

BANNER LAW GROUP

ARNAB BANERJEE (SBN 252618)
11755 Wilshire Boulevard, Suite 1250
Los Angeles, California 90025
Telephone: 323-426-2991
Facsimile: 323-426-2975
arnab@bannerlawgroup.com

MEHTANI LAW OFFICES, P.C.

AANAND MEHTANI (SBN 254556)
2425 Olympic Blvd., Ste. 4000W
Santa Monica, California 90404
Telephone: 310-776-3590
Facsimile: 310-776-3600
amehtani@mehtanilaw.com

Attorneys for Plaintiff Edwin Molina

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

EDWIN MOLINA, an individual,

Plaintiff,

vs.

SBR EXPRESS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20STCV46159

CLASS AND PAGA ACTION COMPLAINT

[Assigned For All Purposes to
Hon. Elihu M. Berle]

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

Date: June 29, 2022

Time: 9:00 a.m.

Place: Department 6

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 29, 2022 at 9:00 a.m., or as soon thereafter as counsel
3 may be heard, in Department 6 of the above-captioned court, located at 312 North Spring Street, Los
4 Angeles, California 90012, the Honorable Elihu M. Berle presiding, Plaintiff Edwin Molina will, and
5 hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action
7 Settlement and Release, attached as Exhibit 1 to the Declaration of Arnab Banerjee;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Edwin Molina as the representative for the Settlement Class;
- 10 4. Appoint Banner Law Group P.C. and Mehtani Law Offices, P.C. as Class Counsel;
- 11 5. Approve distribution of the proposed Notice of Class Action Settlement to the
12 Settlement Class;
- 13 6. Appoint ILYM Group, Inc. 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 Settlement; (3) the
17 Declaration of Arnab Banerjee; (4) the Declaration of Aanand Mehtani; (5) the Joint Stipulation of Class
18 Action Settlement and Release; (6) the Notice of Class Action Settlement; (7) the [Proposed] Order
19 Granting Preliminary Approval of Class Action Settlement; (8) the records, pleadings, and papers filed in
20 this action; and (9) upon such other documentary and oral evidence or argument as may be presented to
21 the Court at or prior to the hearing of this Motion.

22 //

1 As this Motion is unopposed, the Parties respectfully request relief from the page limit
2 requirement set by California Rules of Court, Rule 3.1113(d).

3 Dated: April 29, 2022

Respectfully submitted,

4
5 By: /s/ Arnab Banerjee /am
Arnab Banerjee

6 **BANNER LAW GROUP, P.C.**

7 Attorney for Plaintiff Edwin Molina

8
9 By: /s/ Aanand Mehtani
Aanand Mehtani

10 **MEHTANI LAW OFFICES, P.C.**

11 Attorney for Plaintiff Edwin Molina
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTS AND PROCEDURE.....	3
A.	Brief Overview of the Litigation.....	3
B.	The Parties Settled After Mediation	3
C.	The Proposed Settlement Fully Resolves Plaintiff’s Claims	3
1.	Composition of the Settlement Class	3
2.	Settlement Consideration	4
3.	Formula for Calculating Class Claims Payments from the Net Settlement Fund.....	4
4.	Release by the Settlement Class	6
5.	Release by PAGA Members	6
III.	ARGUMENT.....	6
A.	The Court Should Preliminarily Approve the Proposed Class Action Settlement.....	6
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.....	6
2.	Plaintiff’s 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
B.	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
C.	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	15
D.	The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Payment.....	18
E.	The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and Costs	19

1	F. California Law Authorizes Provisional Certification for Settlement Purposes	20
2	1. The California Standard for Class Certification	20
3	2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined	
4	Community of Interest Among Class Members	21
5	3. The Proposed Notice Properly Informs Class Members about the Case and the	
6	Settlement.....	23
7	IV. CONCLUSION	24

TABLE OF AUTHORITIES

STATE CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	17
<i>Amaral v. Cintas Corp. No. 2</i> , 163 Cal. App. 4th 1157 (2008).....	22, 26
<i>Brinker Rest. Corp. v. Super. Ct.</i> , 53 Cal. 4th 1004 (2012)	31
<i>Bufile v. Dollar Financial Group, Inc.</i> , 162 Cal. App. 4th 1193 (2008).....	30
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	26, 27
<i>Cartt v. Super. Ct.</i> , 50 Cal. App. 3d 960 (1975).....	33
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2010)	16, 17
<i>Cellphone Termination Fee Cases</i> , 186 Cal. App. 4th 1380 (2010)	28
<i>Chance v. Super. Ct.</i> , 58 Cal. 2d 275 (1962)	33
<i>Chavez v. Netflix, Inc.</i> , 162 Cal. App. 4th 43 (2008)	29
<i>Clark v. American Residential Services LLC</i> , 175 Cal. App. 4th 785 (2009).....	28
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	17, 30, 31
<i>Elder v. Schwan Food Co.</i> , No. B223911, 2011 WL 1797254 (Cal. Ct. App. May 12, 2011).....	27
<i>Kass v. Young</i> , 67 Cal. App. 3d 100 (1977)	32, 33
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	20, 21
<i>Laffitte v. Robert Half, Inc.</i> , 1 Cal. 5th 480 (2016).....	29
<i>Lee v. Dynamex, Inc.</i> , 166 Cal. App. 4th 1325 (2008).....	30, 31
<i>Mamika v. Barca</i> , 68 Cal. App. 4th 487 (1998).....	23
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010).....	21
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	28
<i>North County Contractor's Assn., Inc. v. Touchstone Ins. Services</i> , 27 Cal. App. 4th 1085 (1994)	17
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004).....	30
<i>Skulnick v. Roberts Express, Inc.</i> , 2 Cal. App. 4th 884 (1992)	17
<i>Stambaugh v. Super. Ct.</i> , 62 Cal. App. 3d 231 (1976)	17

1	<i>State of Cal. v. Levi Strauss</i> , 41 Cal. 3d 460 (1986).....	19, 33
2	<i>Thurman v. Bayshore Transit Mgmt.</i> , 203 Cal. App. 4th 1112 (2012)	27
3	<i>Trotsky v. Los Angeles Fed. Savings & Loan Assn.</i> , 48 Cal. App. 3d 143 (1975).....	33
4		
5	FEDERAL CASES	
6	<i>Aguirre v. Genesis Logistics</i> , No. SACV 12-00687 JVS (ANx), 2013 WL 10936035	
7	(C.D. Cal. Dec. 30, 2013).....	26
8	<i>Balderas v. Massage Envy Franchising, LLP</i> , 2014 WL 3610945. (N.D. Cal. July 21,	
9	2014).....	23
10	<i>Bernstein v. Virgin Am., Inc.</i> , 990 F.3d 1157 (9th Cir. 2021)	24
11	<i>Chen v. Morgan Stanley Smith Barney, LLC</i> , No. 8:14-CV-01077 ODW (FFMx), 2014	
12	WL 4961182 (C.D. Cal., October 2, 2014)	25
13	<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05–4526 MHP, 2011 WL 672645 (N.D. Cal Feb.	
14	16, 2011).....	26
15	<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016).....	25
16	<i>D’Amato v. Deutsche Bank</i> , 236 F.3d 78, 85 (2d Cir. 2001)	19
17	<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal.	
18	June 29, 2016).....	26, 29
19	<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047	
20	(C.D. Cal. Aug. 12, 2011)	25, 26
21	<i>Fontana v. Elrod</i> , 826 F.2d 729 (7th Cir. 1987)	32
22	<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10–CV–0324 AWI SKO, 2012 WL 5364575	
23	(E.D. Cal. Oct. 31, 2012).....	26
24	<i>Hopson v. Hanesbrands Inc.</i> , No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr.	
25	3, 2009).....	27
26	<i>In re Amtrak Train Derailment in Philadelphia, Pennsylvania</i> , No. 15-MD-2654, 2016	
27	WL 1359725 (E.D. Pa. Apr. 6, 2016)	29
28	<i>In re Apple Computer, Inc. Derivative Litig.</i> , No. C 06-4128 JF (HRL), 2008 WL	

1	4820784 (N.D. Cal. Nov. 5, 2008)	19
2	<i>In Re Armored Car Antitrust Litig.</i> , 472 F. Supp. 1357 (N.D. Ga. 1979)	23
3	<i>In re Bluetooth Headset Prod. Liab. Litig.</i> , 654 F.3d 935 (9th Cir. 2011)	19
4	<i>In Re Four Seasons Secs. Laws Litig.</i> , 58 F.R.D. 19 (W.D. Okla.1972).....	23
5	<i>In re Global Crossing Sec. and ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004)	20
6	<i>In re IKON Office Solutions, Inc. Sec. Litig.</i> , 194 F.R.D. 166 (E.D. Pa. 2000)	20
7	<i>In re Omnivision Tech., Inc.</i> , 559 F. Supp. 2d 1036 (N.D. Cal. 2008)	24
8	<i>In re Processed Egg Prod. Antitrust Litig.</i> , No. 08-MD-2002, 2014 WL 828083 (E.D. Pa.	
9	Feb. 28, 2014)	29
10	<i>In re Uber FCRA Litig.</i> , No. 14-CV-05200-EMC, 2017 WL 2806698 (N.D. Cal. June	
11	29, 2017).....	24
12	<i>In re Warfarin Sodium Antitrust Litig.</i> , 212 F.R.D. 231 (D. Del. 2002).....	23
13	<i>In re World Trade Ctr. Lower Manhattan Disaster Site Litig.</i> , 66 F. Supp. 3d 477	
14	(S.D.N.Y. 2015).....	20
15	<i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL 2236752 (N.D.	
16	Cal. June 15, 2012)	26
17	<i>Nat'l Rural Telecomm. Coop. v. Directv, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004)	20
18	<i>Officers for Just. v. Civ. Serv. Comm'n of City & Cty. of San Francisco</i> , 688 F.2d 615	
19	(9th Cir. 1982).....	20
20	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.</i> , 303 F.R.D. 337 (E.D.	
21	Cal. 2014).....	19
22	<i>Ordonez v. Radio Shack, Inc.</i> , No. CV 10-7060-CAS JCGX, 2013 WL 210223 (C.D.	
23	Cal. Jan. 17, 2013)	22
24	<i>Purnell v. Sunrise Senior Living Mgmt., Inc.</i> , No. SA CV10-00897 JAK, 2012 WL	
25	1951487 (C.D. Cal. Feb. 27, 2012)	22
26	<i>Rodriguez v. West Publishing Corp.</i> , 563 F.3d 948 (9th Cir. 2009).....	27
27	<i>Salazar v. Avis Budget Grp., Inc.</i> , 251 F.R.D. 529 (S.D. Cal. 2008).....	22
28	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12-07658 DDP	

1	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	25
2	<i>Viceral v. Mistras Grp., Inc.</i> , No. 15-CV-02198-EMC, 2016 WL 5907869 (N.D. Cal.	
3	Oct. 11, 2016).....	24
4	<i>Vieyara-Flores v. Sika Corp.</i> , No. EDCV19606JVSKKX, 2019 WL 2436998 (C.D. Cal.	
5	June 10, 2019).....	25
6	<i>Villegas v. J.P. Morgan Chase & Co.</i> , No. 09–00261, 2012 WL 5878390 (N.D. Cal.	
7	Nov.21, 2012)	19
8	<i>Washington v. Joe’s Crab Shack</i> , 271 F.R.D. 629 (N.D. Cal. 2010)	22
9	STATUTES	
10	Cal. Civ. Proc. Code § 382	29, 30
11	Cal. Lab. Code § 203	22
12	Cal. Lab. Code § 2699(h).....	25
13	Cal. R. Ct. 3.769	16
14	Cal. R. Ct. 3.769(c).....	15
15	Cal. R. Ct. 3.769(d)	15
16	Cal. R. Ct. 3.769(e).....	15
17	Cal. R. Ct. 3.769(f)	15
18	Cal. R. Ct. 3.769(g)	15
19	Cal. R. Ct. 3.776(e).....	32
20	Cal. R. Ct. 3.776(f)	32
21		
22	SECONDARY AUTHORITIES	
23	CONTE & NEWBERG, <i>NEWBERG ON CLASS ACTIONS</i> (4TH ED. 2002)	16, 18
24	Wright, A. Miller & M. Kane, <i>Federal Practice and Procedure</i> (2d ed. 1986).....	32
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Edwin Molina (“Plaintiff”) seeks preliminary approval of the Joint Stipulation of Class Action Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately thirty-three (“33”) current and former employees of Defendant SBR Express, Inc. (“Defendant” and, collectively with Plaintiff, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All non-exempt or hourly paid drivers of Defendants who worked in California from December 3, 2016, through the date that the Court preliminarily approves the Settlement (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$235,750. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of \$113,666.67 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs (\$79,583.33 fees and up to \$15,000 costs), Settlement Administration Costs (estimated \$5,000), the PAGA Settlement Amount to the LWDA (\$7,500.00), the Class Representative Enhancement Payment (\$5,000), and the General Release Payment (\$10,000)), which will be allocated to all Class Members on a pro-rata basis according to the total number of biweekly pay periods worked by each Class Member during the Class Period. **The Entire Net Settlement Fund will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$79,583.33), and litigation costs and expenses not to exceed \$15,000, to Banner Law Group, P.C. and Mehtani Law Offices (“Plaintiff’s Counsel”).

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement. The Settlement Agreement is attached to the Declaration of Arnab Banerjee as Exhibit 1. The Notice of Class Action Settlement is Exhibit A to the Settlement Agreement.

- 1 (c) Settlement administration costs of approximately \$5,000, to be paid to the
2 jointly selected Settlement Administrator, ILYM Group, Inc.. (“ILYM”).
- 3 (d) A \$10,000 PAGA settlement, of which 75% (\$7,500) will be paid to the Labor
4 & Workforce Development Agency (“LWDA”), and the remaining 25%
5 (\$2,500) (“PAGA Fund”), will be payable to PAGA Members, defined as: All
6 non-exempt or hourly paid drivers of Defendants who worked in California
7 from December 3, 2016, through the date that the Court preliminarily approves
8 the Settlement. **The Entire PAGA Fund will be paid to all PAGA Members,**
9 **and without the need to submit claims for payment.**
- 10 (e) A Class Representative Enhancement Payment of \$5,000 to Edwin Molina for
11 his service on behalf of the Settlement Class, the risks he took in bringing the
12 action on behalf of the class, and a General Release payment of Ten Thousand
13 Dollars (\$10,000) in exchange for a general release of all known and unknown
14 claims arising out of his employment with Defendant.

15 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
16 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
17 length after two mediations with Mr. Steve Mehta, Esq. and Mr. Mark Lemke, Esq., both experienced
18 and well-respected class action mediators, and the Settlement confers substantial benefits to Class
19 Members. This relief—averaging approximately \$3,444,44 per Class Member from the Net Settlement
20 Fund—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing
21 wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not
22 have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
23 denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal.

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

27
28

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On December 3, 2020, Plaintiff filed this class action against Defendant for multiple Labor Code violations, including claims for unfair competition, failures to pay minimum and overtime wages, waiting time penalties, wage statement penalties, failure to reimburse business expenses, and penalties under the Labor Code Private Attorney General Act (“PAGA”). (Declaration of Arnab Banerjee [“Banerjee Decl.”] ¶ 11.) On June 30, 2020, Plaintiff sent notice of his claims to the LWDA. (Id.)

B. The Parties Settled After Mediation

Defendant and Class Counsel, on behalf of Named Plaintiff and Class Members, attended mediation with Steve Mehta, Esq., an experienced wage and hour class action mediator, in July 2021. Although the mediation was productive, the matter did not resolve at mediation. (Banerjee Decl. ¶ 12.) The Parties informed the Court that the mediation was unsuccessful, and the Court set a class certification briefing schedule. The Parties subsequently proceed with formal class certification discovery, including the exchange of written discovery responses, policy documents, and time and payroll records for the entire putative class. (Id. at ¶ 13.) Class counsel began preparing the motion for class certification when the Parties decided to participate in a second mediation. The parties then attended a second mediation on February 27, 2022. With Mark Lemke, another experienced mediator of wage and hour class actions. With Mr. Lemke’s assistance, the Parties were eventually able to negotiate a complete settlement of Plaintiff’s claims. (Id. at ¶ 14.) The terms of the settlement are now set forth in complete and final form in the Joint Stipulation of Class Action Settlement and Release. (Id. at 10, Ex. 1.) At all times, the Parties’ negotiations were adversarial and non-collusive. The Settlement was therefore a product of arms-length bargaining after extensive investigation and discovery by the Parties and thus constitutes a fair, adequate, and reasonable compromise of the claims at issue. (Id. at 16)

C. The Proposed Settlement Fully Resolves Plaintiff’s Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all non-exempt or hourly paid drivers of Defendants who worked in California from December 3, 2016, through the date of preliminary approval. (Settlement Agreement ¶ 9.) There are approximately 33 Class Members who worked for Defendant during the class

period.

2. Settlement Consideration

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$235,750. (Settlement Agreement ¶ 20.) The Gross Settlement Amount includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit timely and valid Requests for Exclusion—from the Net Settlement Fund; (2) \$79,583.33 in attorneys’ fees (i.e., one-third of the common fund) and up to \$15,000 in litigation costs to Plaintiff’s Counsel; (3) Settlement Administration Costs of up to \$10,000 (estimated at \$5,000); (4) a \$7,500 payment to the LWDA and a \$2,500 payment to PAGA Members; and (5) a Class Representative Enhancement Payment of \$5,000 for Plaintiff’s service on behalf of the Settlement Class, the risks he took in bringing his representative claims, and \$10,000 for a general release of all claims arising out of his employment with Defendants. (Settlement Agreement ¶¶ 3, 4, 18, 20, 26, 35.)

Subject to the Court approving Attorneys’ Fees and Costs, Settlement Administration Costs, the PAGA Settlement Amount, and the Class Representative Enhancement Payment, the Net Settlement Fund will be distributed to Participating Class Members in full.

3. Formula for Calculating Class Claims Payments from the Net Settlement Fund

Defendants will calculate the total number of biweekly pay periods worked by each Class Member during the Class Period and the aggregate total number of pay periods worked by all Class Members during the Class Period. To determine each Participating Class Member’s share of the Net Settlement Fund, the Settlement Administrator will use the following formula:

- The Net Settlement Fund will be divided by the aggregate total number of weekly pay periods worked during the Class Period, resulting in the “Qualifying Weeks.” Each Class Member’s “Individual Settlement Payment” will be receive a *pro rata* share of the Net Distribution Fund based on their share of the total number of Qualifying Weeks..
- The Individual Settlement Payment will be reduced by any required deductions for each Participating Class Member as specifically set forth herein, including employee-side tax withholdings or deductions. The entire Net Settlement Fund will be disbursed to all

Class Members who do not submit timely and valid Requests for Exclusion.

- If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of weekly pay periods worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

(Settlement Agreement ¶ 50(g).)

Given that there are approximately 33 Class Members, the average net recovery will be approximately \$3,444,44. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

Similarly, with respect to the PAGA payments the Settlement Administrator will calculate the total number of weeks worked by each PAGA Member during the PAGA Period and the aggregate total number of work weeks worked by all PAGA Members during the PAGA Period and the Net PAGA Distribution Amount shall be paid to PAGA members based on a pro-rate distribution based on the number or weeks worked. (Settlement Agreement ¶ 50(f).)

1 **4. Release by the Settlement Class**

2 In exchange for the Gross Settlement Amount, Plaintiff and Participating Class Members will
3 agree to release the Released Class Claims during the Class Period:

4 As of the Effective Date, Named Plaintiff and all Settlement Class Members hereby do and
5 shall be deemed to have fully, finally, and forever released, settled, compromised,
6 relinquished, and discharged any and all Settled Claims against any and all Released
7 Parties. The Settlement includes a release of all Settled Claims during the Class Period by
8 Settlement Class Members. The Parties agree that it is their intent that the terms set forth
9 in this Agreement will release any further attempt, by lawsuit, administrative claim or
10 action, arbitration, demand, or other action of any kind, by each and every Settlement Class
11 Member to obtain any recovery based on Settled Claims.

12 (Settlement Agreement ¶¶ 47.)

13 **5. Release by PAGA Members**

14 In exchange for the PAGA Settlement Amount, Plaintiff and PAGA Members will agree to
15 release the Released PAGA Claims during the PAGA Period:

16 As of the Effective Date, Named Plaintiff, individually and on behalf of the State
17 of California and all PAGA Members, hereby does and shall be deemed to have
18 fully, finally, and forever released, settled, compromised, relinquished, and
19 discharged any and all of the Released Parties of and from any and all Settled
20 PAGA Claims. The Parties agree that it is their intent that the terms set forth in
21 this Agreement will release any further attempt, by lawsuit, administrative claim
22 or action, arbitration, demand, or other action of any kind, by each and every
23 PAGA Member to obtain any recovery based on the Settled PAGA Claims.

24 (Settlement Agreement ¶¶ 48.)

25 **III. ARGUMENT**

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

27 **1. Courts Review Class Action Settlements to Ensure that the Terms Are**
28 **Fair, Adequate, and Reasonable**

 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
(2) a subsequent “final” review after notice of the settlement has been distributed to class members for
their comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.
App. 4th 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a
final approval hearing to inquire into the fairness of the proposed settlement”). The motion for

1 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the
2 class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement
3 concerning the payment of attorneys' fees. *Id.* at 3.769(b).

4 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
5 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide
6 notice to the class of the hearing and "an explanation of the proposed settlement." The court must also
7 approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final
8 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at
9 3.769(g).

10 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
11 settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." *See*
12 *North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
13 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg").

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

18
19
20
21
22 ² The presumption of fairness is consistent with California's public policy goal of favoring
23 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors
24 settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally
25 favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v.*
26 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the
27 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation");
28 *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("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 **2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and**
2 **Legal Issues and Were Thus Able to Objectively Assess the Settlement's**
3 **Reasonableness**

4 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues
5 implicated by Plaintiff's claims, and were able to objectively assess the settlement's reasonableness.
6 (Banerjee Decl. ¶ 17.) Prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the
7 factual bases for pursuing an action against Defendants for Labor Code violations. (Id.) Plaintiff was
8 familiar with Defendants' labor policies and practices, and over the course of multiple interviews both in
9 person and over the telephone, knowledgeably summarized those policies and practices to Plaintiff's
10 Counsel. (Id.) During those conversations, he explained how the policies and practices were instituted
11 and provided valuable insight into how they gave rise to the alleged Labor Code violations. (Id.) Based
12 on these interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient
13 grounds for pursuing an action against Defendants. (Id.)

14 In preparation for drafting the complaint, Plaintiff's Counsel conducted their own preliminary
15 investigation into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination
16 of Plaintiff's personnel file and associated records. (Id. at ¶ 18.) Plaintiff's Counsel also prepared a
17 detailed letter (6 pages, single-spaced) to notify the LWDA of Plaintiff's intent to seek civil penalties and
18 other available relief recoverable under PAGA for Labor Code violations. (Id.) Significant research and
19 effort were expended to prepare a PAGA notice that was consistent with the developing legal
20 requirements so as to withstand any challenge from Defendants regarding the notice's sufficiency. (Id.)

21 Early in the litigation the parties agreed to exchange discovery informally, and as part of the
22 preparation for the first mediation. After the first mediation failed, Plaintiff served considerable formal
23 discovery in the form of requests for production of documents and special interrogatories. (Id. at 19.)

24 In response to Plaintiff's discovery requests, Plaintiff's Counsel received a significant amount of
25 documents and data, including employee demographic data, time and pay records, and Defendant's
26 policies and procedures manuals which covered a broad range of topics including, *inter alia*, wage
27 policies, employee clock-in policies and procedures, attendance policies, overtime & premium pay, etc.
28 (Id. at ¶ 20.) The document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and

1 magnitude of the claims being settled, as well as the impediments to recovery, and ultimately enabled
2 Plaintiff's Counsel so as to make an independent assessment of the reasonableness of the settlement's
3 terms. (*Id.*)

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

13 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
14 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
15 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
16 known facts and circumstances, including the risk of significant delay and uncertainty associated with
17 litigation, and various defenses asserted by Defendants. (*Id.* at ¶ 22.)

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

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

25 As explained above, the Parties participated in a mediation with Mr. Mehta and subsequently
26 Mr. Lemke, both of whom are experienced mediators of wage and hour class actions. Although the
27 parties did not settle after the first mediation, it was critical in allowing both parties to learn about the
28 strengths and weaknesses of their claims as well as creating an understanding of the range of settlement

1 that was possible. After the first mediation, the Parties conducted extensive additional discovery and
2 Plaintiff began preparing his motion for class certification with further crystalized their positions, and the
3 range of a reasonable settlement. Ultimately, the parties agreed to participate in a second mediation with
4 Mr. Lemke who helped manage the Parties' expectations and provided a useful, neutral analysis of the
5 issues and risks to both sides, and ultimately presented the parties with a mediator's proposal that was
6 accepted by both parties. (Banerjee Decl. ¶¶ 23-24). Thus, at all times, the Parties' negotiations were
7 adversarial and non-collusive. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir.
8 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re*
9 *Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *3 (N.D. Cal.
10 Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive
11 settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in
12 pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and
13 undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at *6 (N.D.
14 Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement
15 process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D.
16 337, 350 (E.D. Cal. 2014) (accord).

17 The Parties were represented by experienced class action counsel throughout the negotiations
18 resulting in this Settlement. Plaintiff is represented by Banner Law Group P.C. and Mehtani Law
19 Offices, P.C. Plaintiff's Counsel are seasoned class action attorneys who regularly litigate wage and hour
20 claims through certification and on the merits, and have considerable experience settling wage and hour
21 class actions. (Banerjee Decl. ¶¶ 2-9; Declaration of Aanand Mehtani ["Mehtani Decl."] ¶¶2-9.)

22 Defendants are represented by Levian Law, LLP, a respected firm with significant experience
23 with employment law and wage and hour class action defense.

24 **B. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light**
25 **of the Amount in Controversy Discounted by the Risks of Continued Litigation**

26 In seeking approval, a settling party must provide sufficient information to "enable the court to
27 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
28 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement

amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.³

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

³ 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 in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & 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 **Minimum Wage and Unpaid Time Claim:** Based on the allegation that Class Members were
2 not paid for all of their time worked because they were only paid on a per mile basis. Thus drivers were
3 not paid for non-driving employment including pre- and post-trip vehicle inspection time, paperwork
4 completion, cleaning and maintaining trucks, and attending meetings. Defendants' exposure would be
5 calculated as follows: approximately 1,020 work weeks $\times$ 3 hours per week $\times$ \$40.00 average hourly pay
6 $\approx$ \$122,400.

7 **Rest Periods:** Plaintiff also alleges that because drivers were not paid for any time during which
8 they were not driving because they were paid only based on mileage—thus SBR Express failed to
9 provide them separate compensation for rest breaks as they are required to do. “[f]or employees
10 compensated on a piece-rate basis during a pay period, [¶] ... [e]mployees shall be compensated for
11 rest ... periods ... separate from any piece-rate compensation.” § 226.2, subd. (a)(1); see also *Bluford v.*
12 *Safeway*, 216 Cal. App. 4th 864, 873 (2013) (t[here is no doubt that Safeway was required to provide the
13 drivers with paid rest periods”, and that Safeway’s “piece-rate compensation formula that does not
14 compensate separately for rest periods does not comply with California minimum wage law.)
15 Defendant’s exposure would be calculated as follows: approximately 1,020 work weeks $\times$ 3 violations
16 per week $\times$ \$40 $\approx$ \$122,400.

17 **Business Expense Reimbursement Claim:** Plaintiff alleges that Defendants failed to reimburse
18 Plaintiff and other employees who used their personal cell phones for work related purposes, and had to
19 provide their own cleaning supplies. Plaintiff estimates that employees spent approximately \$50 per
20 month on these expenses. Defendant’s exposure is as follows: approximately 1,020 work weeks divided
21 by 4 (monthly) $\times$ \$50 average monthly plan $\approx$ \$12,750.

22 **Wage Statement Claim:** Based on the preceding allegations, Plaintiff alleges that Defendants
23 issued Class Members incorrectly itemized wage statements. Penalties for wage statement violations are
24 calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering
25 injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
26 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
28 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

Defendants' maximum potential exposure would be calculated as follows: There are approximately 302 pay periods with corresponding wage statements in the one-year claims period for section 226(e) penalties. Multiplied by a \$50 penalty for "initial violations" equals \$15,100 *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (finding that the initial penalty applies until there is notification of a violation).

Final Pay Claim: Because Defendants allegedly failed to pay Class Members all minimum and overtime wages within 72-hours of their termination/separation of employment, Class Members are entitled to waiting-time penalties. *See* Labor Code §§ 201-202. Labor Code section 203 provides "[i]f an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty [for up to 30 days.]" *Mamika v. Barca*, 68 Cal. App. 4th 487, 492 (1998), as modified (Dec. 11, 1998). Defendants' exposure would be calculated as follows: approximately 25 former employees × 8 hours × 30 days × \$40.00 / hour ≈ \$240,000.

Gross Settlement Amount: In total, Plaintiff estimated Defendants' maximum exposure for the class claims at approximately \$512,650:

Claim	Amount
Minimum and Wage Claim	\$122,400
Rest Period Claim	\$122,400
Business Expense Claim	\$12,750
Wage Statement Claim	\$15,100
Final Pay Claim	\$240,000
Total	\$512,650

The above estimate assumes, however, that each and every one of Plaintiff's claims would have been certified for class-wide resolution, that Plaintiff's would have prevailed at trial, and that the jury's verdict would have been affirmed on appeal. In other words, this estimate assumes complete and total victory. Understandably, for purposes of evaluating the settlement's reasonable, this estimate must be "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). (Banerjee Decl. ¶ 27.)

Defendant obviously dispute all of these claims and contend that no wage and hour violations occurred, and further claim that even if there were instances of these violations, these would be highly

1 individualized inquires that would not be suitable for class certification. *See, e.g., Purnell v. Sunrise*
2 *Senior Living Mgmt., Inc.*, No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27,
3 2012); *Washington v. Joe's Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification
4 because “an individualized inquiry will be required to determine whether any employee failed to take a
5 meal break because he/she was too busy”); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529, 533 (S.D.
6 Cal. 2008); *Ordonez v. Radio Shack, Inc.*, No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D.
7 Cal. Jan. 17, 2013); *Gonzalez*, 2012WL 5473764, at *5 (holding that “[why] any particular employee
8 missed any particular break requires, ineluctably, individualized fact finding”).

9 Ultimately, Plaintiff's Counsel determined an appropriate range of recovery for settlement
10 purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to
11 the merits of Plaintiff's claims; (ii) the risk of class certification being denied; (iii) the risk of losing on
12 any of a number of dispositive motions that could have been brought between certification and trial (e.g.,
13 motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have
14 eliminated all or some of Plaintiff's claims, or barred evidence/testimony in support of the claims; (iv)
15 the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the
16 difficulties attendant to collecting on a judgment (collectively, the “Discount Factors”). (Banerjee Decl. ¶
17 25.)

18 After taking into account the Discount Factors, Plaintiff's Counsel determined that it would be
19 reasonable to settle for a fraction of Defendants' maximum potential exposure for the class claims
20 (PAGA discussed in the following section), or approximately 46% of the total exposure. (*Id.*)

21 Such a discount is inherently reasonable given that Plaintiff would have had to overcome
22 multiple, dependent contingencies to prevail on his claims. If anything, the projected odds for each of the
23 above contingencies is generous to the class' position, since plaintiffs in employment cases rarely prevail
24 on all of the claims at any of these dispositive stages. Courts routinely approve settlements that provide a
25 similar discounted range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust*
26 *Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be
27 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357,
28 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were

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

C. 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

Pursuant to the Settlement Agreement, \$10,000 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$7,500) will be paid directly to the LWDA, and the remaining 25% (\$2,500) will be paid to Participating Class Members. (Settlement Agreement ¶ 50(f).)

This result was reached after good-faith negotiation between the parties. (Banerjee Decl. ¶ 26). The amount was valued as follows: Based on information and evidence produced by Defendants during discovery, Plaintiff’s Counsel determined that aggrieved employees worked a combined total of approximately 302 pay periods during the PAGA statute of limitations period (“PAGA Period”). Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each

⁴ See also *In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *7 (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 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.”).

aggrieved employee per pay period for each subsequent violation.

However, a number of courts have found that the “subsequent” penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to “heightened civil penalties” because the defendant was not given notice by the Labor Commissioner when the “subsequent” violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008). Under this line of cases, Defendants’ exposure would be approximately $\$30,200 = 302$ violative pay periods $\times$ \$100.

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

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

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

21 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
22 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
23 approved by California courts.⁵ Where PAGA penalties are negotiated in good faith and “there is no
24

25 ⁵ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
26 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
27 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
28 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); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A.

1 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
2 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009
3 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576,
4 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
5 any damages to the PAGA claims.”).

6 Here, Plaintiff resolved the PAGA claims for approximately 33% of the total PAGA exposure
7 which is within the reasonable range of a PAGA settlement.

8 **D. The Court Should Preliminarily Approve the Negotiated Class Representative**
9 **Enhancement Payment**

10 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
11 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez v. West*
12 *Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed. 2002) §
13 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
14 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class representatives
15 for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing
16 the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez*,
17 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to named plaintiffs is
18 that they should be compensated for the expense or risk they have incurred in conferring a benefit on
19 other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806
20 (2009).

21 Approximately 33 current and former employees will share a \$106,166.70 net settlement fund
22 due entirely to the effort and commitment of Edwin Molina. Subject to Court approval, therefore, the
23

24 County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately
25 \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v.*
26 *Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F.
27 Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was
28 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).

Settlement provides for a Class Representative Enhancement Payment of \$5,000.⁶ The Class Representative Enhancement Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action, serving as a private attorney general under PAGA, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class.

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

E. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and Costs

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

⁶ 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; *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. 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).

⁷ Plaintiff is also receiving \$10,000 in exchange for providing a general release of all known and unknown claims against Defendants. This includes a release for non-wage and hour claims. No other class members is providing this release.

California courts routinely award attorneys’ fees equalling one-third or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court-approval of attorneys’ fees of \$79,583.33 (one-third of the Gross Settlement Amount) and up to \$15,000 in actual litigation costs. Here, Class Counsel is requesting an amount that is significantly less than their lodestar. Indeed, Class Counsel is seeking only approximately 37% of their lodestar. (Banerjee Decl. ¶ 27, Mehtani Decl. ¶ 11). Thus, as will be briefed in more detail in connection with final approval, no matter the method used, the requested fees and costs are fair and reasonable.

F. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

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

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

⁸ *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*,

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the
2 same class for purposes of litigation:

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
7 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
8 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
9 purposes for the Rule 23 certification requirements, as they relate to questions of a
10 nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
11 interests of the non-representative class members. The first purpose is inapposite in the
12 settlement context, and the second, as it relates to commonality of issues, only makes a
13 difference if the non-representative class members would do much better by litigating on
14 their own or in their own jurisdiction. The second category concerns are protected by the
15 trial court’s fairness review of the settlement.

16 *Id.* at n19.

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
21 for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where
22 they 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
28 issues which may be jointly tried, when compared with those requiring separate
adjudication, are so numerous or substantial that the maintenance of a class action
would be advantageous to the judicial process and to the litigants.”

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

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 The proposed Settlement Class consists of all non-exempt or hourly paid drivers of Defendants
2 who worked in California from December 3, 2016, through preliminary approval of the settlement.
3 Because all Class Members are either current or former employees of Defendants, the class is readily
4 ascertainable from Defendants' regular business records.

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

11 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
12 from the same factual bases and are based on the same legal theories applicable to the other Class
13 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff
14 maintains that he was injured by the same company-wide practices to which the proposed Settlement
15 Class was subject and seeks the same relief. Plaintiff has already demonstrated his ability to advocate for
16 the interests of the Class by initiating this litigation, undertaking representative discovery, and evaluating
17 the proposed settlement to assure that it is fair.

18 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
19 litigating wage and hour class action cases. (Banerjee Decl. ¶¶ 2-9; Mehtani Decl. ¶¶2-9.) Plaintiff's
20 Counsel have successfully briefed, argued, certified, and gained state and federal court settlement
21 approval of the same class-wide causes of action that are at issue in this case. (Id.) Plaintiff's Counsel's
22 wage and hour class action expertise establishes that they are well qualified to represent the interests of
23 this Class.

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

1 **3. The Proposed Notice Properly Informs Class Members about the Case and**
2 **the Settlement**

3 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
4 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
5 information to decide whether they should accept the benefits offered, opt out and pursue their own
6 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
7 143, 151-52 (1975). The notice must advise class members “that they may be excluded from the class if
8 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
9 request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
10 class members, California authorities generally require service of the class notice by mail or similar
11 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
12 960, 972 (1975).⁹

13 The Parties have jointly drafted the Notice of Class Action Settlement (“Class Notice”) which
14 fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed
15 Class Notice will be mailed to all Class Members by First Class mail and will include information
16 regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms, the class
17 definition, the procedure and time period within which to submit Requests for Exclusions or objections
18 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
19 payments, and the terms and scope of the Released Claims. (Exh. A to Settlement Agreement)

20 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
21 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
22 Agreement ¶ 54.)

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.*
25

26

⁹ Due process does not require that each Class Member actually receive a notice, but rather a
27 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice*
28 *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 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the
2 terms of the proposed compromise and of the options open to dissenting class members.”).

3 **IV. 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.

7
8 Respectfully submitted,

9
10 Dated: April 29, 2022

11 By: /s/ Arnab Banerjee/ am

12 Arnab Banerjee

13 **BANNER LAW GROUP, P.C.**

14 Attorney for Plaintiff Edwin Molina

15 Dated: April 29, 2022

16 /s/ Aanand Mehtani

17 Aanand Mehtani

18 **MEHTANI LAW OFFICES, P.C.**

19 Attorney for Plaintiff Edwin Molina
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: The Water Garden, 2425 Olympic Blvd., Ste. 4000W, Santa Monica, CA 90404. On **April 29, 2022**, I served the foregoing document(s) that, as indicated therein, are described as:

- **DECLARATION OF ARNAB BANERJEE IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- **DECLARATION OF AANAND MEHTANI IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

On the interested party by e-mailing a true copy thereof addressed as follows:

Kevin Levian
kl@levianlaw.com

Gustavo Sustaita
gs@levianlaw.com

Jack Begley
jb@levianlaw.com

☒ **(E-MAIL)** I caused such document(s) to be served via email to the interested parties at their e-mail address listed.

☒ **(ELECTRONIC SERVICE)** I caused such document(s) to be served via electronic service to the interested parties at their e-mail address listed.

☐ **(FAX)** I caused such documents(s) to be served via facsimile on the interested parties at their facsimile numbers listed above. The facsimile numbers used complied with California Rules of Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2006(d), I caused the machine to print a report of the transmission, a copy of which is attached to the original of this declaration.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 29, 2022** in Los Angeles, California.

Lena Ani Kazanchyan
[Print Name Of Person Executing Proof]

[Signature]