

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 EDMUNDO BAQUIRING,
13 individually and on behalf of all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA**

16 EDMUNDO BAQUIRING, individually and
17 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 CALIFORNIA SIERRA EXPRESS, INC., a
21 Nevada Corporation; and DOES 1-50,
22 inclusive,

23 Defendants.

CASE NO.: RG21106254
Consolidated with Case No. 21CV00142
Hon. Evelio Grillo

**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; Declarations of Plaintiff
Edmundo Baquiring; [Proposed] Order filed
concurrently herewith]**

Date: February 3, 2023
Time: 10:00 a.m.
Dept.: 21

Reservation No.:
726547416071

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on January 4, 2023 at 10:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 21 of the above-captioned court, located at
4 1225 Fallon Street, Oakland, CA 04612, the Honorable Evelio Grillo presiding, Plaintiff
5 Edmnundo Baquiring will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Settlement Agreement and Release
7 of Class Action, (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of James Hawkins;
8 2. Conditionally certify the proposed Settlement Classes;
9 3. Appoint Edmnundo Baquiring as the representative for the Settlement Classes;
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; attached as Exhibit A to the Declaration of James Hawkins.
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 Plaintiff Ednundo Baquiring; (5) the Settlement
18 Agreement; (6) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (7) the
19 records, pleadings, and papers filed in this action; and (8) upon such other documentary and oral
20 evidence or argument as may be presented to the Court at or prior to the hearing of this Motion. As this
21 Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by
22 California Rules of Court, Rule 3.1113(5).

23 Dated: January 11, 2023

Respectfully submitted,

24 By: _____

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Edmundo Baquiring is the named plaintiff (“Plaintiff”) in this action brought against Defendant California Sierra Express, Inc., (collectively with Plaintiff, the “Parties”) for wage and hour violations: Case No. RG21106254 consolidated with Case No. 21CV00142 (filed in the Alameda County Superior Court) (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 class-wide settlement of the Action for \$425,000.00.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Class and Representative Action Settlement Agreement and Release (hereinafter Settlement Agreement). If approved, the Settlement would provide considerable monetary relief for approximately 463 current and former employees (Settlement Agreement I §4) of Defendant. The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes (Settlement Agreement I §4). It is estimated there are approximately 463 total class members.

(2) A **non-reversionary** Total Settlement Amount of \$425,000.00. (Settlement Agreement III §10).

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 \$208,958.34. This relief—averages **approximately \$451.00 per** Class Member after fees and costs- and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. 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.” ¶¶ 14- 29).

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 July 23, 2021, Plaintiff filed a putative class action entitled *Edmundo Baquiring vs.*
7 *California Sierra Express, Inc.*, Alameda County Superior Court No. RG21106254 (the "Class
8 Action"); and A Private Attorneys General Act ("PAGA") representative action complaint
9 originally lfiled on November 1, 2021 and entitled *Edmundo Baquiring v. California Sierra*
10 *Express, Inc.*, Alameda County Superior Court No. 21CVOO1422, the ("Lawsuits") seeking
11 damages for Defendant's alleged failure to: failure to pay employees all earned wages (including
12 at least minimum wage for all hours worked and applicable overtime), failure to provide meal
13 periods, failure to provide rest periods, failure to issue premium payments for allegedly non-
14 compliant meal and/or rest periods, failure to timely pay wages, failure to issue proper wage
15 statements, failure to indemnify necessary business expenses, unfair competition, liquidated
16 damages, interest, attorney's fees and costs, and civil penalties under PAGA. (Hawkins Decl.¶
17 3.)

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

19 On June 16, 2022, the Parties engaged in private mediation with a well-respected wage and hour
20 class action mediator, Kelly Knight. Prior to mediation, Plaintiff requested and Defendant produced
21 extensive documentation including time and pay data, policy documents, class size information,
22 information on the number of pay periods and workweeks, and information regarding the hourly rates and
23 workweek. In short, Defendant provided informal discovery sufficient to enable the Plaintiff and Class
24 Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential
25 damages arising from the claims made in this case. As a result of settlement efforts the Parties agreed to
26 settle this matter for the Total Settlement Amount of \$425,000.00 for approximately 463 class members
27 and the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 4-12, Ex. 1.)
28

1 **III. SUMMARY OF SETTLEMENT TERMS**

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

3 1. Composition of the Settlement Class

4 The Class Period” for the Driver Class is between January 1, 2019 and the date of
5 preliminary approval of the Settlement; The Class Period for the Non Driver Class is July 23, 2017
6 and the date of preliminary approval of the Settlement. (Settlement Agreement I, §5.) The
7 proposed Settlement Class consists of “All current and former hourly drivers employed by
8 Defendant in California or continuing to be employed by Defendant in California (either directly
9 or through a temporary staffing agency) between January 1, 2019 and the date of preliminary
10 approval of the Settlement (the “Driver Class”); and All current and former hourly employees who
11 were not or are not drivers, employed by Defendant in California (either directly or through a
12 temporary staffing agency) between July 23, 2017 and the date of preliminary approval of the
13 Settlement (the “Non-Driver Class”) (together, the Driver Class and Non-Driver Class are the
14 “Class Members” or “Settlement Class”). (Settlement Agreement I, §5.) There are approximately
15 463 Class Members.

16 PAGA Settlement Group Member(s) refers to all persons who were employed by
17 Defendant (either directly or through a temporary staffing agency) as either Driver or Non Drivers
18 employees of Defendant in the State of California at any time from July 23, 2020 through the date
19 of Preliminary Approval, regardless of whether they are also a Class Member or Participating
20 Class Member. (Settlement Agreement I §22.)

21 2. Settlement Consideration

22 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Gross
23 Settlement Amount of \$425,000.00. The Total Settlement Amount includes: (1) attorneys’ fees in the
24 amount of \$141,666.66 and reimbursement of reasonable litigation costs and expenses in the amount of up
25 to \$25,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff in the amount
26 of up to \$7,500.00 (“Enhancement Award”); (3) fees and expenses of administration of the Settlement to
27 the Settlement Administrator in an amount not to exceed \$10,000.00 (“Settlement Administration Costs”);
28 (4) \$42,500.00 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part of the

1 Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of
2 \$10,625.00; and (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the
3 amount of \$31,875.00 to the California Labor and Workforce Development Agency (“LWDA”).
4 (Settlement Agreement III §10).

5 Subject to the Court approving attorneys’ fees and costs, settlement administration costs, the
6 payment to the LWDA, and the enhancement payments, the Net Settlement Fund will be distributed to all
7 Class Members in full. (Settlement Agreement III §10).

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

9 Each Class Member’s share of the Individual Settlement Payments will be paid from the Net
10 Settlement Amount and shall be paid pursuant to the settlement formula as follows:

11 (i) using the Class Information, the Settlement Administrator will compute the total number of
12 Eligible Workweeks of all Participating Class Members collectively during the Class Period; this sum shall
13 be known as the Workweek Total;

14 (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to
15 determine the settlement value for each Eligible Workweek (the “Workweek Value”); and

16 (iii) the Settlement Administrator will multiply the number of Eligible Workweeks of a
17 Participating Class Member during the Class Period by the Workweek Value to determine that
18 Participating Class Member’s Individual Settlement Payment. (Settlement Agreement III §10(a).)

19 Given that there are approximately 463 Class Members, can expect to receive on average
20 approximately \$451, with a high payment of up to \$1,914 and a low payment of \$6.96. (Hawkins Decl. ¶
21 29.)

22 This average net recovery is in line with many other wage and hour class action settlements
23 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
24 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
25 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
26 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
27 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
28 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 Total Settlement Amount, Plaintiff and Participating Class Members will agree to release the Released Claims during the Settlement Period: "Released Claims" "Released Claims" The claims to be released by the Class Members are any and all claims under state, federal, or local law, whether statutory or common law arising out of or reasonably related to the facts and claims expressly pleaded in the Lawsuits and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Lawsuits for: failure to pay employees all earned wages (including at least minimum wage for all hours worked and applicable overtime), failure to provide meal periods, failure to provide rest periods, failure to issue premium payments for allegedly non-compliant meal and/or rest periods, failure to timely pay wages, failure to issue proper wage statements, failure to indemnify necessary business expenses, unfair competition, liquidated damages, interest, attorney's fees and costs, and civil penalties under PAGA, including Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2698, 2699, and any and all damages, restitution, disgorgement, civil penalties, statutory penalties, taxes for which employees would otherwise be responsible (except as otherwise provided in this Agreement), interest or attorneys' fees or costs resulting therefrom. Released Claims shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, wrongful termination claims, discrimination claims, or any other claim or right that as a matter of law that cannot be waived or released. The Parties will meet and confer

1 in good faith if the Court requires changes to the scope of the Released Claims. (Settlement Agreement I §28.)

2 **IV. ARGUMENT**

3 **A. The Court Should Preliminarily Approve the Proposed Class Action** 4 **Settlement**

5 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, 6 Adequate, and Reasonable

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

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

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

25 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached through
26 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the court to
27 act intelligently;” (3) counsel is “experienced in similar litigation;” and (4) the percentage of objectors “is
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. ¶¶ 6-12.)

17 Plaintiff’s Counsel received a considerable amount of documents and data, including employee
18 demographic data, random sample of time and pay records and driver manifest, and Defendant’s policies
19 and procedures manuals which covered a broad range of topics including, *inter alia*, employee clock-in
20 policies and procedures, attendance policies, meal periods/rest periods, overtime & premium pay, etc. The

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 document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the
2 claims being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so
3 as to make an independent assessment of the reasonableness of the settlement's terms. (Id.).

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

13 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
14 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
15 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
16 known facts and circumstances, including the risk of significant delay and uncertainty associated with
17 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 14-25.)

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

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

24 As explained above, the Parties settled this matter with the assistance of an experienced wage and
25 hour class and PAGA action mediator. Mr. Knight helped to manage the Parties' expectations and provided
26 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
27 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
28 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S.

1 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
2 inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
3 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings
4 were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012
5 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the conclusion
6 that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
7 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation “tends to support the conclusion that
8 the settlement process was not collusive”). At all times, the Parties’ negotiations were adversarial and non-
9 collusive. (Hawkins Decl. ¶ 4.)

10 The Parties were represented by experienced class action counsel throughout the negotiations
11 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff’s Counsel employ
12 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
13 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 36.)

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

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

18 In seeking approval, a settling party must provide sufficient information to “enable the court to
19 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail,*
20 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
21 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
22 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
23 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
24 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
25 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
26 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
27 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
28 claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled

1 claims for risks such as changes in the law, the probability of success, and other factors.²

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

11 As explained in detail below and in the Hawkins Declaration, the Total Settlement Amount is
12 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
13 various potential impediments to recovery. (Hawkins Decl. ¶¶ 16-29.)

14 Defendant denies all allegations pled, along with all allegations intended to be pled in the operative
15 complaints. Defendant contends they implemented written policies and maintained practices that complied
16 with the requirements of the California Labor Code and applicable California Wage Orders. Defendant
17 contends all employees were provided meal periods and authorized rest periods, were paid all wages, and
18 were timely paid wages in compliance with California law and applicable California Wage Orders. In
19 addition, an individualized investigation into the circumstances surrounding any missed meal and rest
20 breaks is warranted because such claims can only be decided on a case-by-case basis, common issues do

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

1 not predominate and class certification is neither superior nor proper. Defendant contends that any
2 occurrence of missed, late, and interrupted meal period was *de minimis*, and that their witness interviews
3 and time records confirmed the employees in question took meal and rest breaks regularly each day and
4 any instances of non-compliance were a result of personal choice. Further, Defendant contends its meal
5 period practices were and always have been lawful in that Settlement Class Members were automatically
6 paid premiums for late, short or unprovided meals. (Hawkins Decl. ¶¶ 16-29.)

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

15 Defendant also argued that notwithstanding its apparently compliant meal break, rest break and
16 time keeping policies regarding the timing and length, that Plaintiff and Class Members are subject to IWC
17 Wage Order 9-2001 as it relates to the transportation industry. Defendant also argued Plaintiff's meal and
18 rest break claims fail because California's meal and rest break provisions are expressly preempted by
19 federal law, pursuant to the Federal Motor Carrier Safety Administration's December 2018 Determination
20 of Preemption. [Docket No. FMCSA-2018-0304]. Plaintiff argued that notwithstanding those legal
21 hurdles, the policies and practices in place were contrary to those exemptions and applied to all class
22 members across the board. Again, notwithstanding these arguments, Plaintiff was able to secure a
23 reasonable and favorable settlement. Defendants contend their practices have been in compliance with
24 applicable law as set forth above. (Id.)

25 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
26 that a settlement amounting to \$425,000.00 was fair and reasonable, and accounts for an approximate 12-
27 24% of total possible recovery and courts have routinely approved settlements that provided a similar
28 discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 26-28). *See, e.g., In re Warfarin*

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

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

13 Pursuant to the Settlement Agreement, \$42,500.00 from the Total Settlement Amount shall be
14 allocated to the resolution of the PAGA claim, of which 75% (\$31,875.00) will be paid directly to the
15 LWDA, and the remaining 25% (\$10,625.00) will be paid to PAGA Members who worked during the
16 PAGA Period beginning July 23, 2020 through the date of Preliminary Approval. (Settlement Agreement I
17 §20-21.)

18 This result was reached after good-faith negotiation between the parties. The amount was valued as
19 follows: Based on information and evidence produced by Defendant during discovery, Plaintiffs’ Counsel

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

1 determined that aggrieved employees worked a combined total of approximately 9,000 pay periods during
2 the PAGA Period . Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the
3 time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred
4 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
5 (\$200) for each aggrieved employee per pay period for each subsequent violation. (Hawkins Decl. ¶¶ 26-
6 29).

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

22 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
23 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
24 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing PAGA
25 penalties, courts have considered issues including whether the employees suffered actual injury from the
26 violations, whether the defendant was aware of the violations, and the employer’s willingness to fix the
27 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
28 only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);

1 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
2 12, 2011).

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

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

22 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
23 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
24 by California courts.⁴ Where PAGA penalties are negotiated in good faith and “there is no indication that

25 _____
26 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
27 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
28 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million
settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R.*

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

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

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

18 Approximately 463 current and former employees will share a \$425,000.00 settlement fund due
19 entirely to the effort and commitment of Plaintiff Baquiring. Subject to Court approval, therefore, the
20 Settlement provides for Class Representative Enhancement Payment of \$7,500.00 to the Class

21
22 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
23 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
24 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
25 BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of
26 approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA
27 penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18,
28 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 Representative⁵ The Class Representative Enhancement Payment is fair and reasonable compensation for
2 Plaintiff's effort in pursuing the action, assisting counsel with the litigation and settlement, regularly
3 conferring with counsel on the status of their case and the strategies for prosecuting the claims, and
4 reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
5 Settlement Class. (Hawkins Decl. ¶ 30; Edmundo Baquiring Decl.)

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

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 Costa 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 **D. The Court Should Preliminarily Approve the Negotiated Attorneys’ Fees and**
2 **Costs**

3 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who took the
4 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
5 California courts routinely award attorneys’ fees equalling one-third or more of the potential value of the
6 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
7 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical
8 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
9 class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court-
10 approval of attorneys’ fees of \$141,666.66 (one-third of the Total Settlement Amount) and litigation costs
11 and expenses not to exceed \$25,000.00 which are currently \$12,000.

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

13 1. The California Standard for Class Certification

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

22 Conditional certification of the proposed Settlement Classes is particularly warranted here given
23 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
24 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
25 settlement cases).⁶ In *Dunk*, the California Court of Appeal specifically rejected the argument that the

26 _____
27 ⁶ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal
28 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*

1 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
2 class for purposes of litigation:

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

15 *Id.* at n19.

16
17 2. The Proposed Settlement Class Is Ascertainable and There Is a Well-
18 Defined Community of Interest Among Class Members

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

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

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

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

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

The proposed Settlement Class consists of All current and former hourly drivers employed by

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 Defendant in California or continuing to be employed by Defendant in California (either directly or through
2 a temporary staffing agency) between January 1, 2019 and the date of preliminary approval of the
3 Settlement (the “Driver Class”); and All current and former hourly employees who were not or are not
4 drivers, employed by Defendant in California (either directly or through a temporary staffing agency)
5 between July 23, 2017 and the date of preliminary approval of the Settlement (the “Non-Driver Class”)
6 (together, the Driver Class and Non-Driver Class are the “Class Members” or “Settlement Class”).
7 Because all Class Members are either current or former employees of Defendant, subject to the same
8 policies and practices, the class is readily ascertainable from Defendant’s regular business records.
9 (Hawkins Decl. ¶¶ 31-33).

10 Here, common issues of fact and law predominate because the California statutes relating to each
11 of Plaintiffs’ claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class
12 Members. Factually, Plaintiff contends that Defendant’s policies and practices apply class-wide and
13 Defendant’s liability can be determined by facts common to all members of the class. The wage and hour
14 issues are both numerous and substantial, and a class action is the most advantageous method of dealing
15 with the claims of the Settlement Class Members. (*Id.* ¶¶ 31-33).

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

23 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
24 litigating wage and hour class action cases. (Hawkins Decl. ¶ 36.) Plaintiff’s Counsel has successfully
25 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide
26 causes of action that are at issue in this case. (*Id.*) Plaintiff’s Counsel’s wage and hour class action
27 expertise establishes that they are well qualified to represent the interests of this Class.

28 A class action is superior to a multitude of individual lawsuits. Given the size and amount of

1 each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on
2 an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each
3 claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case
4 adjudication.

5 3. The Proposed Notice Properly Informs Class Members about the Case and
6 the Settlement

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

16 The Parties have jointly drafted the Notice of Class Action settlement ("Class Notice") which fairly
17 and neutrally informs Class Members of their rights and remedies in this action. (Settlement Agreement,
18 Exhibit A; Hawkins Decl. ¶¶ 34-35; Ex. 1 Settlement Agreement III § 7 b; Ex. A Class Notice.)

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

23 **V. CONCLUSION**

24 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
25 presented the materials and information necessary for preliminary approval, the Parties request that the

26 ⁷ Due process does not require that each Class Member actually receive a notice, but rather
27 a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal*
28 *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 Court preliminarily approve the settlement.

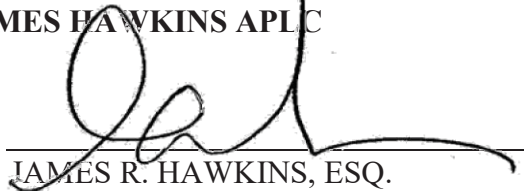
2

3 Dated: January 11, 2023

4

JAMES HAWKINS APLC

5

By: 

6

JAMES R. HAWKINS, ESQ.

7

GREGORY MAURO, ESQ.

8

MICHAEL CALVO, ESQ.

9

Attorneys for Plaintiff EDMUNDO

10

BAQUIRING, individually and on behalf of
all others similarly situated.

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PROOF OF SERVICE, COUNTY OF ORANGE

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

On January 11, 2023, I served on the interested parties in this action the following document(s) entitled:

- **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**
- **DECLARATION OF JAMES HAWKIS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**
- **DECLARATION OF EDMUNDO BAQUIRING IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- **[PROPOSED] ORDER GRANTING 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 Nicole@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

HOLLAND & HART LLP

DORA V. LANE - # 235113

dlane@hollandhart.com

5441 Kietzke Lane, Suite 200

Reno, NV 89511-2094

Telephone: 775.327.3000

Facsimile: 775.786.6179

DAVID K. CROCKETT - # 317816

DKCrockett@hollandhart.com

222 South Main Street, Ste 2200

Salt Lake City, UT 84101

Telephone: (801)799-5721

Attorneys for Defendant CALIFORNIA SIERRA EXPRESS, INC.

[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 January 11, 2023, at Irvine, California


Nicole Miccolis

Additional Service:

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite. 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

(via LWDA Website Only)



Reschedule a Reservation

Reservation

Reservation ID:
726547416071

Reservation Type:
Motion for Order (PRELIMINARY APPROVAL OF CLASS ACTION)

Case Number:
RG21106254

Case Title:
Baquiring VS California Sierra Express, Inc.

Filing Party:
Edmundo Baquiring (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 21

Date/Time:
January 4th 2023, 10:00AM

Status:
RESERVED

Number of Motions:
1

Motions to Reschedule

Motion for Order (PRELIMINARY APPROVAL OF CLASS ACTION)

Reschedule To:

Date: 02/03/2023 10:00 AM

Location: Rene C. Davidson Courthouse - Department 21

Fees

Description	Fee	Qty	Amount
Reschedule Fee	1.00	1	1.00

Description	Fee	Qty	Amount
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX6358

Authorization:
09509C

Payment Date:
1969-12-31

 Print Receipt

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