class actions as to the claims brought,
4 the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records for
5 approximately 10% of employees; (5) reviewing Defendant's relevant employment policies and practices;
6 (6) researching settlements in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's
7 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediations.
8 (*Id.*)

9 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs'
10 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
11 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
12 known facts and circumstances, including the risk of significant delay and uncertainty associated with
13 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 14-45).

14 3. The Settlement Was Reached Through Arm's-Length Bargaining in which
15 All Parties Were Represented by Experienced Counsel

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

20 As explained above, the Parties settled this matter with the assistance of an experienced wage and
21 hour class and PAGA action mediator. Mr. Marlin helped to manage the Parties' expectations and provided
22 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
23 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
24 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S.
25 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
26 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
27 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
28 were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012

1 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the conclusion
2 that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
3 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation “tends to support the conclusion that
4 the settlement process was not collusive”). At all times, the Parties’ negotiations were adversarial and non-
5 collusive. (Hawkins Decl. ¶ 10).

6 The Parties were represented by experienced class action counsel throughout the negotiations
7 resulting in this Settlement. Plaintiff Li Fan is represented by James Hawkins, APLC. Plaintiff Kenneth
8 Chiarito is represented by Capstone Law APC. Plaintiffs’ Counsel employ seasoned class action attorneys
9 who regularly litigate wage and hour claims through certification and on the merits and have considerable
10 experience settling wage and hour class actions. (Hawkins Decl. ¶ 42; Perez Decl. ¶¶ 14-21).

11 Defendant is represented by Ogletree, Deakins, Nash, Smoak & Stewart, P.C., a respected defense
12 firm.

13 4. The Consideration Provided for the Class Claims Is Fair and Reasonable in
14 Light of the Amount in Controversy Discounted by the Risks of Continued
15 Litigation

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

28 ² Federal district courts also recognize that there is an inherent “range of reasonableness”
in determining whether to approve a settlement “which recognizes the uncertainties of law and fact

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 ‘an
3 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’”
4 *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal.
5 App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a
6 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 Gross Settlement Amount is within the range of reasonableness in light of the
9 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 Gross 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. ¶¶ 14-38.)

13 Defendant denies that it engaged in any misconduct in connection with the wage-and-hour
14 practices associated with the Class Members (inclusive of the PAGA Aggrieved Employees). Defendant
15 further denies that it has any liability of any kind associated with the claims alleged in the Actions.
16 Defendant contends that it have complied with both federal and state wage-and-hour laws, and all other
17 laws regulating its relationship with the Class Members and the PAGA Aggrieved Employees, including
18 the Named Plaintiffs. (Settlement Agreement ¶II(3)).

19 Accounting for the risks of continued litigation and impediments to discovery, Plaintiffs
20 determined that a settlement amounting to \$3,000,000.00 was fair and reasonable, and accounts for an
21 approximate 30% of total possible recovery for damages and courts have routinely approved settlements

22 _____
23 in any particular case and the concomitant risks and costs necessarily inherent in taking any
24 litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F.
25 Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221
26 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable
27 even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec.*
28 *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 &*
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 that provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 30-38).
2 Courts routinely approve and uphold gross settlements approximating lesser amounts. *See e.g. Haralson v. U.S.*
3 *Aviation Servs. Corp.* (N.D. Cal. 2018) 383 F. Supp. 3d 959, 972-74 (citing cases reflecting approval of
4 settlements at 0.2% to 1.1% of the potential verdict value); *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal.
5 Aug. 25, 2017) 2017 WL 3670794, at *5 (approving settlement paying less than 4.5% of maximum penalties);
6 *In re Mego Fin. Corp. Secs. Litig.* (9th Cir.2000) 213 F.3d 454, 459 (holding that class action settlement
7 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
8 amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.
9 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the
10 litigation to judgment”); *Bellinghausen v. Tractor Supply Co.* (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-JSC,
11 2015 WL 1289342, at *6 (holding that a class action settlement recovering between 8.5% and 25% of the
12 defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.* (C.D. Cal. 2014) U.S. Dist. Ct.
13 Case No. 8:12-cv-02161 (court granted preliminary approval of wage and hour class settlement which obtained
14 only 9.1% of projected damages, given the risks of continued litigation; *In re Warfarin Sodium Antitrust*
15 *Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be
16 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373
17 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In*
18 *Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages);
19 *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding
20 that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial
21 approval based on the strength of Plaintiffs’ case and the risk and expense of continued litigation.”); *In re*
22 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8%
23 of estimated damages).³ (*Id.*)

24 _____
25 ³ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS
26 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action
27 settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards,
28 was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting
preliminary approval to class action settlement representing “8.1% of the full verdict value” with
net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v.*
W.W. Granger, Inc., No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015)
(granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential

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

4 Pursuant to the Settlement Agreement, \$150,000.00 from the Gross Settlement Amount shall be
5 allocated to the resolution of the PAGA claim, of which 75% (\$112,500.00) will be paid directly to the
6 LWDA, and the remaining 25% (\$37,500.00) will be paid to PAGA Members who worked during the
7 PAGA Period beginning November 24, 2020 through March 31, 2022 as well as the Seating Claim PAGA
8 Period of December 12, 2020 through July 8, 2024. (Settlement Agreement ¶¶ 26, 38, 39).

9 However, a number of courts have found that the “subsequent” penalty under PAGA applies only
10 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
11 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
12 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the
13 employer that it is in violation of the Labor Code . . . [Plaintiffs] has not offered evidence that the Labor
14 Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200
15 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuysen v.*
16 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
17 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
18 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
19 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
20 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
21 employers are not subject to heightened penalties for subsequent violations unless and until a court or
22 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
23 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

24 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
25 maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5
26 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented
27 8.6% of the maximum potential recovery from the class claims and estimated amount distributable
28 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 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
2 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
3 penalties, courts have considered issues including whether the employees suffered actual injury from the
4 violations, whether the Defendants was aware of the violations, and the employer’s willingness to fix the
5 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
6 only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
7 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
8 12, 2011).

9 For example, during the penalty phase of trial in *Carrington*, the Plaintiffs requested PAGA
10 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$1150,000—**or**
11 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
12 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
13 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
14 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
15 under PAGA. *Id.* at 529.

16 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
17 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
18 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
19 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
20 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
21 trial court decision denying any civil penalties where violations had been proven, remanding for the trial
22 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
23 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
24 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
25 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-
26 00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
27 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

28 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a

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

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 Plaintiff is that they

⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05–4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. 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).

1 should be compensated for the expense or risk they have incurred in conferring a benefit on other members
2 of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

3 Approximately 116,544 current and former employees will share a \$3,000,000.00 settlement fund
4 due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement
5 provides for Class Representative Service Award of \$25,000.00 to each Class Representatives. The Class
6 Representative Service Awards are fair and reasonable compensation for Plaintiffs’ effort in pursuing the
7 action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of
8 their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that
9 its terms are fair and provide adequate relief for the Class Members. (Hawkins Decl. ¶ 45; *see also*
10 *generally*, Fan Decl. and Chicharito Decl.)

11 **D. The Court Should Preliminarily Approve the Negotiated Class Counsel Fees**

12 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took the
13 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
14 California courts routinely award attorneys’ fees equalling one-third or more of the potential value of the
15 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
16 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical
17 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
18 class actions average around one-third of the recovery.”). At final approval, Plaintiffs will seek Court-
19 approval of attorneys’ fees of \$1,000,000.00 (30% of the Gross Settlement Amount) and litigation costs
20 and expenses not to exceed \$50,000.00.

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

22 1. The California Standard for Class Certification

23 Class actions are statutorily authorized “when the question is one of common or general interest, of
24 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.”
25 Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification
26 is appropriate when there is an “ascertainable class and a well-defined community of interest among class
27 members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is
28 appropriate even if class members at some point may be required to make an individual showing as to

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

3 Conditional certification of the proposed Class Members is particularly warranted here given the
4 relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*,
5 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
6 settlement cases).⁵ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
7 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
8 class for purposes of litigation:

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

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

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

8 The community of interest requirement embodies three factors: (1) predominant common

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⁵ 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] Class Members 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.”).

1 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
2 class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

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

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

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

8 The proposed Class Members consists of the individual Class Members who did not opt-out of the
9 Settlement by submitting a valid request for exclusion. The Class means all current and former non-exempt
10 employees of Defendant who worked in California during the Class Period. Defendant represents there are
11 approximately 116,544 Class Members who worked during the Class Period. Because all Class Members
12 are either current or former employees of Defendant, subject to the same policies and practices, the class is
13 readily ascertainable from Defendant’s regular business records. (Hawkins Decl. ¶¶ 32-43).

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

20 Plaintiffs’ wage and hour claims are typical of the proposed Class Members because they arise
21 from the same factual bases and are based on the same legal theories applicable to the other Class
22 Members. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class. Plaintiffs
23 maintain that Plaintiffs were injured by the same company-wide practices to which the proposed Class
24 Members was subject and seek the same relief. Plaintiffs have already demonstrated the ability to advocate
25 for the interests of the Class by initiating this litigation, undertaking representative investigation and
26 informal discovery, and evaluating the proposed settlement to assure that it is fair. (*Id.*)

27 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
28 litigating wage and hour class action cases. (Hawkins Decl. ¶ 42; Perez Decl. ¶¶ 14-21). Plaintiffs’ Counsel

1 has successfully briefed, argued, certified, and gained state and federal court settlement approval of the
2 same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs' Counsel's wage and hour
3 class action expertise establishes that they are well qualified to represent the interests of this Class.

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

9 3. The Proposed Notice Properly Informs Class Members about the Case and
10 the Settlement

11 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
12 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
13 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
14 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).
15 The notice must advise class members "that they may be excluded from the class if they so request and that
16 they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67
17 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
18 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*
19 *Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁶

20 The Parties have jointly drafted the Notice of Class Action settlement ("Class Notice") which fairly
21 and neutrally informs Class Members of their rights and remedies in this action. (Settlement Agreement
22 Exhibit A; Hawkins Decl. ¶¶ 40-41).

23 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
24 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi*

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27 ⁶ 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).

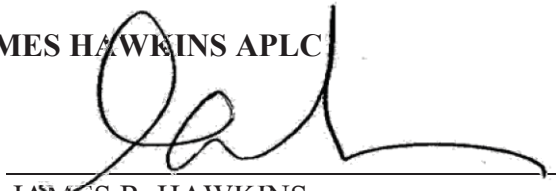
1 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the terms of
2 the proposed compromise and of the options open to dissenting class members.”).

3 **V. CONCLUSION**

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

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8 Dated: November 7, 2024

JAMES HAWKINS APLC

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10 By: 

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GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
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14 Attorneys for Plaintiff LI FAN, individually
15 and on behalf of all others similarly situated.
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