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Attorneys for Plaintiffs MELODY DANIEL-
COLLIER and JUDITH A DAVIS,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MELODY DANIEL-
COLLIER and JUDITH A DAVIS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GEO REENTRY SERVICES LLC, a Florida
limited liability company; THE GEO GROUP,
INC., dba GEO CALIFORNIA, INC., a
Florida corporation, and DOES 1-50,
inclusive,

Defendants.

Case No. CGC-21-595010
Assigned for All Purposes to:
Hon. Ethan P. Shulman, Dept. 304

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

**[Declaration of James Hawkins In Support of
Motion for Preliminary Approval of PAGA and
Class Action Settlement; Declarations of
Plaintiffs MELODY DANIEL-
COLLIER and JUDITH A DAVIS; [Proposed]
Order filed concurrently herewith]**

Date: May 30, 2023
Time: 10:00 a.m.
Dept.: 304

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on May 30, 2023 at 10:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 304 of the above-captioned court, located at
4 400 McAllister St., San Francisco, CA 94102-4514, the Honorable Ethan P. Shulman presiding,
5 Plaintiffs MELODY DANIEL-COLLIER and JUDITH A DAVIS will, and hereby does, move
6 this Court to:

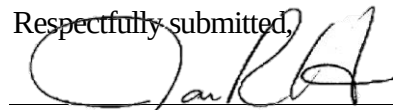
- 7 1. Preliminarily approve the settlement set forth in the Joint Stipulation and Settlement
8 Agreement, (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of James Hawkins;
- 9 2. Conditionally certify the proposed Settlement Class;
- 10 3. Appoint MELODY DANIEL-COLLIER and JUDITH A DAVIS as the representatives
11 for the Settlement Class;
- 12 4. Appoint James Hawkins, APLC as Class Counsel;
- 13 5. Approve distribution of the proposed Notice of Class and Representative Action
14 Settlement and Opt-Out Form to the Settlement Class; attached as Exhibit A and B to the Declaration of
15 James Hawkins.
- 16 6. Appoint ILYM Group, Inc. as the Settlement Administrator; and
- 17 7. Set a hearing date for final approval of the settlement.

18 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
19 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA claims
20 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Plaintiff MELODY DANIEL-
21 COLLIER; (5) the Declaration of Plaintiff JUDITH A DAVIS; (6) the Settlement Agreement; (7) the
22 [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the records, pleadings,
23 and papers filed in this action; and (9) upon such other documentary and oral evidence or argument as
24 may be presented to the Court at or prior to the hearing of this Motion. As this Motion is unopposed, the
25 Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule
26 3.1113(5).
27
28

Dated: April 19, 2023

Respectfully submitted,

By:



James R. Hawkins

Gregory Mauro

Michael Calvo

JAMES HAWKINS, APLC

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 MELODY DANIEL-COLLIER and JUDITH A DAVIS are the named Plaintiffs
4 (“Plaintiffs”) in this action brought against Defendants GEO REENTRY SERVICES LLC, and
5 THE GEO GROUP, INC., dba GEO CALIFORNIA, INC. (collectively with Plaintiffs, the
6 “Parties”) for wage and hour violations. The complaint was amended on July 26, 2022 to
7 consolidate the PAGA claims and a claim for Reimbursement under Labor Code section 2802 (the
8 “Action”). Following a thorough investigation and evaluation of their respective claims and
9 defenses, the Parties participated in a joint mediation session with Mr. Jeff Krivis, an experienced
10 mediator of wage and hour actions. With Mr. Krivis’ guidance, the Parties were able to negotiate a
11 gross settlement of the Action for \$400,000.00.

12 Plaintiffs accordingly seeks preliminary approval of the class action and PAGA settlement, as
13 memorialized in the Settlement Agreement. If approved, the Settlement would provide reasonable
14 monetary relief for approximately 544 class members and aggrieved employees defined as all current and
15 former non-exempt employees employed by Defendants in California at any time during the Class Period
16 of December 21, 2020 to March 28, 2023¹ (Settlement Agreement ¶ I, E and J). The principal terms of the
17 Settlement provide for the following:

18 (1) Conditional certification of Settlement Classes (Settlement Agreement ¶ I, E and J).
19 It is estimated there are approximately 544 total class members; and

20 (2) A Gross Settlement Amount of \$400,000.00. (Settlement Agreement ¶ III.A).

21 An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement
22 Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length
23 with helpful guidance from Mr. Krivis, and the Settlement confers substantial benefits to the Class
24 Members. The Net Settlement Amount is estimated to be approximately \$174,666.67 which provides for
25 an average recovery of approximately \$321 per Class Member after fees and costs- and is particularly
26 impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases.

27

28 ¹ The Class and PAGA Period are due to a prior wage and hour class settlement in San Diego
County, entitled *Raymond Ramirez v. The GEO Group, Inc., et. al.*, Case Number 37-2018-
00039882-CU-OE-CTL

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

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On September 1, 2021 Plaintiffs MELODY DANIEL-COLLIER filed a putative class action complaint entitled MELODY DANIEL-COLLIER v. GEO REENTRY SERVICES LLC et al, San Francisco County Superior Court No. CGC-21-595010 seeking damages for Defendants’ alleged failure to: (1) failure to pay wages including minimum and overtime wages, (2) failure to provide meal periods, (3) failure to provide rest periods, (4) failure to timely pay wages upon termination pursuant to Labor Code § 203, (5) failure to provide accurate itemized wage statements; and (6) Violation of Business and Professions Code section 17200, et seq.

On or about September 1, 2021, Plaintiff MELODY DANIEL-COLLIER provided notice to the LWDA of her intent to file a PAGA action. On or about November 10, 2021 Plaintiff MELODY DANIEL-COLLIER filed A Private Attorneys General Act ("PAGA") representative action complaint entitled MELODY DANIEL-COLLIER v. GEO REENTRY SERVICES LLC, et al., San Francisco County Superior Court No. CGC-21-596387 seeking damages for Defendants’ alleged failure to: (a) failure to pay wages including overtime, (b) failure to provide meal periods and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendants’ employ, (e) failing to provide accurate itemized wage statements.

Pursuant to Court order, on July 26, 2022, Plaintiffs MELODY DANIEL-COLLIER

1 and JUDITH A. DAVIS filed a first amended consolidated class action complaint entitled
2 MELODY DANIEL-COLLIER and JUDITH A. DAVIS v. GEO REENTRY SERVICES LLC et
3 al, San Francisco County Superior Court No. CGC-21-595010 seeking damages for Defendants’
4 alleged failure to: (1) failure to pay wages including minimum and overtime wages, (2) failure to
5 provide meal periods, (3) failure to provide rest periods, (4) failure to timely pay wages upon
6 termination pursuant to Labor Code § 203, (5) failure to provide accurate itemized wage
7 statements; (6) failure to reimburse business expenses, (7) Violation of Business and Professions
8 Code section 17200, et seq.; and (8) Private Attorney General Act of 2004 (“PAGA”). (Hawkins
9 Decl. ¶¶ 4-7).²

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

11 On October 21, 2022, the Parties engaged in private mediation with a well-respected wage and
12 hour class action mediator, Jeff Kravis. As a result of settlement efforts, the Parties agreed to settle this
13 matter for the Total Gross Settlement Amount of \$400,000.00 for approximately 544 Class Members and
14 the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶¶ 8-17, Ex. 1.)

15 **III. SUMMARY OF SETTLEMENT TERMS**

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

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

18 The Class Members are defined as all current and former non-exempt employees of
19 Defendants who worked in California at any time from December 21, 2020, through March 28,
20 2023. There are approximately 544 Class Members and PAGA Members who worked during the
21 Class and PAGA period of December 21, 2020, to March 28, 2023. “PAGA Period” shall mean
22 December 21, 2020, through the date the Court grants preliminary approval of this Settlement.
23 (Settlement Agreement I ¶25; Hawkins Decl. ¶ 9.).

24 **2. Settlement Consideration**

25 Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for the
26 Gross Settlement Amount of \$400,000.00. The Gross Settlement Amount includes: (1) attorneys’ fees in

27 ² Plaintiffs submitted an amended notice to the LWDA with a proposed amended
28 complaint which proposed amended complaint will be filed via stipulation prior to the hearing on
Plaintiffs’ motion for preliminary approval.

1 the amount of \$133,333.33 and reimbursement of reasonable litigation costs and expenses in the amount of
2 up to \$25,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) Class Representatives’ Enhancement
3 Payment to Plaintiffs in the amount of up to \$7,500.00 for each representative Plaintiff (“Enhancement
4 Payment”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an
5 amount not to exceed \$12,000.00 (“Settlement Administration Costs”); (4) \$40,000.00 to PAGA with
6 seventy-five percent (75%) share of PAGA Penalties (“PAGA Payment”) in the amount of \$30,000.00 to
7 the California Labor and Workforce Development Agency (“LWDA”) and \$10,000 distributed to the
8 PAGA Members. (Settlement Agreement ¶¶ I. A; III A; F 1; F2; F4).

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

10 The Gross Settlement Amount less proposed Class Counsel’s fees and costs, Plaintiff’s
11 Enhancement Payment, PAGA Payment, and Settlement Administrator’s costs shall constitute the “Net
12 Settlement Amount.” The Net Settlement Amount estimated at \$174,666.67. (Settlement Agreement ¶¶ III.
13 F, 5 and 6; Hawkins Decl. ¶ 18)

14 Given that there are approximately 544 Class Members, each can expect to receive on average
15 approximately \$321, with a high payment of up to \$754.02 and a low payment of \$6.39. (Hawkins Decl. ¶
16 ¶ 33.)

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

1 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
2 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

3 4. Release by the Settlement Class

4 The release is narrowly tailored to release the claims litigated in the complaints in
5 exchange for the Gross Settlement Amount. Upon Court approval of the Settlement, all
6 Participating Class Members shall be bound by a release of all class claims alleged or that could
7 have been alleged based on the facts alleged in the Action, which arose during the Class/PAGA
8 Period, and all PAGA Members and the L WDA shall be bound by a release of all PAGA claims
9 alleged or that could have been alleged based on the facts alleged in the Action and any PAGA
10 notices filed by Plaintiffs in this Action. The released claims shall include failure to pay wages and
11 overtime, failure to provide compliant meal and rest periods, failure to provide accurate itemized
12 wage statements, failure to timely pay wages, failure to reimburse necessary business expenses,
13 claims under Labor Code sections 200, 201, 202, 203, 204, 212, 213, 218.5, 221 , 226, 226.3,
14 226.7, 227.3, 246, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
15 2802, and 2698 et seq., Business and Professions Code section 17200, Code of Civil Procedure
16 section 1021.5, related IWC Wage Order, and all PAGA penalties arising from the facts and
17 theories and alleged violations in the Released Claims (Settlement Agreement ¶ I, HH).

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

1 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
2 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the payment of
3 attorneys' fees. *Id.* at 3.769(b).

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

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

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

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

20 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues implicated

21 ³ 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 by Plaintiffs' claims and were able to objectively assess the settlement's reasonableness. For example, prior
2 to filing the action, Plaintiffs contacted Plaintiff's Counsel to discuss the factual bases for pursuing their
3 respective actions against Defendants for Labor Code violations. Plaintiffs was intimately familiar with
4 Defendants' labor policies and practices, and over the course of multiple interviews, knowledgeably
5 summarized those policies and practices to Plaintiffs' Counsel. During those conversations, Plaintiff's
6 Counsel explained how the policies and practices were instituted and provided valuable insight into how
7 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiff, Plaintiff's
8 Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendants
9 and in preparation for drafting the complaint, Plaintiff's Counsel conducted their own independent
10 preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a careful
11 examination of Plaintiff's personnel files and associated records. (Hawkins Decl. ¶¶ 7-12.)

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

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. ¶¶ 14-37.)

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

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

18 The Parties were represented by experienced class action counsel throughout the negotiations
19 resulting in this Settlement. Plaintiffs is represented by James Hawkins, APLC. Plaintiff's Counsel employ
20 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
21 merits and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 41.)

22 Defendants are represented by Lewis Brisbois, a respected defense firm.

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

26 In seeking approval, a settling party must provide sufficient information to "enable the court to
27 make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker Retail,*
28 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement

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

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

19 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is
20 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the

21 ⁴ 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 various potential impediments to recovery. (Hawkins Decl. ¶¶ 20-35.)

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

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

18 Defendants also argued that notwithstanding its apparently compliant meal break, rest break and
19 time keeping policies regarding the timing and length, that Plaintiffs and Class Members were paid over
20 25,000 meal period premiums. (Id.)

21 Accounting for the risks of continued litigation and impediments to discovery, Plaintiffs
22 determined that a settlement amounting to \$400,000.00 was fair and reasonable, and accounts for an
23 approximate 12%-21% of total possible recovery and courts have routinely approved settlements that
24 provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 34, 35). *See,*
25 *e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a
26 reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car*
27 *Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the
28 estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D.

Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁵ (Id.)

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, \$40,000.00 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$30,000.00) will be paid directly to the LWDA, and the remaining 25% (\$10,000.00) will be paid to PAGA Members who worked during the PAGA Period beginning June 14, 2020 through the date of Preliminary Approval. (Settlement Agreement I ¶¶ I., AA; III. F (6).)

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 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200

⁵ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-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 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuyse v.*
2 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith*
3 *Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
4 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
5 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
6 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
7 employers are not subject to heightened penalties for subsequent violations unless and until a court or
8 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
9 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

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

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

26 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
27 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
28 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under

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

10 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
11 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
12 by California courts.⁶ Where PAGA penalties are negotiated in good faith and “there is no indication
13 that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are
14 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
15 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579
16 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
17 damages to the PAGA claims.”).

18 ⁶ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
19 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
20 penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI
21 SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement
22 containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*,
23 No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million
24 settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R.*
25 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
26 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
27 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
28 BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of
approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA
penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18,
2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v.*
Vallarta Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge
William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was
allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No.
BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement
fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA
penalties).

1 **C. The Court Should Preliminarily Approve the Negotiated Class**
2 **Representatives’ Enhancemet Payment**

3 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*
4 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming Enhancement Payments of \$10,000); *Rodriguez v.*
5 *West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions (4th ed.
6 2002) ¶ 11:38, and Eisenberg & Miller, *Enhancement Payments to Class Action Plaintiffs: An Empirical*
7 *Study*, 53 UCLA L. Rev. 1303 (2006). Enhancement payments “are intended to compensate class
8 representatives for work done on behalf of the class, to make up for financial or reputational risk
9 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
10 general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or Enhancement
11 Payments to named plaintiffs is that they should be compensated for the expense or risk they have incurred
12 in conferring a benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175
13 Cal. App. 4th 785, 806 (2009).

14 Approximately 544 current and former employees will share a \$400,000.00 settlement fund due
15 entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement
16 provides for Class Representative Enhancement Payments of \$7,500.00 to each of the Class
17 Representatives⁷ The Class Representative Enhancement Payment is fair and reasonable compensation

18 _____
19 ⁷ Such amounts are reasonable by reference to the amounts that California courts (both
20 federal and state) have repeatedly found to be reasonable for wage and hour class action
21 settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10,
22 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton*
23 *Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding
24 \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*,
25 No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding
26 \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
27 CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000
28 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 Costs County Super. Ct. April 15,
2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire’s*
Boutiques, Inc., No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000
enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-
2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000
enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No.
BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to
the named plaintiff); *Baker v. L.A. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct.

1 for Plaintiffs effort in pursuing the action, assisting counsel with the litigation and settlement, regularly
2 conferring with counsel on the status of their case and the strategies for prosecuting the claims, and
3 reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the
4 Settlement Class. (Hawkins Decl. ¶ 35; see *also generally*, declarations of MELODY DANIEL-COLLIER
5 and JUDITH A. DAVIS Decl.)

6 Plaintiffs will file a formal motion for the negotiated Class Representative Enhancement Payments
7 once preliminary approval of the Settlement is granted. Plaintiffs respectfully submits that the above
8 showing is sufficient for preliminary approval of the negotiated Class Representative Incentive 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 the
12 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 in
17 class actions average around one-third of the recovery."). At final approval, Plaintiffs will seek Court-
18 approval of attorneys' fees of \$133,333.33 (one-third of the Gross Settlement Amount) and litigation costs
19 and expenses not to exceed \$25,000.00.

20
21
22 Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v.*
23 *Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21,
24 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795
25 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named
26 plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3,
27 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No.
28 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, of
4 many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.”
5 Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification
6 is appropriate when there is an “ascertainable class and a well-defined community of interest among class
7 members.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is
8 appropriate even if class members at some point may be required to make an individual showing as to
9 eligibility for recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-*
10 *On*, 34 Cal. 4th at 333.

11 Conditional certification of the proposed Settlement Classes 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 in
14 settlement cases).⁸ 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 same
16 class for purposes of litigation:

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

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⁸ *See also* Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal
class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class
certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV-
01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme
Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train*
Derailment in Philadelphia, Pennsylvania, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa.
Apr. 6, 2016) (“[A] settlement class can be preliminarily certified based on a less rigorous analysis
than that necessary for final certification.”); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-
MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28, 2014) (at the preliminary approval stage,
“the Court must determine whether the proposed class should be conditionally certified, and leave
the final certification decision for the Fairness Hearing.”).

1 would do much better by litigating on their own or in their own jurisdiction. The second
2 category concerns are protected by the trial court’s fairness review of the settlement. *Id.* at
n19.

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

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

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

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

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

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

17 The proposed Settlement Class Members consists of the individual Class Members who did not
18 opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all current and
19 former non-exempt employees of Defendants who worked in California at any time from December 20,
20 2020 to March 8, 2023. There are approximately 544 Class Members. Because all Class Members are
21 either current or former employees of Defendant, subject to the same policies and practices, the class is
22 readily ascertainable from Defendants’ regular business records. (Hawkins Decl. ¶¶ 36-38).

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

Plaintiffs’ 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, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs
3 maintains that Plaintiffs was injured by the same company-wide practices to which the proposed
4 Settlement Class was subject and seek the same relief. Plaintiffs have already demonstrated the ability to
5 advocate for the interests of the Class by initiating this litigation, undertaking representative investigation
6 and discovery, and evaluating the proposed settlement to assure that it is fair. (*Id.*)

7 Additionally, Plaintiffs are represented by competent counsel who have extensive experience in
8 litigating wage and hour class action cases. (Hawkins Decl. ¶ 41.) Plaintiffs' Counsel have 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.*) Plaintiffs Counsel's wage and hour class action expertise
11 establishes that they are well qualified to represent the interests of this Class.

12 As such, a class action is superior to a multitude of individual lawsuits. Given the size and amount
13 of 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-case
16 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*, 67
20 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
21 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
22 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975).
23 The notice must advise class members "that they may be excluded from the class if they so request and that
24 they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67
25 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California
26 authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super.*

1 Ct., 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁹

2 The Parties have jointly drafted the Class Notice and Opt-Out Form attached to the Hawkins
3 declaration as Exhibit A and B, which fairly and neutrally informs Class Members of their rights and
4 remedies in this action. (Settlement Agreement, Exhibit A and B; Hawkins Decl. ¶¶ 39, 40.)

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

9 **V. CONCLUSION**

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

13
14 Dated: April 19, 2023

JAMES HAWKINS APLC

15
16 By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.

17
18 Attorneys for Plaintiffs MELODY DANIEL-
19 COLLIER and JUDITH A. DAVIS,
20 individually and on behalf of all others
21 similarly situated.

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27 ⁹ Due process does not require that each Class Member actually receive a notice, but rather
28 a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal*
Practice and Procedure § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class
Members will be bound by the judgment even if they never actually receive the notice. *Fontana v.*
Elrod, 826 F.2d 729, 732 (7th Cir. 1987).

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On April 19, 2023, I served on the interested parties in this action the following document(s) entitled:

- [XX] BY ELECTRONIC SERVICE: Via electronic filing service provider- electronically transmitting the documents listed above to File&Serve Xpress, an electronic filing service provider, at www.fileandservexpress.com pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

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