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On behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

MARK D. TAFT, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SALADINO'S INC., a California
Corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO.: 34-2021-00304595

Hon. Jill H. Talley

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

**[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of Class
Action Settlement; Declaration of Plaintiff
Mark. D. Taft; [Proposed] Order filed
concurrently herewith]**

Date: August 18, 2023

Time: 9:00 a.m.

Dept.: 27

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD: PLEASE TAKE NOTICE** that on August 18, 2023 at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 27 of the above-captioned court, located at
4 720 9th Street, Sacramento, California 95814, with the Honorable Jill H. Talley presiding,
5 Plaintiff Mark D. Taft will, and hereby does, moves this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Class and Representative Action
7 Settlement Agreement and Release, (“Settlement Agreement”), attached as Exhibit 1 to the Declaration
8 of James Hawkins;
- 9 2. Conditionally certify the proposed Settlement Class;
- 10 3. Appoint Mark D. Taft as the representative for the Settlement Class;
- 11 4. Appoint James Hawkins, APLC as Class Counsel;
- 12 5. Approve distribution of the proposed Notice of Proposed Settlement of Class Action to
13 the Settlement Class; attached as Exhibit A to the Declaration of James Hawkins.
- 14 6. Appoint APEX Class Action Administrators. as the Settlement Administrator; and
- 15 7. Set a hearing date for final approval of the settlement.

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

24 Dated: July 18, 2023

Respectfully submitted,
JAMES HAWKINS, APLC

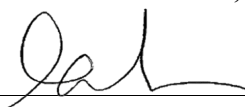
25
26 By: 
27 James R. Hawkins
28 Gregory Mauro
 Michael Calvo
 Attorney for Plaintiff Mark D. Taft

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Named plaintiff (“Plaintiff”) Mark D. Taft, brought this action against Defendant Saladino’s Inc., (“Defendants” or “Saladino’s”) (collectively with Plaintiff, the “Parties”) for wage and hour violations: Case No. 34-2021-003049595 (Sacramento 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. Michael Dickstein, Esq., an experienced mediator of wage and hour class actions. With Mr. Dickstein’s guidance, the Parties were able to negotiate a global settlement of the Action for \$450,000.00

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 2,372 current and former employees of Defendant. The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Settlement Class Members defined as: All non-exempt employees that worked for Defendant in California between July 26, 2018 through April 1, 2023 (“Class Period”). (Settlement Agreement I, ¶ 5).
- (2) A **non-reversionary** Gross Settlement Amount of \$450,000.00. The Gross Settlement Amount includes: (a) A “Net Settlement Fund” means the Gross Settlement Amount, less the amount that will be available for payment to all Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by subtracting all of the following from the Gross Settlement Amount: (1) attorneys’ fees in the amount of up to \$150,000.00 and reimbursement of litigation costs and expenses in the amount of up to \$25,000.00 to Class Counsel (“Attorneys’ Fees and Costs” or “Class Counsel Award”); (2) release payment to Plaintiff in the amount of up to \$10,000.00 (“Release Payment”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$25,000.00 (“Settlement Administration Costs”); (4) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class

Members in the PAGA Group in the amount of \$11,250.00; and (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the amount of \$33,750.00 to the California Labor and Workforce Development Agency (“LWDA”). (Settlement Agreement III ¶16.)

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. Dickstein, and the Settlement confers substantial benefits to Class Members. The Net Settlement Fund is estimated to be approximately \$195,000.00. This relief—averages **approximately \$189.71 per** Class Member before 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.

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

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On July 20, 2021, Plaintiff filed a putative Class Action entitled *Mark D. Taft v. Saladino’s Inc.*, (Sacramento County Case No. 34-2021-00304595) (“*Taft I*”) on behalf of Defendant’s non-exempt employees in California seeking damages for Defendant’s alleged failure to: (1) pay wages including overtime, (2) provide meal periods, (3) authorize and permit rest periods, (4) timely pay wages, (5) for failure to provide accurate itemized wage statements, (6) for unlawful deductions, (7) for payment of wages in non-Labor Code compliant instruments, (8) failure to reimburse expenses, and (9) for unfair competition (“UCL”). (Declaration of James Hawkins [“Hawkins Decl.”] ¶ 3.)

On November 9, 2021, Plaintiff filed a PAGA Representative Action entitled *Mark D. Taft v. Saladino’s Inc.*, (Sacramento County Case No. 34-2021-00310936) (“*Taft II*”) on behalf of Defendant’s non-exempt employees in California seeking civil penalties for Defendants’ alleged failure to: 1) pay

wages including overtime, (2) provide meal periods, (3) authorize and permit rest periods, (4) timely pay wages, (5) for failure to provide accurate itemized wage statements, (6) for unlawful deductions, (7) for payment of wages in non-Labor Code compliant instruments, and (8) failure to reimburse expenses. (Hawkins Decl. ¶ 4.)

B. The Parties Settled After Mediation and Mediator Proposal

On November 22, 2022, the Parties attended a full-day mediation with experienced mediator Michael Dickstein. After a full-day's mediation and subsequent continued negotiations with the assistance of the mediator, the Parties reached an agreement to settle the claims as provided herein, to settle Plaintiff's claims on a class-wide and PAGA basis and on or about March 1, 2023 executed a Memorandum of Understanding, for \$450,000.00 and the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 5, Ex. 1.)

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

The proposed Settlement Class consists of all non-exempt employees that worked for Defendant in California between July 26, 2018 through April 1, 2023 ("Class Period"). Defendant represents there are 2,372 employees as of February 1, 2023. (Settlement Agreement I, ¶5.) This number may increase to accommodate the full settlement Class Period.

2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$450,000.00. The Gross Settlement Amount includes: (1) automatic payments from the Net Settlement Fund to all Class Members who do not opt out; (2) attorneys' fees in the amount of up to \$150,000.00 and reimbursement of litigation costs and expenses in the amount of up to \$25,000.00 to Class Counsel ("Attorneys' Fees and Costs" or "Class Counsel Award"); (3) release payment to Plaintiff in the amount of up to \$10,000.00 ("Release Payment"); (4) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$25,000.00 ("Settlement Administration Costs"); (5) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the

1 amount of \$11,250.00; and (6) the seventy-five percent (75%) share of PAGA Penalties (“LWDA
2 Payment”) in the amount of \$33,750.00 to the California Labor and Workforce Development Agency
3 (“LWDA”). (Settlement Agreement III ¶16.)

4 Subject to the Court approving attorneys’ fees and costs, settlement administration costs, the
5 payment to the LWDA, and the release payments, the Net Settlement Fund will be distributed to all
6 Class Members in full. (Settlement Agreement III ¶¶ 16-19.)

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

8 Each Class Member’s share of the Class Payout Fund will be proportional to the number of
9 work weeks during which s/he or they worked during the Settlement Period. (Settlement Agreement III
10 ¶18.) The Settlement Administrator will calculate payments as follows:

- 11 • Individual Settlement Payments to Settlement Class Members and Aggrieved
12 Employees will be paid from the Net Settlement Fund and shall be paid pursuant to the
13 settlement formula set forth herein. Individual Settlement Payments shall be mailed by
14 regular First-Class U.S. Mail to each Settlement Class Member’s last known mailing
15 address within five (5) calendar days after Defendant makes the settlement payment. All
16 Individual Settlement Payments to Settlement Class Members will be allocated as
17 follows: 1/3 wages, 1/3 interest and 1/3 penalties. All Individual Settlement Payments
18 to Aggrieved Employees will be allocated as one hundred percent (100%) penalties.
19 (Settlement Agreement III ¶17.)
- 20 • Settlement Class Members will be paid on a pro-rata basis. A Settlement Class
21 Member’s Individual Settlement Payment will be based on the number of Compensable
22 Work Weeks during which they worked in proportion to the aggregate number of
23 Compensable Work Weeks worked by all Class members, reduced as necessary to
24 account for the employee’s mandatory payroll withholdings. (Settlement Agreement III
25 ¶18.)
- 26 • Checks shall be made payable to each Settlement Class Member and/or Aggrieved
27 Employee for payment of each Settlement Class Member and/or Aggrieved Employee’s
28 Individual Settlement Payment as set forth in Paragraph III.16-19 of the Settlement

1 Agreement. (Settlement Agreement III ¶ 20.)

2 Given that there are approximately 2,372 Class Members, the average negotiated recovery will
3 be approximately \$189.71 before fees and costs and about an average recovery of approximately \$82.20
4 after fees and costs. The highest payment of will be \$421, and a low payment of approximately \$1.88.
5 (Hawkins Decl. ¶ 28.) This average net recovery is well within the range of many other wage and hour
6 class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of*
7 *Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of
8 approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
9 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
10 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
11 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90);
12 *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
13 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.)
14 (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213
15 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon,*
16 *Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath*
17 *& Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately
18 \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.)
19 (average net recovery of approximately \$80).

20 **4. Release by the Settlement Class**

21 In exchange for the Gross Settlement Amount, Plaintiff and Participating Class Members will
22 agree to release the Released Claims during the Settlement Period. The releasee is narrowly tailored to
23 the claims alleged and mediated in the action.

24 Class Member and Aggrieved Employees' Released Claims" shall mean any and all
25 claims during the time period of July 20, 2018 through April 1, 2023, alleged in either or
26 both civil Complaints or those that could have been brought based on the claims asserted
27 in the operative civil Complaints and/or the LWDA letter including the following: 1)
28 failure to provide meal periods; 2) failure to provide rest periods, 3) failure to pay wages

(including overtime or minimum wages based on theories of alleged off-the-clock work, miscalculation of the regular rate of pay for overtime, meal period or rest break premium wages and paid sick leave), 4) making unlawful deductions from earned wages without authorization; 5) failure to pay all wages due to discharged and quitting employees; 6) failure to furnish accurate itemized wage statements; 7) failure to reimburse for necessary business expenses; 8) engaging in unfair business practices. (Settlement Agreement I ¶ 28.)

Further, Class Members will not be able to opt out of the Released PAGA Claims and will be entitled to their PAGA portion for the Released PAGA Claims during the PAGA Period i.e. July 20, 2018 through April 1, 2023. (Settlement Agreement I ¶ 28)

IV. ARGUMENT

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

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

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

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

1 3.769(g).

2 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
3 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.” *See*
4 *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90
5 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

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

10 **2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual**
11 **and Legal Issues and Were Thus Able to Objectively Assess the**
12 **Settlement’s Reasonableness**

13 Plaintiff’s Counsel conducted a thorough investigation into the factual and legal issues
14 implicated by Plaintiffs’ claims, and were able to objectively assess the settlement’s reasonableness. For
15 example, prior to filing the action, Plaintiff contacted Plaintiff’s Counsel to discuss the factual bases for
16 pursuing her action against Defendants for Labor Code violations. Plaintiff was intimately familiar with
17 Defendant’s labor policies and practices, and over the course of multiple interviews, knowledgeably
18 summarized those policies and practices to Plaintiff’s Counsel. During those conversations, Plaintiff’s
19 Counsel explained how the policies and practices were instituted and provided valuable insight into how
20 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff’s

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

1 Counsel determined that there were legally sufficient grounds for pursuing the Actions against
2 Defendant and in preparation for drafting the complaint, Plaintiff's Counsel conducted their own
3 independent preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter*
4 *alia*, a careful examination of Plaintiffs' personnel files and associated records. (Hawkins Decl. ¶ 6.)

5 Plaintiff's Counsel received a considerable amount of documents and data, including employee
6 demographic data, time and pay records for the class, and Defendant's policies and procedures manuals
7 which covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures,
8 attendance policies, meal periods/rest periods, overtime & premium pay, etc. The document and data
9 exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being
10 settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make
11 an independent assessment of the reasonableness of the settlement's terms. (Hawkins Decl. ¶¶ 7, 11.)

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

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

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

28 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume
2 the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is
3 offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, §
4 11.51.

5 As explained above, the Parties settled this matter with the assistance of an experienced wage
6 and hour class action mediator. Mr. Dickstein helped to manage the Parties' expectations and provided a
7 useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
8 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor
9 of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008
10 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
11 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.
12 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
13 proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–
14 00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support
15 the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of*
16 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation
17 "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties'
18 negotiations were adversarial and non-collusive.

19 The Parties were represented by experienced class action counsel throughout the negotiations
20 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel
21 employ seasoned class action attorneys who regularly litigate wage and hour claims through certification
22 and on the merits, and have considerable experience settling wage and hour class actions. (Hawkins
23 Decl. ¶ 33.)

24 Defendant is represented by McCormick, Barstow, Sheppard, Wayte & Carruth LLP, a
25 respected defense firm.
26
27
28

1 **4. The Consideration Provided for the Class Claims Is Fair and Reasonable**
2 **in Light of the Amount in Controversy Discounted by the Risks of**
3 **Continued Litigation**

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

17 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
18 **“Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record
19 which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes

20
21 ² Federal district courts also recognize that there is an inherent “range of reasonableness” in
22 determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any
23 particular case and the concomitant risks and costs necessarily inherent in taking any litigation to
24 completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482
25 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal.
26 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a
27 fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461
28 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or
 even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc.*
 Sec. Litig., 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a
 relatively small percentage of the most optimistic estimate does not, in itself, weigh against the
 settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for*
 Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982) (it is “the
 complete package, taken as a whole rather than the individual component parts, that must be examined
 for overall fairness”).

1 of the litigation.”” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010)
2 (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in
3 determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the
4 merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal.
5 App. 4th at 130). As explained in detail below, the Gross Settlement Amount is within the range of
6 reasonableness in light of the nature and magnitude of the claims being settled and the various potential
7 impediments to recovery.

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

11 Defendant denies all allegations pled, along with all allegations intended to be pled in the
12 operative complaint. Defendants contend they implemented written policies and maintained practices
13 that complied with the requirements of the California Labor Code and applicable California Wage
14 Orders. Defendant contends all minimum wages, overtime wages, and double time wages were paid in
15 compliance with California law and applicable California Wage Orders. In addition, an individualized
16 investigation into the circumstances surrounding any missed meal and rest breaks and off the clock work
17 is warranted because such claims can only be decided on a case-by-case basis, common issues do not
18 predominate and class certification is neither superior nor proper. Defendant contends that their witness
19 interviews and time records confirmed the employees in question took meal and rest breaks regularly
20 each day and any instances of non-compliance were a result of personal choice. Defendant contends
21 their meal period practices were and always have been lawful in that non-exempt employees have been
22 “provided” meal periods as required and Defendant has a practice of paying premiums. Defendant
23 contends that Plaintiff and Class Members were not subject to any bonuses or other remuneration
24 requiring recalculation of the regular rate for overtime and meal period premium payments nor were
25 Plaintiff and Class Members ever deprived of expense reimbursements for cellphone usage. Lastly,
26 Defendant asserts the policy of no off the clock work, and the facts and circumstances regarding off the
27 clock were not supported in this case. (Hawkins Decl. ¶¶ 19-28.)

28 Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties

1 were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the
2 willfulness threshold required by Labor Code section 203. Plaintiff evaluated and considered the former
3 Class Members who have separated from Defendant's employ during the Class Period. Plaintiff applied
4 the three year statute of limitations and argued that the employer's underlying violation was willful.
5 Defendant disagreed with this analysis, with respect to the "willfulness" prong and argued that Plaintiff
6 could not show willfulness. The considerable risk that Defendant could defeat certification and prevail
7 on its defenses defeating any and all recovery to the class warranted a compromise of the class claims.
8 Similarly, Defendants contend that they have complied with all such requirements with respect to payroll
9 records and wage statements at all times. Further, Plaintiff would still face a difficult, if not impossible,
10 hurdle to overcome the willfulness threshold required by Labor Code section 226. (Id.)

11 Defendant contends its practices have been in compliance with applicable law as set forth above,
12 and that Plaintiff has no basis for asserting a claim under the UCL. (Id.)

13 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
14 determined that a settlement amounting to \$450,000.00 was fair and reasonable, and accounts for an
15 approximate 50% of total possible damages recovery minus penalties and courts have routinely
16 approved settlements that provided a similar discounted range of the maximum potential recovery.
17 (Hawkins Decl. ¶ 27). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del.
18 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated
19 damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements
20 with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs.*
21 *Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy*
22 *Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which
23 amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the
24 strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs.,*
25 *Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated
26 damages).³ (Id.)

27
28 ³ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at

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

Pursuant to the Settlement Agreement, \$45,000.00 from the Total Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$33,7500.00) will be paid directly to the LWDA, and the remaining 25% (\$11,250.00) will be paid to PAGA Members who worked during the PAGA Period from July 20, 2021 through April 1, 2023. (Settlement Agreement I ¶ 23; III ¶ 19.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendant during discovery, Plaintiff's Counsel determined that aggrieved employees worked a combined total of approximately 50,000 pay periods during the PAGA Period . Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. (Hawkins Decl. ¶¶ 19-28.).

However, a number of courts have found that the “subsequent” penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the

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

1 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty
2 of \$200 for subsequent violations will not be calculated to determine the amount in controversy”);
3 *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v.*
4 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
5 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing
6 a violation, they are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components*
7 *Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)
8 (“courts have held that employers are not subject to heightened penalties for subsequent violations unless
9 and until a court or commissioner notifies the employer that it is in violation of the Labor Code”), citing
10 *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

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

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

27 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
28 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*

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

12 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
13 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
14 approved by California courts.⁴ Where PAGA penalties are negotiated in good faith and “there is no
15 indication that [the] amount was the result of self-interest at the expense of other Class Members,” such
16 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009
17 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal.

18
19 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
20 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
21 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
22 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
23 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
24 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
25 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
26 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
27 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
28 *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane
Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated
to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County
Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

C. The Court Should Preliminarily Approve the Negotiated Class Representative Release Payment

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

Approximately 2,372 current and former employees will share a \$450,000.00 settlement fund due entirely to the effort and commitment of Mark D. Taft. Subject to Court approval, therefore, the Settlement provides for Class Representative Release Payment of \$10,000.00⁵ The Class

⁵ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named

1 Representative Release Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the
2 action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status
3 of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to
4 ensure that its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 27;
5 Mark D. Taft Decl.)

6 Plaintiff will file a formal motion for the negotiated Class Representative Release Payment 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.

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

11 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took
12 the risk of non-payment and invested in a case that achieved a substantial positive result for the class.
13 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
14 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
15 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
16 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
17 in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
18 approval of attorneys' fees of \$150,000.00 (one-third of the Gross Settlement Amount) and litigation
19 costs and expenses not to exceed \$25,000.00.

20 plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16,
21 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*,
22 No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to
23 three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A.
24 County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann*
25 *Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement
26 payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
27 Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health*
28 *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 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

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

3 Class actions are statutorily authorized “when the question is one of common or general interest,
4 of many persons, or when the parties are numerous, and it is impracticable to bring them all before the
5 court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class
6 certification is appropriate when there is an “ascertainable class and a well-defined community of interest
7 among class members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class
8 treatment is appropriate even if class members at some point may be required to make an individual
9 showing as to eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193,
10 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

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

17 Geer argues the court must use the same standard under Federal Rules of Civil
18 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and litigation
19 class certifications . . . That rule is contrary to the Ninth Circuit rule, stated in *Officers for*
20 *Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and the position of the leading
21 commentators (Newberg & Conte, *supra*, § 11.28 at p. 11–58), which allow a lesser
22 standard of scrutiny for settlement cases . . . We agree with the latter. The two basic
23 purposes for the Rule 23 certification requirements, as they relate to questions of a
24 nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the
25 interests of the non-representative class members. The first purpose is inapposite in the
26 settlement context, and the second, as it relates to commonality of issues, only makes a

23 ⁶ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class
24 certification as a prerequisite for preliminary approval and undertak[e] a more cursory class certification
25 analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC,
26 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in
27 *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia,*
28 *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 difference if the non-representative class members would do much better by litigating on
2 their own or in their own jurisdiction. The second category concerns are protected by the
trial court's fairness review of the settlement.

3 *Id.* at n19.

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

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

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

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

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

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

18 The proposed Settlement Class consists of any and all current and former hour-paid non-exempt
19 employees who worked for Defendants within the State of California at any time from July 26, 2018
20 through April 1, 2023. Because all Class Members are either current or former employees of Defendant,
21 the class is readily ascertainable from Defendant's regular business records. (Hawkins Decl. ¶¶ 28-30).

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

28 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise

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

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

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

17 **3. The Proposed Notice Properly Informs Class Members about the Case and** 18 **the Settlement**

19 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*,
20 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient
21 information to decide whether they should accept the benefits offered, opt out and pursue their own
22 remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d
23 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if
24 they so request and that they will be bound by the judgment, whether favorable or not, if they do not
25 request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of
26 class members, California authorities generally require service of the class notice by mail or similar
27 reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d
28

1 960, 972 (1975).⁷

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

10 In the event Class Notices are returned as undeliverable, the Settlement Administrator will
11 attempt to locate a current address using, among other resources, a skip-trace search. (Settlement
12 Agreement III ¶ 8.)

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

17 **V. CONCLUSION**

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

21 Dated: July 18, 2023

Respectfully submitted,

22 By: _____

23 James R. Hawkins
24 Gregory Mauro
25 Michael Calvo
26 **JAMES HAWKINS, APLC**
27 Attorney for Plaintiff

28 ⁷ Due process does not require that each Class Member actually receive a notice, but rather 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).

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On July 25, 2023, I served on the interested parties in this action the following document(s) entitled:

[Declaration of James Hawkins In Support of Motion for Preliminary Approval of Class Action Settlement; Declaration of Plaintiff Mark. D. Taft; [Proposed] Order filed concurrently herewith]

SERVICE LIST

Via LWDA Website
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 July 25, 2023, at Irvine, California

Alma Chavarin
Alma Chavarin