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individually and on behalf of all other similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KAYLA MILLIGAN, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

CWI, Inc. d/b/a Camping World, a Kentucky
Corporation; and DOES 1-50, inclusive

Defendants.

CASE NO. CIVDS2020159

Assigned to the Hon. David Cohn

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

[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of Class Action
Settlement; Declaration of Plaintiff Kayla Milligan;
James Hawkins [Proposed] Order filed concurrently
herewith]

Date: May 2, 2022
Time: 08:30 a.m.
Dept.: S-26

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

2 **PLEASE TAKE NOTICE** that on May 2, 2022 **at 9:00 a.m.**, or as soon thereafter as counsel
3 may be heard, in Department S-26 of the above-captioned court, located at 247 West Third Street, San
4 Bernardino, CA 92415, the Honorable David Cohn presiding, Plaintiff Kayla Milligan (“Plaintiff”) will,
5 and hereby does, move this Court for an order:

6 1. Granting preliminarily approval of the proposed all-in non-revisionary **\$1,500,000.00**
7 Settlement as described herein and as set forth in the Class and PAGA Action Settlement Agreement and
8 Release (“Settlement Agreement”), attached as **Exhibit 1** to the Declaration of James Hawkins;

9 2. Granting preliminary approval of the Settlement Agreement, attached as **Exhibit 1** to the
10 Declaration of James Hawkins, as to the California Class Action and PAGA Action;

11 3. Approving the Notice of Class Action and Private Attorney General Act Settlement
12 (“Notice”) attached as **Exhibit “A”** to the Settlement Agreement;

13 4. Conditionally certifying the California Class for settlement purposes;

14 5. Appointing James Hawkins, APLC as class counsel (“Class Counsel”), and
15 preliminarily approving Class Counsel’s request for attorneys’ fees in the amount of **\$500,000.00**;

16 6. Preliminarily approving Class Counsel’s request for reimbursement of litigation costs
17 and expenses not to exceed **\$30,000.00**;

18 7. Preliminary appointing and approving Kayla Milligan as the representative for the
19 Putative Class Members, Settlement Class Members, and PAGA Releasees;

20 8. Preliminarily approving the **\$10,000.00** Service Award to Plaintiff as the class
21 representative;

22 9. Appoint ILYM Group, Inc. as the Settlement Administrator;

23 10. Directing ILYM Group, Inc. to distribute the proposed Notice to the Class, PAGA
24 Releasees, and to direct ILYM Group, Inc. to carry out all of the other responsibilities outlined in the
25 Settlement Agreement; and

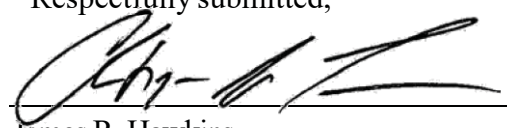
26 11. Set a hearing date for final approval of the Settlement.

27 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
28 Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of Class Action

1 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Kayla Milligan; (5) the Class
2 and PAGA Action Settlement Agreement and Release and exhibits attached thereto; (6) the [Proposed]
3 Order Granting Preliminary Approval of Class Action Settlement; (7) the records, pleadings, and papers
4 filed in this action; and (8) upon such other documentary and oral evidence or argument as may be
5 presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the Parties
6 respectfully request relief from the page limit requirement set by California Rules of Court, Rule
7 3.1113(5).

8 Dated: February 16, 2022

Respectfully submitted,

9
10 By: 

James R. Hawkins

Christina M. Lucio

JAMES HAWKINS, APLC

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12 Attorneys for Plaintiff Kayla Milligan individually
13 and on behalf of all other similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Kayla Milligan is the named plaintiff (“Plaintiff”) in this action brought against Defendant CWI,
4 Inc. doing business as Camping World (“Defendant” or “CWI”) (collectively with Plaintiff, the
5 “Parties”) for wage and hour violations and for penalties for these wage and hour violations under the
6 Private Attorney’s General Act (“PAGA”). Following a thorough investigation and evaluation of their
7 respective claims and defenses, the Parties participated in a joint mediation session with Mr. Jeffrey
8 Ross, Esq., an experienced mediator of wage and hour actions. With Mr. Ross’s guidance, the Parties
9 were able to negotiate a global settlement of the Action for \$1,500,000.00.

10 Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as
11 memorialized in the Class and PAGA Action Settlement Agreement and Release (hereinafter,
12 “Settlement Agreement”).¹ If approved, the Settlement would provide considerable monetary relief for
13 approximately 662 current and former employees of Defendant with approximately 49,063 workweeks.²
14 The principal terms of the Settlement provide for the following:

15 (1) Conditional certification of a Settlement Class defined as: any and all current and
16 former hourly-paid or non-exempt employees employed by Defendant within the State
17 of California at any time from July 8, 2016 through the Preliminary Approval hearing
18 date or up to when the Workweeks at Issue exceed 49,437 workweeks, whichever is
19 earlier (“Class Members”).

20 (2) A **non-reversionary** Maximum Gross Settlement Amount of \$1,500,000.00. The
21 Maximum Gross Settlement Amount (“GSA”) includes: (1) payments to the Settlement
22 Class Members; (2) a PAGA Payment of \$125,000.00; (3) Class Counsel’s attorneys’ fees of
23 up to 1/3 of the GSA; (4) Class Counsel’s costs and expenses not to exceed \$30,000.00; (5) all

24
25 ¹ The Settlement Agreement is attached as **Exhibit 1** to the accompanying Declaration of James R.
26 Hawkins In Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action
Settlement (“Hawkins Decl.”), Ex. “1.”

27 ² These numbers were reached based on time and payroll data that was current up to September 26,
28 2021. The Parties are presently in the process of acquiring updated workweek and pay period
calculations that will have calculations current to the present. The Parties do not anticipate the updated
pay and time data will substantively affect the above-mentioned numbers and other calculations in this

1 fees, costs, and expenses associated with a mutually agreed upon Settlement Administrator to
2 administer the settlement currently estimated at \$20,000.00; and (6) a Service Award to the
3 Plaintiff in the amount of \$10,000. **The entire GSA will be paid to all Class Members who**
4 **do not opt out of the Settlement Class, and without the need to submit claims for**
5 **payment.**

6 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
7 Class' behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm's
8 length with helpful guidance from Mr. Ross, and the Settlement confers substantial benefits to Class
9 Members. The Net Settlement Amount is estimated to be approximately **\$815,000.00**. This relief—
10 averaging approximately **\$1,231.12** per Class Member -- is particularly impressive when viewed against
11 the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather
12 than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they
13 have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiff
14 prevailing at trial but losing on appeal.

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

18 **II. FACTS AND PROCEDURE**

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

20 On July 8, 2020, Plaintiff Milligan filed her class action complaint in the Superior Court of the
21 State of California, for the County of San Bernardino (Case No. CIVDS2013999) alleging claims for (1)
22 failure to pay wages; (2) failure to provide meal breaks as required; (3) failure to authorize/permit rest
23 breaks; (4) failure to timely pay wages; (5) failure to provide accurate itemized wages statements; (6)
24 failure to provide suitable seating; and (7) violation of California Business & Professions Code §§
25 17200, et seq. ("Class Complaint"). ((Declaration of James Hawkins ["Hawkins Decl."] ¶ 3.) On
26 September 9, 2020, the Class Action was removed to the United States District Court of California, Case

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28

Motion.

No. 5:20-cv-01847-MWF-SHK. Plaintiff Milligan submitted a PAGA notice to the LWDA on July 7, 2020, in accordance with the requirements of Labor Code section 2699.3(a). The PAGA notice alleged that Defendant had violated the various California Labor Code sections alleged in her class action complaint. (Hawkins Decl. ¶ 6.)

On September 22, 2020, Plaintiff filed a PAGA complaint in the Superior Court of the State of California, San Bernardino County, Case No. CIVDS2020159, in which she alleged the following causes of actions: (1) violation of California Labor Code sections 2698, *et seq.* (Private Attorney General Act of 2004), which includes allegations of (a) failure to pay all wages owed, including minimum wage and overtime, (b) failure to provide lawful meal periods or compensation in lieu thereof, (c) failure to authorize or permit lawful rest periods or provide compensation in lieu thereof, (d) willful failure to provide accurate semi-monthly itemized wage statements, (e) failure to pay all wages due upon separation of employment, and (f) failure to provide suitable seating (hereinafter, “PAGA Complaint” or “PAGA Action”). Plaintiff filed a First Amended Complaint in the present matter adding the class claims from the Class Complaint with the PAGA claims in the present matter. (Declaration of James Hawkins [“Hawkins Decl.”] ¶ 3.)³

Defendant timely filed answers to both complaints that generally and specifically denied Plaintiff’s claims of wrongdoing as alleged, while asserting all applicable affirmative defenses, including a defense that Milligan’s claims were subject to binding arbitration, and continues to deny, each and every material allegation, dispute, and claim raised in the underlying actions. (Hawkins Decl. ¶ 7.) Defendant has at all times denied, and continues to deny, all of these allegations, and denies any and all liability for Plaintiff’s claims. Defendant further denies that Plaintiff’s allegations are appropriate for class, and/or representative treatment for any purpose other than for settlement purposes only. (Id. ¶ 8.)

³ On March 8, 2021, Plaintiff filed a single-plaintiff discrimination and wrongful termination action, entitled *Kayla Milligan v. CWI, Inc. and Jerry Lopez*, in Shasta County Superior Court, Case No. 196840, alleging twelve individual causes of action including: (1) Sex/Gender Discrimination; (2) Sex/Gender Harassment; (3) Assault; (4) Battery; (5) Pregnancy Discrimination; (6) Disability Discrimination; (7) Failure to Accommodate; (8) Failure to Engage in the Interactive Process; (9) Failure to Prevent Discrimination, Harassment, and Retaliation; (10) Retaliation in violation of Cal. Gov’t Code §12940; (11) Wrongful Termination; and (12) Retaliation in violation of Cal. Gov’t Code §12945.2 (hereinafter the “Individual Complaint”). The Parties did not settle, nor did they attempt to settle, the claims in Plaintiff’s Individual Complaint. (Settlement Agreement ¶¶ 1.12-1.15, 2.13, 2.20). (Hawkins

1 On December 28, 2021, the Parties filed a Joint Stipulation to File First Amended Complaint
2 (“FAC”) and consolidate the Class Action and PAGA Action, which was granted by the Court on
3 December 30, 2021. (Hawkins Decl. ¶ 9.) The FAC consolidated the PAGA Complaint and Class
4 Complaint into one Operative Complaint for purposes of this Settlement. The FAC and all allegations
5 and causes of action were deemed denied by Defendant, and Defendant was not required to file an
6 Answer or any other responsive pleading to the FAC. The FAC related back to Plaintiff’s original
7 complaint filed on July 8, 2020 with regards to all applicable claims. Similarly, the FAC related back to
8 Plaintiff’s PAGA LWDA letter submitted on July 7, 2020 with regards to all Private Attorney General
9 Act claims. (Id.)

10 **B. The Parties Settled After Mediation and Mediator Proposal**

11 On June 17, 2021, in an effort to resolve Plaintiff’s claims and to keep litigation costs to a
12 minimum, and after engaging in informal discovery, the Parties attended a full mediation session with
13 Jeff Ross, an experienced wage and hour class action and PAGA-action mediator to resolve the Class
14 Action and PAGA Action. On the day of the mediation, after an 11-hour day of arms-length
15 negotiations, the Parties reached an agreement to settle all of the claims alleged in Plaintiff’s PAGA
16 Complaint and the Class Action Complaint. (Hawkins Decl. ¶ 12, Ex. 1.)

17 **III. SUMMARY OF SETTLEMENT TERMS**

18 **A. The Proposed Settlement Fully Resolves Plaintiff’s Claims**

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

20 The proposed Settlement Class consists of any and all current and former hourly-paid or non-
21 exempt employees employed by Defendant within the State of California at any time from July 8, 2016
22 through the Preliminary Approval hearing date or up to when the Workweeks at Issue exceed 49,437
23 workweeks, whichever is earlier. (Settlement Agreement ¶ 2.1, 2.47.) There are approximately 662 Class
24 Members. (Hawkins Decl. ¶ 21.)

25 **2. Settlement Consideration**

26 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the

27
28 Decl. ¶ 11.)

GSA of **\$1,500,000.00**. The GSA includes: (1) automatic payments from the Net Settlement Amount to all Class Members who do not opt out; (2) attorneys' fees in the amount of up to **\$500,000.00** (1/3 of the GSA) and reimbursement of litigation costs and expenses in the amount of up to **\$30,000.00** to Class Counsel ("Attorneys' Fees and Costs"); (3) Service Award to Plaintiff in the amount of up to **\$10,000.00** ("Service Award"); (4) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed **\$20,000.00** ("Settlement Administration Costs"); (5) the twenty-five percent (25%) share of the PAGA Payment to be a part of the Net Settlement Amount that will be distributed to Class Members in the PAGA Releasees group in the amount of **\$31,250.00**; and (6) the seventy-five percent (75%) share of PAGA Payment in the amount of **\$93,750.00** to the California Labor and Workforce Development Agency ("LWDA Payment"). (Settlement Agreement ¶¶ 4.5, 4.6.)

Subject to the Court approving Attorneys' Fees and Costs, Settlement Administration costs, the PAGA Payment, and the Service Award, the Net Settlement Amount will be distributed to all Class Members and PAGA Releasees in full. (Settlement Agreement ¶¶ 2.18, 2.21.)

3. Formula for Calculating Payments from the Class and PAGA Settlement Amounts

Each Class Member's share of the Class Settlement and PAGA Payment will be proportional to the number of work weeks during which s/he or they worked during the Settlement Period. (Settlement Agreement ¶¶ 2.33, 2.49, 4.5.1, 4.6.) The Settlement Administrator will calculate payments as follows:

- The amount of each Class Member Individual Settlement Payment will be calculated on a *pro rata* basis, based on the number of work weeks each Settlement Class Member worked during the Settlement Period.
- To establish the work week period value, the Settlement Administrator will first determine the total number of pay periods worked by the Settlement Class Members during the Settlement Period.
- There is no need for a Settlement Class Member to submit a claim form in order to be eligible for and to receive a Class Member Individual Settlement Payment.
- Class Member Individual Settlement Payments will be reduced by any required deductions for each Settlement Class Member, including employee-side tax

withholdings and/or deductions.

- The 25% of the \$125,000.00 PAGA payment, which amounts to \$31,250.00 of the PAGA Payment shall be distributed *pro rata* to all PAGA Releasees, based on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA Pay Periods worked by all PAGA Releasees.

(*Id.*; Settlement Agreement ¶¶ 4.5, 4.6, 4.10.)

Given that there are approximately 662 Class Members, the average net recovery will be approximately \$1,231.12. (Hawkins Decl. ¶ 21, 35) 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. Release by the Settlement Class

In exchange for the GSA, Plaintiff and Settlement Class Members will agree to release the Released Claims during the Settlement Period, as defined in the Settlement Agreement ¶¶ 2.37, 8.1.1. Further, Class Members will not be able to opt out of the released PAGA Claims and will be entitled to their portion of the PAGA Payment for the released PAGA Claims during the PAGA Settlement Period. (Settlement Agreement ¶ 8.1.3.)

1 **IV. ARGUMENT**

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

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

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

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

21 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
22 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” See
23 *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”).

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

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

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

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

16 In response to Plaintiff’s informal discovery requests, Class Counsel received a considerable
17 amount of documents and data, including employee demographic data, time and pay data and records,
18 and Defendant’s policies and procedures manuals which covered a broad range of topics including, *inter*
19 *alia*, employee clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime

21 ⁴ The presumption of fairness is consistent with California’s public policy goal of favoring settlements.
22 *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”);
23 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the
24 compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland*
25 *Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred
26 means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v.*
27 *Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and
28 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 & premium pay, etc. (Settlement Agreement ¶ 1.11; Hawkins Decl. ¶ 14.) The document and data
2 exchanges allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as
3 well as the impediments to recovery, and ultimately enabled Class Counsel so as to make an independent
4 assessment of the reasonableness of the settlement's terms. (Hawkins Decl. ¶ 14.)

5 In summary, Class Counsel performed a thorough investigation into the claims at issue, which
6 included: (1) determining Plaintiff's suitability as private attorney general and class representative
7 through interviews, background investigations, and analyses of her employment files and related records;
8 (2) evaluating all of Plaintiff's potential representative claims; (3) engaging in informal discovery, which
9 included production of Defendant's timekeeping, meal period and rest break policies; documents
10 evidencing Defendant's handbooks, policies and procedures for managing payment for all hours worked,
11 meal periods and rest breaks; and other relevant information, including Plaintiff's personnel and payroll
12 file; (4) exchanging documents, data, and information based on electronic time and pay records for the
13 Putative Class Members to determine the number of current and former putative class members who
14 worked during the relevant time period, the total number of workweeks at issue, the average hourly rate
15 for the putative class and aggrieved employees; (5) researching similar wage and hour class actions as to
16 the claims brought, the nature of the positions, and the type of employer; (6) analyzing employees' time,
17 pay, and wage records; (7) reviewing Defendant's employment policies and practices; (8) researching
18 settlements in similar cases; (9) evaluating Plaintiff's claims and estimating Defendant's liability for
19 purposes of settlement; (10) drafting the mediation brief; and (11) participating in the mediation.
20 (Hawkins Decl. ¶ 15.)

21 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Class Counsel
22 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. (Hawkins Decl. ¶ 16.)

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 settled this matter with the assistance of an experienced wage
6 and hour class and PAGA action mediator, Jeff Ross. Mr. Ross helped to manage the Parties'
7 expectations and provided a useful, neutral analysis of the issues and risks to both sides. It took an 11-
8 hour day of arms-length negotiations to reach an agreement in principle. (Hawkins Decl., ¶ 12.) The
9 process was so adversarial, the Parties were unable to reach an agreement regarding the Memorandum of
10 Understanding ("MOU") the day of the mediation and needed an additional day of negotiations and
11 requesting that Mr. Ross submit a mediator's proposal before an MOU was signed by the Parties. *See In*
12 *re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral
13 mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative*
14 *Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's
15 participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche*
16 *Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement
17 negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v.*
18 *J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012)
19 (participation in mediation "tends to support the conclusion that the settlement process was not
20 collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D.
21 Cal. 2014) (participation in mediation "tends to support the conclusion that the settlement process was
22 not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive. (Hawkins
23 Decl., ¶ 12.)

24 The Parties were represented by experienced class action counsel throughout the negotiations
25 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Class Counsel employs
26 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on
27 the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 19.)
28 Defendant is represented by Littler Mendelson P.C., a respected and seasoned defense firm.

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

4 In seeking approval, a settling party must provide sufficient information to “enable the court to
5 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail,*
6 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
7 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
8 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. Of San Francisco*, 688 F.2d 615,
9 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative
10 measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair
11 settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the
12 case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.—*
13 *Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In
14 other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should
15 discount the value of the settled claims for risks such as changes in the law, the probability of success,
16 and other factors.⁵

17 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
18 **“Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record
19 which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes
20 of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting
21 *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining

22 ⁵ Federal district courts also recognize that there is an inherent “range of reasonableness” in determining
23 whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular
24 case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In*
25 *re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see*
26 *also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled
27 law that a proposed settlement may be acceptable even though it amounts to only a fraction of the
28 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,

1 “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits,
2 balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th
3 at 130). As explained in detail below, the Gross Settlement Amount is within the range of reasonableness
4 in light of the nature and magnitude of the claims being settled and the various potential impediments to
5 recovery.

6 Defendant categorically denies all of the above-mentioned assertions and allegations raised in
7 and in support of the claims in the Class and PAGA Actions. (Hawkins Decl. ¶ 17.) To that end,
8 Defendant has denied and continues to deny each, and all of the allegations, claims, and contentions
9 alleged by the Plaintiff in the Class and PAGA Actions. Defendant has expressly denied and continues to
10 deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or
11 omissions alleged in the Class and PAGA Actions. Defendant contends that it complied in good faith
12 with wage and hour laws and has dealt legally and fairly with Plaintiff and putative class members.
13 Defendant further denies that, for any purpose other than settling the Class and PAGA Actions, these
14 claims are appropriate for class or representative treatment. Nonetheless, the Parties have concluded that
15 further proceedings in the Class and PAGA Actions would be protracted and expensive and that it is
16 desirable that the Class and PAGA Actions be fully and finally settled in the manner and upon the terms
17 and conditions set forth in this Settlement in order to dispose of burdensome and protracted litigation, to
18 permit the operation of Defendant’s business without further expensive litigation and the distraction and
19 diversion of its personnel with respect to matters at issue in the Class and PAGA Actions. Defendant has
20 also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases
21 such as the Class and PAGA Actions. Defendant has, therefore, determined that it is desirable and
22 beneficial to it that the Class and PAGA Actions be settled in the manner and upon the terms and
23 conditions set forth in Settlement. (*Id.*) (Settlement Agreement ¶ 1.10.)

24 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
25 determined that a settlement amounting to \$1,500,000.00 was fair and reasonable, and courts have
26 routinely approved settlements that provided a similar discounted range of the maximum potential
27
28 taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 recovery. See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002)
2 (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In*
3 *Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of
4 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58
5 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising,*
6 *LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8%
7 of maximum recovery “[fell] within the range of possible initial approval based on the strength of
8 plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F.
9 Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁶

10 Based upon the information received, Plaintiff’s counsel estimates that the Gross Settlement
11 Amount is approximately 39.5% of the total realistic value of the crux of Plaintiff’s claims in the action.
12 (Hawkins Decl. ¶ 33.)

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

15 Pursuant to the Settlement Agreement, \$125,000.00 from the Gross Settlement Amount shall be
16 allocated to the resolution of the PAGA claim, of which 75% (\$93,750.00) will be paid directly to the
17 LWDA, and the remaining 25% (\$32,250.00) will be paid to PAGA Releasees who worked during the
18 PAGA Release Period beginning July 7, 2019 to the date of preliminary approval or up to when the
19 Workweeks at Issue exceed 49,437 workweeks, whichever is earlier. (Settlement Agreement ¶¶ 2.25-

20 ⁶ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24
21 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross
22 settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of
23 total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS
24 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement
25 representing “8.1% of the full verdict value” with net settlement amount representing approximately
26 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL
27 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to
28 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.”).

2.31.)

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 informal discovery, Class Counsel determined that aggrieved employees worked a combined total of approximately **11,411** PAGA Pay Periods during the PAGA Release Period. (Hawkins Decl. ¶ 32.) Plaintiff's counsel contended that 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 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 *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"); *Steenhuysen v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *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).

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

1 actual injury from the violations, whether the defendant was aware of the violations, and the employer's
2 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
3 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
4 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
5 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

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

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

26 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
27 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
28

1 approved by California courts.⁷ Where PAGA penalties are negotiated in good faith and “there is no
2 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
3 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009
4 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.
5 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which
6 does not allocate any damages to the PAGA claims.”).

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

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

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

Services LLC, 175 Cal. App. 4th 785, 806 (2009).

Approximately 662 current and former employees will share a \$1,500,000.00 settlement fund due entirely to the effort and commitment of Kayla Milligan. Subject to Court approval, therefore, the Settlement provides for a Service Award of \$10,000.⁸ The Service Award is fair and reasonable compensation for Plaintiff's effort in pursuing the action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their 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. (Hawkins Decl. ¶ 36; see generally Kayla Milligan Decl.)

Plaintiff will file a formal motion for the negotiated Service Award once preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is sufficient for

\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

⁸ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: See *Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra 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); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding

1 preliminary approval of the negotiated Service Award.

2 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
3 **Costs**

4 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
5 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
6 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
7 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
8 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
9 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
10 in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
11 approval of attorneys' fees of \$500,000 (one-third of the Gross Settlement Amount) and litigation costs
12 and expenses not to exceed \$30,000.00.

13 **E. The Court Should Appoint ILYM Group, Inc. as the Settlement Administrator.**

14 Class Counsel proposes the appointment of ILYM Group, Inc. ("ILYM"), an experienced,
15 reputable third-party settlement administrator, as the third-party Settlement Administrator to administer
16 the proposed Settlement. Neither party or its counsel owns or is affiliated with ILYM. (Hawkins Decl. ¶
17 40.) Pursuant to the terms of the Settlement Agreement, ILYM will print and distribute the Notice to the
18 Settlement Class by First Class mail; establish a mailing address and toll-free telephone number to
19 receive Class Members' inquiries about the proposed Settlement; will receive, review, and process all
20 objections to the proposed Settlement; will receive and process any written disputes and supporting
21 documentation submitted by the Class Members as to their number of workweeks; will handle inquiries
22 from Class Members regarding the proposed Settlement; will calculate each Class Members' individual
23 share of the Net Settlement Amount; will mail the settlement checks to the Settlement Class Members;
24 and will perform any other usual and customary duties for administering a class action settlement.
25 ILYM's fees and expenses shall be paid out of the GSA, not to exceed \$20,000.00.

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27
28 \$15,000 enhancement payment).

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

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

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

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

17 Geer argues the court must use the same standard under Federal Rules of Civil
18 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation
19 class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for*
20 *Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
21 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
22 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

23 ⁹ See also Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class certification
24 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at
25 the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL
26 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
27 cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*,
28 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 their own or in their own jurisdiction. The second category concerns are protected by the
2 trial court’s fairness review of the settlement.

3 *Id.* at n.19.

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

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

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

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

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

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

19 The proposed Settlement Class consists of any and all current and former hourly-paid non-
20 exempt employees employed by Defendant within the State of California at any time from July 8, 2016
21 through the Preliminary Approval hearing date or up to when the Workweeks at Issue exceed 49,437
22 workweeks, whichever is earlier. Because all Class Members are either current or former employees of
23 Defendant, the class is readily ascertainable from Defendant’s regular business records. (Hawkins Decl.
24 ¶¶ 21, 40.)

25 Here, common issues of fact and law predominate because the California statutes relating to
26 each of Plaintiff’s claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class
27 Members. Factually, Plaintiff contends that Defendant’s policies and practices apply class-wide and
28 Defendant’s liability can be determined by facts common to all members of the class. The wage and hour
29 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
30 with the claims of the Settlement Class Members. (*Id.* at ¶ 39.)

1 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise
2 from the same factual bases and are based on the same legal theories applicable to the other Class
3 Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the Class. Plaintiff
4 maintains that Plaintiff was injured by the same company-wide practices to which the proposed
5 Settlement Class was subject and seek the same relief. Plaintiff has already demonstrated her ability to
6 advocate for the interests of the Class by initiating this litigation, undertaking representative discovery,
7 and evaluating the proposed settlement to assure that it is fair. (*Id.* at ¶ 26, 37-39.)

8 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
9 litigating wage and hour class action cases. (*Hawkins Decl.* ¶ 38, 42.) Plaintiff's Counsel has
10 successfully briefed, argued, certified, and gained state and federal court settlement approval of the same
11 class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class
12 action expertise establishes that they are well qualified to represent the interests of this Class.

13 A class action is superior to a multitude of individual lawsuits. (*Id.* at ¶ 39.) Given the size and
14 amount of each individual Class Member's claim, Class Members likely have little incentive to litigate
15 their claims on an individual basis because the out-of-pocket expense and personal commitment
16 necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to
17 individual, case-by-case adjudication.

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

20 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
21 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
22 information to decide whether they should accept the benefits offered, opt out and pursue their own
23 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
24 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
25 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
26 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
27 class members, California authorities generally require service of the class notice by mail or similar
28 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d

1 960, 972 (1975).¹⁰

2 The Parties have jointly drafted the Notice of Proposed Settlement of Class Action (“Notice” or
3 “Class Notice”) which fairly and neutrally informs Class Members of their rights and remedies in this
4 action. The proposed Class Notice will be mailed to all Class Members by First Class mail and will
5 include information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s
6 terms, the class definition, the procedure and time period within which to submit Requests for Exclusions
7 or objections to the Settlement, the date for the final approval hearing, the formula used to calculate
8 settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit
9 A; Hawkins Decl. ¶¶ 41-42.)

10 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
11 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
12 Agreement ¶ 5.2.1)

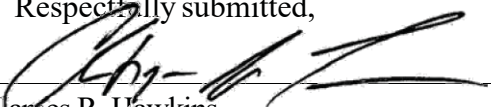
13 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
14 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v.*
15 *Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the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

17 **V. CONCLUSION**

18 For the foregoing reasons, the Parties have negotiated a fair and reasonable settlement of claims.
19 Having appropriately presented the materials and information necessary for preliminarily approval, the
20 Parties respectfully requests that the Court grant preliminary approval of the proposed Settlement in
21 accordance with the above and the Parties’ Settlement Agreement.

22 Dated: February 16, 2022

Respectfully submitted,

23 By: 

24 James R. Hawkins

Christina M. Lucio

25 JAMES HAWKINS, APLC

26 ¹⁰ Due process does not require that each Class Member actually receive a notice, but rather a procedure
27 reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and*
28 *Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by
the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir.
1987).

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Attorney for Plaintiff Kayla Milligan

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On February 16, 2022, I served on the interested parties in this action the following document(s) entitled:

- **NOTICE OF MOTION AND PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND AUTHORITIES**
- **DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- **DECLARATION OF KAYLA MILLIGAN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT**

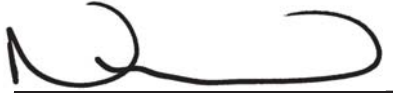
[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Nicole@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did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

SERVICE LIST

REBECCA ARAGON, Bar No. 134496 Raragon@littler.com HOVANNES G. NALBANDYAN, Bar No. 300364 Hnalbandyan@littler.com LAURA E. SCHNEIDER, Bar No. 326077 Lschneider@littler.com Michele Morelli MMorelli@littler.com Sarah Fleming SAFleming@littler.com LITTLER MENDELSON, P.C. 633 W. Fifth Street, 63rd Floor Los Angeles, CA 90071 Attorneys for Defendant CWI, Inc. d/b/a Camping World	Labor and Workforce Development Agency Attn: PAGA Administrator 1515 Clay Street, Ste 801 Oakland, CA 94612 http://www.dir.ca.gov/Private-Attorneys-General-Act
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[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on February 16, 2022, at Irvine, California



Nicole Miccolis