

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiffs

Norman B. Blumenthal, Bar No. 068687
Kyle R. Nordrehaug, Bar No. 205975
Aparajit Bhowmik, Bar No. 248066
Nicholas J. De Blouw, Bar No. 280922
BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Fax: (858) 551-1232

Attorneys for Plaintiffs

[Additional Counsel on the Following Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Coordination Proceeding Special Title
(Rule 3.550)

TARGET WAGE AND HOUR CASES

Included Actions:

Medina et al. v. Target Corporation
San Bernardino Superior Court, Case No.
CIVSB2209126

Torres v. Target Corporation
Sacramento Superior Court, Case No. 34-
2022-00319715

Judicial Council Coordination Proceeding Case
No.: JCCP 5259

Assigned for All Purposes To:
Hon. Wilfred J. Schneider, Jr.
Dept.: S-32

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: ##, 2024
Time: #:00 a.m.
Place: Department S-32

Complaint Filed: September 22, 2022
Trial Date: None Yet Set

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)

phaines@haineslawgroup.com

Fletcher W. Schmidt (SBN 286462)

fschmidt@haineslawgroup.com

Matthew K. Moen (SBN 305956)

mmoen@haineslawgroup.com

Susan J. Perez (SBN 329044)

sperez@haineslawgroup.com

2155 Campus Drive, Suite 180

El Segundo, California 90245

Telephone: (424) 292-2350

Facsimile: (424) 292-2355

Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	FACTS AND PROCEDURE.....	4
	A. Overview of the Litigation and the Claims.....	4
	B. Investigation and Evaluation of the Claims.....	8
	C. Summary of the Proposed Settlement.....	10
	1. Composition of the Class.....	10
	2. Gross Settlement Amount and Net Settlement Amount.....	10
	3. Participating Class Member Payments and PAGA Affected Employee Payments.....	11
	4. Release by Participating Class Members and PAGA Affected Employees.....	12
	5. Notice Procedure.....	13
	6. Processing of Payments.....	14
III.	ARGUMENT.....	14
	A. The Court Should Preliminarily Approve the Proposed Settlement	14
	1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.....	14
	2. The Investigation and Discovery Are “Sufficient To Allow Counsel and The Court To Act Intelligently”.....	16
	3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All Parties Were Represented by Experienced Counsel.....	17
	4. The Settlement Should Be Approved As It Is A Fair and Reasonable Compromise of the Claims in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation....	18
	a. The Settlement is Within the Range of Reasonableness...	19
	b. The Risks Inherent in Continued Litigation Are Great....	19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

c.	The Fairness of the Distribution to Class Members Also Supports Approval.....	20
d.	Class Counsel Experienced in Similar Litigation Endorse the Settlement.....	21
e.	The Court Should Preliminary Approve the Negotiated Class Representative Service Awards.....	21
f.	The Court Should Preliminarily Approve the Negotiated Class Counsel Fees and Litigation Costs.....	22
B.	Conditional Certification Of The Class Is Appropriate	23
1.	Numerosity and Ascertainability.....	23
2.	Well-Defined Community of Interest.....	23
3.	Typicality.....	24
4.	Adequacy of Representation.....	24
IV.	THE COURT SHOULD APPOINT APEX CLASS ACTION LLC AS SETTLEMENT ADMINISTRATOR AND APPROVE THE CLASS NOTICE.....	24
A.	The Notice to be Provided to Class Member is Sufficient.....	25
B.	The Content of the Notice Provided to Class Members is Sufficient.....	25
C.	The Manner of Supplying Notice to Class Members is Sufficient.....	25
V.	CONCLUSION.....	25

1 **TABLE OF AUTHORITIES**

2 **CASES**

3		
4	<i>Amaro v. Anaheim Arena Mgmt., LLC,</i>	
5	69 Cal. App. 5th 521 (2021).....	22
6	<i>Arenas v. El Torito Rests, Inc.</i>	
7	(2010) 183 Cal. App. 4 th 723.....	23
8	<i>Barboza v. West Coast Digital GSM, Inc.</i>	
9	(2009) 179 Cal. App. 4 th 540.....	24
10	<i>Boyd v. Bechtel Corp</i>	
11	(N.D. Cal. 1979) 485 F. Supp. 610.....	21
12	<i>Bush v. Superior Court</i>	
13	(1992) 10 Cal.App.4 th 1374.....	15
14	<i>Cartt v. Super. Ct.</i>	
15	(1975) 50 Cal.App.3d 960.....	25
16	<i>Cellphone Termination Fee Cases,</i>	
17	(2010) 186 Cal.App.4th 1380.....	21
18	<i>Chavez v. Netflix, Inc.,</i>	
19	162 Cal. App. 4th 43 fn. 11 (2008).....	22
20	<i>Ching v. Siemens Indus, Inc.,</i>	
21	(N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4.....	19
22	<i>Clark v. American Residential Services LLC,</i>	
23	175 Cal. App. 4th 785 (2009).....	21
24	<i>Dunk v. Ford Motor Co.</i>	
25	(1996) 48 Cal. App. 4 th 1794.....	passim
26	<i>Ellis v. Naval Air Rework Facility</i>	
27	(N.D.Cal. 1980) 87 F.R.D. 15.....	21
28		

III

TABLE OF CONTENTS AND AUTHORITIES

1	<i>Fisher Bros. v. Cambridge-Lee Indus, Inc.</i>	
2	(E.D. Pa. 1985) 630 F. Supp. 482.....	21
3	<i>In re MyFord Touch Consumer Litig.,</i>	
4	(2019) WL 1411510, at p. 10.....	19
5	<i>Kullar v. Foot Locker Retail, Inc.</i>	
6	(2008) 168 Cal. App. 4 th 116.....	15,18
7	<i>Laffitte v. Robert Half Internat. Inc.,</i>	
8	231 Cal. App. 4 th 860 (2016).....	22,23
9	<i>Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.</i>	
10	(9 th Cir. 2001). 244 F.3d 1152.....	24
11	<i>Medrazo v. Honda of N. Hollywood</i>	
12	(2008) 166 Cal. App. 4 th 89.....	23
13	<i>Munoz v. BCI Coca-Cola Bottling Co.,</i>	
14	186 Cal. App. 4 th 399 (2010).....	18
15	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services,</i>	
16	27 Cal. App. 4 th 1085 (1994).....	15
17	<i>Officers for Justice v. Civil Serv. Comm’n,</i>	
18	(9 th Cir. 1992) 688 F.2d 615.....	15,18
19	<i>Rodriguez v. West Publishing Corp.,</i>	
20	563 F.3d 948 (9 th Cir. 2009).....	21
21	<i>State of Cal. v. Levi Strauss & Co.,</i>	
22	41 Cal. 3d 460 (1986).....	17
23	<i>Wershba v. Apple Computer, Inc.,</i>	
24	(2001) 91 Cal. App. 4 th 224.....	15,25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE RULES AND STATUTES

Business & Professional Code section 17200, et seq.....6,7

Cal. Civ. Code § 382.....23

Cal. R. Ct. 3.766(d).....25

Cal. R. Ct. 3.76915

Cal. R. Ct. 3.769(d).....23

SECONDARY SOURCES

Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002) (“Newberg”).....16

Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA
L. Rev. 1303 (2006).....21

Newberg, § 3.13.....24

Newberg, § 11.51.....17

4 Newberg on Class Actions (4th ed. 2002) § 11:38.....21

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Gustavo Medina, Janira Perez, Sergio Garcia, Alicia Torres, Zachary Lomely, Angel Carter, Denise Cardenas, Brian Mena, Jimmy Perez, Emily Porcho, Sheemal Narayan, Juan Morales, Joaldi Gonzalez, and Martha Franco (together “Plaintiffs”) seek preliminary approval of the Stipulation Regarding Class and Private Attorneys General Act Settlement and Release, attached as Exhibit 1 to the Declaration of James R. Hawkins.¹ The Settlement, if approved, would provide considerable monetary relief for approximately 24,528 current and former employees of Defendant Target Corporation (“Defendant” or “Target”). (Plaintiffs and Defendants are collectively the “Parties.”) The principal terms of the Settlement provide for the following:

- (1) Conditional certification of a Class defined as: all individuals employed by Target at one or more Target distribution centers in the State of California in non-exempt positions at any time during the Class Period from March 21, 2019, through and including December 10, 2023, or when the aggregate workweeks amount to 1,590,887, whichever occurs first (“Class Members”).
- (2) A **non-reversionary** Gross Settlement Amount of \$6,450,000. The Gross Settlement Amount includes:
 - (a) A Net Settlement Amount of \$3,887,500 (the Gross Settlement Amount minus the requested Service Awards, the Class Counsel Fees Award, the Class Counsel Costs Award, the Settlement Administration Costs, and the PAGA Distribution Amount), which will be allocated to all Class Members on a pro-rata basis according to the number of weeks each Class Member worked during the Class Period. **The entire Net Settlement Amount will be distributed amongst all Class Members who do not opt out of the Class, and without the need to submit claims for payment.**
 - (b) Class Counsel Fees Award in the amount of one-third of the Gross Settlement Amount (or \$2,128,500.00), and litigation costs and expenses not to exceed \$80,000, to James Hawkins APLC, Blumenthal Nordrehaug Bhowmik De Blouw LLP, and Haines Law Group, APC (collectively, “Class Counsel”).
 - (c) Settlement administration costs of approximately \$85,000, to be paid to

¹ Referred to as the “Settlement Agreement” or “Settlement.” Unless indicated otherwise, capitalized terms used in this Motion have the same meaning as those defined by the Settlement Agreement.

the jointly selected Settlement Administrator, Apex Class Action LLC.

- (d) A \$129,000 PAGA Distribution Amount, of which 75% (\$96,750.00) will be paid to the Labor and Workforce Development Agency (“LWDA”) (the “PAGA LWDA Payment”), and the remaining 25% (\$32,250.00) (“PAGA Affected Employee Payment”) will be paid to PAGA Affected Employees, defined as: all individuals employed by Target at one or more of its California distribution centers in the State of California in non-exempt positions at any time during the PAGA Period from February 22, 2021, through and including December 10, 2023, or when the aggregate workweeks in the Class Period amount to 1,590,887, whichever occurs first. **The entire PAGA Distribution Amount, less the PAGA LWDA Payment, will be distributed amongst all PAGA Affected Employees, and without the need to submit claims for payment.**
- (e) Service Award Payments of \$10,000 to each of the Class Representatives for their service on behalf of the Class, the risks they took in bringing the Action on behalf of the Class, and for the Complete and General Release provided to the Released Parties.

An objective evaluation of the Settlement confirms that the relief negotiated on the Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Gig Kyriacou, Esq., a well-respected and highly sought-after class action mediator, and the Settlement confers substantial benefits to Class Members. This relief is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal.

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

II. FACTS AND PROCEDURE

A. Overview of the Litigation and the Claims

Target Corporation is an American retail corporation that operates a chain of discount department stores in the United States, headquartered in Minneapolis, Minnesota. This case

1 involves the employees who worked during the Class Period at the distribution center facilities
2 in California which store the goods sold by Target. Target employed approximately 24,528
3 distribution center employees in California from March 21, 2019 through approximately
4 December 10, 2023. (Declaration of James Hawkins [“Hawkins Decl.”] ¶37.)

5 Defendant employed Plaintiffs in distribution center facilities during the Class Period.
6 (Hawkins Decl. ¶ 37.)

7 On February 23, 2022, Plaintiff Gustavo Medina filed a class action complaint in San
8 Bernardino Superior Court, Case No. CIVSB2204117, alleging the following causes of action:
9 (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure to Provide
10 Meal Periods; (4) Failure to Authorize or Permit Rest Periods; (5) Failure to Timely Pay
11 Wages Owed Upon Separation from Employment; (6) Knowing and Intentional Failure to
12 Comply with Itemized Wage Statement Provisions; and (7) Violation of California Business
13 and Professions Code §§17200, et seq. (the “*Medina* Class Action”). (Hawkins Decl. ¶6.)
14 Plaintiff Medina served both the LWDA and Defendant with notice of his claims on February
15 22, 2022. (Id.) The *Medina* Class Action was removed to the United States District Court for
16 the Central District of California on May 11, 2022 as Central District, Case No. 5:22-cv-
17 00805-JVS-SP. (Id. at ¶ 7.)

18 On May 2, 2022, as a proxy for the State of California, Plaintiff Medina filed a PAGA
19 representative action as San Bernadino Superior Court Case No. CIVSB2209126 which sought
20 PAGA penalties for Labor Code violations including (1) failure to pay all wages owed including
21 minimum wages; (2) failure to accurately calculate and pay overtime wages; (3) failure to
22 provide meal periods; (4) failure to pay compensation for meal periods that were not lawfully
23 provided; (5) failure to authorize and permit rest periods; (6) failure to pay compensation for
24 rest periods that were not lawfully authorized and permitted; (7) failure to timely pay all owed
25 wages during employment; (8) failure to timely pay wages owed upon separation from
26 employment; (9) failure to furnish accurate, itemized wage statements; and (10) unlawful
27 deductions from wages (the “*Medina* PAGA Action”). (Hawkins Decl. at ¶ 8.) On June 13,

2022, Plaintiff Medina filed an amended complaint to add additional allegations (including failure to pay sick leave in violation of Labor Code 246 and unlawful background checks in violation Labor Code § 1024.5), clarify the claims and add a second plaintiff Janira Perez. (Id. at ¶ 9.)

On March 17, 2022, Plaintiff Alicia Torres filed a related class action complaint in Sacramento County Superior Court entitled *Torres v. Target Corporation*, Case No34-2022-00316991 (“the *Torres* Class Action”). *Torres* was removed to the United States District Court for the Eastern District, Case No. 2:22-at-00604 on June 10, 2022. (Hawkins Decl. at ¶ 10.) Pursuant to a stipulation between Defendant and Plaintiff Torres, venue of the *Torres* Class Action was transferred to the Central District of California on July 26, 2022. (Id. at ¶ 11.)

On May 11, 2022, Plaintiff Torres filed an action against Defendant in the Sacramento County Superior Court seeking civil penalties pursuant to PAGA for alleged Labor Code violations. (Id. at ¶ 12.)

On September 28, 2022, Plaintiff Angel Carter filed a lawsuit against Defendant in the San Bernardino County Superior Court, Case No. CIVSB2221510 alleging class action claims for: (1) unfair competition in violation of California Business & Professions Code §§ 17200 et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide lawful meal periods; (5) failure to authorize and permit rest periods; (6) failure to furnish accurate itemized wage statements; (7) failure to indemnify necessary business expenses; (8) waiting time penalties; and (9) failure to pay sick pay wages. (Hawkins Decl. at ¶ 13.)

On September 30, 2022, Plaintiff Zachary Lomely filed a lawsuit against Defendant in the Kern County Superior Court, Case No. BCV-22-102580. The Complaint alleged class action claims for: (1) unfair competition in violation of California Business & Professions Code section 17200 et seq.; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide lawful meal periods; (5) failure to authorize and permit rest periods; (6) failure to furnish accurate itemized wage statements; (7) failure to indemnify necessary business expenses; (8) waiting time penalties; and (9) failure to pay sick pay wages. On November 30,

2022, Defendant removed the *Lomely* action to the United States District Court for the Eastern District of California, and the case was assigned Case No. 1:22-cv-01541-ADA-CDB. (Hawkins Decl. ¶ 14.)

On December 27, 2022, the United States District Court for the Central District of California issued an order permitting the filing of a consolidated class action complaint, consolidating the pending *Medina* and *Torres* class actions, adding Plaintiffs Carter and Lomely, and staying the consolidated class action pending the Parties' mediation. (Id. at ¶ 15.)

On January 5, 2023, Plaintiff Joaldi Gonzalez filed a class action lawsuit against Defendant in the Kern County Superior Court, Case No. BCV-23-100057, alleging class action claims for: (1) meal period violations; (2) rest period violations; (3) wage statement violations; (4) waiting time penalties; and (5) unfair competition in violation of California Business & Professions Code section 17200 et seq. (Id. at ¶ 16.)

Based upon the petition for coordination filed by Defendant, the *Torres* PAGA Action and the *Medina* PAGA Action were coordinated in JCCP5259 in San Bernardino Superior Court on or about January 9, 2023. (Id. at ¶ 17.)

On February 14, 2023, the *Medina* Class Action and *Torres* Class Action were consolidated in the Central District of California, Case No. 5:22-cv-00805-JGB (SHKx). (Hawkins Decl. ¶ 18.) In filing the Consolidated Class Action Complaint, Plaintiffs Medina, Perez, and Torres added additional representatives (Zachary Lomely, Angel Carter, Denisa Cardenas, Brian Mena, and Jimmy Perez) and claims to the Action. (Id. at ¶ 19.)

On June 7, 2023, Plaintiffs filed an Amended Consolidated Complaint to name additional representative Joaldi Gonzalez and claims to the Action. (Hawkins Decl. ¶ 20.) Plaintiffs filed a first amended consolidated class action complaint in the United States District Court for the Central District of California against Defendant, alleging: (1) unfair competition in violation of California Business & Professions Code section 17200 et seq.; (2) minimum wage violations; (3) overtime wage violations; (4) meal period violations; (5) rest period violations; (6) wage statement violations; (7) failure to reimburse necessary business expenses; (8) failure to provide wages when

1 due; (9) sick pay violations; (10) discrimination and retaliation; and (11) wrongful termination in
2 violation of public policy. (Id.)

3 The separate class actions filed by Plaintiffs Lomely, Carter, and Gonzalez, were dismissed
4 without prejudice on February 16, 2023, June 30, 2023, and June 20, 2023, respectively. (Id. at ¶
5 21.)

6 In connection with the Settlement, the Parties filed a stipulation for leave for the filing of a
7 Second Amended Consolidated Complaint which effectively consolidates the consolidated class
8 action lawsuit currently pending in the United States District Court for the Central District of
9 California entitled *Gustavo Medina, et al. v. Target Corporation*, Case No. 5:22-cv-00805-JGB
10 (SHKx) (the “Class Action”) with the the coordinated California Private Attorneys General Act
11 lawsuits currently in the San Bernardino County Superior Court entitled Target Wage and Hour
12 Cases, Judicial Council Coordination Proceeding No. 5259 (the “PAGA Action”) and which
13 asserts all claims which have been investigated and released in the Settlement. An amended notice
14 letter was also sent to the LWDA to ensure that the agency received notice of the claims which are
15 released in the context of the Settlement of this Action.²

16 **B. Investigation And Evaluation of The Claims**

17 Prior to filing each of the lawsuits and the amendments, Class Counsel conducted a
18 thorough investigation of the facts and circumstances underlying the potential claims, including an
19 in-depth review of Plaintiffs’ employment files, as well as their payroll and timekeeping records.
20 (Hawkins Decl., ¶ 23.) Class Counsel engaged in numerous interviews and telephonic conferences
21 with Plaintiffs, analysis of documents and other information provided by Plaintiffs, investigation
22 into the viability of class treatment and representative treatment of the potential claims, and
23

24 ² The Action hereinafter means: (a) the coordinated California Private Attorneys General
25 Act lawsuits currently in the San Bernardino County Superior Court entitled Target Wage and
26 Hour Cases, Judicial Council Coordination Proceeding No. 5259 (the “PAGA Action”); and (b) the
27 consolidated class action lawsuit currently pending in the United States District Court for the
Central District of California entitled *Gustavo Medina, et al. v. Target Corporation*, Case No.
5:22-cv-00805-JGB (SHKx) (the “Class Action”).

1 research of the applicable law. (*Id.* ¶¶ 23-24.)

2 Class Counsel continued a diligent investigation in litigation and in preparing for mediation
3 by: (1) conducting extensive informal and formal discovery, including a Rule 26(f) conference and
4 initial disclosures; (2) reviewing and analyzing thousands of timekeeping and payroll records,
5 Defendants' employee handbooks, Plaintiffs' offer letters, certain pay stubs, forms and
6 acknowledgments, memoranda, Plaintiffs' personnel files, training materials, schedules, roster
7 data, and relevant policies and procedures; (3) reviewing class size data and cross checking data
8 points; (4) researching the applicable law and potential defenses; (5) interviewing Class Members
9 regarding their experience and the claims asserted; (6) conferences between counsel regarding the
10 claims and defenses; and (7) analyzing and calculating Defendant's potential liability with the
11 existence of an expert. (*Hawkins Decl.*, ¶ 23-24.) Class Counsel investigated the law as applied to
12 the facts regarding Plaintiffs' claims and potential defenses thereto, and the damages and
13 penalties claimed. (*Id.* at ¶ 28.) From the documentation and data provided, the Parties
14 conducted their own evaluations of the potential recoveries based on the alleged claims. (*Id.* at ¶
15 25-29.)

16 To facilitate a productive mediation, Class Counsel prepared a comprehensive mediation
17 brief outlining relevant factual and legal issues, providing a detailed analysis of the timekeeping
18 and payroll records, and presenting a complete breakdown of the liability exposure for Defendants
19 if Plaintiffs succeeded on each of their claims at trial. (*Hawkins Decl.*, ¶ 29.)

20 On November 1, 2023, the Parties participated in full-day mediation with Gig Kyriacou, an
21 experienced mediator of wage and hour class actions. (*Id.* at ¶ 30.) Mr. Kyriacou helped to
22 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to
23 both sides. (*Id.*) While the Parties were unable to reach a resolution at mediation, the Parties
24 ultimately negotiated a complete settlement of Plaintiffs' claims with Mr. Kyriacou's guidance,.
25 (*Id.*) The terms of the settlement are set forth in the Stipulation Regarding Class and Private
26 Attorneys General Act Settlement and Release. (*Id.*, Ex. 1.) At all times, the Parties' negotiations
27 were adversarial and non-collusive. (*Id.* at ¶¶ 30-32.)

1 Class Counsel has concluded that the terms of the Settlement are fair, reasonable,
2 adequate, and in the best interests of the Class Members, considering the sharply contested issues
3 involved, the expense and time necessary to litigate the Action through trial and any appeals, the
4 risk of an adverse outcome, the uncertainty of complex litigation, and the benefits to be received
5 by Class Members. (Hawkins Decl., ¶ 33.)

6 Because of the substantial expense of defending against the Action, the length of time
7 necessary to resolve the issues presented herein, the inconvenience involved, and the disruption
8 to its normal business operations, Defendant has concluded that it is in their best interest to accept
9 the terms of the Settlement. Defendant denies each of the allegations and claims asserted against
10 it in the Action, and denies that the claims are proper for representative treatment. (Hawkins
11 Decl., ¶ 34.) Nevertheless, Defendant desires to settle the Action for the purpose of avoiding the
12 burden, expense, and uncertainty of continuing litigation and for the purpose of putting to rest
13 the controversies. (Id.)

14 **C. Summary of the Proposed Settlement**

15 **1. Composition of the Class**

16 The proposed Class consists of all individuals employed by Target at one or more
17 Target distribution centers in the State of California in non-exempt positions at any time
18 during the Class Period from March 21, 2019, through and including December 10, 2023, or
19 when the aggregate workweeks amount to 1,590,887, whichever occurs first. (“Class
20 Members”). (Ex. 1, Settlement Agreement (“Settlement”), ¶¶ 1.2, 1.8.) There are
21 approximately 24,528 Class Members. (Hawkins Decl. ¶ 37.)

22 **2. Gross Settlement Amount and Net Settlement Amount**

23 Plaintiffs and Defendant have agreed to settle the Action in exchange for the Gross
24 Settlement Amount of \$6,450,000. Subject to Court approval, the Gross Settlement Amount
25 includes: (1) automatic payments to all Participating Class Members—meaning, all Class
26 Members except those who submit valid Requests for Exclusion—from the Net Settlement
27 Amount; (2) \$2,128,500.00 in Class Counsel Fees Award (i.e., one-third of the common fund)
28 and up to \$80,000 in Class Counsel Costs Award; (3) Settlement Administration Costs of

1 approximately \$85,000; (4) a \$129,000 PAGA Distribution Amount (payment to the LWDA of
2 \$96,750 and a \$32,250.00 payment to PAGA Affected Employees); and (5) Class
3 Representative Service Awards of \$10,000.00 to each Plaintiff, for their service on behalf of the
4 Class, the risks they took in bringing their representative claims, and for Complete and General
5 Release provided to the Released Parties. (Ex. 1, Settlement, ¶¶ 1.18, 1.25, 1.26, 1.35.)

6 Subject to the Court approving the Class Counsel Fees Award, Class Counsel Costs
7 Award, Settlement Administration Costs, the PAGA Distribution Amount and the Class
8 Representative Service Awards, the Net Settlement Amount will be distributed to Participating
9 Class Members in full. (Ex. 1, Settlement, ¶ 1.17, 1.18.) Based on the requested allocations, it is
10 estimated that the Net Settlement Amount will be approximately \$3,887,500.00. (Id., ¶ 1.18.)
11 Likewise, the PAGA Affected Employee Payment will be distributed to all PAGA Affected
12 Employees in full. (Id. at ¶ 1.22-1.23.)

13 3. Participating Class Member Payments and PAGA Affected 14 Employee Payments

15 The Net Settlement Amount will be allocated to each Participating Class Members on a
16 proportional basis based on the number of weeks each worked for Defendant in a non-exempt
17 position at one or more Target distribution centers in California during the Class Period. (Ex. 1,
18 Settlement, ¶ 1.7.) Given that there are approximately 24,528 Class Members, the average net
19 recovery will be approximately \$158.50 before payroll withholdings. This average net recovery
20 is consistent with many other wage and hour class action settlements approved by California
21 state and federal courts.³

22
23 ³ See, e.g., *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego
24 County Super. Ct. Dec. 7, 2010) (average net recovery of approximately \$145); *Fukuchi v. Pizza
25 Hut*, Case No. BC302589 (L.A. County Super. Ct. Sept. 29, 2006) (average net recovery of
26 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
27 County Super. Ct. Sept. 10, 2009) (average net recovery of approximately \$120); *Ressler v.
28 Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct. Jan. 27, 2009)
(average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-
3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
Sorenson v. PetSmart, Inc., Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008)
(average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately
\$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct. July 23, 2010)

1 The PAGA Affected Employees Payment will be allocated to all PAGA Affected
2 Employees on a proportional basis based on the number of weeks each worked for Defendant in
3 a non-exempt position at one or more Target distribution centers in California during the PAGA
4 Period. (*Id.* at ¶ 1.23.)

5 **4. Release by Participating Class Members and PAGA Affected**
6 **Employees**

7 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs and
8 Participating Class Members will agree to release the Released Class Claims during the Class
9 Period. (Ex. 1, Settlement, ¶¶ 1.3, 1.8, 3.5.2.) The “Released Class Claims” means the claims
10 released by Participating Class Members, and include:

11 any and all claims, rights, demands, and liabilities of every nature and description,
12 whether known or unknown, suspected or unsuspected, arising under federal, state, or
13 local law, that were asserted or that could have been asserted based on the facts alleged
14 in the Second Amended Consolidated Class Action and PAGA Complaint, that arose
15 during the Class Period, including but not limited to: unfair competition in violation of
16 California Business & Professions Code section 17200, et seq.; failure to pay for all
17 hours worked including due to rounding of time punches, off-the-clock work, time spent
18 in security screenings (including but not limited to bag and other security checks), time
19 spent in COVID screenings not limited to temperature checks and symptom
20 questionnaires), controlled walking time, and/or controlled meal and rest periods; failure
21 to pay minimum wages in violation of California Labor Code sections 1194, 1197, and
22 1197.1 including due to rounding of time punches, off-the-clock work, time spent in
23 security screenings (including but not limited to bag and other security checks), time
24 spent in COVID screenings (including but not limited to temperature checks and
25 symptom questionnaires), controlled walking time, and/or controlled meal and rest
26 periods; failure to accurately pay all wages based on the regular rate of pay by failing to
27 include incentive pay based on employee performance in the regular rate calculation;
28 failure to pay overtime wages in violation of California Labor Code section 510 and the
applicable IWC Wage Order including due to rounding of time punches, off-the-clock
work, time spent in security screenings including but not limited to bag and other
security checks), time spent in COVID screenings (including but not limited to
temperature checks and symptom questionnaires), controlled walking time, controlled
meal and rest periods, and failure to accurately calculate the regular rate of pay; failure
to provide meal periods and to pay meal period premiums at the correct regular rate of
pay in violation of California Labor Code section 512 and the applicable IWC Wage
Order, including missed, late, short, controlled, and/or interrupted meal periods; failure

(average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-
05206-FMO-AJW (C.D. Cal. July 11, 2016) (average net recovery of approximately \$50); and
Palencia v. 99 Cents Only Stores, No. 34-2010-00079619 (Sacramento County Super. Ct. Oct.
11, 2012) (average net recovery of approximately \$80).

1 to provide rest periods and to pay rest period premiums at the correct regular rate of pay
2 in violation of California Labor Code section 226.7 and the applicable IWC Wage Order,
3 including missed, late, short, controlled, and/or interrupted rest periods; failure to pay
4 sick pay wages at the correct regular rate of pay in violation of California Labor Code
5 sections 201-204, 223, and 246; failure to pay reporting time pay wages when due or at
6 the correct regular rate of pay; unlawful deductions from wages in violation of in
7 violation of California Labor Code section 221; failure to provide accurate wage
8 statements in violation of California Labor Code section 226; failure to reimburse
9 business expenses in violation of California Labor Code section 2802; failure to pay
10 wages when due in violation of California Labor Code sections 201-204; attorneys' fees
11 and costs incurred to prosecute the Action on behalf of Class Members; and any other
12 derivative remedies, penalties, and interest available under the law based on the facts
13 alleged in the Second Amended Consolidated Class Action and PAGA Complaint. The
14 release of Class Claims will run through the Class Period. Except as set forth in the
15 Settlement, this Agreement, the Class Members who do not opt out of the Settlement do
16 not release any other claims, including claims for vested benefits, wrongful termination,
17 violation of the Fair Employment and Housing Act, unemployment insurance, disability,
18 social security, workers' compensation, or claims based on facts occurring outside the
19 Class Period.

20 (Ex. 1, Settlement, ¶¶ 1.3, 1.8, 3.5.2.)

21 Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiffs, the
22 State, and the PAGA Affected Employees will also agree to release the Released PAGA Claims
23 during the PAGA Period. Ex. 1, Settlement, ¶ 3.5.3.) The "Released PAGA Claims" include
24 any and all claims, rights, demands, and liabilities of every nature and description,
25 whether known or unknown, for civil penalties that were asserted or that could have
26 been asserted based on the facts alleged in the Second Amended Consolidated Class
27 Action and PAGA Complaint that arose during the PAGA Period, including, but not
28 limited to, claims for civil penalties for alleged violations of California Labor Code
sections 201-204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-
224, 225.5, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1024.5, 1174, 1174.5, 1182.12,
1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198, and 2802, violations of California Code
of Regulations, Title 8, Section 11000, et seq., and violations of the applicable IWC
Wage Order(s), and by incorporation any and all of the alleged conduct included in the
defined Class Claims. The release of PAGA claims will run through PAGA Period.

(Ex. 1, Settlement, ¶ 1.24, 1.27, 3.5.3.)

Plaintiffs will each also enter into an individual Complete and General Release including
a 1542 Waiver. (Ex. 1, Settlement, ¶ 3.5.4.)

5. Notice Procedure

The proposed Class Notice provides information regarding the nature of the Action, a
summary of the Settlement's terms, the Class and Class Period definitions, the Class

Member's Workweeks during the Class Period, the estimated Individual Settlement Payment, and the formula for calculating the Payment, instructions to submit Requests for Exclusion or Objections, the Response Deadline, and the claims released by the Settlement. (Ex.1, Ex. A, Class Notice). Defendant will provide the Employee List to Settlement Administrator within fifteen (15) calendar days after entry of the Preliminary Approval Order. (Ex. 1, Settlement, ¶3.6.4.) Before mailing, the Settlement Administrator will conduct a National Change of Address database search and a skip trace for updated contact information. (Id. at ¶ 3.6.5.)

Within twenty-one (21) calendar days after receipt of the Employee List, the Settlement Administrator will mail a Class Notice to all Class Members via First-Class USPS. (Ex.1, Settlement, ¶3.6.5.) Any Class Notice returned as non-deliverable on or before the Response Deadline will be remailed in accordance with the provisions of Section 3.6.6 of the Settlement Agreement. The "Response Deadline" is sixty (60) calendar days from the initial mailing. (Id. at ¶ 1.34.) As such, Class Members will have sixty days to request exclusion from the Settlement, or object to the Settlement by following the procedures set forth therein. (Id. at ¶ 3.6.8-3.6.9.) The remailing of a Class Notice shall not extend the Response Deadline. (Id. at 3.6.6.)

6. Processing of Payments

Within fourteen (14) calendar days following funding of the Gross Settlement Amount, the Administrator will issue payments as provided for in the Settlement. (Ex.1, Settlement, ¶¶ 3.7.1-3.7.8.) Checks issued to Participating Class Members or PAGA Affected Employees will remain valid and negotiable for 180 days from their date of issuance. The checks will become void on the 181st day after mailing. (Ex. 1, Settlement, ¶ 3.7.8-3.7.9.) Any amounts attributable to checks that remain uncashed by the Void Date shall be transmitted within fourteen days of the Void Date to a cy pres, Legal Aid at Work. (Ex. 1, Settlement, ¶ 3.7.9.)

III. ARGUMENT

A. The Court Should Preliminarily Approve the Proposed Settlement.

1. Courts Review Class Action Settlements to Ensure that the Terms

Are Fair, Adequate, and Reasonable

The law favors settlements. (*Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 1382.) This is particularly true in class actions. However, a class action may not be dismissed, compromised or settled without Court approval. (Cal. Civ. Code § 1781(f); Cal. R. Ct. 3.769 (a).) A class action may be settled only after the parties (1) obtain preliminary approval of the settlement from the Court; (2) give notice to Class Members as directed by the Court; and (3) undergo a final approval hearing to inquire into the fairness of the settlement. (Cal. R. Ct. 3.769(c), (e)-(f).)

The decision to approve a proposed settlement lies within the Court's discretion. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128; *Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 234-25.) Nevertheless, in considering a settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits...[or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." (*Officers for Justice v. Civil Serv. Comm'n*, (9th Cir. 1992) 688 F.2d 615, 625.) The Court's duty is to determine whether the settlement is fair, adequate, and reasonable. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801.) The Court should consider factors including:

[T]he strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel...and the reaction of the class members to the proposed settlement. (*Id.* at p. 1801.)

Furthermore, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." (*Wershba, supra*, 91 Cal. App. 4th at p. 245.) 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." (*Ibid.*)

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, preliminary approval is warranted if the settlement falls within a "reasonable range." See *North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085,

1 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002)
2 (“Newberg”). Reasonableness and fairness are presumed where, as here: (1) the settlement is
3 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
4 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
5 the percentage of objectors is small. collectively, “Dunk Factors”). *Dunk v. Ford Motor Co.*, 48
6 Cal. App. 4th 1794, 1802 (1996).⁴ As shown below, the Settlement falls well within the range
7 of approval because there are no grounds to doubt its fairness.

8 **2. The Investigation and Discovery Are “Sufficient To Allow Counsel** 9 **and The Court To Act Intelligently”**

10 As set forth in greater detail in the Hawkins Declaration, Class Counsel thoroughly
11 investigated and evaluated the factual and legal strengths and weaknesses of the claims and
12 defenses at issue and engaged the assistance of an expert before reaching the Settlement.
13 (Hawkins Decl. ¶¶ 6-29.) Based on an analysis of documents and class data produced by
14 Defendant—including Defendant’s California labor policies and procedures manuals and a 10%
15 sampling of more than 2,200 Class Members’ time and pay records—Class Counsel was able to
16 realistically assess the value of Plaintiffs’ claims and intelligently engage defense counsel in
17 settlement discussions that culminated in the proposed settlement now before the Court.
18 (Hawkins Decl. ¶ 33.)

19 By engaging in a thorough investigation and evaluation of Plaintiffs’ claims, Class

20
21 ⁴ The presumption of fairness is consistent with California’s public policy goal of
22 favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely
23 favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public
24 policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners*
25 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary
26 conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially
27 true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884,
28 891 (1992) (“public policy strongly discourages litigation and encourages settlement [because
settlements] can produce peace and goodwill in the community while reducing the expense and
persistence 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.

Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. (Id.)

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

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

As explained above, the Parties participated in an all-day mediation with highly experienced wage and hour mediator, Gig Kyriacou. The mediation helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties were unable to reach a resolution that day, but committed to continued negotiations with the mediator’s assistance. The Settlement achieved is the product of extensive arm’s length bargaining by the Parties and a mediator’s proposal. At all times, the negotiations were adversarial and non-collusive. The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement.. Plaintiffs are represented by James Hawkins APLC, Blumenthal Nordrehaug Bhowmik De Blouw LLP, and the Haines Law Group, APC. Class Counsel are seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶¶ 75, 80-86; Haines Decl. ¶¶ 1-16, Nordrehaug Decl. ¶¶ 3-5; 11.) Defendants are represented by DLA Piper LLP (US), a respected defense firm.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

4
5
6
7
8
9

10
11
12
13
14
15
16
17
18
19
20

21
22
23
24
25
26
27

chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment (collectively, the “Discount Factors”). (Id. at ¶68.)

a. The Settlement is Within the Range of Reasonableness.

As more fully set forth herein, this Settlement compares favorably to other similar class settlements in terms of potential recovery. (See *In re MyFord Touch Consumer Litig.*, (2019) WL 1411510, at p. 10 (citing cases where settlement ranges from 5% to 10% of potential recovery).) While Plaintiffs believe in the strength of the allegations and that the claims are appropriate for class certification, certification was far from certain given Defendant’s defenses and the state of the law regarding certification. (Hawkins Decl., ¶¶ 59-70.) The risks that Defendant could defeat certification and Plaintiffs’ representative claims, and prevail on its defenses, were substantial enough to warrant a compromise. (Id.) Following arms-length negotiations between experienced and informed counsel and with the assistance of a mediator, the Parties accepted the mediator’s proposal and agreed on a Gross Settlement Amount of \$6,450,000. (Id., ¶¶ 30-33, 68-70). As the court in *Glass* held:

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigation an appeal. “The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.” (*Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862, at *9 (quoting *In re Mego Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

“Generally, unless the settlement is clearly inadequate, it is acceptable and approval are preferable to lengthy and expensive litigation with uncertain results,” (*Ching v. Siemens Indus, Inc.*, (N.D. Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).) At approximately 23 % of the estimated realistic liability, the Gross Settlement Amount is fair and reasonable, and will provide certain, meaningful relief to the Plaintiffs and to the Class. (Hawkins Decl., ¶ 69.) This factor weighs in favor of approval.

b. The Risks Inherent in Continued Litigation Are Great.

In its assessment of a class action settlement, the Court should consider “[t]he strength of plaintiff’s case, the risk, expense, complexity, and likely duration of further litigation, [and] the

1 risk of maintaining class action status.” (*Dunk, supra*, 48 Cal. App. 4th at p. 1801.)

2 Defendant presented strong defenses to Plaintiffs’ claims, asserting, among other things,
3 that Defendant maintained facially lawful policies, trained Class Members to follow the lawful
4 practices implemented, paid Class Members for walking time and temperature checks as hours
5 worked, provided lawfully compliant meal periods and authorized and permitted the taking of
6 15-minute rest periods, provided grace periods to employees to ensure that all hours worked were
7 compensated, automatically paid premiums for any purported violations, prohibited off the clock
8 work, and provided all equipment and items necessary for employees to perform their job duties.
9 These defenses create a possibility that the claims might not be certified or might fail on the
10 merits. Counsel recognized the expense and length of proceedings necessary to continue the
11 litigation through trial and any appeals. Counsel also considered the uncertainty and risk of
12 further litigation, and the difficulties and delays inherent in such litigation. (Hawkins Decl. ¶¶
13 59-70.)

14 Plaintiffs and Class Counsel have balanced their evaluation of the validity and merit of
15 the asserted claims against potential problems of proof, the legal standards governing litigation
16 of class claims, uncertainty of obtaining and maintaining class certification, the potential for
17 appeals, and the expense and burden of prolonged litigation. (*Id.* at ¶ 35.) Based on Class
18 Counsel’s evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of
19 the Class, including Plaintiff. (*Id.* at ¶ 36.) This factor also weighs in favor of approval.

20 **c. The Fairness of the Distribution to Class Members Also Supports**
21 **Approval.**

22 The Settlement treats all Class Members equally, providing no preferential treatment for
23 the named Plaintiff or any segment of the Class. The Parties have allocated Class Member
24 Payments to the Class Members according to the number of weeks worked by the Class Member
25 for Defendant in a non-exempt position at one or more Target distribution centers in California
26 during the Class Period versus the total weeks worked by all Class Members in non-exempt
27 positions at one or more Target distribution centers in California during the Class Period. (Ex.1,
28 Settlement ¶ 1.7.) This allocation is fair because it ensures that the distribution of the Net

1 Settlement Amount is proportional to the harm experienced by each member of the Class. This
2 factor favors approval.

3 **d. Class Counsel Experienced in Similar Litigation Endorse the**
4 **Settlement.**

5 The opinion of the attorneys actively conducting the litigation “is entitled to significant
6 weight” in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge-Lee Indus,*
7 *Inc.* (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D.Cal. 1980)
8 87 F.R.D. 15, 18, affd. (*9th Cir. 1981) 661 F.2d 939; *Boyd v. Bechtel Corp* (N.D. Cal. 1979)
9 485 F. Supp. 610, 616-17.) Class Counsel are experienced in wage-and-hour class actions.
10 (Hawkins Decl. ¶ 80-85; Haines Decl. ¶¶ 1-16, Nordrehaug Decl. ¶¶ 3-5; 11.) Counsel
11 negotiated this Settlement at arm’s length and believe this is a fair and reasonable settlement in
12 light of the complexities of the case, the state of the law, and uncertainties of class certification
13 and litigation. Given the risk inherent in litigation and the defenses asserted, this settlement is
14 fair, adequate, and reasonable and in the best interests of the Class Members and should be
15 preliminarily approved. (Hawkins Decl. ¶ 86; Haines Decl. ¶17; Nordrehaug Decl. ¶ 9.)

16 **e. The Court Should Preliminarily Approve the Negotiated Class**
17 **Representative Service Awards**

18 Service awards “are fairly typical in class action cases.” *Cellphone Termination Fee*
19 *Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive awards of \$10,000); *Rodriguez*
20 *v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009), citing 4 Newberg on Class Actions
21 (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action Plaintiffs: An*
22 *Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Service awards “are intended to compensate
23 class representatives for work done on behalf of the class, to make up for financial or
24 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
25 willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–59. “[T]he
26 rationale for making enhancement or incentive awards to named plaintiffs is that they should be
27 compensated for the ... risk they have incurred in conferring a benefit on other members of the
28 class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 806 (2009).

Over 24,000 current and former employees will share a \$6,450,000 settlement fund due entirely to the effort and commitment of the Plaintiffs. Subject to Court approval, therefore, the Settlement provides for Class Representative Service Payments of \$10,000, each. The Class Representative Service Payments are fair and reasonable compensation for Plaintiffs' effort in pursuing the action, serving as representatives, taking the risks associated with filing their respective cases, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. Plaintiffs will file a formal motion for the negotiated Class Representative Service Payments once preliminary approval of the Settlement is granted. Plaintiffs respectfully submit that the above showing is sufficient for preliminary approval of the negotiated service payments.

**f. The Court Should Preliminarily Approve the Negotiated Class
Counsel Fees and Litigation Costs**

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. "Fee awards in class actions average around one-third of the recovery regardless of whether the percentage method or the lodestar method is used." *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (quoting *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, fn. 11 (2008)) (internal quotations omitted). Consistent with that observation, California courts routinely award attorneys' fees equaling one-third of the common fund. *See, e.g. Laffitte v. Robert Half Internat. Inc.*, 231 Cal. App. 4th 860, 871 (2016) ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits"); *Chavez*, 162 Cal. App. 4th at 66 n.11 ("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."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35

(independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates). Notably, the California Supreme Court in *Laffitte v. Robert Half Internat. Inc.* affirmed a fee award representing one-third of the fund. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480 (2016).

At final approval, Plaintiffs will seek Court-approval of attorneys' fees of \$2,128,500.00 million (one-third of the Gross Settlement Amount) and up to \$80,000 in litigation costs.

B. Conditional Certification Of The Class Is Appropriate.

California Rule of Court 3.769(d) provides that the Court may issue an order approving certification of a provisional class at the preliminary approval stage. Trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk, supra*, 48 Cal.App.4th at p. 1807 n.19.) Because no trial is anticipated in a settlement, case management issues inherent in determining if the class should be certified need not be confronted, and the trial court's fairness review of the settlement protects the interests of the class members. (*Id.*) Here, for the purposes of this settlement, Plaintiffs ask this Court to provisionally certify the Class.

1. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. (Cal. Code Civ. Proc. § 382.) A proposed class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. (*Medraza v. Honda of N. Hollywood* (2008) 166 Cal. App. 4th 89, 101.) The Class is ascertainable as all of the Class Members worked for Defendant and can be identified through employee files and payroll records. In fact, Defendant has identified approximately 24,528 Class Members. (Hawkins Decl. ¶ 37.) As such, the Class is sufficiently ascertainable and numerous to warrant conditional class certification. (Hawkins Decl., ¶ 77.)

2. Well-Defined Community of Interest

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. (*Arenas v. El Torito Rests, Inc.* (2010) 183 Cal. App. 4th 723, 732.) The claims of Plaintiffs and the Class

Members all flow from the same facts and legal claims; i.e., Defendant's policies, practices, and procedures resulted in Defendant's failure to pay minimum wages and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay wages during employment, failure to pay sick leave, failure to reimburse, unlawful deductions, failure to timely pay all wages due at the time of separation from employment, failure to provide accurate wage statements, and engaging in unfair competition. Under these circumstances, the commonality requirement is satisfied. (Hawkins Decl., ¶ 73.)

3. Typicality

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." (*Newberg*, § 3.13.) Here, the typicality requirement is met because the proposed Class Representatives and Class Members all claim Defendant committed similar violations based upon similar conduct, policies and practice and they seek the same remedies. Plaintiffs' claims are typical of the Class because they arise from the same factual basis and legal theories as those of the Class Members. (Hawkins Decl. ¶ 74.)

4. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. (*See Barboza v. West Coast Digital GSM, Inc. (2009)* 179 Cal. App. 4th 540, 546.) Here, Class Counsel is not aware of any interests of the Class Representatives which are adverse to the interests of the Class. (Hawkins Decl. ¶ 75 and fn. 1.)

Adequacy of counsel may be established by the fact that counsel are experienced practitioners. (*See Local Joint Exec. Bd. Of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc. (9th Cir. 2001)*. 244 F.3d 1152, 1162. Here, Class Counsel are experienced in wage-and-hour litigation. (Hawkins Decl. ¶ 80-85; Haines Decl. ¶¶ 1-16; Nordrehaug Decl. ¶¶3-5; 11) Thus, the adequacy requirements are satisfied.

IV. THE COURT SHOULD APPOINT APEX CLASS ACTION LLC AS SETTLEMENT ADMINISTRATOR AND APPROVE THE CLASS NOTICE

The parties propose that the Court appoint Apex Class Action LLC to serve as the Settlement Administrator. Apex has estimated its fees and costs for this Settlement will not exceed \$85,000. (Hawkins Decl. ¶ 50; Ex.1, Settlement, ¶1.37.)

1 **A. The Notice to be Provided to Class Members Is Sufficient.**

2 California statutory and case law grants courts broad discretion in fashioning an
3 appropriate notice program. What constitutes adequate notice will depend on the circumstances
4 of each case, and such efforts and their costs must be proportional to the magnitude of the claims.
5 The notice plans here satisfy all due process requirements.

6 **B. The Content of The Notice Provided to Class Members Is Sufficient.**

7 The Class Notice identifies the Parties, describes the Action and the Class, summarizes
8 the proceedings and the terms and conditions of the Settlement in an informative and coherent
9 manner, and is accurate, objective, and understandable to Class Members (Ex.1, Settlement, Ex.
10 A.) It clearly states the Settlement is not an admission of liability by Defendant and that the Court
11 has not ruled on the merits and that the final settlement approval decision has yet to be made
12 (*Id.*). The Class Notice meets the applicable legal standards since it appries the Class Members
13 “of the terms of the proposed compromise and of the options open to dissenting class members.”
14 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 251 [citation omitted]; see Cal.
15 R. Ct., Rule 3.766, subd. (d).)

16 **C. The Manner of Supplying Notice to Class Members Is Sufficient.**

17 There is no statutory or due process requirement that all Class Members actually receive
18 notice of the settlement. Rather, “[t]he notice given should have a reasonable chance of reaching
19 a substantial percentage of the class members....” (*Cartt v. Super. Ct.* (1975) 50 Cal.App.3d 960,
20 973.) This is satisfied by mailing the Notice of Class Action Settlement by First-Class USPS to
21 all Class Members on the Employee List (Ex. 1, Settlement, ¶ 3.6.7).

22 **V. CONCLUSION**

23 For all these reasons, Plaintiffs respectfully request that the Court preliminarily approve
24 the Settlement, approve the Class Notice, and conditionally certify the Class for settlement
25 purposes.
26
27
28

Dated: June 4, 2024

Respectfully submitted,

JAMES HAWKINS APLC

By:

A handwritten signature in black ink, appearing to read 'James Hawkins', is written over a horizontal line.

James Hawkins
Christina Lucio
Mitchell Murray