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Attorneys for Plaintiff THOMAS LONGACRE

on behalf of the general public as private attorney general

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

THOMAS LONGACRE, on behalf of the
general public as private attorney general,

Plaintiff,

v.

KEHE DISTRIBUTORS, INC., a Delaware
Corporation; and DOES 1-50, inclusive

Defendant.

Case No.: STK-CV-UOE-2022-0001211

Assigned For All Purposes To

Judge: HON. Erin Guy Castillo

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

*(Filed concurrently with Declarations of
James Hawkins and Plaintiff Thomas
Longacre; [Proposed] Order)*

Date:

Time:

Dept: 10B

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD: PLEASE TAKE NOTICE** that on XXX, 2023 at 9:00 a.m., or as soon thereafter as
3 counsel may be heard, in Department 10B of the above-captioned court, located at 180 East Weber
4 Avenue, Stockton, CA 95202, the Honorable Erin Guy Castillo presiding, Plaintiff THOMAS
5 LONGACRE will, and hereby does, move this Court to:

6 1. Preliminarily approve the settlement set forth in the Class Action and PAGA Settlement
7 Agreement, (“Agreement” or “Settlement Agreement”), attached as Exhibit 1 to the Declaration of James
8 Hawkins;

9 2. Conditionally certify the proposed Settlement Class;

10 3. Appoint THOMAS LONGACRE as the representative for the Settlement Class;

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

12 5. Approve distribution of the proposed Notice of Proposed Class Action and PAGA
13 Settlement Agreement; attached as Exhibit A to the Declaration of James Hawkins.

14 6. Appoint Apex Class Action Settlement Administrator 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 Points
17 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 THOMAS
19 LONGACRE; (5) the Class Action and PAGA Settlement Agreement; (6) the [Proposed] Order Granting
20 Preliminary Approval of Class Action Settlement; (7) the records, pleadings, and papers filed in this action;
21 and (8) upon such other documentary and oral evidence or argument as may be presented to the Court at or
22 prior to the hearing of this Motion. As this Motion is unopposed, the Parties respectfully request relief from
23 the page limit requirement set by California Rules of Court, Rule 3.1113(5).

1 Dated: June 15, 2023

JAMES HAWKINS APLC

2
3
4 By:


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Gregory Mauro, Esq.
Michael Calvo, Esq.
Lauren Falk, Esq.
Ava Issary, Esq.

7 Attorneys for Plaintiff THOMAS
8 LONGACRE,
9 individually and on behalf of all others
10 similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff THOMAS LONGACRE (“Plaintiff”) seeks preliminary approval of the Parties’
4 Class Action and PAGA Settlement Agreement (“Agreement”) which, if approved, would provide
5 valuable monetary relief for approximately 4,560 potential Class Members who work(ed) for
6 Defendant KEHE DISTRIBUTORS, INC. (“Defendant” or “Kehe”) (collectively the “Parties”).

7 **The basic terms of the non-reversionary settlement provide for the following:**

- 8 1. Conditional certification for settlement purposes only of a Class defined as:
- 9 a. Class Member or Settlement Class Member: “Means a member of the Class,
10 as either a participating Class Member or Non-Participating Class Member
11 (including a Non-Participating Class Member who qualifies as an Aggrieved
12 Employee)”
- 13 2. A Gross Settlement Amount of Seven-Hundred and Fifty-Thousand Dollars
14 (\$750,000.00). The Gross Class Settlement Amount includes:
- 15 a. A Net Settlement Amount of approximately \$389,000 (the Gross Settlement
16 less the following payments in the amounts approved by the Court: Individual
17 PAGA Payments, the LWDA PAGA Payment, Class Representative Service
18 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
19 Payment, and the Administration Expenses Payment. The remainder is to be paid
20 to Participating Class Members as Individual Class Payments;
- 21 b. Class Counsel Fees in the amount of not more than one-third of the Gross
22 Settlement Amount (\$250,000.00), and Class Counsel Litigation Expenses not to
23 exceed \$30,000.00, to James R. Hawkins APLC (“Class Counsel”);
- 24 c. Settlement Administration Costs, not to exceed \$35,000.00, to be paid to
25 the jointly selected Claims Administrator, Apex Class Action Settlement
26 Administrator;
- 27 d. An allocation in the amount of \$36,000.00 for the PAGA payment as
28 approved by the Court, of which \$27,000.00 shall be distributed to the

1 California Labor and Workforce Development Agency (“LWDA”) pursuant to
2 the California Labor Code Private Attorneys General Act of 2004 (“PAGA”)
3 and 25% (\$9,000.00) to Individual PAGA Payments; and

- 4 e. Class Representative Service Payment of Ten Thousand Dollars (\$10,000.00)
5 to Plaintiff for services on behalf of the Class and for agreeing to a broader
6 release than those required of Class Members (i.e., a complete and general
7 release of all known and unknown claims under California Civil Code
8 section 1542).

9 The relief negotiated on behalf of the Class is fair, reasonable, and valuable. The settlement
10 was negotiated by the Parties at arm's length with the helpful guidance from Gig Kyriacou, Esq., an
11 experienced and well-respected class action mediator, and the settlement confers substantial benefits
12 to Class Members. The relief offered by the settlement is particularly impressive in light of the
13 substantial risks Plaintiff would have undertaken in proceeding to trial. (Hawkins Decl. ¶¶ 6, 9-11,
14 13, 14).

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

18 **II. STATEMENT OF RELEVANT FACTS AND PROCEDURE**

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

20 Plaintiff filed this representative action on February 16, 2022, alleging a cause of action
21 against Defendant under the Private Attorneys General Act (“PAGA”), entitled *Thomas Longacre,*
22 *et al. vs. Kehe Distributors, Inc.*, in the San Joaquin County Superior Court (No. STK-CV-UOE-
23 2022-121) (the “PAGA Action”). (Hawkins Decl. ¶ 3). Specifically, Plaintiff’s Lawsuits sought
24 civil penalties against Defendant for Defendant’s alleged failure to: failure to pay wages, the failure
25 to pay overtime compensation, the failure to provide meal periods, the failure to provide rest periods,
26 the failure to maintain or provide accurate itemized statements, failure to pay all wages earned and
27 owed during employment and upon employee’s termination of employment, the failure to maintain
28 records, failure to pay statutory sick pay at the correct rate of pay, failing to provide cool down

1 recovery periods, and any other claims whatsoever that were or could have been alleged in this case
2 based on the facts of the complaints, including all related claims for restitution and other equitable
3 relief under Business and Professions Code section 17200, liquidated damages, waiting-time
4 penalties, and penalties under the Labor Code Private Attorneys General Act of 2004. (Hawkins
5 Decl. ¶ 3, 4, 17).

6 On October 17, 2022, the Parties engaged in a full-day of private mediation with a well-
7 respected wage and hour class action mediator, Gig Kyriacou, Esq. Prior to mediation, Plaintiff
8 requested and Defendant produced extensive documentation, including a time and pay data for a
9 random sample of approximately 20% of the Class Members, Defendant's written policies,
10 Plaintiff's time and pay records and personnel file, documents relating to arbitration agreements
11 with Class Members, applicable collective bargaining agreements, and information relating to the
12 average hourly rate, class size, and workweeks during the Class Periods and PAGA Period. In short,
13 Defendant provided informal discovery sufficient to enable the Plaintiff and Class Counsel to
14 rigorously evaluate the strengths, weaknesses, and risks of the case and perform an analysis of the
15 potential damages arising from the claims made in this case. (Hawkins Decl. ¶ 4). On December 22,
16 2022, Plaintiff filed a First Amended Class Action Complaint adding Class Claims. (Hawkins Decl.
17 ¶ 3).

18 Defendant denies any liability or wrongdoing of any kind associated with the claims asserted
19 in the Lawsuits, disputes the damages and penalties claimed by Plaintiff, and further contends that,
20 for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
21 representative treatment. This Settlement is a compromise of disputed claims. Nothing contained
22 in this Settlement, no documents referred to herein, and no action taken to carry out this Settlement,
23 shall be construed or used as an admission by or against Defendant as to the merits or lack thereof
24 of the claims asserted in the Lawsuits. (Hawkins Decl. ¶ 10).

25 Defendant contends, among other things, that, at all times, it has complied with all applicable
26 state, federal and local laws related to the Class Members' and PAGA Settlement Group Members'
27 employment. Nevertheless, Defendant has entered into this Settlement to avoid the cost, risk and
28 inconvenience of further litigation. Nothing contained in this Settlement, nor the fact of this

1 Settlement itself, shall be construed or deemed as an admission of liability, or wrongdoing on the
2 part of any of the Defendant, or an admission that class or representative action treatment would be
3 allowed outside the settlement context. (Hawkins Decl. ¶¶ 13, 16).

4 The Class Representative is represented by Class Counsel. Class Counsel investigated the
5 facts relevant to the Lawsuits, including reviewing documents and information provided by
6 Defendant. Based on their own independent investigation and evaluation, Class Counsel is of the
7 opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest
8 of the Class Members in light of all known facts and circumstances, including the risks of significant
9 delay, defenses asserted by Defendant, uncertainties regarding a class trial, and numerous potential
10 appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Settlement
11 to avoid the cost, distraction, and risks of further litigation. Accordingly, the Parties and their
12 counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims
13 arising from or relating to the Lawsuits on the terms set forth herein. (Hawkins Decl. ¶¶ 7, 9-11, 13,
14 14).

15 As a result of settlement efforts mentioned above, the Parties agreed to resolve this matter
16 for the Gross Settlement Amount of \$750,000.00 for approximately 4,560 Class Members and the
17 terms of which are fully memorialized in the Settlement Agreement. The settlement was negotiated
18 at arms-length and is not collusive. From Class Counsel's review of the facts, strengths, and
19 weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior
20 litigation experience, Class Counsel believe that recovery for each Class Member is fair and
21 reasonable. (Hawkins Decl. ¶¶ 5, 13).

22 **III. SUMMARY OF THE SETTLEMENT TERMS**

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

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

25 The Class is defined as all hourly non-exempt employees employed by Defendant in
26 California during the Class Period. Defendant contends that there are approximately 116,248
27 workweeks worked by 4,560 Class Members through the end of the Class Period of January 15,
28 2023. ("Class Member" or "Settlement Class Member" refers to a member of the Class, as either a

1 participating Class Member or Non-Participating Class Member (including a Non-Participating
2 Class Member who qualifies as an Aggrieved Employee)). “PAGA Period” shall mean the period
3 from August 26, 2020 to January 15, 2023. (Settlement Agreement I, ¶1.31.) (Hawkins Decl. ¶¶ 6,
4 32).

5 2. Settlement Consideration

6 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for
7 the Gross Settlement Amount of \$750,000.00 (“Settlement Agreement” ¶ 3, 3.1). The Gross
8 Settlement Amount includes: (1) settlement payments to each participating Class Member; (2)
9 Class Counsel Fees Payment of not more than one third of the Gross Settlement Amount, which is
10 currently estimated to be \$250,000.00, and a Class Counsel Litigation Expenses Payment which
11 are estimated to be not more than \$30,000.00; (3) Settlement Administration Expenses Payment
12 not to exceed \$35,000.00 except for a showing of good cause and as approved by the Court; (4) to
13 the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$36,000.00 to be paid
14 from the Gross Settlement Amount, with 75% (\$27,000.00) allocated to the LWDA PAGA
15 Payment and 25% (\$9,000.00) allocated to the Individual PAGA Payments; and (5) a Class
16 Representative Service Payment of not more than \$10,000.00 (in addition to any Individual Class
17 Payment and any Individual PAGA Payment the Class Representative is entitled to receive as
18 Participating Class Member) to Thomas Longacre (Plaintiff) for his services on behalf of the Class
19 and for agreeing to a broader release than those required of Class Members. (Settlement
20 Agreement ¶ 3).

21 Subject to the Court approving Individual PAGA Payments, the LWDA PAGA Payment,
22 Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
23 Expenses Payment, and the Administration Expenses Payment, the remaining Net Settlement
24 Amount (“NSA”) in the amount of \$389,000 is to be paid to Participating Class Members as
25 Individual Class Payments. (Settlement Agreement ¶ 1, 1.28; Hawkins Decl. ¶ 15).

26 3. Formula for Calculating Payments from Net Settlement Amount

27 Individual Class Payments will be paid from the Net Settlement Amount and shall be paid
28 pursuant to the settlement formula as follows: (i) using the Class Information, the Settlement

1 Administrator will compute the total number of Eligible Workweeks of all Participating Class
2 Members collectively during the Class Period (this sum shall be known as the Workweek Total) (ii)
3 the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total to
4 determine the settlement value for each Eligible Workweek (the “Workweek Value”); and (iii) the
5 Settlement Administrator will multiply the number of Eligible Workweeks of a Participating Class
6 Member during the Class Period by the Workweek Value to determine that Participating Class
7 Member’s Individual Class Payment. (Settlement Agreement ¶ 3, 3.2.4).

8 Given that there are approximately 4,560 PAGA Members, each can expect to receive on average
9 approximately **\$84**, with a high payment of up to **\$394** and a low payment of **\$3.34** (Hawkins Decl. ¶¶ 31,
10 32.)

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

25 4. Scope of the Release by the Settlement Class

26 The release of claims is narrowly tailored to release the claims litigated in the complaints in
27 exchange for the Gross Settlement Amount. Plaintiff and Participating Class Members will agree
28

1 to release the Released Claims during the Class and PAGA Period subject to Court Approval.
2 (Settlement Agreement ¶ 6).

4 **IV. ARGUMENT**

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

6 1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, 7 Adequate, and Reasonable

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

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

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

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

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

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

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

16 In summary, Plaintiff’s Counsel performed a thorough investigation into the claims at issue, which
17 included: (1) determining Plaintiff’s suitability as Private Attorneys General and Class Representative
18 through interviews, background investigations, and analyses of their employment files and related records;
19 (2) evaluating all of Plaintiff’s potential representative claims; (3) researching similar wage and hour class
20 actions as to the claims brought, the nature of the positions, and the type of employer and Defendant’s 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
25 Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and
26 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex
27 class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992)
28 (“public policy strongly discourages litigation and encourages settlement [because settlements]
can produce peace and goodwill in the community while reducing the expense and persistency of
litigation”). Additionally, in reviewing the fairness of a class action settlement, due regard should
be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone
Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must be limited to the extent
necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 class action settlement; (4) analyzing employees' time and wage records; (5) reviewing Defendant's
2 employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's
3 claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and
4 (9) participating in the mediation. (Id.).

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

10 3. The Settlement Was Reached Through Arms-Length Bargaining in Which All
11 Parties Were Represented by Experienced Counsel

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

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

1 collusive. (Hawkins Decl. ¶ 5.)

2 The Parties were represented by experienced class action counsel throughout the negotiations
3 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ
4 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
5 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 39).

6 Defendant is represented by Ballard Rosenberg Golper & Savitt, LLP, a respected defense firm.

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

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

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

10 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is within
11 the range of reasonableness in light of the nature and magnitude of the claims being settled and the various
12 potential impediments to recovery. (Hawkins Decl. ¶¶ 16-35).

13 Defendant denies all allegations pled, along with all allegations intended to be pled in the operative
14 complaints. Defendant contends they implemented written policies and maintained practices that complied
15 with the requirements of the California Labor Code and applicable California Wage Orders. Defendant
16 contends all employees were provided meal periods and authorized rest periods, were paid all wages, were
17 provided cool down recovery periods, and were timely paid wages in compliance with California law and
18 applicable California Wage Orders. Defendant further alleges no work was done off the clock and contrary
19 to its policies. In addition, an individualized investigation into the circumstances surrounding any missed
20 meal and rest breaks and alleged off the clock work, and cool down recovery periods, is warranted because
21 such claims can only be decided on a case-by-case basis, common issues do not predominate and class
22 certification is neither superior nor proper. (*Id.*)

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

1 not impossible, hurdle to overcome the thresholds required by Labor Code section 226 claims. (Id.)

2 Accounting for the risks of continued litigation and impediments to full recovery, Plaintiff
3 determined that a settlement amounting to \$750,000.00 was fair and reasonable, and accounts for an
4 approximate 20% of total possible recovery. Courts have routinely approved settlements that provided a
5 similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 30-33). See, e.g., *In re*
6 *Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable
7 settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*,
8 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total
9 damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972)
10 (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D.
11 Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the
12 range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of
13 continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008)
14 (approving settlement of 6% to 8% of estimated damages).³ (Id.)

15 **B. The Consideration Provided for the PAGA Claim is Fair and Reasonable in Light of**
16 **the Amount in Controversy Discounted by the Risks of Continued Litigation**

17 Pursuant to the Settlement Agreement, \$36,000.00 from the Gross Settlement Amount shall be
18 allocated to the resolution of the PAGA claim, of which 75% (\$27,000.00) will be paid directly to the
19 LWDA, and the remaining 25% (\$9,000.00) will be paid to the Aggrieved Employees who worked during

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

1 the PAGA Period from August 26, 2020 to January 15, 2023. (Settlement Agreement ¶¶ 1, 1.31, 1.34).

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

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

26 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA penalties
27 in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or 0.21% of**
28 **the maximum**—and stated that this reduction was warranted because imposing the maximum penalty would

1 be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply with meal period
2 obligations and because the court found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517.
3 The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at
4 529.

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

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

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

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

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

8 Enhancement Awards or Service Payments “are fairly typical in class action cases.” *Cellphone*
9 *Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000);
10 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions
11 (4th ed. 2002) ¶ 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical*
12 *Study*, 53 UCLA L. Rev. 1303 (2006). Class Representative Service Payments “are intended to compensate
13 class representatives for work done on behalf of the class, to make up for financial or reputational risk
14 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney
15 general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he rationale for making enhancement or incentive awards to
16 named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring
17 a benefit on other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th
18 785, 806 (2009).

19 Approximately 4,560 current and former employees will share a \$750,000.00 Gross Settlement fund
20 due entirely to the effort and commitment of the Plaintiff. Subject to Court approval, therefore, the Settlement
21 provides for Class Representative Service Payment of \$10,000.00 to the Class Representative.⁵ The Class

22 _____
23 allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No.
24 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).

25 ⁵ Such amounts are reasonable by reference to the amounts that California courts (both
26 federal and state) have repeatedly found to be reasonable for wage and hour class action
27 settlements: See *Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10,
28 2017) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Crook v. Barton*
Healthcare System, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding
\$10,000 Enhancement Award to the named plaintiff); *Singh v. American Building Supply, Inc.*,
No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding
\$10,000 Enhancement Award to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000

1 Representative Service Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the
2 action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of
3 their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that
4 its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 36; *see also generally*,
5 Thomas Longacre Decl.).

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

9 **D. The Court Should Preliminarily Approve the Negotiated Class Counsel Fees and Costs**
10 **Payments**

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. California
13 courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund.
14 *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the

15
16 Enhancement Awards to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269
17 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 Enhancement Award to the named
18 plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
19 April 28, 2016) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Cook v. United*
20 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016)
21 (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Quintana v. Claire's Boutiques,*
22 *Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 Enhancement Awards
23 to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-
24 GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 Enhancement Award to
25 the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County
26 Super. Ct. July 16, 2015) (awarding \$10,000 Enhancement Award to the named plaintiff); *Baker v.*
27 *L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000
28 Enhancement Awards 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 Award); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct.
June 11, 2010) (awarding \$10,000 Enhancement Awards to the named plaintiffs); *Coleman v.*
Estes Express Lines, Inc., No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding
\$10,000 Enhancement Award); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A.
County Super. Ct. May 27, 2011) (awarding \$10,000 Enhancement Award); *Hickson v. South*
Coast Auto Insurance Marketing, Inc., No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012)
(awarding \$10,000 Enhancement Award); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A.
County Super. Ct. July 2, 2012) (awarding \$10,000 Enhancement Awards to the named plaintiffs);
Kabamba v. Victoria's Secret Stores, LLC, No. BC368528 (L.A. County Super. Ct. Aug. 19,
2011) (awarding Enhancement Awards 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 Award).

common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”). At final approval, Plaintiff will seek Court-approval of Class Counsel Fees Payment in the amount of \$250,000.00 (one-third of the Gross Settlement Amount) and Class Counsel Litigation Expenses not to exceed \$30,000.00. Any difference in actual costs and the \$30,000 costs allocation will be included in the Net Settlement Amount (“NSA”).

E. California Law Authorizes Provisional Certification for Settlement Purposes

1. The California Standard for Class Certification

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

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

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

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

14 2. The Proposed Settlement Class is Ascertainable and There Is a Well-Defined
15 Community of Interest Among Class Members

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

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

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

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

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

The proposed Class Member or Settlement Class Member means a member of the Class, as either a
Participating Class Member or Non-Participating Class Member (including a Non-Participating Class
Member who qualifies as an Aggrieved Employee). The Class Period means the period from August 26,
2020 to January 15, 2023. Defendant represents there are approximately 4,560 Class Members during the
Class Period. (Hawkins Decl. ¶¶ 6).

Here, common issues of fact and law predominate because the California statutes relating to each of
Plaintiff’s claims, and Defendant’s defenses thereto, apply with equal force and effect to all Class Members.
Factually, Plaintiff contends that Defendant’s policies and practices apply class-wide and Defendant’s

1 liability can be determined by facts common to all members of the class. The wage and hour issues are both
2 numerous and substantial, and a class action is the most advantageous method of dealing with the claims of
3 the Settlement Class Members. (Hawkins Decl. ¶¶ 33-35).

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

11 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
12 litigating wage and hour class action cases. Plaintiff's Counsel has successfully briefed, argued, certified, and
13 gained state and federal court settlement approval of the same class-wide causes of action that are at issue in
14 this case. (*Id.*) Plaintiff's Counsel's wage and hour class action expertise establishes that they are well
15 qualified to represent the interests of this Class. (Hawkins Decl. ¶ 39.)

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

21 3. The Proposed Class Notice Properly Informs Class Members About the Case and 22 the Settlement

23 Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67
24 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to
25 decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to
26 the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The
27 notice must advise class members "that they may be excluded from the class if they so request and that they
28 will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal.

1 App. 3d at 106. In a case such as this involving a significant number of class members, California authorities
2 generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal.
3 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).⁷

4 The Parties have jointly drafted the Class Notice which fairly and neutrally informs Class Members
5 of their rights and remedies in this action. (Settlement Agreement, **Exhibit A**; Hawkins Decl. ¶¶ 37-38).

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

10 **V. PRELIMINARY APPROVAL SHOULD BE GRANTED**

11 Given the favorable terms of the settlement and informed, arms-length negotiations, the proposed
12 settlement should be preliminarily viewed as a fair, reasonable, and adequate compromise of the issues in
13 dispute. The Court should therefore grant preliminary approval of the settlement, order dissemination of
14 notice to the Class for comment, and proceed to a formal fairness hearing.

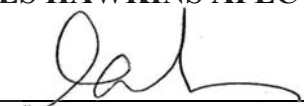
15 **VI. CONCLUSION**

16 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
17 presented the materials and information necessary for preliminarily approval, the Parties respectfully request
18 that the Court preliminarily approve the Class Action and PAGA Settlement.

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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: June 15, 2023

JAMES HAWKINS APLC

2
3 By: 

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7 LONGACRE, individually and on behalf of
8 all others similarly situated.