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16 Attorneys for Plaintiff DAVID CHERNO,
17 individually and on behalf of all others similarly situated.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN LUIS OBISPO – CIVIL BRANCH**

20 DAVID CHERNO, individually and on behalf
21 of all others similarly situated,

22 Plaintiff,

23 v.

24 PEOPLEASE LLC, a South Carolina
25 Limited Liability Company; DRAKE
26 FARMS TRUCKING, INC., a Texas
27 Corporation; and DOES 1 through 50,
28 inclusive,

Defendants.

Case No. 21CV-0513

ASSIGNED FOR ALL PURPOSES TO:
Honorable Rita Federman, Dept. 2

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

**[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of PAGA and
Class Action Settlement; Declaration of Plaintiff
DAVID CHERNO; [Proposed] Order filed
concurrently herewith]**

Date: November 2, 2023
Time: 9:00 a.m.
Dept.: 2

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on November 2, 2023 at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 2 of the above-captioned court, located at
4 1035 Palm Street, Rm 385, San Luis Obispo, CA 93408, the Honorable Rita Federman
5 presiding, Plaintiff DAVID CHERNO will, and hereby does, move this Court to:

6 1. Preliminarily approve the settlement set forth in the Joint Stipulation and Settlement
7 Agreement of Class Action and PAGA Claims, ("Settlement Agreement"), attached as Exhibit A to the
8 Declaration of James Hawkins;

9 2. Conditionally certify the proposed Settlement Classes;

10 3. Appoint DAVID CHERNO as the representative for the Settlement Classes;

11 4. Appoint James Hawkins, APLC as Class Counsel;

12 5. Approve distribution of the proposed Notice of Proposed Settlement of Class Action and
13 PAGA claims to the Settlement Class; attached as Exhibit 1 to the Settlement Agreement.

14 6. Appoint ILYM Group, Inc. 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 and PAGA claims
18 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Plaintiff DAVID CHERNO;
19 (5) the Settlement Agreement; (6) the [Proposed] Order Granting Preliminary Approval of Class Action
20 Settlement; (7) the records, pleadings, and papers filed in this action; and (8) upon such other
21 documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of
22 this Motion. As this Motion is unopposed, the Parties respectfully request relief from the page limit
23 requirement set by California Rules of Court, Rule 3.1113(5).

24 Dated: October 6, 2023

Respectfully submitted,

25 By: _____

James R. Hawkins

Gregory Mauro

Michael Calvo

Lauren Falk

Ava Issary

JAMES HAWKINS, APLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

DAVID CHERNO is the named plaintiff (“Plaintiff”) in this action brought against Defendants PEOPLEASE, LLC and DRAKE FARMS, INC. (“Defendants”) (collectively with Plaintiff, the “Parties”) for wage and hour violations. Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Jeffrey Krivis, Esq., an experienced mediator of wage and hour actions. With Mr. Krivis’s guidance, the Parties were able to negotiate a gross settlement of the Action for \$250,000.00 after a full day of mediation.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Joint Stipulation of Class Action Settlement and PAGA Claims (hereinafter Settlement Agreement). If approved, the Settlement would provide considerable monetary relief for approximately 110 class members (Settlement Agreement I) of Defendants. The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes (Settlement Agreement I). It is estimated there are approximately 110 total class members.

(2) A Gross Settlement Amount of \$250,000.00. (Settlement Agreement I).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Mr. Krivis, and the Settlement confers substantial benefits to Class Members. The Net Settlement Amount is estimated to be approximately \$106,750.00. This relief—averages **approximately \$970** 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.” ¶¶ 15-36).

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

1 respectfully request that this Court grant preliminary approval of the Settlement Agreement.

2 **II. FACTS AND PROCEDURE**

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

4 On September 10, 2021 Plaintiff files a putative class action complaint entitled *DAVID*
5 *CHERNO v. PEOPLEASE, LLC, et al.*, San Luis Obispo County Superior Court No. 21CV-0513
6 seeking damages for Defendants' alleged failure to: (1) failure to pay wages including minimum
7 and overtime wages, (2) failure to timely pay wages upon termination pursuant to Labor Code §
8 203, (3) failure to provide accurate itemized wage statements, (4) failure to provide a day of rest as
9 Required by Code §§ 551 and 552, (5) failure to reimburse business expenses, and (6) violation of
10 Business & Professions Code section 17200, et seq. (Hawkins Decl. ¶¶ 3-6).

11 On November 19, 2021 Plaintiff on behalf of the general public as private attorney general
12 filed a PAGA representative action entitled *DAVID CHERNO v. PEOPLEASE, LLC, et al.*, San
13 Luis Obispo County Superior Court No. 21CV-0651 seeking damages for Defendants' alleged (a)
14 failure to pay minimum wages, (b) failure to pay all wages earned and owed upon separation from
15 Defendants' employ, (c) failure to provide accurate itemized wage statements, (d) failure to
16 provide a day's rest in seven; and (e) failure to reimburse necessary business expenses. *Id.*

17 On January 6, 2023 Plaintiff filed an amended LWDA letter to include claims under Labor
18 Code Sections 201-204, 210, 226, 226.2, 226.3, 551-551, 558, 1174, 1174.5, 1194, 1194.2, 1197,
19 1197.1, 1198, 1198.5, 2802. (Settlement Agreement I).

20 On or about May 17, 2023, Plaintiff filed a First Amended Class Complaint wherein
21 Plaintiff added the PAGA claims to the class complaint. (Hawkins Decl. ¶6).

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

23 On August 4, 2022, the Parties engaged in private mediation with a well-respected wage and hour
24 class action mediator, Jeffrey Krivis. Prior to mediation, Plaintiff requested, and Defendants produced
25 extensive documentation including time and pay data records for approximately 90% of the class, policy
26 documents applicable to the class during the Class Period, class size information, information on the
27 number of pay periods and workweeks, and information regarding the hourly rates and workweek. In
28 short, Defendants provided discovery sufficient to enable the Plaintiff and Class Counsel to rigorously

1 evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from
2 the claims made in this case. As a result of settlement efforts, the Parties agreed to settle this matter for the
3 Gross Settlement Amount of \$250,000.00 for approximately 110 class members and the terms of which are
4 fully memorialized in the Settlement Agreement (Hawkins Decl. ¶ 4-12, Ex. 1.)

5 **III. SUMMARY OF SETTLEMENT TERMS**

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

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

8 The "Class Members" are defined as all current and former non-exempt employees of
9 Defendants who worked for Defendants Drake Farms as truck drivers and/or were issued wage
10 statements by Peoplease, to work at Drake farms as truck drivers, during the time period of
11 September 10, 2017 through October 4, 2022. Defendants represent there are approximately 110
12 Class Members as of the date of mediation, August 4, 2022. (Settlement Agreement I) "PAGA
13 Employee" or "Aggrieved Employee" shall mean all current and former non-exempt employees
14 who worked for Defendants Drake Farms as truck drivers and/or were issued wage statements by
15 Peoplease, to work at Drake Farms to work as truck drivers, during the time periods of September
16 10, 2020 through October 4, 2022. (Settlement Agreement I). "PAGA Period" means all pay
17 periods worked by Class Members as nonexempt truck drivers who worked during the Period of
18 September 10, 2020, through October 4, 2022. (Settlement Agreement I.)

19 **2. Settlement Consideration**

20 Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Gross
21 Settlement Amount of \$250,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the
22 amount of \$83,250.00 ("The Fee Award") and reimbursement of reasonable litigation costs and expenses
23 in the amount of up to \$20,000.00 to Class Counsel ("The Cost Award"); (2) Class Representative's
24 incentive award to Plaintiff in the amount of up to \$15,000.00 ("The Incentive Award"); (3) fees and
25 expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed
26 \$10,000.00 ("The Settlement Administrator's Fees"); (4) \$25,000.00 ("PAGA Payment") with twenty-five
27 percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed
28 to Class Members in the PAGA Group in the amount of \$6,250.00; (5) the seventy-five percent (75%)

1 share of PAGA Penalties in the amount of \$18,750.00 to the California Labor and Workforce Development
2 Agency (“LWDA”); and the remainder to of the Net Settlement Amount to the Settlement Class Members.
3 (Settlement Agreement IV(D)).

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

5 The “Net Settlement Amount” means the net amount available for payment of claims to Class
6 Members after deducting attorney fees and costs, settlement administration fees, Incentive Award to
7 Plaintiff, 75% of the \$25,000 PAGA Payment that is payable to the LWDA, and the employer-side payroll
8 taxes attributed to the wage portion of settlement payments to Class Members for release for the Class
9 Released claims. (Settlement Agreement I). The Net Settlement Amount estimated at \$106,750.00.
10 (Settlement Agreement ¶43; Hawkins Decl. ¶ 15)

11 Given that there are approximately 110 Class Members, each can expect to receive on average
12 approximately \$970, with a high payment of up to \$3,000 and a low payment of \$10.71. (Hawkins Decl.
13 ¶¶ 27.)

14 This average net recovery is in line with many other wage and hour class action settlements
15 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
16 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
17 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
18 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
19 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
20 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
21 No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
22 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately
23 \$60); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net
24 recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
25 (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-
26 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
27 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).
28

1 4. Release by the Settlement Class

2 The release is narrowly tailored to release the claims litigated in the complaints in exchange
3 for the Gross Settlement Amount. Plaintiff and Participating Class Members will agree to release the
4 Released Claims during the Class Period as follows: The Claims set forth in the Proposed Amended
5 Complaint, including, but not limited to, (1) Failure to pay wages including overtime and minimum wage;
6 (2) Failure to pay wages at termination; (3) Failure to provide accurate itemized wage statements; (4)
7 failure to provide a days rest in seven, (5) Failure to reimburse business expenses; (6) Unfair competition
8 under Cal. Bus. & Prof. Code ¶¶17200, et seq., and (7) Violation of the California Private Attorneys
9 General Act of 2004 (Labor Code ¶ 2698, et seq.) predicated on the same or similar facts and/or claims
10 alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as
11 well as any claims that could have been pled which arise from the same or similar facts concerning the
12 Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting
13 time penalties), as well as any claims under the California Labor Code and California Industrial Welfare
14 Commission Wage Orders that were alleged (specifically for violations of Labor Code sections 200-203,
15 204, 210, 226, 226.2, 226.3, 551, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802,
16 business & Professions Code section 17200, et seq, 2698 *et seq.*, and related Wage Order), (Settlement
17 Agreement I).

18 **IV. ARGUMENT**

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

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

23 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
24 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
25 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their
26 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
27 1110, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final
28 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

1 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of
2 attorneys' fees. *Id.* at 3.769(b).

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

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

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

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

19 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated
20 by Plaintiff's claims and were able to objectively assess the settlement's reasonableness. For example, prior

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*
Franchising v. Southland Corp., 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and
25 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex
26 class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992)
27 ("public policy strongly discourages litigation and encourages settlement [because settlements]
28 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 to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual bases for pursuing their
2 respective actions against Defendants for Labor Code violations. Plaintiff was intimately familiar with
3 Defendants' labor policies and practices, and over the course of multiple interviews, knowledgeably
4 summarized those policies and practices to Plaintiffs' Counsel. During those conversations, Plaintiff's
5 Counsel explained how the policies and practices were instituted and provided valuable insight into how
6 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's
7 Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendants
8 and in preparation for drafting the complaint, Plaintiff's Counsel conducted their own independent
9 preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
10 examination of Plaintiff's personnel files and associated records. (Hawkins Decl. ¶¶ 7-12.)

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

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

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

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

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

3 As explained above, the Parties settled this matter with the assistance of an experienced wage and
4 hour class and PAGA action mediator. Mr. Krivis helped to manage the Parties' expectations and provided
5 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*
6 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
7 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S.
8 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any
9 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
10 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings
11 were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
12 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion
13 that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
14 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that
15 the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-
16 collusive. (Hawkins Decl. ¶ 4.)

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

21 Defendant Drake Farms Trucking, Inc. is represented by GORDON REES SCULLY
22 MANSUKHANI and Defendant Peoplease, LLC is represented by Fisher & Phillips, LLP, two respected
23 defense firms.

24 4. The Consideration Provided for the Class Claims Is Fair and Reasonable in
25 Light of the Amount in Controversy Discounted by the Risks of Continued
26 Litigation

27 In seeking approval, a settling party must provide sufficient information to "enable the court to
28 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*

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

11 Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar**
12 **does not ... require any such explicit statement of [maximum] value;** it requires a record which allows
13 ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the
14 litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*,
15 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether
16 a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against
17 the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As
18 explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the
19 nature and magnitude of the claims being settled and the various potential impediments to recovery.

20 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is

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 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
2 various potential impediments to recovery. (Hawkins Decl. ¶¶ 14-37.)

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

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

24
25 ³ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS
26 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action
27 settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards,
28 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

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

4 Pursuant to the Settlement Agreement, \$25,000.00 from the Gross Settlement Amount shall be
5 allocated to the resolution of the PAGA claim, of which 75% (\$18,750.00) will be paid directly to the
6 LWDA, and the remaining 25% (\$6,250.00) will be paid to PAGA Members who worked during the
7 PAGA Period beginning September 10, 2020 through October 4, 2022. (Settlement Agreement I).

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

23 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
24 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
25 maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5
26 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented
27 8.6% of the maximum potential recovery from the class claims and estimated amount distributable
28 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 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
2 penalties, courts have considered issues including whether the employees suffered actual injury from the
3 violations, whether the Defendants was aware of the violations, and the employer’s willingness to fix the
4 violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of
5 only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016);
6 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
7 12, 2011).

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

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

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

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

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

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

17
18
19 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
20 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
21 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
22 SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
23 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
24 No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million
25 settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R.*
26 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
27 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
28 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of
approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA
penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18,
2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v.*
Vallarta Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge
William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was
allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No.
BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement
fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA
penalties).

1 should be compensated for the expense or risk they have incurred in conferring a benefit on other members
2 of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

3 Approximately 110 current and former employees will share a \$250,000.00 settlement fund due
4 entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement
5 provides for The Incentive Award of \$15,000.00 to the Class Representative⁵ The Incentive Award is fair
6 and reasonable compensation for Plaintiff’s effort in pursuing the action, assisting counsel with the
7 litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for
8 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide
9 adequate relief for the Settlement Class. (Hawkins Decl. ¶ 29; *see also generally*, Cherno Decl.)

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 \$83,250.00 (one-third of the Gross Settlement Amount) and litigation costs
11 and expenses not to exceed \$20,000.00 which are currently approximately \$14,578.61.

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

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

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 Members consists of the individual Class Members who did not
opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all current and

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 former non-exempt employees of Defendants who worked in California at any time from September 10,
2 2020 through October 4, 2022. Defendants represents there are approximately 110 Class Members as of
3 August 4, 2022. Because all Class Members are either current or former employees of Defendants, subject
4 to the same policies and practices, the class is readily ascertainable from Defendants' regular business
5 records. (Hawkins Decl. ¶¶ 7-38).

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

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

19 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
20 litigating wage and hour class action cases. (Hawkins Decl. ¶ 35.) Plaintiff's Counsel has successfully
21 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide
22 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
23 expertise establishes that they are well qualified to represent the interests of this Class.

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

1 3. The Proposed Notice Properly Informs Class Members about the Case and
2 the Settlement

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

12 The Parties have jointly drafted the Notice of Class Action settlement (“Class Notice”) which fairly
13 and neutrally informs Class Members of their rights and remedies in this action. (Settlement Agreement,
14 Exhibit 1; Hawkins Decl. ¶¶ 33-34.)

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

19 **V. CONCLUSION**

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

23
24
25
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 Dated: October 6, 2023

JAMES HAWKINS APLC

2
3 By: 

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AVA ISSARY, ESQ.

4
5
6
7 Attorneys for Plaintiff DAVID CHERNO,
8 individually and on behalf of all others
9 similarly situated.

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On October 6, 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 PAGA and Class Action Settlement; Declaration of Plaintiff DAVID CHERNO; [Proposed] Order filed concurrently herewith]

SERVICE LIST

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

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15
16 **Via LWDA Website Only**

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