

1 JAMES HAWKINS APLC
2 James R. Hawkins, Esq. (#192925)
3 Gregory Mauro, Esq. (#222239)
4 Michael Calvo, Esq. (#314986)
5 Lauren Falk, Esq. (#316893)
6 Ava Issary, Esq. (#342252)
7 9880 Research Drive, Suite 200
8 Irvine, CA 92618
9 Tel.: (949) 387-7200
10 Fax: (949) 387-6676
11 Email: James@jameshawkinsaplc.com
12 Email: Greg@jameshawkinsaplc.com
13 Email: Michael@jameshawkinsaplc.com
14 Email: Lauren@jameshawkinsaplc.com
15 Email: Ava@jameshawkinsaplc.com

16 Attorneys for Plaintiff ABDUL RASHID DESAI,
17 individually and on behalf of all others similarly situated

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

20 ABDUL RASHID DESAI, On behalf of the
21 general public as private attorney general,

22 Plaintiff,

23 v.

24 CYPRESS PRIVATE SECURITY, LP a
25 California Limited Partnership, and DOES 1-
26 50, inclusive,

27 Defendants.

Case No. 20STCV26087

ASSIGNED FOR ALL PURPOSES TO:

JUDGE: Hon. Lia Martin

DEPT: 16

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF 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
ABDUL RASHID DESAI; [Proposed] Order
filed concurrently herewith]**

Date: June 15, 2023

Time: 9:00 a.m.

Dept.: 16

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on June 15, 2023 at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 16 of the above-captioned court, located at
4 111 N. Hill Street, Los Angeles, CA 90012, the Honorable Lia Martin presiding, Plaintiff
5 ABDUL RASHID DESAI will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Class Action and PAGA Settlement
7 Agreement, (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of James Hawkins;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint ABDUL RASHID DESAI 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 Proposed Settlement of Class Action and
12 Certification of Settlement Class attached as Exhibit A to the Declaration of James Hawkins.
- 13 6. Appoint Apex Settlement Administration. as the Settlement Administrator; and
- 14 7. Set a hearing date for final approval of the settlement.

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

23 Dated: May 24, 2023

Respectfully submitted,

24 By: 
25 James R. Hawkins
26 Gregory Mauro
27 Michael Calvo
28 **JAMES HAWKINS, APLC**

TABLE OF CONTENTS

I.	INTRODUCTION.....	- 1 -
II.	FACTS AND PROCEDURE	- 2 -
A.	Brief Overview of the Litigation	2
B.	The Parties Settled After Mediation.....	2
III.	SUMMARY OF SETTLEMENT TERMS.....	- 3 -
A.	The Proposed Settlement Fully Resolves Plaintiff's Claims.....	- 3 -
IV.	ARGUMENT	5
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement.....	5
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	- 10 -
C.	The Court Should Preliminarily Approve the Negotiated Class Representative Service Payment	- 13 -
D.	The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs	- 14 -
E.	California Law Authorizes Provisional Certification for Settlement Purposes	- 15 -
1.	The California Standard for Class Certification.....	- 15 -
2.	The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members.....	- 16 -
3.	The Proposed Notice Properly Informs Class Members about the Case and the Settlement	17
V.	CONCLUSION	18

TABLE OF AUTHORITIES

Statutes

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	6
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	16
<i>Bufile v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008)	15
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	11,12
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960 (1975)	18
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010)	5,6
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010)	13
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275 (1962)	18
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	15
<i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009)	13
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	6,15
<i>Elder v. Schwan Food Co.</i> , No. B223911, 2011 WL 1797254 (Cal. Ct. App. May 12, 2011)	12
<i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977)	17
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	8,9
<i>Laffitte v. Robert Half, Inc.</i> , 1 Cal. 5th 480 (2016)	15
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008)	15,16
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010)	9
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	13
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994)	5
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	15
<i>Skulnick v. Roberts Express, Inc.</i> , 2 Cal. App. 4th 884 (1992)	6
<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976)	6
<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986)	7,18

1	<i>Thurman v. Bayshore Transit Mgmt.</i> , 203 Cal. App. 4th 1112 (2012)	12
2	<i>Trotsky v. Los Angeles Fed. Savings & Loan Assn.</i> , 48 Cal. App. 3d 143 (1975)	117
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).....	12
6	<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21, 2014).....	10
7		
8	<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645 (N.D. Cal Feb. 16, 2011).....	12
9	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016)	11
10	<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	7
11	<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal. June 29, 2016)	2,15
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)	11
14	<i>Fontana v. Elrod</i> , 826 F.2d 729 (7th Cir. 1987)	18
15	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012).....	12
16		
17	<i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	13
18	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016 WL 1359725 (E.D. Pa. Apr. 6, 2016)	15
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)	7
21	<i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979).....	10
22	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011).....	7
23	<i>In Re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972)	10
24	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004).....	9
25	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	9
26	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	10
27	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa. Feb. 28, 2014).....	15
28		

1	<i>In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA)</i>	
	<i>Litig.</i> , 295 F.R.D. 438, 453 (C.D. Cal. 2014).....	8
2	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002)	10
3	<i>In re World Trade Ctr. Lower Manhattan Disaster Site Litig.</i> , 66 F. Supp. 3d 477	
4	(S.D.N.Y. 2015)	9
5	<i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL 2236752	
	(N.D. Cal. June 15, 2012).....	12
6	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	9
7	<i>Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco</i> , 688 F.2d 615	
8	(9th Cir. 1982)	8,9,16
9	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D.	
	Cal. 2014)	8
10	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	13
11	<i>Steenhuysen v. UBS Fin. Servs., Inc.</i> , 317 F. Supp. 3d 1062 (N.D. Cal. 2018)	11
12	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12-07658 DDP	
13	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012).....	11
14	<i>Vieyara-Flores v. Sika Corp.</i> , No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal.	
	June 10, 2019).....	11
15	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09-00261, 2012 WL 5878390 (N.D. Cal.	
16	Nov.21, 2012).....	8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rules

Cal. Civ. Proc. Code ¶ 38215,16

Cal. Lab. Code ¶ 203.....12

Cal. Lab. Code ¶ 204.....3

Cal. Lab. Code ¶ 2699(h) 11

Cal. R. Ct. 3.7695

Cal. R. Ct. 3.769(c)5

Cal. R. Ct. 3.769(d)5

Cal. R. Ct. 3.769(e)5

Cal. R. Ct. 3.769(f).....5

Cal. R. Ct. 3.769(g)5

Cal. R. Ct. 3.776(e) 18

Cal. R. Ct. 3.776(f)..... 18

Private Attorneys General Act of 2004 (Labor Code ¶ 2698.....1

Secondary Authorities

Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002).....6,7,13,14

Wright, A. Miller & M. Kane, *Federal Practice and Procedure* (2d ed. 1986)13,18

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

ABDUL RASHID DESAI is the named plaintiff (“Plaintiff”) in this action brought against Defendant CYPRESS SECURITY, LP. (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. Jeffrey Ross, Esq., an experienced mediator of wage and hour actions, where the Parties were able to negotiate a gross settlement of the Lawsuit for \$430,000.00.

Plaintiff accordingly seeks preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement Agreement¹”). If approved, the Settlement would provide reasonable monetary relief for approximately 1,210 class members and 1,110 aggrieved employees of Defendant. (Hawkins Decl. Ex. 1-Settlement Agreement ¶ 4.1). The principal terms of the Settlement provide for the following:

- (1) A Gross Settlement Amount of \$430,000.00. (Settlement Agreement ¶1).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Mr. Ross and the Settlement confers substantial benefits to the Settlement Class. The Net Settlement Amount is estimated to be approximately **\$193,000**. This relief—averages **approximately \$159** per individual in the Settlement Class after fees and costs and **\$11.26 per** aggrieved employee²- 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, the Settlement Class 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 Plaintiff prevailing at trial but losing on appeal. (James Hawkins Decl. “Hawkins Decl.” ¶¶ 15-31).

As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff

¹ The Parties used the LASC model Class and PAGA Settlement Agreement and Class Notice.

² \$50,000 is allocated to the PAGA Penalty with \$37,500 allocated to the State of California and \$12,500 to the aggrieved employees per LC section 2698, et. seq.

1 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

2 **II. FACTS AND PROCEDURE**

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

4 On May 4, 2020 Plaintiff filed a putative Class action complaint entitled *Abdul Rashid*
5 *Desai v. Cypress Private Security, LP, et al.*, Los Angeles County Superior Court No.
6 20STCV17281 seeking damages for Defendant's alleged failure to: (1) Failure to Pay Minimum
7 Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay
8 Timely Wages; (5) Failure to Provide Accurate Itemized Wage Statements; and (6) Violation of
9 Unfair Competition Law (Hawkins Decl. ¶¶ 3-7). The class case was dismissed on or about
10 October 8, 2022 due to an arbitration agreement.

11 On July 8, 2020, Plaintiff filed a related PAGA Action entitled *Abdul Rashid Desai v.*
12 *Cypress Private Security, LP, et al.*, Los Angeles County Superior Court No. 20STCV26087
13 alleging violations of PAGA related (1) Failure to Pay Minimum Wages; (2) Failure to Provide
14 Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Timely Wages; and (5)
15 Failure to Provide Accurate Itemized Wage Statements. (Id.).

16 On or about May 3, 2023 Plaintiff filed a First Amended Complaint which
17 added the class claims to the PAGA complaint, as well as adding claims under Labor Code
18 violations which were negotiated and settled, such as 204, 551, 552, and 2802. (Id.).

19 **B. The Parties Settled After Mediation**

20 On August 31, 2022, the Parties engaged in private mediation with a well-respected wage
21 and hour class action mediator, Jeff Ross. Prior to mediation, Plaintiff requested and Defendant
22 produced extensive documentation including time and payroll data records for 25% of the Class
23 and Aggrieved Employees, policy documents applicable to the class during the Class Period, class
24 size information, hire and term dates, information on the number of pay periods and workweeks,
25 and information regarding the hourly rates and workweek. In short, Defendant provided discovery
26 sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of
27 the case and perform an analysis of the potential damages arising from the claims made in this
28 case. Although the case did not settle at mediation, the Parties continued to discuss settlement and

1 eventually were able to resolve the matter. At all times, the Parties' negotiations were adversarial
2 and non-collusive. As a result of settlement efforts, and continued settlement discussions, the
3 Parties agreed to settle this matter for the Gross Settlement Amount of \$430,000.00 for
4 approximately 1,210 class members, the terms of which are fully memorialized in the Settlement
5 Agreement. (Hawkins Decl. ¶ 4-14, Ex. 1.)

6 **III. SUMMARY OF SETTLEMENT TERMS**

7 **A. The Proposed Settlement Fully Resolves Plaintiff's Claims**

8 1. Composition of the Settlement Class

9 "Settlement Class Member" means a member of the class, as either a Participating Class
10 Member or Non-Participating Class Member (including a Non-Participating Class Member who
11 qualifies as an Aggrieved Employee). "Class Period" means the time period from March 16, 2019
12 through April 1, 2020. (Settlement Agreement ¶1.9). "Aggrieved Employees" means a person
13 employed by Cypress in California and classified as a non-exempt employee who worked for
14 Cypress during the PAGA period. (Settlement Agreement ¶1.4). "PAGA Period" shall mean May
15 4, 2019 through April 1, 2020. (Settlement Agreement ¶1.31). There are approximately potential
16 1,210 Class Members and 1,110 Aggrieved Employees. (Settlement Agreement ¶ 4.1)

17 2. Settlement Consideration

18 Plaintiff and Defendant have agreed to settle the Lawsuit in exchange for the Gross Settlement
19 Amount of \$430,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the amount of
20 \$143,333.33 and reimbursement of reasonable litigation costs and expenses in the amount of up to
21 \$30,000.00³ to Class Counsel ("Class Counsel Fees Payment and Class Litigation Expenses Payment"); (2)
22 Class Representative Service Payment to Plaintiff in the amount of up to \$10,000.00 ("Class
23 Representative Service Payment"); (3) fees and expenses of administration of the Settlement to the
24 Settlement Administrator in an amount not to exceed \$17,000.00 ("Administrator Expenses Payment"); (4)
25 \$50,000.00 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net
26 Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of

27
28 ³ Class Counsel's costs to date are approximately \$16,606.53 thus the Net Settlement Amount will likely be increased by approximately \$13,393.47.

1 \$12,500.00; and (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the
2 amount of \$37,500.00 to the California Labor and Workforce Development Agency (“LWDA”).
3 (Settlement Agreement ¶¶1-3).

4 3. Formula for Calculating Payments from the Net Settlement Amount

5 The Gross Settlement Amount less the following payments in the amounts approved by the
6 Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment,
7 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration
8 Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class
9 Payments shall constitute the “Net Settlement Amount.” The Net Settlement Amount estimated at
10 **\$193,000.** (Settlement Agreement ¶ 3; Hawkins Decl. ¶ 16)

11 Given that there are approximately 1,210 Class Members, each can expect to receive on average
12 approximately \$159, with a high payment of up to \$475 and a low payment of \$8.97. (Hawkins Decl. ¶¶
13 28, 29 .)

14 This average net recovery is in line with many other wage and hour class action settlements
15 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
16 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
17 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
18 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
19 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
20 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
21 No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
22 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately
23 \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net
24 recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
25 (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-
26 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
27 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

1 4. Release by the Settlement Class

2 The release is narrowly tailored to release the claims litigated in the complaints in exchange
3 for the Gross Settlement Amount. Plaintiff and Settlement Class Members will agree to release the
4 Released Parties during the Class Period as outlined in the Settlement Agreement, (Settlement Agreement ¶
5 5) and the released claims are tailored to the claims negotiated and plead in the operative First Amended
6 Complaint.

7 **IV. ARGUMENT**

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

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

12 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
13 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
14 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their
15 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
16 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final
17 approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary
18 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
19 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of
20 attorneys’ fees. *Id.* at 3.769(b).

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

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

1 Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

2 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
3 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to
4 act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is
5 small” (collectively, “*Dunk Factors*”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).⁴

6 2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and
7 Legal Issues and Were Thus Able to Objectively Assess the Settlement’s
8 Reasonableness

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

21 ⁴ 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 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
2 included: (1) determining Plaintiff's suitability as private attorneys general and class representative through
3 interviews, background investigations, and analyses of their employment files and related records; (2)
4 evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class
5 actions as to the claims brought, the nature of the positions, and the type of employer and Defendant's prior
6 class action settlement; (4) analyzing employees' time and wage records; (5) reviewing Defendant's
7 employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's
8 claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and
9 (9) participating in the mediation. (Id.)

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

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

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

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

1 were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012
2 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the conclusion
3 that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
4 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation “tends to support the conclusion that
5 the settlement process was not collusive”). Although the matter did not settle, the Parties were able to
6 continue discussions and ultimately reach a settlement with the mediator that is before the Court for
7 approval. At all times, the Parties’ negotiations were adversarial and non-collusive. (Hawkins Decl. ¶ 6.)

8 The Parties were represented by experienced class action counsel throughout the negotiations
9 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff’s Counsel employ
10 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
11 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 49.)

12 Defendant is represented by MARTENSON, HASBROUCK & SIMON LLP, a respected defense
13 firm.

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

17 In seeking approval, a settling party must provide sufficient information to “enable the court to
18 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail,*
19 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
20 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
21 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
22 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
23 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
24 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
25 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
26 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
27 claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled
28

1 claims for risks such as changes in the law, the probability of success, and other factors.⁵

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

11 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is
12 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
13 various potential impediments to recovery. (Hawkins Decl. ¶¶ 18-42.)

14 Defendant denies all allegations pled, along with all allegations intended to be pled in the operative
15 complaints. Defendant contends they implemented written policies and maintained practices that complied
16 with the requirements of the California Labor Code and applicable California Wage Orders. Defendant
17 further contends that all employees were paid all wages, were properly reimbursed for all business
18 expenses, and were timely paid wages in compliance with California law and applicable California Wage
19 Orders. In addition, Defendant contends that class certification is not appropriate because an individualized
20 investigation into the circumstances surrounding the claims in the Lawsuit is warranted, including because

21 ⁵ Federal district courts also recognize that there is an inherent “range of reasonableness”
22 in determining whether to approve a settlement “which recognizes the uncertainties of law and fact
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 such claims can only be decided on a case-by-case basis, common issues do not predominate and class
2 certification is neither superior nor proper. (Hawkins Decl. ¶¶ 30-42.)

3 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
4 that a settlement amounting to \$430,000.00 was fair and reasonable, and accounts for an approximate 7%-
5 14% of total possible recovery and courts have routinely approved settlements that provided a similar
6 discounted range of the maximum potential recovery. (Hawkins Decl. ¶ 29). See, e.g., *In re Warfarin*
7 *Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement
8 amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F.
9 Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
10 were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972) (approving 8%
11 of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21,
12 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of
13 possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued
14 litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving
15 settlement of 6% to 8% of estimated damages).⁶ (Id.)

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

19 Pursuant to the Settlement Agreement, \$50,000.00 from the Gross Settlement Amount shall be

20 ⁶ 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 allocated to the resolution of the PAGA claim, of which 75% (\$37,500.00) will be paid directly to the
2 LWDA, and the remaining 25% (\$12,500.00) will be paid to Aggrieved Employees who worked during
3 the PAGA Period beginning May 4, 2019 through April 1, 2020. (Settlement Agreement ¶ 1.30).

4 However, a number of courts have found that the “subsequent” penalty under PAGA applies only
5 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
6 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
7 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the
8 employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor
9 Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200
10 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuyse v.*
11 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
12 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
13 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
14 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
15 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
16 employers are not subject to heightened penalties for subsequent violations unless and until a court or
17 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
18 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

19 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
20 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
21 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
22 penalties, courts have considered issues including whether the employees suffered actual injury from the
23 violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the
24 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
25 only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
26 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
27 12, 2011).

28 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA

1 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or**
2 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
3 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
4 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
5 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
6 under PAGA. *Id.* at 529.

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

19 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
20 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
21 by California courts.⁷ Where PAGA penalties are negotiated in good faith and “there is no indication

22
23 ⁷ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
24 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
25 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
26 SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
27 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
28 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,

1 that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are
2 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
3 33900, at *24 (N.D. Cal. Apr. 3, 2009); see, e.g., *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579
4 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
5 damages to the PAGA claims.”).

6 **C. The Court Should Preliminarily Approve the Class Representative Service**
7 **Payment**

8 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
9 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming Enhancement awards of \$10,000); *Rodriguez v.*
10 *West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed.
11 2002) ¶ 11:38, and Eisenberg & Miller, *Enhancement Awards to Class Action Plaintiffs: An Empirical*
12 *Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class
13 representatives for work done on behalf of the class, to make up for financial or reputational risk
14 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
15 general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or Enhancement
16 awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in
17 conferring a benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal.
18 App. 4th 785, 806 (2009).

19 Approximately 1,210 class members and 1,110 aggrieved current and former employees will share
20 a \$430,000.00 settlement fund due entirely to the effort and commitment of Plaintiff. Subject to Court
21 approval, therefore, the Settlement provides for Class Representative Service Payment of \$10,000.00 to the
22 Class Representative⁸ The Class Representative Service Payment is fair and reasonable compensation for

23 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
24 approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v.*
25 *Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge
26 William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was
27 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).

28 ⁸ 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,

1 Plaintiff's effort in pursuing the action, assisting counsel with the litigation and settlement, regularly
2 conferring with counsel on the status of their case and the strategies for prosecuting the claims, and
3 reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
4 Settlement Class. (Hawkins Decl. ¶ 43; *see also generally*, Abdul Rashid Desai Decl.)

5 Plaintiff will file a formal motion for the Class Representative Service Payment once preliminary
6 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for
7 preliminary approval of the Class Representative Service Payment.

8 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
9 **Costs**

10 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the
11 risk of non-payment and invested in a case that achieved a substantial positive result for the class.

12
13 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton*
14 *Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding
15 \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*,
16 No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding
17 \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
18 CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000
19 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269
20 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named
21 plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
22 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v.*
23 *United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15,
24 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's*
25 *Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000
26 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-
27 2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000
28 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No.
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.
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,
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
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.
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.
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
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);
Magee v. American Residential Services, LLC, No. BC423798 (L.A. County Super. Ct. Apr. 21,
2011) (awarding \$15,000 enhancement payment).

1 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
2 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
3 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
4 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
5 class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
6 approval of attorneys' fees of \$143,333.33 (one-third of the Gross Settlement Amount) and litigation costs
7 and expenses not to exceed \$30,000.00 which are currently approximately \$16,606.53.

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

9 1. The California Standard for Class Certification

10 Class actions are statutorily authorized "when the question is one of common or general interest, of
11 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court."
12 Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification
13 is appropriate when there is an "ascertainable class and a well-defined community of interest among class
14 members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is
15 appropriate even if class members at some point may be required to make an individual showing as to
16 eligibility for recovery. *Bufl v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-*
17 *On*, 34 Cal. 4th at 333.

18 Conditional certification of the proposed Settlement Class is particularly warranted here given the
19 relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*,
20 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in
21 settlement cases).⁹ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
22 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same

23 ⁹ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts "declin[e] to treat formal
24 class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class
25 certification analysis at the preliminary approval stage."); *Dearaujo v. Regis Corp.*, No. 2:14-CV-
26 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) ("[D]espite the Supreme
27 Court's cautions in *Amchem* . . . , a cursory approach appears the norm."); *In re Amtrak Train*
28 *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.").

1 class for purposes of litigation:

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

16
17 2. The Proposed Settlement Class Is Ascertainable and There Is a Well-
18 Defined Community of Interest Among Class Members

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

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

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

27 The “ultimate question” the element of predominance presents is whether “the issues
28 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).

29 The proposed Settlement Class Members consists of the individual Class Members who did not
30 opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all persons
31 who are or have been employed by Defendant as employee drivers who were California residents or
32 assigned to work out of a location in California during the Class Period. Defendant represents there are
33 approximately 1,210 Class Members. Because all Class Members are either current or former employees of
34 Defendant, subject to the same policies and practices, the class is readily ascertainable from Defendant’s

1 regular business records. (Hawkins Decl. ¶¶ 44-46).

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

8 Plaintiff's interests are entirely coextensive with the interests of the Settlement Class. Plaintiff
9 maintains that Plaintiff was injured by the same company-wide practices to which the proposed Settlement
10 Class was subject and seek the same relief. Plaintiff has already demonstrated the ability to advocate for
11 the interests of the Class by initiating this litigation, undertaking representative investigation and discovery,
12 and evaluating the proposed settlement to assure that it is fair. (*Id.*)

13 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
14 litigating wage and hour class action cases. (Hawkins Decl. ¶ 49.) Plaintiff's Counsel has successfully
15 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide
16 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
17 expertise establishes that they are well qualified to represent the interests of this Class.

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

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

25 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
26 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
27 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
28 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).

1 The notice must advise class members “that they may be excluded from the class if they so request and that
2 they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67
3 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
4 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*
5 *Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).¹⁰

6 The Parties have jointly drafted the Notice of Class Action settlement (“Class Notice”) using the
7 LASC Court approved class notice model which fairly and neutrally informs Class Members of their rights
8 and remedies in this action. (Settlement Agreement, Exhibit A; Hawkins Decl. ¶¶ 47, 48; Ex. A).

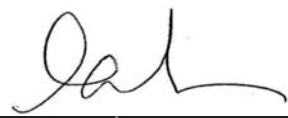
9 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
10 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi*
11 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class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

13 V. CONCLUSION

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

17
18 Dated: May 24, 2023

JAMES HAWKINS APLC

19
20 By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

24 Attorneys for Plaintiff ABDUL RASHID
25 DESAI, individually and on behalf of all
others similarly situated.

26
27 ¹⁰ Due process does not require that each Class Member actually receive a notice, but
28 rather a procedure reasonably certain to reach Class Members. *Wright, A. Miller & M. Kane*,
Federal Practice and Procedure § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class
Members will be bound by the judgment even if they never actually receive the notice. *Fontana v.*
Elrod, 826 F.2d 729, 281 (7th Cir. 1987).

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

On May 24, 2023, I served on the interested parties in this action the following document(s) entitled:

- [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Nicole@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

See Attached Service List

Executed on May 24, 2023, at Irvine, California

Nicole Miccolis

1 Jeremy T. Naftel, Esq.
Janine M. Braxton, Esq.
2 Alex A. Smith, Esq.
MARTENSON, HASBROUCK
3 & SIMON LLP
4 455 Capitol Mall, Suite 601
Sacramento, California 95814
5 jnaftel@martensonlaw.com
jbraxton@martensonlaw.com
6 alexsmith@martensonlaw.com
cphilip@martensonlaw.com
7 alexsmith@martensonlaw.com
8

9 Labor and Workforce Development Agency
Attn: PAGA Administrator
10 1515 Clay Street, Suite 801
11 Oakland, CA 94612
12 <http://www.dir.ca.gov/Private-Attorneys-General-Act>
(Via LWDA Website)
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28