

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.:(949) 387-7200
Fax:(949) 387-6697
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff KASSANDRA
VASQUEZ, individually and on behalf of all
other similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

KASSANDRA VASQUEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

RLMK, INC., dba MCDONALD'S, a
California Corporation; and DOES 1-50,
inclusive

Defendants.

CASE NO. VCU280653

Assigned to the Hon. Nathan Ide

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

**[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of Class
Action Settlement; Declaration of Plaintiff
Kassandra Vasquez; Declaration of Sean
Hartranft; James Hawkins [Proposed] Order
filed concurrently herewith]**

Date: June 7, 2021
Time: 08:30 a.m.
Dept.: 2

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

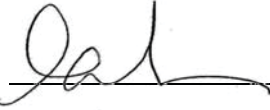
2 **PLEASE TAKE NOTICE** that on June 7, 2021 at 8:30 a.m., or as soon thereafter as counsel
3 may be heard, in Department 2 of the above-captioned court, located at 221 South Mooney Blvd, # 201,
4 Visalia, CA 93291, the Honorable Nathan Ide presiding, Plaintiff Kassandra Vasquez will, and hereby
5 does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation of Class Action and
7 PAGA Settlement, attached as Exhibit 1 to the Declaration of James Hawkins;
- 8 2. Conditionally certify the proposed Settlement Class;
- 9 3. Appoint Kassandra Vasquez as the representative for the Settlement Class;
- 10 4. Appoint James Hawkins, APLC as Class Counsel;
- 11 5. Approve distribution of the proposed Notice of Proposed Settlement of Class Action to
12 the Settlement Class;
- 13 6. Appoint ILYM Group, Inc. as the Settlement Administrator; and
- 14 7. Set a hearing date for final approval of the settlement.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
16 Points and Authorities in support of Motion for Preliminary Approval of Class Action Settlement; (3) the
17 Declaration of James Hawkins; (4) the Declaration of Sean Hartranft; (5) the Declaration of Kassandra
18 Vasquez; (6) the Joint Stipulation of Class Action and PAGA Settlement and Release and Exhibits
19 attached thereto; (6) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
20 (7) the records, pleadings, and papers filed in this action; and (8) upon such other documentary and oral
21 evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this
22 Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by
23 California Rules of Court, Rule 3.1113(9).

1 Dated: May 13, 2021

Respectfully submitted,

2
3 By: _____

4 James R. Hawkins
5 Gregory Mauro
6 Michael Calvo
7 **JAMES HAWKINS, APLC**

8 Attorney for Plaintiff Kassandra Vasquez
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Kassandra Vasquez is the named plaintiff (“Plaintiff”) in this action brought against Defendant RLMK Inc. doing business as McDonald’s Restaurant and include via the proposed amended complaint the following Defendants: Leapday Enterprise, Inc.; KAD Enterprises, LLC; Delph Enterprises, LLC; and KAD91, Inc. (“Defendants” or “RLMK”) (collectively with Plaintiffs, the “Parties”) for wage and hour violations: No. VCU 280653 (Tulare County Superior Court, Visalia); (the “Action”). Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Jeffrey Ross, Esq., an experienced mediator of wage and hour actions. With Mr. Ross’s guidance, the Parties were able to negotiate a global settlement of the Action for \$4,250,000.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Joint Stipulation of Class Action and PAGA Settlement (hereinafter Settlement Agreement).¹ If approved, the Settlement would provide considerable monetary relief for approximately 28,000 current and former employees of Defendant. The principal terms of the Settlement provide for the following:

(1) Conditional certification of a Settlement Class defined as: means any and all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time from October 2, 2015 to the Preliminary Approval Date, or 60 days after full execution, whichever date occurs first. (“Class Members”).

(2) A **non-reversionary** Gross Settlement Amount of \$4,250,000. The Gross Settlement Amount includes: (a) A “Net Settlement Amount” means the Maximum Settlement Amount, less the amount that will be available for payment to all Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by subtracting all of the following from

¹ Notice of the Proposed Amended Complaint including Claims for PAGA was served on the LWDA on the April 1, 2021. The Parties anticipate filing a Stipulation to File Amended Complaint prior to the hearing on the Motion for Preliminary Approval of Settlement.

1 the Maximum Settlement Amount: (1) attorneys’ fees in the amount of up to \$1,416,666.00 and
2 reimbursement of litigation costs and expenses in the amount of up to \$20,000.00 to Class
3 Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff in the amount of up to
4 \$7,500.00 (“Service Payment”); (3) fees and expenses of administration of the Settlement to the
5 Settlement Administrator in an amount not to exceed \$80,000.00 (“Settlement Administration
6 Costs”); (4) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net
7 Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of
8 \$62,500.00; and (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA
9 Payment”) in the amount of \$187,500.00 to the California Labor and Workforce Development
10 Agency (“LWDA”). **The Entire Gross Settlement Amount will be paid to all Class
11 Members who do not opt out of the Settlement Class, and without the need to submit
12 claims for payment.**

13 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
14 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s
15 length with helpful guidance from Mr. Ross, and the Settlement confers substantial benefits to Class
16 Members. The Net Settlement Amount is estimated to be approximately \$2,475,834.00. This relief—
17 averages approximately \$343 per Class Member- is particularly impressive when viewed against the
18 difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather
19 than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they
20 have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff
21 prevailing at trial but losing on appeal.

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

25 **II. FACTS AND PROCEDURE**

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

27 On October 2, 2019, Plaintiff Vasquez filed her class action complaint alleging claims (1)
28 failure to pay minimum wages and overtime wages; (2) failure to provide meal breaks; (3) failure to

1 authorize/permit rest breaks; (4) failure to timely pay wages; (5) failure to reimburse business expenses;
2 and (6) unfair competition. On April 1, 2021 Plaintiff Vasquez submitted a PAGA notice to the LWDA
3 in accordance with the requirements of Labor Code section 2699.3(a). The PAGA notice alleged that
4 Defendant had violated various California Labor Code sections. The parties await the LWDA response if
5 any to investigate the alleged violations. Plaintiff will file a First Amended Complaint which alleges
6 claims under PAGA based on the same allegations and Labor Code provisions in the complaint and
7 adding a claim for Labor Code section 226 wage statement violations. (Declaration of James Hawkins
8 [“Hawkins Decl.”] ¶ 3.)

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

10 On September 28, 2020, Plaintiff Vasquez and Defendant attended a full-day mediation with
11 mediator Jeff Ross, but were not able to reach a settlement on that date. Plaintiff Vasquez and Defendant
12 continued to engage in informal settlement discussions with the assistance of Jeff Ross, including having
13 the financial documents of Defendant reviewed by Plaintiff’s expert CPA. During this process, the
14 parties continued to negotiate, and mediator Jeff Ross communicated a mediator proposal for
15 \$4,250,000. On January 7, 2021, the parties accepted the mediator proposal and ultimately reached a
16 settlement, the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 4,
17 Ex. 1.)

18 **III. SUMMARY OF SETTLEMENT TERMS**

19 **A. The Proposed Settlement Fully Resolves Plaintiffs’ Claims**

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

21 The proposed Settlement Class consists of any and all current and former hourly-paid or non-
22 exempt employees who worked for Defendants within the State of California at any time from October
23 2, 2015 to the Preliminary Approval Date, or 60 days after full execution, whichever date occurs
24 first. (Settlement Agreement ¶ 1.1.) There are approximately 7,200 Class Members through September
25 28, 2020.

26 **2. Settlement Consideration**

27 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the
28 Gross Settlement Amount of \$4,250,000. The Gross Settlement Amount includes: (1) automatic

1 payments from the Net Settlement Amount to all Class Members who do not opt out; (2) attorneys' fees
2 in the amount of up to \$1,416,666.00 and reimbursement of litigation costs and expenses in the amount
3 of up to \$20,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (3) service award to Plaintiff in the
4 amount of up to \$7,500.00 ("Service Payment"); (4) fees and expenses of administration of the
5 Settlement to the Settlement Administrator in an amount not to exceed \$80,000.00 ("Settlement
6 Administration Costs"); (5) the twenty-five percent (25%) share of the PAGA Penalties to be a part of
7 the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of
8 \$62,500.00; and (6) the seventy-five percent (75%) share of PAGA Penalties ("LWDA Payment") in the
9 amount of \$187,500.00 to the California Labor and Workforce Development Agency ("LWDA").
10 (Settlement Agreement ¶¶ 1.9, 1.13.)

11 Subject to the Court approving attorneys' fees and costs, settlement administration costs, the
12 payment to the LWDA, and the enhancement payments, the Net Settlement Fund will be distributed to
13 all Class Members in full. (Settlement Agreement ¶¶ 1.9, 1.13.)

14 **3. Formula for Calculating Payments from the Class Payout Fund**

15 Each Class Member's share of the Class Payout Fund will be proportional to the number of
16 work weeks during which s/he or they worked during the Settlement Period. (Settlement Agreement ¶¶
17 1.10, 1.18, 2.5.) The Settlement Administrator will calculate payments as follows:

- 18 • The amount of each Class Member Payment will be calculated on a pro rata basis, based
19 on the number of work weeks each Settlement Class Member worked during the
20 Settlement Period.
- 21 • To establish the work week period value, the Settlement Administrator will first
22 determine the total number of pay periods worked by the Employees during the
23 Settlement Period.
- 24 • The pay period value will be equal to the Class Payout Fund divided by the total number
25 of pay periods worked by Employees during the Settlement Period. The pay period
26 value will be rounded to the nearest cent. The Class Member Payment to each
27 Settlement Class Member will be determined by multiplying the pay period value by the
28 total number of pay periods each Employee worked during the Settlement Period.

- The total of all Class Member Payments to all Settlement Class Members shall equal the Class Payout Fund. There is no need for a Settlement Class Member to submit a claim form in order to be eligible for and to receive a Class Member Payment. Any partial pay period will be rounded up to the nearest full pay period.
- Class Member Payments will be reduced by any required deductions for each Settlement Class Member, including employee-side tax withholdings and/or deductions.

(Settlement Agreement ¶¶ 1.18, 2.5.)

Given that there are approximately 7,200 Class Members, the average net recovery will be approximately \$343. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

4. Release by the Settlement Class

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

“Released Claims” means all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as

defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendants in California, that arise under any law or administrative order, rule, or other precedent that, pled based on the claims, allegations or facts alleged in the operative Complaint, including claims of failure to pay wages, failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods and/or associated premiums, failure to provide compliant rest periods and/or associated premiums, failure to provide accurate wage statements, failure to pay wages timely at termination, failure to reimburse for business expenses, unfair competition, PAGA penalties and violations of California Labor Code §§201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1021.5, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2800, 2802, 2804 the applicable Wage Order of the Industrial Wage Commission, civil penalties pursuant to §2698 *et seq.* and other related penalties, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties, including civil penalties. The release does not extend to any claims not alleged in the operative Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment.

(Settlement Agreement ¶¶ 1.27; 1.28.) Further, Class Members will not be able to opt out of the Released PAGA Claims and will be entitled to their PAGA portion for the Released PAGA Claims during the PAGA Period. (Settlement Agreement ¶¶ 1.18, 1.1.19; 1.27; 1.28.)

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;

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

8 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the court to
9 (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide
10 notice to the class of the hearing and “an explanation of the proposed settlement.” The court must also
11 approve a procedure for class members to file objections to the settlement. *Id.* at 3.769(f). At the final
12 approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at
13 3.769(g).

14 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
15 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” See
16 *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
17 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

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

22
23 ² The presumption of fairness is consistent with California’s public policy goal of favoring
24 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
25 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally
26 favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v.*
27 *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
28 preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”);
Skulnick v. Roberts Express, Inc., 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages
litigation and encourages settlement [because settlements] can produce peace and goodwill in the
community while reducing the expense and persistency of litigation”). Additionally, in reviewing the
fairness of a class action settlement, due regard should be given to what is “otherwise a private
consensual agreement between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at

1 **2. Plaintiff's Counsel Conducted a Thorough Investigation of the Factual and**
2 **Legal Issues and Were Thus Able to Objectively Assess the Settlement's**
3 **Reasonableness**

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

16 In response to Plaintiff's discovery requests, Plaintiff's Counsel received a considerable amount
17 of documents and data, including employee demographic data, time and pay records, and Defendant's
18 policies and procedures manuals which covered a broad range of topics including, *inter alia*, employee
19 clock-in policies and procedures, attendance policies, meal periods/rest periods, overtime & premium
20 pay, etc. The document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and
21 magnitude of the claims being settled, as well as the impediments to recovery, and ultimately enabled
22 Plaintiff's Counsel so as to make an independent assessment of the reasonableness of the settlement's
23 terms. (Hawkins Decl. ¶ 6.)

24 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
25 which included: (1) determining Plaintiffs' suitability as private attorneys general and class

26
27 1117. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the
28 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 representatives through interviews, background investigations, and analyses of their employment files
2 and related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar
3 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
4 employer; (4) analyzing employees' time and wage records; (5) reviewing Defendant's employment
5 policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiffs' claims and
6 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
7 participating in the mediation. (Hawkins Decl. ¶ 7.)

8 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
9 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
10 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
11 known facts and circumstances, including the risk of significant delay and uncertainty associated with
12 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 8, 14.)

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

15 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed
16 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
17 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
18 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
19 11.51.

20 As explained above, the Parties settled this matter with the assistance of an experienced wage
21 and hour class and PAGA action mediator. Mr. Ross helped to manage the Parties' expectations and
22 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod.*
23 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
24 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
25 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
26 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.
27 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
28 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.

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. ¶ 33.)

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

4. 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,

1 and other factors.³

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

12 As explained in detail below, the Gross Settlement Amount is within the range of reasonableness
13 in light of the nature and magnitude of the claims being settled and the various potential impediments to
14 recovery.

15 Defendants deny all allegations pled, along with all allegations intended to be pled in the
16 operative complaint. Defendants contend they implemented written policies and maintained practices
17 that complied with the requirements of the California Labor Code and applicable California Wage
18 Orders. Defendants contend there was no off-the-clock work performed by Plaintiff or the putative class.
19 Defendants contend all minimum wages, overtime wages, and double time wages were paid in

21 ³ Federal district courts also recognize that there is an inherent “range of reasonableness” in
22 determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any
23 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
24 completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482
25 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal.
26 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a
27 fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461
28 (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 compliance with California law and applicable California Wage Orders. In addition, an individualized
2 investigation into the circumstances surrounding any missed meal and rest breaks is warranted because
3 such claims can only be decided on a case-by-case basis, common issues do not predominate and class
4 certification is neither superior nor proper, Defendants contend that any occurrence of missed, late, and
5 interrupted meal period was *de minimis*, and that their witness interviews and time records confirmed the
6 employees in question took meal and rest breaks regularly each day and any instances of non-
7 compliance were a result of personal choice. Defendants contend their meal period practices were and
8 always have been lawful in that non-exempt employees have been “provided” meal periods as required
9 and Defendants have a practice of paying premiums.

10 Defendants contend Plaintiff could not successfully argue that derivative waiting time penalties
11 were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the
12 willfulness threshold required by Labor Code section 203. Plaintiff evaluated and considered the former
13 Class Members who have separated from Defendants’ employ during the Class Period. Plaintiff applied
14 the three year statute of limitations and argued that the employer’s underlying violation was willful.
15 Defendant disagreed with this analysis, with respect to the “willfulness” prong and argued that Plaintiff
16 could not show willfulness. The considerable risk that Defendant could defeat certification and prevail
17 on its defenses defeating any and all recovery to the class warranted a compromise of the class claims.
18 Similarly, Defendants contend that they have complied with all such requirements with respect to payroll
19 records and wage statements at all times. Further, Plaintiff would still face a difficult, if not impossible,
20 hurdle to overcome the willfulness threshold required by Labor Code section 226.

21 Defendants contend any business expense incurred by Plaintiff or the putative class was properly
22 reimbursed or not a reimbursable business expense.

23 Defendants contend their practices have been in compliance with applicable law as set forth
24 above, and that Plaintiff has no basis for asserting a claim under the UCL.

25 Defendants contend that Plaintiff will face certification hurdles in that Defendants operate
26 twenty-seven location as management at each location imparts specific wage and hour practices on the
27 ground. These practices differ widely from store to store, representing the differences in the locations’
28 peak times, customer volume, seasonality of the business, and management style, amongst other factors.

As such, Plaintiff will have to make individualized inquiries into employees' actual wage and hour procedures as they are actually expressed over different shifts, seasons, stores, amongst other factors.

Defendant's Realistic Exposure for the Class Claims	
Claim	Approximate Value Factoring In the Risks of Continued Litigation
Off-the-Clock Violations	\$714,600.00
Meal Period Violations	\$2,679,750.00
Rest Period Violations	\$2,118,515.00
Wage Statement Violations	\$6,953,600.00
Final Pay Violations	\$9,001,816.200
Total	\$21,648,281.00

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined that a settlement amounting to \$4,250,000 was fair and reasonable, and courts have routinely approved settlements that provided 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 settlement of 6% to 8% of estimated damages).⁴

⁴ 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-

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

3 Pursuant to the Settlement Agreement, \$250,000.00 from the Gross Settlement Amount shall be
4 allocated to the resolution of the PAGA claim, of which 75% (\$187,500.00) will be paid directly to the
5 LWDA, and the remaining 25% (\$62,500.00) will be paid to PAGA Members who worked during the
6 PAGA Period beginning October 2, 2018 to the date of preliminary approval. (Settlement Agreement ¶¶
7 1.13; 1.17 to 1.20.)

8 This result was reached after good-faith negotiation between the parties. The amount was valued
9 as follows: Based on information and evidence produced by Defendant during discovery, Plaintiff's
10 Counsel determined that aggrieved employees worked a combined total of approximately 70,000 pay
11 periods during the PAGA Period . Statutory penalties would be calculated according to Labor Code
12 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil
13 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
14 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
15 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 Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June
19 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies
20 the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
21 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty
22 of \$200 for subsequent violations will not be calculated to determine the amount in controversy”);
23 *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v.*
24 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
25 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing
26
27 cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where
28 “[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 a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components*
2 *Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)
3 (“courts have held that employers are not subject to heightened penalties for subsequent violations unless
4 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”), citing
5 *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

6 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
7 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
8 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
9 reducing PAGA penalties, courts have considered issues including whether the employees suffered
10 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
11 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
12 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
13 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
14 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

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

22 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
23 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
24 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
25 under specified PAGA claim where the employer produced evidence that it took its obligations
26 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
27 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
28 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*

1 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
2 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
3 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
4 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
5 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
6 other PAGA claims).

7 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
8 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
9 approved by California courts.⁵ Where PAGA penalties are negotiated in good faith and “there is no
10 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
11 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009
12 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); see, e.g., *Nordstrom Com. Cases*, 186 Cal.
13 App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which
14 does not allocate any damages to the PAGA claims.”).

15 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
16 **Enhancement Payments**

17 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*

18
19 ⁵ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
20 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
21 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
22 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
23 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
24 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
25 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
26 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
27 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
28 *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).

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

Approximately 7,200 current and former employees will share a \$4,250,000 settlement fund due entirely to the effort and commitment of Kassandra Vasquez. Subject to Court approval, therefore, the Settlement provides for Class Representative Service Payment of \$7,500.⁶ The Class Representative

⁶ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super.

Service Payment 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. ¶ 27; Kassandra Vasquez Decl.)

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

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

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. 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, Plaintiffs will seek Court-approval of attorneys' fees of \$1,416,666.00 (one-third of the Gross Settlement Amount) and litigation costs and expenses not to exceed \$20,000.00.

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

Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment).

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).⁷ In *Dunk*, the California Court of Appeal specifically rejected the argument that the standard for certifying a class for purposes of settlement is identical to the standard for certifying the same class for purposes of litigation:

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

Id. at n19.

⁷ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous analysis than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage, “the Court must determine whether the proposed class should be conditionally certified, and leave the final certification decision for the Fairness Hearing.”).

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

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

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

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

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

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

15 The proposed Settlement Class consists of any and all current and former hour-paid non-exempt
16 employees who worked for Defendants within the State of California at any time from October 2, 2015
17 to the Preliminary Approval Date, or 60 days after full execution, whichever dates occurs first. Because
18 all Class Members are either current or former employees of Defendant, the class is readily ascertainable
19 from Defendant’s regular business records. (Hawkins Decl. ¶¶ 28-30).

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

26 Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise
27 from the same factual bases and are based on the same legal theories applicable to the other Class
28 Members. Likewise, Plaintiff’s interests are entirely coextensive with the interests of the Class. Plaintiff

1 maintains that Plaintiff was injured by the same company-wide practices to which the proposed
2 Settlement Class was subject and seek the same relief. Plaintiff has already demonstrated her ability to
3 advocate for the interests of the Class by initiating this litigation, undertaking representative discovery,
4 and evaluating the proposed settlement to assure that it is fair. (*Id.*)

5 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
6 litigating wage and hour class action cases. (Hawkins Decl. ¶ 33.) Plaintiff's Counsel has successfully
7 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide
8 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
9 expertise establishes that they are well qualified to represent the interests of this Class.

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

15 **3. The Proposed Notice Properly Informs Class Members about the Case and** 16 **the Settlement**

17 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
18 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
19 information to decide whether they should accept the benefits offered, opt out and pursue their own
20 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
21 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
22 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
23 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
24 class members, California authorities generally require service of the class notice by mail or similar
25 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
26 960, 972 (1975).⁸

27
28 ⁸ Due process does not require that each Class Member actually receive a notice, but rather a

1 The Parties have jointly drafted the Notice of Proposed Settlement of Class Action (“Class
2 Notice”) which fairly and neutrally informs Class Members of their rights and remedies in this action.
3 The proposed Class Notice will be mailed to all Class Members by First Class mail and will include
4 information regarding the nature of the lawsuit, a summary of the substance of the Settlement’s terms,
5 the class definition, the procedure and time period within which to submit Requests for Exclusions or
6 objections to the Settlement, the date for the final approval hearing, the formula used to calculate
7 settlement payments, and the terms and scope of the Released Claims. (Settlement Agreement, Exhibit
8 A-C; Hawkins Decl. ¶¶ 31, 32.)

9 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
10 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
11 Agreement ¶ 2.2.)

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

16 V. CONCLUSION

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

20 Dated: May 13, 2021

Respectfully submitted,

By: _____

James R. Hawkins

Gregory Mauro

Michael Calvo

JAMES HAWKINS, APLC

Attorney for Plaintiff Cassandra Vasquezf

26 procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice*
27 *and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound
28 by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th
Cir. 1987).

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On May 13, 2021, I served on the interested parties in this action the following document(s) entitled:

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

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SERVICE LIST

LEWIS BRISBOIS BISGAARD & SMITH LLP

KATHERINE C. DEN BLEYKER, SB# 257187

E-Mail: Katherine.DenBleyker@lewisbrisbois.com

RAINA SINGER, SB# 323116

E-Mail: Raina.Singer@lewisbrisbois.com

633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendant RLMK, INC. dba MCDONALD'S

[XX] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on May 13, 2021, at Irvine, California



JOCELYN MATEO