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Attorneys for Plaintiff,  
JESUS LOPEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

JESUS LOPEZ, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

ECOLOGY AUTO PARTS INC., a California  
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: 21STCV15403

[Assigned for all purposes to Hon. Elihu M. Berle,  
Dept. 6]

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

*(Filed concurrently with Declarations of James  
Hawkins and Plaintiff Jesus Lopez; [Proposed]  
Order)*

Date: May 4, 2023  
Time: 09:00 a.m.  
Dept: 6

Reservation No.:

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
RECORD: PLEASE TAKE NOTICE** that on May 04, 2023 at 9:00 a.m., or as soon thereafter as counsel  
may be heard, in Department 6 of the above-captioned court, located at 312 N. Spring Street, Los Angeles,  
CA 90012, the Honorable Elihu M. Berle presiding, Plaintiff JESUS LOPEZ will, and hereby does, move  
this Court to:

1. Preliminarily approve the settlement set forth in the Class and Representative Action Settlement Agreement and Release, ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of James Hawkins;
2. Conditionally certify the proposed Settlement Class;
3. Appoint JESUS LOPEZ as the representative for the Settlement Class;
4. Appoint James Hawkins, APLC as Class Counsel;
5. Approve distribution of the proposed Notice of Proposed Class and Representative Action Settlement; attached as Exhibit A to the Declaration of James Hawkins.
6. Appoint ILYM Group, Inc. as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

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

Dated: February 27, 2023

Respectfully submitted,

By: 

James R. Hawkins  
Gregory Mauro  
Michael Calvo  
Lauren Falk  
Ava Issary  
**JAMES HAWKINS, APLC**

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff JESUS LOPEZ (“Plaintiff”) seeks preliminary approval of the Parties’ Class And  
4 Representative Action Settlement Agreement And Release (“Settlement Agreement”) which, if  
5 approved, would provide valuable monetary relief for approximately 377Class Members who work(ed)  
6 for Defendant ECOLOGY AUTO PARTS, INC. (“Defendant” or “Ecology”) (collectively the  
7 “Parties”). **The basic terms of the non-reversionary settlement provide for the following:**

- 8 1. Conditional certification for settlement purposes only of a Class defined as:
- 9 a. Class Members or Class: “All current and former non-exempt employees employed  
10 by Defendant in California or continuing to be employed by Defendant in California  
11 between April 22, 2017 and the earlier of December 31, 2022 or the date of preliminary  
12 approval of this settlement. Defendant estimated for purposes of mediation that there  
13 are: 35,916 workweeks worked by 377 Class Members as of September 16, 2022.”
- 14 2. A Total Settlement Amount of One Million Dollars (\$1,000,000.00). The total Class  
15 Settlement Amount includes:
- 16 a. A Net Settlement Amount of approximately \$584,166.67 (the Class Settlement  
17 Amount minus the requested Class Representative Enhancement Award, Settlement  
18 Administration Costs, LWDA Payment and Attorneys’ Fees and Costs), which will be  
19 allocated to all Class Members on a pro-rata basis according to the number of  
20 workweeks each Class Member worked during the Class Period;
- 21 b. Class Counsel Fees in the amount of one-third of the Class Settlement Amount  
22 (\$333,333.33), and Litigation Expenses not to exceed \$25,000.00, to James R. Hawkins  
23 APLC (“Class Counsel”);
- 24 c. Settlement Administration Costs, currently estimated at \$10,000.00, to be paid to  
25 the jointly selected Claims Administrator, ILYM Group, Inc.;
- 26 d. An allocation in the amount of \$50,000.00 for the PAGA payment as approved by  
27 the Court of which \$37,500.00 shall be distributed to the California Labor and  
28 Workforce Development Agency (“LWDA”) pursuant to the California Labor Code

Private Attorneys General Act of 2004 (“PAGA”) and 25% (\$12,500) to the PAGA Settlement Group Members; and

- e. Class Representative Enhancement Award of Ten Thousand Dollars (\$10,000.00) to Plaintiff for his services on behalf of the Class and for agreeing to a broader release than those required of Class Members (i.e., a complete and general release of all known and unknown claims under California Civil Code section 1542).

The relief negotiated on behalf of the Class is fair, reasonable, and valuable. The settlement was negotiated by the Parties at arm's length with the helpful guidance from Lou Marlin, Esq., an experienced and well-respected class action mediator, and the settlement confers substantial benefits to Class Members. The relief offered by the settlement is particularly impressive in light of the substantial risks Plaintiff would have undertaken in proceeding to trial. (Hawkins Decl. ¶¶ 6, 9-11, 13, 14).

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

## **II. STATEMENT OF RELEVANT FACTS AND PROCEDURE**

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

Plaintiff filed this action on April 22, 2021, alleging that Defendant violated various provisions of the California Labor Code and seeking restitution pursuant to the California Business and Professions Code section 17200, et seq. Plaintiff’s action was entitled *Jesus Lopez, et al. vs. Ecology Auto Parts Inc.*, Los Angeles County Superior Court No. 21STCV15403 (the “Class Action”). (Hawkins Decl. ¶¶ 3-5).

On April 22, 2021, Plaintiff provided notice to the LWDA. On or about June 28, 2021, Plaintiff filed his representative action complaint under the Private Attorneys General Act (“PAGA”), entitled *Jesus Lopez, et al. vs. Ecology Auto Parts Inc.*, Los Angeles County Superior Court No. 21STCV23780 (the “PAGA Action”) (collectively, the Class Action and PAGA Action are the “Lawsuits”). (Id.) Specifically, Plaintiff’s Lawsuits seek damages and penalties for Defendant’s alleged failure to: failure to pay wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods, the failure to maintain or provide accurate itemized statements, the failure

1 to maintain records, and any other claims whatsoever that were or could have been alleged in this case  
2 based on the facts of the complaints, including all related claims for restitution and other equitable relief  
3 under Business and Professions Code section 17200, liquidated damages, waiting-time penalties, and  
4 penalties under the Labor Code Private Attorneys General Act of 2004. (Id.)

5 On or about January 12, 2023, Plaintiffs served an amended notice to the LWDA with a proposed  
6 amended complaint. Plaintiff intends to file the amended consolidated complaint via stipulation before  
7 the May 4, 2023 hearing so all matters are before this court. (Hawkins Decl. ¶ 5).

8 On September 22, 2022, the Parties engaged in private mediation with a well-respected wage and  
9 hour class action mediator, Lou Marlin, Esq. Prior to mediation, Plaintiff requested and Defendant  
10 produced extensive documentation including time and pay data for approximately 10% of the putative  
11 class, policy documents, class size information, information on the number of pay periods and workweeks,  
12 and information regarding the hourly rates and workweek. In short, Defendant provided informal  
13 discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths,  
14 weaknesses, and risks of the case and perform an analysis of the potential damages arising from the claims  
15 made in this case. (Hawkins Decl. ¶ 5)

16 Defendant denies any liability or wrongdoing of any kind associated with the claims asserted in  
17 the Lawsuits, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any  
18 purpose other than settlement, Plaintiff's claims are not appropriate for class or representative treatment.  
19 This Settlement is a compromise of disputed claims. Nothing contained in this Settlement, no documents  
20 referred to herein, and no action taken to carry out this Settlement, shall be construed or used as an  
21 admission by or against Defendant as to the merits or lack thereof of the claims asserted in the Lawsuits.

22 Defendant contends, among other things, that, at all times, it has complied with all applicable state,  
23 federal and local laws related to the Class Members' and PAGA Settlement Group Members' employment.  
24 Nevertheless, Defendant has entered into this Settlement to avoid the cost, risk and inconvenience of  
25 further litigation. Nothing contained in this Settlement, nor the fact of this Settlement itself, shall be  
26 construed or deemed as an admission of liability, or wrongdoing on the part of any of the Defendant, or  
27 an admission that class or representative action treatment would be allowed outside the settlement context.  
28 (Hawkins Decl. ¶ 12; Settlement Agreement pg. 9).

1 The Class Representative is represented by Class Counsel. Class Counsel investigated the facts  
2 relevant to the Lawsuits, including reviewing documents and information provided by Defendant. Based  
3 on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement  
4 with Defendant is fair, reasonable and adequate, and in the best interest of the Class Members in light of  
5 all known facts and circumstances, including the risks of significant delay, defenses asserted by  
6 Defendant, uncertainties regarding a class trial, and numerous potential appellate issues. Although  
7 Defendant denies any liability, Defendant is agreeing to this Settlement to avoid the cost, distraction, and  
8 risks of further litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever  
9 settle, compromise and discharge all disputes and claims arising from or relating to the Lawsuits on the  
10 terms set forth herein. (Hawkins Decl. ¶¶ 6, 9-11, 13, 14).

11 As a result of settlement efforts mentioned above, the Parties agreed to resolve this matter for the  
12 Total Settlement Amount of \$1,000,000.00 for approximately 377 class members and the terms of which  
13 are fully memorialized in the Settlement Agreement. The settlement was negotiated at arms-length and is  
14 not collusive. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks  
15 and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel  
16 believe that recovery for each Class Member is fair and reasonable. (Hawkins Decl. ¶¶ 15, 16).

### 17 **III. SUMMARY OF THE SETTLEMENT TERMS**

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

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

20 The Class is defined as all current and former non-exempt employees employed by Defendant in  
21 California or continuing to be employed by Defendant in California between April 22, 2017 and the earlier  
22 of December 31, 2022 or the date of preliminary approval of this settlement. Defendant estimated for  
23 purposes of mediation that there are: 35,916 workweeks worked by 377 Class Members as of September  
24 16, 2022. ("PAGA Settlement Group Member" refers to all Class Members employed by Defendant  
25 April 22, 2020 to the earlier of preliminary approval or December 31, 2022. Each PAGA Settlement Group  
26 Member will be paid an Individual PAGA Payment. (Settlement Agreement I, ¶22.). "PAGA Period" shall  
27 mean April 22, 2020, to the earlier of preliminary approval or December 31, 2022. (Settlement Agreement  
28

I, ¶21.) There are approximately and there are approximately 16,000 pay periods during the PAGA Period (Hawkins Decl. ¶¶ 31).

## 2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Total Settlement Amount of \$1,000,000.00. Settlement Agreement (“Settlement Agreement” ¶ I. 34). The Total Settlement Amount includes: (1) settlement payments to Class Members; (2) \$333,333.33 in Class Counsel Fees (i.e., 33% of the common fund) and up to \$25,000.00 in Litigation Expenses to Class Counsel.; (3) Settlement Administration Costs of approximately \$10,000.00.;(4) PAGA penalties in the amount of \$50,000 with the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the sum of \$37,500.00 paid to the LWDA and 25% (\$12,500) to the aggrieved employees; and (5) a Class Representative Enhancement Award of \$10,000.00 to Jesus Lopez for his services on behalf of the Class and for agreeing to a broader release than those required of Class Members. (Settlement Agreement ¶ III. 10).

Subject to the Court approving Counsel Fees and Litigation Expense Award, Administration Costs, LWDA payment, and Class Representative Enhancement Award, the remaining Net Settlement Amount in the amount of \$584,166.67 will be available for payment to Settlement Class Members. (Settlement Agreement ¶ III. 10).

## 3. Formula for Calculating Payments From Net Settlement Amount

Individual Settlement Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (i) using the Class Information, the Settlement Administrator will compute the total number of Eligible Workweeks of all Participating Class Members collectively during the Class Period; this sum shall be known as the Workweek Total; (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to determine the settlement value for each Eligible Workweek (the “Workweek Value”); and (iii) the Settlement Administrator will multiply the number of Eligible Workweeks of a Participating Class Member during the Class Period by the Workweek Value to determine that Participating Class Member’s Individual Settlement Payment. (Settlement Agreement ¶ III. (10) (a)).

Given that there are approximately 377 Class Members, each can expect to receive on average approximately **\$1,549**, with a high payment of up to **\$4,574.04** and a low payment of **\$16.22** (Hawkins Decl. ¶¶ 33, 34.)

This average net recovery is in line with or higher 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. Scope of the Release by the Settlement Class

The release is narrowly tailored to release the claims litigated in the complaints in exchange for the Total Settlement Amount. Plaintiff and Participating Class Members will agree to release the Released Claims during the Class and PAGA Period subject to Court Approval. (Settlement Agreement ¶¶ I. 23, 28, 29).

### IV. 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

1 objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the  
2 court first “preliminarily approves the settlement” and later “conducts a final approval hearing to inquire into the  
3 fairness of the proposed settlement”). The motion for preliminary approval must be accompanied by (1) the  
4 settlement agreement, (2) proposed notice to the class, and (3) the proposed order. *Id.* at 3.769(c). The motion must  
5 also identify any agreement concerning the payment of attorneys’ fees. *Id.* at 3.769(b).

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

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

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

19 2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and Legal Issues  
20 and Were Thus Able to Objectively Assess the Settlement’s Reasonableness  
21

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22 <sup>1</sup> The presumption of fairness is consistent with California’s public policy goal of favoring  
23 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors  
24 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally  
25 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*  
26 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the  
27 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”);  
28 *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages  
litigation and encourages settlement [because settlements] can produce peace and goodwill in the  
community while reducing the expense and persistency of litigation”). Additionally, in reviewing the  
fairness of a class action settlement, due regard should be given to what is “otherwise a private  
consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at  
1117. The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the  
agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

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

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

20 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can  
21 opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair,  
22 reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and circumstances,  
23 including the risk of significant delay and uncertainty associated with litigation, and various defenses asserted by  
24 Defendant. (Hawkins Decl. ¶¶ 15-18).

25 3. The Settlement Was Reached Through Arms-Length Bargaining in Which All Parties  
26 Were Represented by Experienced Counsel

27 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's  
28 fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or

collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, ¶ 11.51.

As explained above, the Parties settled this matter with the assistance of an experienced wage and hour class and PAGA action mediator. Mr. Lou Marlin, Esq. assisted to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive. (Hawkins Decl. ¶ 6.)

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 41.)

Defendant is represented by Jackson Lewis, P.C., a respected defense firm.

4. The Consideration Provided for the Class Claims is Fair and Reasonable in Light of the Amount in Controversary 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.<sup>2</sup>

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

As explained in detail below and in the Hawkins Declaration, the Total 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. (Hawkins Decl. ¶¶ 17-34).

Defendant denies all allegations pled, along with all allegations intended to be pled in the operative complaints. Defendant contends they implemented written policies and maintained practices that complied with the

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<sup>2</sup> Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is “the complete package, taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 requirements of the California Labor Code and applicable California Wage Orders. Defendant contends all  
2 employees were provided meal periods and authorized rest periods, were paid all wages, and were timely paid  
3 wages in compliance with California law and applicable California Wage Orders. Defendant further alleges no  
4 work was done off the clock and contrary to its policies. Defendant further alleges the reimbursement claim lacked  
5 merit due to vehicles being provided. In addition, an individualized investigation into the circumstances  
6 surrounding any missed meal and rest breaks and alleged off the clock work and rounding, is warranted because  
7 such claims can only be decided on a case-by-case basis, common issues do not predominate and class certification  
8 is neither superior nor proper. (Id.)

9 Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties were owed.  
10 Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the willfulness threshold required  
11 by Labor Code section 203. The considerable risk that Defendant could defeat certification and prevail on its  
12 defenses defeating any and all recovery to the class warranted a compromise of the class claims. Similarly,  
13 Defendant contends that they have complied with all such requirements with respect to payroll records and wage  
14 statements at all times. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the  
15 thresholds required by Labor Code section 226 claims. Lastly, many employees signed arbitration agreements  
16 which would make certification issues more complex. (Id.)

17 Accounting for the risks of continued litigation and impediments to full recovery, Plaintiff determined that  
18 a settlement amounting to \$1,000,000.00 was fair and reasonable, and accounts for an approximate 21% of total  
19 possible recovery on the low side and approximately 43% possible recovery on the high end. Courts have routinely  
20 approved settlements that provided a similar discounted range of the maximum potential recovery. (Hawkins Decl.  
21 ¶¶ 32, 33). See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing  
22 that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car*  
23 *Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated  
24 total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972)  
25 (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at \*5 (N.D. Cal.  
26 July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of  
27 possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”);  
28 *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of

estimated damages).<sup>3</sup> (Id.)

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

Pursuant to the Settlement Agreement, \$50,000.00 from the Total Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$37,500.00) will be paid directly to the LWDA, and the remaining 25% (\$12,500.00) will be paid to PAGA Members who worked during the PAGA Period beginning April 22, 2020 through the date of Preliminary Approval or December 31, 2022. (Settlement Agreement I ¶¶20-21).

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 Vieyra-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

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<sup>3</sup> *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at \*23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at \*21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at \*4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at \*2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [ . . . ] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 held that employers are not subject to heightened penalties for subsequent violations unless and until a court or  
2 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No.*  
3 *2*, 163 Cal. App. 4th 1157 (2008).

4 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties “based  
5 on the facts and circumstances of a particular case” when “to do otherwise would result in an award that is unjust,  
6 arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA penalties, courts have  
7 considered issues including whether the employees suffered actual injury from the violations, whether the defendant  
8 was aware of the violations, and the employer’s willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30  
9 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft,*  
10 *Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX),  
11 2011 WL 7563047, at \*4 (C.D. Cal. Aug. 12, 2011).

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

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

Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.

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

**C. The Court Should Preliminarily Approve the Negotiated Class Representative Enhancement Award**

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

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<sup>4</sup> *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at \*3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at \*7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP, 2011 WL 672645 at \*1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 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).

in conferring a benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

Approximately 377 current and former employees will share a \$1,000,000.00 settlement fund due entirely to the effort and commitment of the Plaintiff. Subject to Court approval, therefore, the Settlement provides for Class Representative Enhancement Award of \$10,000.00 to the Class Representative.<sup>5</sup> The Class Representative Enhancement 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. ¶ 35; *see also generally*, Jesus Lopez Decl.).

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

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<sup>5</sup> 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 Awards to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 Enhancement Award 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 Award to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 Enhancement Award to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 Enhancement Awards 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 Awards 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 Awards 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 Award to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 Enhancement Award 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 Awards 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 Award); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 Enhancement Award); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 Enhancement Award); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 Enhancement Award); *Hill v. Sunglass Hut Int’l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding Enhancement Awards of \$10,000 to the named plaintiffs); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 Enhancement Award).

for preliminary approval of the negotiated Class Representative Enhancement Award.

**D. The Court Should Preliminarily Approve the Negotiated Attorney’s Fees and Costs**

The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys’ fees equalling one-third or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court-approval of attorneys’ fees in the amount of \$333,333.33 (one-third of the Total Settlement Amount) and litigation costs and expenses not to exceed \$25,000.00, which are currently estimated to be less than \$25,000. Any difference in actual costs and the \$25,000 costs allocation will be included in the NSA.

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

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

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

Conditional certification of the proposed Settlement Class is particularly warranted here given the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in settlement cases).<sup>6</sup> In *Dunk*,

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

the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation:

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

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

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

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

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

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

The proposed Settlement Class Members consists of all current and former non-exempt employees of Defendants who worked in California at any time from April 22, 2017 and the earlier of December 31, 2022. Defendant represents there are approximately 377 Class Members as of September 2022. (Hawkins Decl. ¶¶ 36-

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.”).

38).

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

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

Additionally, Plaintiff is represented by competent counsel who have extensive experience in litigating wage and hour class action cases. Plaintiff's Counsel has successfully briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class. (Hawkins Decl. ¶ 41.)

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

### 3. The Proposed Notice Properly Informs Class Members About the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky*

1 v. *Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class  
2 members “that they may be excluded from the class if they so request and that they will be bound by the judgment,  
3 whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at 106. In a case such as this  
4 involving a significant number of class members, California authorities generally require service of the class notice  
5 by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal.  
6 App. 3d 960, 972 (1975).<sup>7</sup>

7 The Parties have jointly drafted the Class Notice which fairly and neutrally informs Class Members of their  
8 rights and remedies in this action. (Settlement Agreement, Exhibit A; Hawkins Decl. ¶¶ 39, 40).

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

#### 13 **V. PRELIMINARY APPROVAL SHOULD BE GRANTED**

14 Given the favorable terms of the settlement and informed, arms-length negotiations, the proposed  
15 settlement should be preliminarily viewed as a fair, reasonable, and adequate compromise of the issues in dispute.  
16 The Court should therefore grant preliminary approval of the settlement, order dissemination of notice to the Class  
17 for comment, and proceed to a formal fairness hearing.

#### 18 **VI. CONCLUSION**

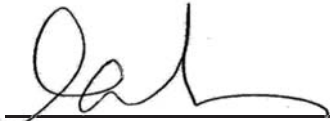
19 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the  
20 materials and information necessary for preliminarily approval, the Parties request that the Court preliminarily  
21 approve the settlement.  
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26 <sup>7</sup> Due process does not require that each Class Member actually receive a notice, but rather a  
27 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice*  
28 *and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be  
bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729,  
732 (7th Cir. 1987).

1 Dated: February 27, 2023

JAMES HAWKINS APLC

2  
3 By: 

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GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

LAUREN FALK, ESQ.

AVA ISSARY, ESQ.

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7 Attorneys for Plaintiff JESUS LOPEZ,  
8 individually and on behalf of all others  
9 similarly situated.

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On February 27, 2023, I served on the interested parties in this action the following document(s) entitled:

- XX] BY ELECTRONIC SERVICE: Via electronic filing service provider- electronically transmitting the documents listed above to CaseAnywhere, an electronic filing service provider, at [www.caseanywhere.com](http://www.caseanywhere.com) pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

See Attached Service List

Executed on February 27, 2023, at Irvine, California

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