

1 JAMES HAWKINS APLC
2 James R. Hawkins, Esq. (#192925)
3 Gregory Mauro, Esq. (#222239)
4 Michael Calvo, Esq. (#314986)
5 9880 Research Drive, Suite 200
6 Irvine, CA 92618
7 Tel.: (949) 387-7200
8 Fax: (949) 387-6676
9 Email: James@jameshawkinsaplc.com
10 Email: Greg@jameshawkinsaplc.com
11 Email: Michael@jameshawkinsaplc.com

12 Attorneys for Plaintiff RENE G. NAVARRO LOVERA,
13 individually and on behalf of all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 RENE G. NAVARRO LOVERA, individually
17 and on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 FORWARD AIR SERVICES, LLC, a
21 Delaware Limited Liability Company;
22 FORWARD AIR, INC., a Tennessee
23 Corporation; and DOES 1-50, inclusive,

24 Defendants.

Case No. 21STCV39280
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Holly J. Fujie
DEPT: 56

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

**[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of PAGA and
Class Action Settlement; Declarations of
Plaintiff RENE G. NAVARRO LOVERA;
[Proposed] Order filed concurrently herewith]**

Date: February 21, 2023
Time: 8:30 a.m.
Dept.: 56

Reservation No.:
161852485722

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on February 21, 2023 at 8:30 a.m., or as soon
3 thereafter as counsel may be heard, in Department 56 of the above-captioned court, located at
4 111 N. Hill Street, Los Angeles, CA 90012, the Honorable Holly J. Fujie presiding, Plaintiff
5 RENE G. NAVARRO LOVERA will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Joint Stipulation and Settlement
7 Agreement of Class Action and PAGA Claims , (“Settlement Agreement”), attached as Exhibit 1 to the
8 Declaration of James Hawkins;
9 2. Conditionally certify the proposed Settlement Classes;
10 3. Appoint RENE G. NAVARRO LOVERA as the representative for the Settlement
11 Classes;
12 4. Appoint James Hawkins, APLC as Class Counsel;
13 5. Approve distribution of the proposed Notice of Proposed Settlement of Class Action and
14 PAGA claims to the Settlement Class; attached as Exhibit A to the Declaration of James Hawkins.
15 6. Appoint ILYM Group, Inc. as the Settlement Administrator; and
16 7. Set a hearing date for final approval of the settlement.

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

25 Dated: January 27, 2023

Respectfully submitted,

26 By: _____

27 James R. Hawkins
28 Gregory Mauro
Michael Calvo
JAMES HAWKINS, APLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

RENE G. NAVARRO LOVERA is the named plaintiff (“Plaintiff”) in this action brought against Defendants FORWARD AIR SERVICES, LLC and FORWARD AIR, INC. (collectively with Plaintiff, the “Parties”) for wage and hour violations. This matter was amended on July 29, 2022 to add class action claims (the “Action”). Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Kelly A. Knight, Esq., an experienced mediator of wage and hour actions. With Mr. Knight’s guidance, the Parties were able to negotiate a gross settlement of the Action for \$1,250,000.00.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (hereinafter Settlement Agreement). If approved, the Settlement would provide considerable monetary relief for approximately 732 class members and aggrieved employees (Settlement Agreement ¶ 4) of Defendant. The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes (Settlement Agreement ¶¶4). It is estimated there are approximately 732 total class members.

(2) A Gross Settlement Amount of \$1,250,000.00. (Settlement Agreement ¶¶15).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Mr. Knight, and the Settlement confers substantial benefits to Class Members. The Net Settlement Amount is estimated to be approximately \$625,170 with \$100,000 of this amount allocated to the FCRA class. This relief—averages **approximately \$700** per Class Member after fees and costs- and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. The \$100,000.00 Net Settlement allocation will be awarded to the FCRA Class and will provide approximately \$200 per FRCA participating class member. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal. (James Hawkins Decl. “Hawkins Decl.” ¶¶ 15-36).

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

4 **II. FACTS AND PROCEDURE**

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

6 On October 25, 2021 Plaintiff files A Private Attorneys General Act ("PAGA")
7 representative action complaint entitled *RENE G. NAVARRO LOVERA v. FORWARD AIR*
8 *SERVICES LLC, et al.*, Los Angeles County Superior Court No. 21STCV39280 seeking damages
9 for Defendant's alleged failure to: (1) failure to pay wages including minimum and overtime
10 wages, (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to timely
11 pay wages upon termination pursuant to Labor Code § 203, (5) failure to timely pay wages during
12 employment as pursuant to Labor Code § 204; (6) failure to provide accurate itemized wage
13 statements; (7) failure to reimburse business expenses, and (8) failure to keep requisite payroll
14 records. (Hawkins Decl. ¶¶ 4-6).

15 On June 16, 2022, the Parties engaged in private mediation with a well-respected wage
16 and hour class action mediator, Kelly Knight. Prior to mediation, Plaintiff requested and
17 Defendant produced extensive documentation including time and pay data records for
18 approximately 90% of the class, policy documents applicable to the class during the Class Period,
19 class size information, information on the number of pay periods and workweeks, and information
20 regarding the hourly rates and workweek. In short, Defendant provided discovery sufficient to
21 enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case
22 and perform an analysis of the potential damages arising from the claims made in this case. As a
23 result of settlement efforts, the Parties agreed to settle this matter for the Gross Settlement Amount
24 of \$1,250,000.00 for approximately 732 class members and the terms of which are fully
25 memorialized in the Settlement Agreement. (Id.)

26 As a result of the investigations, and subsequent settlement discussions and the resultant
27 settlement and scope of claims, on or about August 2, 2022, Plaintiff sent amended notice to the
28 LWDA along with a proposed amended complaint. On or about January 26, 2023, Plaintiff filed

1 the First Amended Complaint which added a correctly named Defendant, FORWARD AIR
2 CORPORATION, related labor code causes of action and class allegations, and including a claim
3 under the FCRA. (Id.)

4 **B. The Parties Settled After Mediation and Expert Analysis**

5 On July 15, 2022, the Parties engaged in private mediation with a well-respected wage and hour
6 class action mediator, Kelly Knight. As a result of settlement efforts the Parties agreed to settle this matter
7 for the Total Gross Settlement Amount of \$1,250,000.00 for approximately 732 class members and the
8 terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 4-12, Ex. 1.)

9 **III. SUMMARY OF SETTLEMENT TERMS**

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

11 1. Composition of the Settlement Class

12 The "Class Members" means the Class and the FCRA Class. The Class is defined as
13 all current and former non-exempt employees of Defendants who worked in California at any time
14 from June 14, 2017, through the date the Court grants preliminary approval. Defendant represents
15 there are approximately 732 Class Members as of July 12, 2022. The FCRA Class is defined all
16 prospective employees in the California for whom Defendant procured a background check during
17 the FCRA Class Period (the "FCRA Class"). The "FCRA Class Period" shall mean the Period of
18 June 14, 2019, through the date the Court grants preliminary approval. (Settlement Agreement I,
19 ¶12.) "PAGA Employee" or "Aggrieved Employee" shall mean all persons who are Class
20 Members who were employed at any time during the PAGA Period. (Settlement Agreement I,
21 ¶22.). "PAGA Period" shall mean June 14, 2020, through the date the Court grants preliminary
22 approval of this Settlement. (Settlement Agreement I ¶25.) There are approximately 732 Class
23 Members. (Hawkins Decl. ¶¶ 4-6)

24 2. Settlement Consideration

25 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Gross
26 Settlement Amount of \$1,250,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the
27 amount of \$437,500.00 and reimbursement of reasonable litigation costs and expenses in the amount of up
28 to \$20,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (2) Class Representative's incentive award

1 to Plaintiff in the amount of up to \$15,000.00 (“Incentive Award”); (3) fees and expenses of administration
2 of the Settlement to the Settlement Administrator in an amount not to exceed \$17,330.00 (“Settlement
3 Administration Costs”); (4) \$180,000.00 to PAGA with twenty-five percent (25%) share of the PAGA
4 Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA
5 Group in the amount of \$45,000.00; (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA
6 Payment”) in the amount of \$135,000.00 to the California Labor and Workforce Development Agency
7 (“LWDA”); and (6) \$100,000.00 to the FCRA Class (“FCRA Settlement Amount”) and the remainder to
8 of the Net Settlement Amount to the Settlement Class Members. (Settlement Agreement ¶¶41 43-44, 46-
9 48).

10 3. Formula for Calculating Payments from the Net Settlement Amount

11 The Gross Settlement Amount less proposed Class Counsel’s fees and costs, Plaintiff’s Incentive
12 Award, PAGA Payment, and Settlement Administrator’s costs shall constitute the “Net Settlement
13 Amount.” The Net Settlement Amount estimated at \$625,170.00 and One Hundred Thousand Dollars and
14 Zero Cents (\$100,000.00) of this amount to the FCRA Class (“FCRA Settlement Amount”) and the
15 remainder to of the Net Settlement Amount to the Settlement Class Members. (Settlement Agreement ¶43;
16 Hawkins Decl. ¶ 15)

17 Given that there are approximately 732 Class Members, each can expect to receive on average
18 approximately \$700, with a high payment of up to \$3,000 and a low payment of \$10.71. The FCRA class
19 members can expect to receive approximately \$200 each. (Hawkins Decl. ¶¶ 35, 36.)

20 This average net recovery is in line with many other wage and hour class action settlements
21 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
22 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
23 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
24 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
25 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
26 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
27 No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
28 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately

1 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net
2 recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
3 (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-
4 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
5 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

6 4. Release by the Settlement Class

7 The release is narrowly tailored to release the claims litigated in the complaints in exchange
8 for the Gross Settlement Amount. Plaintiff and Participating Class Members will agree to release the
9 Released Claims during the Class Period as follows: The Claims set forth in the Amended Complaint,
10 including, but not limited to, (1) Failure to pay wages including overtime and minimum wage; (2) Failure
11 to provide meal periods; (3) Failure to provide rest periods; (4) Failure to pay meal and rest break
12 premiums; (5) Failure to pay wages at termination; (6) Failure to timely pay wages during employment; (7)
13 Failure to provide accurate itemized wage statements; (8) Failure to maintain accurate payroll records; (9)
14 Failure to reimburse business expenses; (10) Violation of the Fair Credit Reporting Act (as to California
15 non-exempt employees, with a limitations period of June 14, 2019, forward); (11) Unfair competition
16 under Cal. Bus. & Prof. Code §§17200, et seq., and (12) Violation of the California Private Attorneys
17 General Act of 2004 (Labor Code § 2698, et seq.) predicated on the same or similar facts and/or claims
18 alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as
19 well as any claims that could have been pled which arise from the same or similar facts concerning the
20 Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting
21 time penalties), as well as any claims under the California Labor Code and California Industrial Welfare
22 Commission Wage Orders that were alleged (specifically for violations of Labor Code sections 200-203,
23 204, 510, 512, 558, 226, 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 *et*
24 *seq.*, and related Wage Order 1-2001), or which could have been alleged under the same or similar facts,
25 allegations and/or claims pleaded in the Lawsuit; b. Any claims for injunctive relief, declaratory relief,
26 restitution, fraudulent business practices or punitive damages alleged or which could have been alleged
27 under the facts, allegations and/or claims pleaded in the complaints filed as part of the Action (Settlement
28 Agreement §§ 63. 64).

1 **IV. ARGUMENT**

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

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

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

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

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

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

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

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

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

17 In summary, Plaintiff’s Counsel performed a thorough investigation into the claims at issue, which
18 included: (1) determining Plaintiff’s suitability as private attorneys general and class representative through
19 interviews, background investigations, and analyses of their employment files and related records; (2)
20 evaluating all of Plaintiff’s potential representative claims; (3) researching similar wage and hour class

21 ¹ The presumption of fairness is consistent with California’s public policy goal of favoring
22 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
23 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy
24 generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair
25 Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and
26 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex
27 class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992)
28 (“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 actions as to the claims brought, the nature of the positions, and the type of employer and Defendant's prior
2 class action settlement; (4) analyzing employees' time and wage records; (5) reviewing Defendant's
3 employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's
4 claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and
5 (9) participating in the mediation. (Id.)

6 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
7 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
8 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
9 known facts and circumstances, including the risk of significant delay and uncertainty associated with
10 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 14-37.)

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

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

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

1 the settlement process was not collusive”). At all times, the Parties’ negotiations were adversarial and non-
2 collusive. (Hawkins Decl. ¶ 4.)

3 The Parties were represented by experienced class action counsel throughout the negotiations
4 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff’s Counsel employ
5 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
6 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 44.)

7 Defendant is represented by Holland & Hart LLP, a respected defense firm.

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

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

23 _____
24 ² Federal district courts also recognize that there is an inherent “range of reasonableness”
25 in determining whether to approve a settlement “which recognizes the uncertainties of law and fact
26 in any particular case and the concomitant risks and costs necessarily inherent in taking any
27 litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F.
28 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

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

10 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is
11 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
12 various potential impediments to recovery. (Hawkins Decl. ¶¶ 14-37.)

13 Defendant denies all allegations pled, along with all allegations intended to be pled in the operative
14 complaints. Defendant contends they implemented written policies and maintained practices that complied
15 with the requirements of the California Labor Code and applicable California Wage Orders. Defendant
16 contends all employees were provided meal periods and authorized rest periods, were paid all wages, and
17 were timely paid wages in compliance with California law and applicable California Wage Orders. In
18 addition, an individualized investigation into the circumstances surrounding any missed meal and rest
19 breaks is warranted because such claims can only be decided on a case-by-case basis, common issues do
20 not predominate and class certification is neither superior nor proper. (*Id.*)

21 Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties
22 were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the
23 willfulness threshold required by Labor Code section 203. The considerable risk that Defendant could
24 defeat certification and prevail on its defenses defeating any and all recovery to the class warranted a
25 compromise of the class claims. Similarly, Defendant contends that they have complied with all such
26

27 _____ optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should
28 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 with respect to payroll records and wage statements at all times. Further, Plaintiff would still
2 face a difficult, if not impossible, hurdle to overcome the thresholds required by Labor Code section 226
3 claims. Lastly, many employees signed arbitration agreements which would make certification issues more
4 complex. (Id.)

5 Defendant also argued that notwithstanding its apparently compliant meal break, rest break and
6 time keeping policies regarding the timing and length, that Plaintiff and Class Members were paid over
7 49,000 meal period premiums(Id.) .

8 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
9 that a settlement amounting to \$1,250,000.00 was fair and reasonable, and accounts for an approximate
10 23%-47% of total possible recovery and courts have routinely approved settlements that provided a similar
11 discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 34, 35). *See, e.g., In re Warfarin*
12 *Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement
13 amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F.
14 Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
15 were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8%
16 of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21,
17 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of
18 possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued
19 litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving
20 settlement of 6% to 8% of estimated damages).³ (Id.)

21
22 ³ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS
23 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action
24 settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards,
25 was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
26 02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting
27 preliminary approval to class action settlement representing “8.1% of the full verdict value” with
28 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

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

4 Pursuant to the Settlement Agreement, \$180,000.00 from the Gross Settlement Amount shall be
5 allocated to the resolution of the PAGA claim, of which 75% (\$135,000.00) will be paid directly to the
6 LWDA, and the remaining 25% (\$45,000.00) will be paid to PAGA Members who worked during the
7 PAGA Period beginning June 14, 2020 through the date of Preliminary Approval. (Settlement Agreement I
8 ¶¶25 and 69.)

9 However, a number of courts have found that the “subsequent” penalty under PAGA applies only
10 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
11 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
12 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the
13 employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor
14 Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200
15 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuyse v.*
16 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
17 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
18 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
19 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
20 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
21 employers are not subject to heightened penalties for subsequent violations unless and until a court or
22 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
23 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

24 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
25 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
26 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
27
28 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 penalties, courts have considered issues including whether the employees suffered actual injury from the
2 violations, whether the defendant was aware of the violations, and the employer's willingness to fix the
3 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
4 only 0.2% of the maximum); *see also* *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
5 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
6 12, 2011).

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

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

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

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

7 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
8 **Enhancement Payment**

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

18 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
19 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
20 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
21 SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
22 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
23 No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million
24 settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R.*
25 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
26 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
27 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
28 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).

1 of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

2 Approximately 732 current and former employees will share a \$1,250,000.00 settlement fund due
3 entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement
4 provides for Class Representative Incentive Award of \$15,000.00 to the Class Representative⁵ The Class
5 Representative Incentive Award is fair and reasonable compensation for Plaintiff’s effort in pursuing the
6 action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of
7 their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that
8 its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 29; *see also*
9 *generally*, Rene G. Navarro Lovera Decl.)

10 Plaintiff will file a formal motion for the negotiated Class Representative Incentive Payments once

11 ⁵ Such amounts are reasonable by reference to the amounts that California courts (both
12 federal and state) have repeatedly found to be reasonable for wage and hour class action
13 settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10,
14 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton*
15 *Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding
16 \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*,
17 No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding
18 \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
19 CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000
20 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269
21 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named
22 plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
23 April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v.*
24 *United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15,
25 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s*
26 *Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000
27 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-
28 2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000
enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No.
BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to
the named plaintiff); *Baker v. L.A. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct.
Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*
Coldwell Banker Residential Brokerage Co., No. BC417335 (L.A. County Super. Ct. Mar. 21,
2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795
(L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named
plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3,
2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No.
BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment);
Hickson v. South Coast Auto Insurance Marketing, Inc., No. BC390395 (L.A. County Super. Ct.
Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to
the named plaintiffs); *Kabamba v. Victoria’s Secret Stores, LLC*, No. BC368528 (L.A. County
Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs);
Magee v. American Residential Services, LLC, No. BC423798 (L.A. County Super. Ct. Apr. 21,
2011) (awarding \$15,000 enhancement payment).

1 preliminary approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is
2 sufficient for preliminary approval of the negotiated Class Representative Incentive Payments.

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

5 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the
6 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
7 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
8 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
9 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
10 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
11 class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
12 approval of attorneys' fees of \$437,500.00 (one-third of the Gross Settlement Amount) and litigation costs
13 and expenses not to exceed \$20,000.00 which are currently approximately \$12,000.

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

15 1. The California Standard for Class Certification

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

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

1 settlement cases).⁶ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
2 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
3 class for purposes of litigation:

4
5 Geer argues the court must use the same standard under Federal Rules of Civil Procedure,
6 rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation class
7 certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for Justice*
8 *v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading commentators
9 (Newberg & Conte, *supra*, ¶ 11.28 at p. 11–58), which allow a lesser standard of scrutiny for
10 settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23
11 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep
12 the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class
13 members. The first purpose is inapposite in the settlement context, and the second, as it relates
14 to commonality of issues, only makes a difference if the non-representative class members
15 would do much better by litigating on their own or in their own jurisdiction. The second
16 category concerns are protected by the trial court’s fairness review of the settlement. *Id.* at
17 n19.

18
19 2. The Proposed Settlement Class Is Ascertainable and There Is a Well-
20 Defined Community of Interest Among Class Members

21
22 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is
23 “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for
24 identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they
25 may be readily identified without unreasonable expense or time by reference to official records. *Id.*

26
27 The community of interest requirement embodies three factors: (1) predominant common
28 questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a
class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

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

⁶ 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 adjudication, are so numerous or substantial that the maintenance of a class action
2 would be advantageous to the judicial process and to the litigants.”

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

4 The proposed Settlement Class Members consists of the individual Class Members who did not
5 opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all current and
6 former non-exempt employees of Defendants who worked in California at any time from June 14, 2017,
7 through the date the Court grants preliminary approval. Defendant represents there are approximately 732
8 Class Members as of July 12, 2022. The FCRA Class is defined all prospective employees in the California
9 for whom Defendant procured a background check during the FCRA Class Period of June 14, 2019 to the
10 date of preliminary approval (the “FCRA Class”). Because all Class Members are either current or former
11 employees of Defendant, subject to the same policies and practices, the class is readily ascertainable from
12 Defendant’s regular business records. (Hawkins Decl. ¶¶ 39-41).

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

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

26 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
27 litigating wage and hour class action cases. (Hawkins Decl. ¶ 44.) Plaintiff’s Counsel has successfully
28 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide

1
2 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
3 expertise establishes that they are well qualified to represent the interests of this Class.

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

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

11 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
12 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
13 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
14 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).
15 The notice must advise class members "that they may be excluded from the class if they so request and that
16 they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67
17 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
18 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*
19 *Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁷

20 The Parties have jointly drafted the Notice of Class Action settlement ("Class Notice") which fairly
21 and neutrally informs Class Members of their rights and remedies in this action. (Settlement Agreement,
22 Exhibit A; Hawkins Decl. ¶¶ 42, 43.)

23 Accordingly, both the method of disseminating the Class Notice and content of the Class Notice
24 satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f); *State of Cal. v. Levi*

25
26
27 ⁷ Due process does not require that each Class Member actually receive a notice, but rather
28 a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

1 *Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise the class members of the terms of
2 the proposed compromise and of the options open to dissenting class members.”).

3 **V. CONCLUSION**

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

7
8 Dated: January 27, 2023

JAMES HAWKINS APLC

9
10 By: 
11 JAMES R. HAWKINS, ESQ.
12 GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.

13 Attorneys for Plaintiff RENE G. NAVARRO
14 LOVERA, individually and on behalf of all
15 others similarly situated.
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I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

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

DECLARATION OF RENE G. NAVARRO LOVERA IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@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.

Christopher L. Dengler, Esq.
Jyoti Mittal, Esq.
LITTLER MENDELSON, PC
633 West 5th Street, 63rd Floor
Los Angeles, CA 90071
Email: cdengler@littler.com
Email: jmittal@littler.com

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Executed on January 27, 2023, at Irvine, California

PROOF OF SERVICE



Make a Reservation

RENE G. NAVARRO LOVERA vs FORWARD AIR SERVICES, LLC, et al.

Case Number: 21STCV39280 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2021-10-25 Location: Stanley Mosk Courthouse - Department 56

Reservation

Case Name:

RENE G. NAVARRO LOVERA vs FORWARD AIR SERVICES, LLC, et al.

Case Number:

21STCV39280

Type:

Motion for Order (FOR PRELIMINARY APPROVAL)

Status:

RESERVED

Filing Party:

Rene G. Navarro Lovera (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 56

Date/Time:

02/21/2023 8:30 AM

Number of Motions:

1

Reservation ID:

161852485722

Confirmation Code:

CR-XTTMOMUB5QP4RVPQM

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX6358

Authorization:

06244C

Payment Date:

1969-12-31

Print Receipt

Reserve Another Hearing