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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 FOR THE COUNTY OF LOS ANGELES

17 FATIMA GOODARZI, individually, and on
18 behalf of other members of the general public
19 similarly situated, and as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"),

20 Plaintiff,

21 vs.

22 BELMONT VILLAGE, L.P., a Delaware
limited partnership; BELMONT VILLAGE
23 ALISO VIEJO CA LP, a Delaware limited
partnership; BELMONT VILLAGE
24 BERKELEY, LLC, a Delaware limited liability
company; BELMONT VILLAGE
25 THOUSAND OAKS CA LP, a Delaware
limited partnership; and DOES 1 through 10,
26 inclusive,

27 Defendants.
28

Case No.: 20STCV15572

Assigned to the Hon. Stuart M. Rice

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

Date: July 20, 2022

Time: 10:30 a.m.

Place: Department 1

Complaint Filed: April 22, 2020

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

2 **PLEASE TAKE NOTICE** that on July 20, 2022 at 10:30 a.m., or as soon thereafter as counsel
3 may be heard, in Department 1 of the above-captioned court, located at 312 North Spring Street, Los
4 Angeles, CA 90012, the Honorable Stuart M. Rice presiding, Plaintiffs Fatima Goodarzi and Marianita
5 Yadao will, and hereby do, 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 Raul Perez;
- 8 2. Conditionally certify the proposed Settlement Class for settlement purposes only;
- 9 3. Appoint Fatima Goodarzi and Marianita Yadao as the representatives for the Settlement
10 Class;
- 11 4. Appoint Capstone Law APC and Diversity Law Group, PC as Class Counsel;
- 12 5. Approve distribution of the proposed Notice of Class Action Settlement to the
13 Settlement Class;
- 14 6. Appoint CPT Group, Inc. as the Settlement Administrator; and
- 15 7. Set a hearing date for final approval of the settlement.

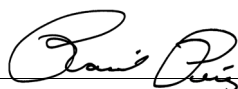
16 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
17 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the
18 Declaration of Raul Perez; (4) the Declaration of Kristen M. Agnew; (5) the Declaration of Fatima
19 Goodarzi; (6) the Declaration of Marianita Yadao; (7) the Joint Stipulation of Class Action Settlement
20 and Release; (8) the Notice of Class Action Settlement; (9) the [Proposed] Order Granting Preliminary
21 Approval of Class Action Settlement; (10) the records, pleadings, and papers filed in this action; and (11)
22 upon such other documentary and oral evidence or argument as may be presented to the Court at or prior
23 to the hearing of this Motion. As this Motion will be unopposed, the Parties respectfully request relief
24 from the page limit requirement set by California Rules of Court, Rule 3.1113(12). Defendant denies any
25 and all liability in connection to Plaintiffs claims and the Actions.

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Dated: June 24, 2022

Respectfully submitted,

By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Fatima Goodarzi and Marianita Yadao (collectively “Plaintiffs”) seek preliminary approval of the Joint Stipulation of Class Action Settlement and Release,¹ which if approved, would provide considerable monetary relief for approximately 7,000 current and former employees of Defendant Belmont Village, L.P. (“Defendant” or “BV”) (collectively with Plaintiffs, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All current and former non-exempt, hourly employees employed by Defendant in the State of California at any time between April 22, 2016 and May 24, 2022 (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$3,250,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of \$1,971,667 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the PAGA Settlement Amount, and the Class Representative Enhancement Payments), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked 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 \$1,083,333), and litigation costs and expenses not to exceed \$30,000, to Capstone Law APC and Diversity Law Group, PC (“Plaintiffs’ Counsel”).
 - (c) Settlement administration costs of approximately \$45,000, to be paid to the jointly selected Settlement Administrator, CPT Group, Inc. (“CPT”).
 - (d) A \$100,000 PAGA settlement, of which 75% (\$75,000) will be paid to the

¹ Hereinafter “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

1 Labor & Workforce Development Agency (“LWDA”), and the remaining 25%
2 (\$25,000) (“PAGA Fund”), will be payable to PAGA Members, defined as: All
3 current and former non-exempt, hourly employees employed by Defendant in
4 the State of California at any time between May 4, 2019 and May 24, 2022. **The**
5 **Entire PAGA Fund will be paid to all PAGA Members, and without the**
6 **need to submit claims for payment.**

7 (e) Class Representative Enhancement Payments of \$10,000, each, to Fatima
8 Goodarzi and Marianita Yadao for their service on behalf of the Settlement
9 Class, the risks they took in bringing the action on behalf of the class, and for
10 general releases of all claims arising out of their employment with Defendant.

11 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
12 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
13 length with helpful guidance from Jeffrey Ross, Esq., an experienced and well-respected class action
14 mediator, and the Settlement confers substantial benefits to Class Members. This relief—averaging
15 approximately \$280 per Class Member from the Net Settlement Fund—is particularly impressive when
16 viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by
17 settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for
18 relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at
19 trial, or of Plaintiffs prevailing at trial but losing on appeal.

20 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
21 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiffs
22 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

23 **II. FACTS AND PROCEDURE**

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

25 On April 22, 2020, Plaintiff Fatima Goodarzi filed this putative class and PAGA action on
26 behalf of herself and all current and former non-exempt, hourly employees employed by Defendant in
27 the State of California asserting claims for: (1) unpaid overtime, (2) unpaid minimum wages, (3) failure
28 to provide meal periods, (4) failure to authorize and permit rest periods, (5) non-compliant wage

1 statements and failure to maintain payroll records, (6) wages not timely paid upon termination, (7) failure
2 to timely pay wages during employment, (8) unreimbursed business expenses, (9) unlawful business
3 practices, and (10) unfair business practices. (Declaration of Raul Perez [“Perez Decl.”] ¶ 2.) On May 29,
4 2020, Defendant removed this case to federal court. (*Id.*)

5 On May 4, 2020, counsel for Ms. Goodarzi sent a PAGA Notice to the California LWDA and
6 Belmont Village. (*Id.* at ¶ 3.) Thereafter, the Parties filed a joint stipulation to allow Plaintiff to file an
7 amended complaint to add a PAGA cause of action, which remained pending before the U.S. District
8 Court. (*Id.*) On March 2, 2022, counsel for Ms. Goodarzi sent an amended PAGA Notice to the
9 California LWDA and Belmont Village. (*Id.*)

10 On June 8, 2020, Plaintiff Marianita Yadao filed a class action Complaint in the Los Angeles
11 County Superior Court alleging class action claims on behalf of herself and all current and former non-
12 exempt, hourly employees employed by Defendant in the State of California asserting claims for: (1)
13 failure to provide meal periods, (2) failure to authorize and permit rest periods, (3) failure to provide
14 accurate itemized wage statements, (4) wages not timely paid upon termination, (5) unfair business
15 practices, and (6) PAGA. (Declaration of Kristen M. Agnew [“Agnew Decl.”] ¶ 5.) On July 17, 2020,
16 Defendant removed this case to federal court. (*Id.*)

17 On August 10, 2020, the U.S. District Court to which the Actions were assigned granted the
18 parties’ stipulation to consolidate the Actions for all purposes. (Perez Decl. ¶ 5.) On March 29, 2022, the
19 Actions were remanded back to this Court. (*Id.*)

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

21 On February 23, 2022, the Parties participated in full-day mediation with Mr. Ross, an
22 experienced mediator of wage and hour class actions. (Perez Decl. ¶ 6.) Mr. Ross helped to manage the
23 Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. (*Id.*)
24 With Mr. Ross’s guidance, the Parties were eventually able to negotiate a complete settlement of
25 Plaintiffs’ claims. (*Id.*) The terms of the settlement are now set forth in complete and final form in the
26 Joint Stipulation of Class Action Settlement and Release. (*Id.*, Ex. 1.) At all times, the Parties’
27 negotiations were adversarial and non-collusive. (*Id.*) The Settlement therefore constitutes a fair,
28 adequate, and reasonable compromise of the claims at issue. (*Id.*)

1 **C. The Proposed Settlement Fully Resolves Plaintiffs’ Claims**

2 **1. Composition of the Settlement Class**

3 The proposed Settlement Class consists of all current and former non-exempt, hourly employees
4 employed by Defendant in the State of California at any time between April 22, 2016 and May 24, 2022.
5 (Settlement Agreement ¶ 5.) There are approximately 7,000 Class Members.

6 **2. Settlement Consideration**

7 Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for the
8 Gross Settlement Amount of \$3,250,000. The Gross Settlement Amount includes: (1) automatic
9 payments to all Participating Class Members—meaning, all Class Members except those who submit
10 timely and valid Requests for Exclusion—from the Net Settlement Fund; (2) \$1,083,333 in attorneys’
11 fees (i.e., one-third of the common fund) and up to \$30,000 in litigation costs to Plaintiffs’ Counsel; (3)
12 Settlement Administration Costs of approximately \$45,000; (4) a \$75,000 payment to the LWDA and a
13 \$25,000 payment to PAGA Members; and (5) Class Representative Enhancement Payments of \$10,000,
14 each, for Plaintiffs’ service on behalf of the Settlement Class, the risks they took in bringing their
15 representative claims, and for general releases of all claims arising out of their employment with
16 Defendant. (Settlement Agreement ¶¶ 32-36.)

17 Subject to the Court approving Attorneys’ Fees and Costs, Settlement Administration Costs, the
18 payment to the LWDA, and the Class Representative Enhancement Payments, the Net Settlement Fund
19 will be distributed to Participating Class Members in full. (Settlement Agreement ¶ 38.)

20 **3. Formula for Calculating Payments from the Net Settlement Fund**

21 Defendant will calculate the total number of Workweeks worked by each Class Member during
22 the Class Period and the aggregate total number of Workweeks worked by all Class Members during the
23 Class Period. To determine each Class Member’s estimated “Individual Settlement Payment” from the
24 Net Settlement Fund, the Settlement Administrator will use the following formula:

- 25 • The Net Settlement Fund will be divided by the aggregate total number of Workweeks,
26 resulting in the “Workweek Value.” Each Class Member’s “Individual Settlement
27 Payment” will be calculated by multiplying each individual Class Member’s total
28 number of Workweeks by the Workweek Value.

- 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 Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Fund.

(Settlement Agreement ¶ 40(a).)

Given that there are approximately 7,000 Class Members, the average net recovery will be approximately \$280. 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).

4. Formula for Calculating Payments from the PAGA Fund

Defendant will calculate the total number of Workweeks worked by each PAGA Member during the PAGA Period and the aggregate total number of Workweeks worked by all PAGA Members

1 during the PAGA Period. To determine each PAGA Member's estimated "Individual Settlement
2 Payment," the Settlement Administrator will use the following formula:

- 3 • The PAGA Fund will be divided by the aggregate total number of Workweeks, resulting
4 in the "PAGA Workweek Value."
- 5 • Each PAGA Member's "Individual Settlement Payment" will be calculated by
6 multiplying each individual PAGA Member's total number of Workweeks by the
7 PAGA Workweek Value.
- 8 • The entire PAGA Fund will be disbursed to all PAGA Members.

9 (Settlement Agreement ¶ 40(b).)

10 **5. Release by the Settlement Class**

11 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will
12 agree to release the Released Class Claims during the Class Period:

13 All claims for the failure to pay minimum wages, failure to pay overtime wages, failure
14 to provide meal periods and pay meal period premiums, failure to authorize and permit
15 rest periods and failure to pay rest period premiums, failure to pay timely all wages due
16 upon separation of employment (which attaches to all claims for unpaid wages which are
17 known or unknown, under any theory of liability, whether for off-the-clock work,
18 interruptions of meal and rest periods, calculation of the regular rate of pay, and sick pay),
19 failure to pay timely wages during employment, failure to provide accurate itemized
20 wage statements, failure to keep requisite payroll records, failure to reimburse necessary
21 business expenses, violation of Business and Professions Code § 17200, failure to pay
22 sick and vacation pay, and violations of Labor Code §§ 200, 201, 202, 203 (derivative of
23 any known or unknown unpaid wages theory), 204, 218.5, 221, 226(a) (derivative of any
24 known or unknown unpaid wages theory), 226.7, 227.3, 246, 246.5, 247.5, 248.5, 510,
25 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, and 2802, Code of Civil Procedure
26 § 1021.5, and applicable IWC Wage Orders.

21 (Settlement Agreement ¶¶ 24, 52.)

22 **6. Release by PAGA Members**

23 In exchange for the PAGA Settlement Amount, Plaintiffs and PAGA Members will agree to
24 release the Released PAGA Claims during the PAGA Period:

25 All claims for violations of California Labor Code §§ 2698, et seq. (PAGA)
26 based on all alleged violations of the California Labor Code set forth in
27 Paragraph 24 above, including claims for unpaid wages, off-the-clock work,
28 vacation pay, and sick pay.

28 (Settlement Agreement ¶¶ 25, 53.)

III. ARGUMENT

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

1. Courts Review Class Action Settlements to Ensure that the Terms Are 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 preliminary approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

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

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

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

“is small” (collectively, “*Dunk* Factors”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).²

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

Plaintiffs’ Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiffs’ claims, and were able to objectively assess the settlement’s reasonableness. (Perez Decl. ¶¶ 7-11; Agnew Decl. ¶ 8-10.) For example, prior to filing their respective actions, Plaintiffs contacted Plaintiffs’ Counsel to discuss the factual bases for pursuing an action against Defendant for Labor Code violations. (Perez Decl. ¶ 7; Agnew Decl. ¶ 3.) Plaintiffs were intimately familiar with Defendant’s labor policies and practices, and over the course of multiple interviews, knowledgeably summarized those policies and practices to Plaintiffs’ Counsel. (*Id.*) During those conversations, they explained how the policies and practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code violations. (*Id.*) Based on these interviews with Plaintiffs, Plaintiffs’ Counsel determined that there were legally sufficient grounds for pursuing an action against Defendant. (*Id.*)

In preparation for drafting their complaints, Plaintiffs’ Counsel conducted their own preliminary investigation into the factual bases for Plaintiffs’ claims, which entailed, *inter alia*, a careful examination of Plaintiffs’ employment records. (Perez Decl. ¶ 8; Agnew Decl. ¶ 3.) Plaintiffs’ Counsel also prepared a detailed letters to notify the LWDA of Plaintiffs’ intent to seek civil penalties and other available relief recoverable under PAGA for Labor Code violations. (*Id.*) Significant research and effort were expended

² The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *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 to prepare a PAGA notice that was consistent with the developing legal requirements so as to withstand
2 any challenge from Defendant regarding the notice's sufficiency. (*Id.*)

3 In response to Plaintiffs' evidentiary requests, Plaintiffs' Counsel received a considerable
4 amount of documents and data, including employee demographic data, Plaintiffs' and Class Members'
5 timekeeping and payroll records from April 22, 2016 to March 27, 2021, and Defendant's written labor
6 policies manuals which covered a broad range of topics including, *inter alia*, employee clock-in policies
7 and procedures, attendance policies, meal periods/rest periods, overtime & premium pay, etc. (Perez
8 Decl. ¶ 9; Agnew Decl. ¶¶ 8-10.) The document and data exchanges allowed Plaintiffs' Counsel to fully
9 assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and
10 ultimately enabled Plaintiffs' Counsel so as to make an independent assessment of the reasonableness of
11 the settlement's terms. (*Id.*)

12 In summary, Plaintiffs' Counsel performed a thorough investigation into the claims at issue,
13 which included: (1) determining Plaintiffs' suitability as private attorneys general and class
14 representatives through interviews, background investigations, and analyses of their employment files
15 and related records; (2) evaluating all of Plaintiffs' potential representative claims; (3) researching similar
16 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
17 employer; (4) analyzing Class Members' time and wage records; (5) reviewing Defendant's
18 employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiffs'
19 claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief;
20 and (9) participating in the mediation. (Perez Decl. ¶ 7-10; Agnew Decl. ¶ 3, 8-10.)

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

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

28 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
2 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
3 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
4 11.51.

5 As explained above, the Parties participated in a mediation with Mr. Ross, an experienced
6 mediator of wage and hour class actions. Mr. Ross helped manage the Parties' expectations and provided
7 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
8 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor
9 of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008
10 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
11 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
12 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
13 were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
14 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the
15 conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of*
16 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord). At all times, the
17 Parties' negotiations were adversarial and non-collusive. (Perez Decl. ¶ 6; Agnew Decl. ¶ 11.)

18 The Parties were represented by experienced class action counsel throughout the negotiations
19 resulting in this Settlement. Plaintiffs are represented by Capstone Law APC and Diversity Law Group,
20 PC. Plaintiffs' Counsel employ seasoned class action attorneys who regularly litigate wage and hour
21 claims through certification and on the merits, and have considerable experience settling wage and hour
22 class actions. (Perez Decl. ¶¶ 20-28, Ex. 2; Agnew Decl. ¶¶ 13-18.)

23 Defendant is represented by Lewis Brisbois Bisgaard & Smith LLP, a respected defense firm.

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”).

Defendant's Exposure for the Class Claims	
Meal Period Claim ⁴	\$9,225,815.00
Rest Period Claim ⁵	\$12,331,995.00
Off-the-Clock Claim ⁶	\$81,420.00
Business Expense Reimbursement Claim ⁷	\$102,480.00
Wage Statement Claim ⁸	\$3,134,765.00
Final Pay Claim ⁹	\$1,188,320.00
Total	\$26,064,795.00

The above estimates assume that each and every one of Plaintiffs' claims would have been

⁴ Plaintiffs conservatively estimated that class-wide violations were at 50% of all meal period eligible shifts (less shifts with meal premium payments paid), for a total of 580,605 shifts with violations, each earning one hour of premium pay at the average hourly rate of \$15.89.

⁵ Plaintiffs conservatively estimated that class-wide violations were at 50% of all rest period eligible shifts, for a total of 776,085 shifts with violations, each earning one hour of premium pay at the average hourly rate of \$15.89.

⁶ Assuming one hour incurred by each new hire (5,124) for drug testing, at the average hourly rate of \$15.89.

⁷ Based on a \$20 mileage expenditure for each new hire employee. Damages is calculated as number of new hires × \$20 [(5,124) * \$20].

⁸ Based on the preceding allegations, Plaintiffs allege that Defendant issued Class Members incorrectly itemized wage statements. Penalties for wage statement violations are calculated according to the formula provided by Labor Code section 226(e)(1): An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000). Defendant's maximum potential exposure would be calculated as follows: Statutory penalties are the lesser of \$4,000 per employee (\$22,092,000) or [(128,152 pay periods × \$100 per initial violation) – 5,523 affected employees × \$50 per initial violation) = \$12,539,050]. However, this derivative wage statement claim is only as strong as the underlying predicate claims. Defendant would also have argued that to recover penalties for wage statement violations, Plaintiffs would have had to show that it knowingly and intentionally issued wage statements with unlawful deficiencies. *See* Lab. Code § 226; *Price v. Starbucks Corp.*, 192 Cal. App. 4th 1136, 1142-43 (2011). Given the contingent nature of the wage statement claim, and the strength of Defendant's defenses to all claims, Plaintiffs discounted Defendant's exposure by 75%, or to \$3,134,765.

⁹ Based on the forgoing allegations, Plaintiffs allege that Defendant is liable for statutory penalties under Labor Code section 203. Section 203 provides that "the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Defendant's exposure would be as follows: 3,116 former employees × \$15.89/hour × 8 hours/day × 30 days = \$11,883,177.60. However, while Section 203 penalties are relatively straightforward to calculate, the analysis becomes more difficult for settlement purposes as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. For example, Defendant argued that no waiting-time penalties can be awarded unless the failure to pay wages is "willful," an element that Plaintiff acknowledges would have been difficult to prove. *See* Cal. Code Regs. tit. 8, § 13520 ("[a] willful failure to pay wages within the meaning of Labor Code section 203 occurs when an employer intentionally fails to pay wages to an employee when those wages were due."). Given the contingent nature of the Section 203 claim, and the strength of Defendant's defenses to all claims, Plaintiffs discounted Defendant's exposure by 90%, or to \$1,188,320.

1 certified for class-wide resolution, that Plaintiffs’ would have prevailed at trial, and that the jury’s verdict
2 would have been affirmed on appeal. Understandably, for purposes of evaluating the settlement’s
3 reasonableness, this estimate must be “tempered by factors such as the risk of losing at trial, the expense
4 of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-*
5 *Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D.
6 Cal. 2014).

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

15 After taking into account the Discount Factors, Plaintiffs’ Counsel determined that it would be
16 reasonable to settle for a fraction of Defendant’s maximum potential exposure for the class claims
17 (PAGA discussed in the following section), or approximately 12.5%, which is essentially the product of
18 the probability of: (i) certification being granted on **all claims** ($\approx 50\%$); (ii) prevailing on summary
19 judgment/motions in limine/renewed motions to deny certification on **all claims** ($\approx 50\%$); (iii) prevailing
20 at trial on **all of Plaintiffs’ claims** ($\approx 50\%$); i.e., $50\% \times 50\% \times 50\%$.

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

Pursuant to the Settlement Agreement, \$100,000 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$75,000) will be paid directly to the LWDA, and the remaining 25% (\$25,000) will be paid to Participating Class Members. (Settlement Agreement ¶ 36.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendant during discovery, Plaintiffs’ Counsel determined that aggrieved employees worked a combined total of approximately 130,000 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 aggrieved

¹⁰ 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.”).

1 employee per pay period for each subsequent violation.

2 However, a number of courts have found that the “subsequent” penalty under PAGA applies
3 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
4 *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to
5 “heightened civil penalties” because the defendant was not given notice by the Labor Commissioner
6 when the “subsequent” violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX,
7 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties .
8 . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . .
9 [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA
10 violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not be calculated to
11 determine the amount in controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-
12 01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an
13 employer does not have notice that they are committing a violation, they are not subject to the heightened
14 penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx),
15 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to
16 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
17 employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
18 4th 1157 (2008). Under this line of cases, Defendant’s exposure would be approximately \$13,000,000 =
19 130,000 violative pay periods × \$100.

20 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
21 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
22 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
23 reducing PAGA penalties, courts have considered issues including whether the employees suffered
24 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
25 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
26 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
27 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
28 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. If a similar reduction had been applied here,
8 Plaintiff would have recovered only approximately \$27,300 (\$13 million × 0.0021 reduction).

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

22 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
23 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
24 approved by California courts.¹¹ Where PAGA penalties are negotiated in good faith and “there is no

25
26 ¹¹ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
27 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
28 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,

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 **D. The Court Should Preliminarily Approve the Negotiated Class Representative**
7 **Enhancement Payments**

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

19 Approximately 7,000 current and former employees will share a \$3,250,000 settlement fund due
20 entirely to the effort and commitment of Fatima Goodarzi and Marianita Yadao. Subject to Court

21 2011 WL 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
22 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
23 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
24 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
25 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane
26 Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
27 to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
28 Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 approval, therefore, the Settlement provides for Class Representative Enhancement Payments of
2 \$10,000, each.¹² The Class Representative Enhancement Payments are fair and reasonable compensation
3 for Plaintiffs' effort in pursuing the action, serving as private attorneys general under PAGA, assisting
4 counsel with the litigation and settlement, being deposed, regularly conferring with counsel on the status
5 of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
6 ensure that its terms are fair and provide adequate relief for the Settlement Class.

7 Plaintiffs will file a formal motion for the negotiated Class Representative Enhancement
8 Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the
9 above showing is sufficient for preliminary approval of the negotiated Class Representative
10 Enhancement Payments.

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

13 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
14 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
15 "Fee awards in class actions average around one-third of the recovery regardless of whether the
16 percentage method or the lodestar method is used." *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App.

17 ¹² Such amounts are reasonable by reference to the amounts that California courts (both federal
18 and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter*
19 *v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000
20 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146
21 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named
22 plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento
23 County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff);
24 *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016)
25 (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*,
26 No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the
27 named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
28 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).

1 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal
2 quotations omitted). Consistent with that observation, California state and federal courts routinely award
3 attorneys’ fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231
4 Cal. App. 4th 860, 871 (2016) (“33 1/3 percent of the common fund is consistent with, and in the range
5 of, awards in other class action lawsuits”); *Chavez*, 162 Cal. App. 4th at 66 n.11 (“Empirical studies
6 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
7 actions average around one-third of the recovery.”); Eisenberg & Miller, *Attorney Fees in Class Action*
8 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35
9 (independent studies of class action litigation nationwide conclude that fees representing one-third of the
10 total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v.*
11 *Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte v. Robert Half*
12 *Internat. Inc.*, 1 Cal. 5th 480 (2016).

13 At final approval, Plaintiffs will seek Court-approval of attorneys’ fees of \$1,083,333 (one-third
14 of the Class Settlement Amount) and \$30,000 in litigation costs.

15 **F. California Law Authorizes Provisional Certification for Settlement Purposes**

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

17 Class actions are statutorily authorized “when the question is one of common or general interest,
18 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
19 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
20 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
21 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
22 treatment is appropriate even if class members at some point may be required to make an individual
23 showing as to eligibility for recovery. *Bufl v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,
24 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

25 Conditional certification of the proposed Settlement Class is particularly warranted here given
26 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
27 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification
28

in settlement cases).¹³ In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation:

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

Id. at n19.

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

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

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

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

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

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

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

6 The proposed Settlement Class consists of all current and former non-exempt, hourly employees
7 employed by Defendant in the State of California at any time between April 22, 2016 and May 24, 2022.
8 Because all Class Members are either current or former employees of Defendant, the class is readily
9 ascertainable from Defendant’s regular business records.

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

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

23 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
24 litigating wage and hour class action cases. (Perez Decl. ¶¶ 20-28, Ex. 2; Agnew Decl. ¶¶ 13-18.)
25 Plaintiffs’ Counsel have successfully briefed, argued, certified, and gained state and federal court
26 settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiffs’
27 Counsel’s wage and hour class action expertise establishes that they are well qualified to represent the
28 interests of this Class.

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

6 **3. The Proposed Notice Properly Informs Class Members about the Case and**
7 **the Settlement**

8 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
9 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
10 information to decide whether they should accept the benefits offered, opt out and pursue their own
11 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
12 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
13 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
14 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
15 class members, California authorities generally require service of the class notice by mail or similar
16 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
17 960, 972 (1975).¹⁴

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

25
26 ¹⁴ 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 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
2 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
3 Agreement ¶ 45.)

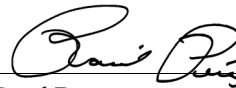
4 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
5 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*
6 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class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

8 **IV. CONCLUSION**

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

12
13 Dated: June 24, 2022

Respectfully submitted,

14 By: 

15 Raul Perez
16 Orlando Villalba
17 Helga Hakimi
18 Roxanna Tabatabaeepour
19 **CAPSTONE LAW APC**

20 Larry W. Lee
21 Kristen M. Agnew
22 Nicholas Rosenthal
23 **DIVERSITY LAW GROUP, P.C.**

24 Attorney for Plaintiffs Fatima Goodarzi and
25 Marianita Yadao
26
27
28

1 **PROOF OF SERVICE**

2 I am employed in the State of California, County of Los Angeles. I am over the age of 18
3 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

4 On **June 24, 2022**, I served the document(s) described as: **NOTICE OF MOTION AND**
5 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
6 **MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

7 Jeffrey Ranen
8 Jeffrey.ranen@lewisbrisbois.com
9 Kelley Fox
10 Kelley.Fox@lewisbrisbois.com
11 LEWIS BRISBOIS BISGAARD & SMITH
12 LLP
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14 Los Angeles, CA 90017

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Attorneys for Plaintiffs
Marianita Yadao

19 [] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
20 for mailing in the ordinary course of business at Los Angeles, California. I am “readily
21 familiar” with this firm’s practice of collection and processing correspondence for
22 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service
23 that same day in the ordinary course of business with postage thereon fully prepaid at
24 Los Angeles, California.

22 [] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
23 California, by e-mail delivery on the parties listed herein at their most recent known e-
24 mail address or e-mail of record in this action.

24 [X] **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted
25 electronically via One Legal eService to the individuals listed above, as they exist on that
26 database. This will constitute service of the document(s).

26 [] **BY FAX:** I hereby certify that this document was served from Los Angeles, California,
27 by facsimile delivery on the parties listed herein at their most recent fax number of record
28 in this action.

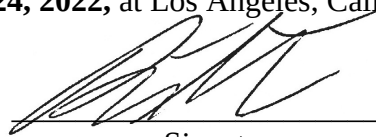
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[] **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 24, 2022**, at Los Angeles, California.

Riley McIntire
Type or Print Name


Signature