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15 HAROLD CASALE

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF LOS ANGELES

18 HAROLD CASALE, an individual,

19 Plaintiff,

20 vs.

21 MERCHANT OF TENNIS, INC., a
22 California corporation; GREENLINE
23 TRANSPORTATION, a California
24 corporation and DOES 1 through 50,
25 inclusive,

26 Defendants.

Case No.: 21STCV33661

[Assigned for all purposes to the Hon. Kenneth
Freeman, Dept. 14]

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

Date: January 4, 2024
Time: 11:00 a.m.
Place: Department 14

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

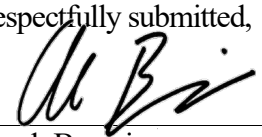
2 **PLEASE TAKE NOTICE** that on January 4, 2024 at 11:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 14 of the above-captioned court, located at 312 North Spring
4 Street, Los Angeles, California 90012, the Honorable Kenneth R. Freeman presiding, Plaintiff Harold
5 Casale will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action
7 Settlement and Release, attached as Exhibit 1 to the Declaration of Arnab Banerjee;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Harold Casale as the representative for the Settlement Class;
- 10 4. Appoint Banner Law Group P.C. and Leslie Glycer Law, P.C. as Class Counsel;
- 11 5. Approve distribution of the proposed Notice of Class Action Settlement to the
12 Settlement Class;
- 13 6. Appoint Phoenix Settlement Administrators as the Settlement Administrator; and
- 14 7. Set a hearing date for final approval of the settlement.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
16 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the
17 Declaration of Arnab Banerjee; (4) the Declaration of Leslie Glycer; (5) the Class Action Settlement and
18 PAGA Agreement and Release of Claims; (6) the Notice of Class Action Settlement; (7) the [Proposed]
19 Order Granting Preliminary Approval of Class Action Settlement; (8) the records, pleadings, and papers
20 filed in this action; and (9) upon such other documentary and oral evidence or argument as may be
21 presented to the Court at or prior to the hearing of this Motion.

22
23 Dated: July 12, 2023

Respectfully submitted,

24
25 By: 

Arnab Banerjee

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

27 Attorney for Plaintiff Harold Casale
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By: _____
Leslie Glycer

LESLIE GLYER LAW, P.C.

Attorney for Plaintiff Harold Casale

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Harold Casale (“Plaintiff”) seeks preliminary approval of the Class Action Settlement and PAGA Agreement and Release of Claims,¹ which if approved, would provide considerable monetary relief for approximately forty-four (“44”) current and former employees of Defendant Merchant of Tennis, Inc. (“Defendant” and, collectively with Plaintiff, the “Parties”). The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class defined as: All former and current hourly-paid truck drivers in California and classified as a non-exempt employee who worked for Defendants from September 13, 2017 through the date that the Court preliminarily approves the Settlement, who did not sign an arbitration agreement and/or did not settle all of his or her claims as part of a prior class action lawsuit, entitled *Alejandra Carrillo v. Merchant of Tennis, Inc.*, Case Number BC707896 (the “Carrillo Action”) (this definition is hereinafter referred to “Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$142,500. The Gross Settlement Amount includes:
 - (a) A Net Settlement Fund of \$65,000 (the Gross Settlement Amount minus the requested Attorneys’ Fees and Costs, Settlement Administration Costs, the payment to the LWDA, the Class Representative Enhancement Payment), which will be allocated to all Class Members on a pro-rata basis according to the total workweeks worked by each Class Member during the Class Period. **The Entire Net Settlement Fund will be paid to all Class Members who do not opt out of the Settlement Class, and without the need to submit claims for payment.**
 - (b) Attorneys’ fees in the amount of one-third of the Gross Settlement Amount (or \$47,500), and litigation costs and expenses not to exceed \$15,000, to Banner

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 Law Group, P.C. and Leslie Glycer Law (“Plaintiff’s Counsel”).

- 2 (c) Settlement administration costs of approximately \$5,000, to be paid to the
3 jointly selected Settlement Administrator, Phoenix Class Action Administration
4 Solutions (“Phoenix”)².
- 5 (d) A \$10,000 PAGA settlement, of which 75% (\$7,500) will be paid to the Labor
6 & Workforce Development Agency (“LWDA”), and the remaining 25%
7 (\$2,500) (“PAGA Fund”), will be payable to PAGA Members, defined as: All
8 former and current hourly-paid truck drivers in California and classified as a
9 non-exempt employee who worked for Defendants from December 8, 2019 to
10 the date of preliminary approval. The Entire PAGA Fund will be paid to all
11 PAGA Members, and without the need to submit claims for payment.
- 12 (e) A Class Representative Enhancement Payment of \$2,500 to Harold Casale for
13 his service on behalf of the Settlement Class, the risks he took in bringing the
14 action on behalf of the class.

15 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
16 Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
17 length a mediation by Hon. Leo Wagner (Ret.). Although, a settlement was not reached at the mediation,
18 subsequent efforts by Judge Wagner and the parties resulted in a Settlement that confers substantial
19 benefits to Class Members. This relief—averaging approximately \$1,477 per Class Member from the
20 Net Settlement Fund—is particularly impressive when viewed against the difficulties encountered by
21 plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class
22 Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class
23 certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing
24 on appeal.

25 As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement
26 approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff
27

28 ² The Settlement Agreement allows for up to \$10,000 in settlement administration costs, however, Phoenix has provided the best estimate with a bid for \$5,000.

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

2 **II. FACTS AND PROCEDURE**

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

4 On September 13, 2021, Plaintiff filed this class action against Defendant for multiple Labor
5 Code violations, including claims for unfair competition, failures to pay minimum and overtime wages,
6 waiting time penalties, wage statement penalties, failure to reimburse business expenses, failure to make
7 rest breaks available, and penalties under the Labor Code Private Attorney General Act (“PAGA”).
8 (Declaration of Arnab Banerjee [“Banerjee Decl.”] ¶ 10.) On December 8, 2020, Plaintiff sent notice of
9 his claims to the LWDA. (*Id.*)

10 **B. The Parties Conducted Significant Discovery**

11 Following the start of this lawsuit, the Parties promptly exchanged discovery requests in January
12 and February 2022. (Banerjee Decl. ¶ 11.) Following discovery, the Parties met and conferred regarding
13 the scope of the potential class, data and information relevant to the claims, as well as status and
14 procedural matters pertaining to several other class actions pending against Defendant that may be
15 relevant to the claims alleged in this Action. During this process, the Parties informally exchanged
16 additional discovery, and Plaintiff served additional formal discovery responses. (*Id.*)

17 **C. The Parties Settled After Mediation**

18 The Parties ultimately agreed to participate in private mediation with Hon. Leo Wagner (Ret.), a
19 well-respected and experienced wage and hour class action mediator. As a condition of this mediation
20 the Parties agreed to exchange additional informal discovery in order to maximize the chances of
21 resolution. That mediation took place on February 14, 2023 and although the mediation was productive,
22 the matter did not resolve at mediation. (Banerjee Decl. ¶ 12.) The Parties continued discussions
23 following the mediation and, with the assistance of the mediator, Judge Wagner, the Parties were able to
24 come to a settlement in principle. Over the next few months, the Parties were ultimately able to negotiate
25 a complete class action and PAGA settlement. The terms of the settlement are now set forth in complete
26 and final form in the Settlement Agreement. (*Id.* at ¶¶ 9, 13 at, Ex. 1.) At all times, the Parties’
27 negotiations were adversarial and non-collusive. The Settlement was therefore a product of arms-length
28 bargaining after extensive investigation and discovery by the Parties and thus constitutes a fair, adequate,

1 and reasonable compromise of the claims at issue. (*Id.* at ¶14.)

2 **D. The Proposed Settlement Fully Resolves Plaintiff's Claims**

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

4 The proposed Settlement Class consists of all former and current hourly-paid truck drivers in
5 California and classified as a non-exempt employee who worked for Defendants from September 13,
6 2017 through the date of preliminary approval, who did not sign an arbitration agreement and/or did not
7 settle all of his or her claims as part of the *Carrillo* Action. (Settlement Agreement ¶¶ 5,12.) There are
8 approximately 44 Class Members who worked for Defendant during the class period.

9 **2. Settlement Consideration**

10 Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the
11 Gross Settlement Amount of \$142,500. (Settlement Agreement ¶ 47.) The Gross Settlement Amount
12 includes: (1) automatic payments to all Participating Class Members—meaning, all Class Members
13 except those who submit timely and valid Requests for Exclusion—from the Net Settlement Fund; (2)
14 \$47,500 in attorneys' fees (i.e., one-third of the common fund) and up to \$15,000 in litigation costs to
15 Plaintiff's Counsel; (3) Settlement Administration Costs of approximately \$5,000; (4) a \$5,625 payment
16 to the LWDA and a \$1,875 payment to PAGA Members; and (5) a Class Representative Enhancement
17 Payment of \$2,500 for Plaintiff's service on behalf of the Settlement Class, the risks he took in bringing
18 his representative claims. (Settlement Agreement ¶¶ 47, 48)

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

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

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

- 28
 - The Net Settlement Fund will be divided by the aggregate total number of weekly pay

1 periods worked during the Class Period, resulting in the “Qualifying Weeks.” Each
2 Class Member’s “Individual Settlement Payment” will equal a *pro rata* share of the Net
3 Distribution Fund based on their share of the total number of Qualifying Weeks.

- 4 • The Individual Settlement Payment will be reduced by any required deductions for each
5 Participating Class Member as specifically set forth herein, including employee-side tax
6 withholdings or deductions. The entire Net Settlement Fund will be disbursed to all
7 Class Members who do not submit timely and valid Requests for Exclusion.
- 8 • If there are any valid and timely Requests for Exclusion, the Settlement Administrator
9 shall proportionately increase the Individual Settlement Payment for each Participating
10 Class Member according to the number of weekly pay periods worked, so that the
11 amount actually distributed to the Settlement Class equals 100% of the Net Settlement
12 Fund.

13 (Settlement Agreement ¶ 48(d).)

14 Given that there are approximately 44 Class Members, the average net recovery will be
15 approximately \$1,477. This average net recovery is significantly greater than many other wage and hour
16 class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of*
17 *Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of
18 approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
19 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
20 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
21 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90);
22 *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
23 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.)
24 (average net recovery of approximately \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213
25 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*
26 *Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath*
27 *& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately
28 \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.)

(average net recovery of approximately \$80).

Similarly, with respect to the PAGA payments the Settlement Administrator will calculate the total number of weeks worked by each PAGA Member during the PAGA Period and the aggregate total number of work weeks worked by all PAGA Members during the PAGA Period and the Net PAGA Distribution Amount shall be paid to PAGA members based on a pro-rate distribution based on the number or weeks worked. (Settlement Agreement ¶ 48(d).)

4. Release by the Settlement Class

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including, e.g., any alleged failure to pay wages, failure to pay minimum wages, overtime wages, or other wages in violation of the California Labor Code or an Industrial Welfare Commission ("IWC") wage order, because of any alleged off-the-clock work, failure to record all time worked, work during a rest break; failure to provide accurate wage statements; failure to pay waiting time penalties; any alleged failure to provide breaks or authorize and permit breaks as required by the California Labor Code or an IWC wage order, or to pay premium pay with respect to rest periods in accordance with California Labor Code section 226.7 or an IWC wage order; or to reimburse any business expense as required by California Labor Code sections 2800 or 2802. These released claims include, without limitation, any such claim based on a theory of alleged violation of unfair competition laws encompassed in California Business and Professions Code section 17200 *et seq.* and which derives from the foregoing statutory or regulatory provisions or obligations, as well as any declaratory or injunctive relief or for restitution that otherwise derives from the foregoing alleged violations or as alleged in the Operative Complaint. Except as set forth in Section 51(d) of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

(Settlement Agreement ¶ 52(c).)

5. Release by PAGA Members

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

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the

Operative Complaint and the PAGA Notice.
(Settlement Agreement ¶ 52(d).)

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 inquire 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

1 “is small” (collectively, “*Dunk Factors*”). *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996).³

2 **2. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and**
3 **Legal Issues and Objectively Assessed the Settlement’s Reasonableness**

4 Plaintiff’s Counsel conducted a thorough investigation into the factual and legal issues
5 implicated by Plaintiff’s claims, and were able to objectively assess the settlement’s reasonableness.
6 (Banerjee Decl. ¶ 15.) Prior to filing the action, Plaintiff contacted Plaintiff’s Counsel to discuss the
7 factual bases for pursuing an action against Defendants for Labor Code violations. (*Id.*) During those
8 conversations, he explained how the policies and practices were instituted and provided valuable insight
9 into how they gave rise to the alleged Labor Code violations. (*Id.*) In addition, Plaintiff put Plaintiff’s
10 Counsel in touch with several other drivers who experienced similar labor code violations. Plaintiff’s
11 Counsel conducted thorough investigations of these individuals as well. (*Id.*) Based on these interviews,
12 Plaintiff’s Counsel determined that there were legally sufficient grounds for pursuing an action against
13 Defendants. (*Id.*)

14 In preparation for drafting the complaint, Plaintiff’s Counsel conducted their own preliminary
15 investigation into the factual bases for Plaintiff’s claims, which entailed, *inter alia*, a careful examination
16 of Plaintiff’s personnel file and associated records. (*Id.* at ¶ 16.) Plaintiff’s Counsel also prepared a
17 detailed letter (5 pages, single-spaced) to notify the LWDA of Plaintiff’s intent to seek civil penalties and
18 other available relief recoverable under PAGA for Labor Code violations. (*Id.*) Significant research and
19 effort were expended to prepare a PAGA notice that was consistent with the developing legal
20 requirements so as to withstand any challenge from Defendants regarding the notice’s sufficiency. (*Id.*)

21
22 ³ The presumption of fairness is consistent with California’s public policy goal of favoring
23 settlements. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
24 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
25 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
26 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”);
27 *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages
28 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 Plaintiff propounded several sets of discovery including Requests for Productions of Documents
2 and Special Interrogatories. (*Id.* at 17.) In addition, in advance of mediation Plaintiffs requested
3 additional informal discovery including updated datapoints and records. (*Id.*) In response to Plaintiff's
4 discovery requests, Plaintiff's Counsel received a considerable amount of documents and data, including
5 employee demographic data, time and pay records, and Defendants' policies and procedures manuals
6 which covered a broad range of topics including, *inter alia*, wage policies, employee clock-in policies
7 and procedures, attendance policies, overtime & premium pay, etc. (*Id.*) The document and data
8 exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being
9 settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make
10 an independent assessment of the reasonableness of the settlement's terms. (*Id.*)

11 In addition, Defendants propounded and Plaintiff responded to a significant amount of discovery
12 which also helped both parties access the strengths and weaknesses of the claims. (*Id.*)

13 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
14 which included: (1) determining Plaintiff's suitability as a private attorney general and class
15 representative through interviews, background investigations, and analyses of his employment files and
16 related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar
17 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
18 employer; (4) analyzing employees' time and wage records; (5) reviewing Defendants' employment
19 policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and
20 estimating Defendants' liability for purposes of settlement; (8) drafting mediation briefs; and (9)
21 participating in a full-day mediation and well as settlement discussions after the mediation with and
22 without the mediator. (*Id.* at ¶ 18.)

23 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
24 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
25 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
26 known facts and circumstances, including the risk of significant delay and uncertainty associated with
27 litigation, and various defenses asserted by Defendants. (*Id.* at ¶ 19.)
28

1 **3. The Settlement Was Reached Through Arm’s-Length Bargaining in which**
2 **All Parties Were Represented by Experienced Counsel**

3 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
4 settlement’s fairness.” *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
5 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
6 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
7 11.51.

8 As explained above, the Parties participated in a mediation with Hon. Leo Wagner (Ret.) who is
9 an experienced and well-respected mediator of wage and hour class actions. Although the parties did not
10 settle at the mediation, it was critical in allowing both parties to learn about the strengths and weaknesses
11 of their claims as well as creating a understanding of the range of settlement that was possible. After the
12 mediation, the Parties continued to work with Mr. Wagner who helped manage the Parties’ expectations
13 and provided a useful, neutral analysis of the issues and risks to both sides, and ultimately presented the
14 parties with a mediator’s proposal that was accepted by both parties. (Banerjee Decl. ¶¶ 12-14). Thus, at
15 all times, the Parties’ negotiations were adversarial and non-collusive. *See In re Bluetooth Headset Prod.*
16 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
17 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
18 2008 WL 4820784, at *3 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against
19 any inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
20 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings
21 were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
22 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the
23 conclusion that the settlement process was not collusive”); *Ogbuehi v. Comcast of*
24 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (accord).

25 The Parties were represented by experienced class action counsel throughout the negotiations
26 resulting in this Settlement. Plaintiff is represented by Banner Law Group P.C. and Leslie Glycer Law,
27 P.C. Plaintiff’s Counsel are seasoned class action attorneys who regularly litigate wage and hour claims
28 through certification and on the merits, and have considerable experience settling wage and hour class

actions. (Banerjee Decl. ¶¶ 2-9; Declaration of Leslie Glycer (“Glycer Decl.”) ¶¶2-11.)

Defendants are represented by Arent Fox Schiff, LLP, a respected firm with significant experience with employment law and wage and hour class action defense.

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

In seeking approval, a settling party must provide sufficient information to “enable the court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail, 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.⁴

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.’”⁵ *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

⁴ 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”); *see also 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”).

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.

Minimum Wage and Unpaid Time Claim: Based on the allegation that Class Members were not paid for all of their time worked because they were only paid on a per mile basis. Thus, drivers were not paid for non-driving employment including pre- and post-trip vehicle inspection time, paperwork completion, cleaning and maintaining trucks, and attending meetings. Defendants’ exposure would be calculated as follows: 2,225 work weeks $\times$ 1.5 hours per week $\times$ \$28.38 average hourly pay $\approx$ \$94,718.

Business Expense Reimbursement Claim: Plaintiff alleges that Defendants failed to reimburse Plaintiff and other employees who used their personal cell phones for work related purposes, and had to provide their own cleaning supplies. Plaintiff estimates that employees spent approximately \$50 per month on these expenses. Defendant’s exposure is as follows: (2,225 work weeks divided by 4 (monthly) $\times$ \$25 average monthly plan $\approx$ \$13,906.

Wage Statement Claim: Based on the preceding allegations, Plaintiff alleges that Defendants 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).

Defendants’ maximum potential exposure would be calculated as follows: There are approximately 943 pay periods with corresponding wage statements in the one-year claims period for section 226(e) penalties. Multiplied by a \$50 penalty for “initial violations” equals \$47,150 *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (finding that the initial penalty applies until there is notification of a violation).

Final Pay Claim: Because Defendants allegedly failed to pay Class Members all minimum and

overtime wages within 72-hours of their termination/separation of employment, Class Members are entitled to waiting-time penalties. *See* Labor Code §§ 201-202. Labor Code section 203 provides “[i]f an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty [for up to 30 days.]” *Mamika v. Barca*, 68 Cal. App. 4th 487, 492 (1998), as modified (Dec. 11, 1998). Defendants’ exposure would be calculated as follows: 33 former employees × 8 hours × 30 days × \$28.28 / hour ≈ \$223,978.

Gross Settlement Amount: In total, Plaintiff estimated Defendants’ maximum exposure for the class claims at approximately \$379,752:

Claim	Amount
Minimum and Wage Claim	\$94,718
Business Expense Claim	\$13,906
Wage Statement Claim	\$47,150
Final Pay Claim	\$223,978
Total	\$379,752

(Banerjee Decl. ¶ 20.)

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

Defendant obviously dispute all of these claims and contend that no wage and hour violations occurred, and further claim that even if there were instances of these violations, these would be highly individualized inquiries that would not be suitable for class certification. *See, e.g., Purnell v. Sunrise Senior Living Mgmt., Inc.*, No. SA CV10-00897 JAK, 2012 WL 1951487, at *8 (C.D. Cal. Feb. 27, 2012); *Washington v. Joe’s Crab Shack*, 271 F.R.D. 629, 641 (N.D. Cal. 2010) (denying certification because “an individualized inquiry will be required to determine whether any employee failed to take a meal break because he/she was too busy”); *Salazar v. Avis Budget Grp., Inc.*, 251 F.R.D. 529, 533 (S.D. Cal. 2008); *Ordonez v. Radio Shack, Inc.*, No. CV 10-7060-CAS JCGX, 2013 WL 210223, at *8 (C.D.

Cal. Jan. 17, 2013); *Gonzalez*, 2012WL 5473764, at *5 (holding that “[why] any particular employee missed any particular break requires, ineluctably, individualized fact finding”).

Ultimately, Plaintiff’s Counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants’ maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiff’s claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiff’s claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the “Discount Factors”). (Banerjee Decl. ¶ 21.)

After taking into account the Discount Factors, Plaintiff’s Counsel determined that it would be reasonable to settle for a fraction of Defendants’ maximum potential exposure for the class claims (PAGA discussed in the following section), or approximately **37.5%** of the total exposure. (*Id.*)

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

1 settlement of 6% to 8% of estimated damages).⁵

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

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

8 This result was reached after good-faith negotiation between the parties. (Banerjee Decl. ¶ 22).
9 The amount was valued as follows: Based on information and evidence produced by Defendants during
10 discovery, Plaintiff's Counsel determined that aggrieved employees worked a combined total of
11 approximately 943 pay periods during the PAGA statute of limitations period ("PAGA Period").
12 Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged
13 violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for
14 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each
15 aggrieved employee per pay period for each subsequent violation.

16 However, a number of courts have found that the "subsequent" penalty under PAGA applies
17 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
18 *See Bernstein v. Virgin Am., Inc.*, 990 F.3d 1157, 1173 (9th Cir. 2021) (reversing judgment as to
19 "heightened civil penalties" because the defendant was not given notice by the Labor Commissioner
20

21 ⁵ *See also In re Uber FCRA Litig.*, No. 14-CV-05200-EMC, 2017 WL 2806698, at *7 (N.D.
22 Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement
23 fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible
24 verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-CV-02198-EMC, 2016 WL 5907869, at *7 (N.D. Cal.
25 Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full
26 verdict value" with net settlement amount representing approximately 5.3% of full verdict value);
27 *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal.
28 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 when the “subsequent” violations occurred); *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX,
2 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties .
3 . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . .
4 [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA
5 violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not be calculated to
6 determine the amount in controversy”); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-
7 01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under the Labor Code, if an
8 employer does not have notice that they are committing a violation, they are not subject to the heightened
9 penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx),
10 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to
11 heightened penalties for subsequent violations unless and until a court or commissioner notifies the
12 employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
13 4th 1157 (2008). Under this line of cases, Defendants’ exposure would be approximately $\$94,300 = 943$
14 violative pay periods $\times$ \$100.

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

24 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
25 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—
26 or 0.21% of the maximum—and stated that this reduction was warranted because imposing the
27 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
28 attempts” to comply with meal period obligations and because the court found the violations were

1 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court's reduced
2 award of a \$150,000 penalty under PAGA. *Id.* at 529.

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

16 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
17 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
18 approved by California courts.⁶ Where PAGA penalties are negotiated in good faith and "there is no
19

20
21 ⁶ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
22 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
23 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
24 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
25 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
26 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
27 PAGA penalties with \$7,500 paid to LWDA); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A.
28 County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately
\$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v.*
Smart & Final, Inc., No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F.
Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was
allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No.
BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund
of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the settlement of PAGA penalties); *Coleman*
v. Estes Express Lines, Inc., No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R.
Freeman) (gross settlement fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the
settlement of PAGA penalties).

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

6 Here, Plaintiff resolved the PAGA claims for approximately 10% of the total PAGA exposure
7 which is within the reasonable range of a PAGA settlement.

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

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

21 Approximately 44 current and former employees will share a \$65,000 net settlement fund due
22 entirely to the effort and commitment of Harold Casale. Subject to Court approval, therefore, the
23 Settlement provides for a Class Representative Enhancement Payment of \$2,500. The Class
24 Representative Enhancement Payment is fair and reasonable compensation for Plaintiff’s effort in
25 pursuing the action, serving as a private attorney general under PAGA, assisting counsel with the
26 litigation and settlement, regularly conferring with counsel on the status of his case and the strategies for
27 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and
28 provide adequate relief for the Settlement Class.

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

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

7 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
8 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
9 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
10 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
11 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
12 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
13 in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
14 approval of attorneys' fees of \$47,500 (one-third of the Gross Settlement Amount) and up to \$15,000 in
15 actual litigation costs. Here, Class Counsel is requesting an amount that is significantly less than their
16 lodestar. Indeed, Class Counsel is seeking only approximately 24% of their lodestar. (Banerjee Decl.
17 ¶ 25, Glycer Decl. ¶13). Thus, no matter the method used the requested fees and costs are fair and
18 reasonable.

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

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

21 Class actions are statutorily authorized "when the question is one of common or general interest,
22 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
23 court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
24 certification is appropriate when there is an "ascertainable class and a well-defined community of interest
25 among class members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
26 treatment is appropriate even if class members at some point may be required to make an individual
27 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,
28 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

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

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

20 *Id.* at n19.

21 **2. The Proposed Settlement Class Is Ascertainable and There Is a Well-** 22 **Defined Community of Interest Among Class Members**

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

27 The community of interest requirement embodies three factors: (1) predominant common
28 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.

29 ⁷ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
30 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification
31 analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC,
32 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in
33 *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*
34 *Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class
35 can be preliminarily certified based on a less rigorous analysis than that necessary for final certification.”)

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

2 The “ultimate question” the element of predominance presents is whether “the
3 issues which may be jointly tried, when compared with those requiring separate
4 adjudication, are so numerous or substantial that the maintenance of a class 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 former and current hourly-paid truck drivers in
7 California and classified as a non-exempt employee who worked for Defendants, who did not sign an
8 arbitration agreement and/or did not settle all of his or her claims as part of the *Carrillo* Action, and who
9 worked in California from September 13, 2017, through preliminary approval of the settlement. Because
10 all Class Members are either current or former employees of Defendants, the class is readily
11 ascertainable from Defendants’ regular business records.

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

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

25 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
26 litigating wage and hour class action cases. (Banerjee Decl. ¶¶ 2-8; Glyer Decl ¶¶2-11.) Plaintiff’s
27 Counsel have successfully briefed, argued, certified, and gained state and federal court settlement
28 approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff’s Counsel’s

1 wage and hour class action expertise establishes that they are well qualified to represent the interests of
2 this Class.

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

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

10 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
11 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
12 information to decide whether they should accept the benefits offered, opt out and pursue their own
13 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
14 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
15 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
16 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
17 class members, California authorities generally require service of the class notice by mail or similar
18 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
19 960, 972 (1975).⁸

20 The Parties have jointly drafted the Notice of Class Action Settlement ("Class Notice") which
21 fairly and neutrally informs Class Members of their rights and remedies in this action. The proposed
22 Class Notice will be mailed to all Class Members by First Class mail and will include information
23 regarding the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class
24 definition, the procedure and time period within which to submit Requests for Exclusions or objections
25

26
27 ⁸ Due process does not require that each Class Member actually receive a notice, but rather a
28 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice
and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound
by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th
Cir. 1987).

1 to the Settlement, the date for the final approval hearing, the formula used to calculate settlement
2 payments, and the terms and scope of the Released Claims. (Banerjee Decl. ¶ 24, Exhibit 3.)

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

7 **IV. CONCLUSION**

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

11 Respectfully submitted,

12
13 Dated: July 12, 2023

14 By: 

15 Arnab Banerjee

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

17 Attorney for Plaintiff Harold Casale

18 Dated: July 12, 2023



19 Leslie Glycer

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21 Attorney for Plaintiff Harold Casale
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