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Attorneys for Plaintiff ANIVAL SALAZAR,
individually and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ANIVAL SALAZAR, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN INTEGRATED SERVICES,
INC., a California Corporation; and DOES 1-
50, inclusive,

Defendant.

Case No. 22STCV05538

Assigned for all Purposes to:
Hon. Maren Nelson
Dept. 17

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

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

Date: February 6, 2024
Time: 9:00 a.m.
Dept.: 17

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on February 6, 2024 at 9:00 a.m., or as soon
3 thereafter as counsel may be heard, in Department 17 of the above-captioned court, located at
4 312 N Spring St, Los Angeles, CA 90012, the Honorable Maren Nelson presiding, Plaintiff
5 Anival Salazar will, and hereby does, move this Court to:

- 6 1. Preliminarily approve the settlement set forth in the Stipulation of Class Action and
7 PAGA Settlement, (“Settlement Agreement”), attached as Exhibit 1 to the Declaration of James
8 Hawkins;
- 9 2. Conditionally certify the proposed Settlement Class;
- 10 3. Appoint Anival Salazar 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 Settlement of Class Action and PAGA
13 claims to the Settlement Class; attached as Exhibit A to James Hawkins Declaration.
- 14 6. Appoint Apex Class Action LLC as the Settlement Administrator; and
- 15 7. Set a hearing date for final approval of the settlement.

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

24 Dated: October 5, 2023

Respectfully submitted,

25 By: _____

26 James R. Hawkins
27 Gregory Mauro
28 Michael Calvo
Lauren Falk
Ava Issary
JAMES HAWKINS, APLC

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

ANIVAL SALAZAR is the named plaintiff (“Plaintiff”) in this action brought against Defendant AMERICAN INTEGRATED SERVICES, INC. (“Defendant”) (collectively with Plaintiff, the “Parties”) for wage and hour violations. Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Michael Dickstein, Esq., an experienced mediator of wage and hour actions. With Mr. Dickstein’s guidance, the Parties were able to negotiate a gross settlement of the Action for \$965,000.00 after a full day of mediation and a mediator proposal accepted by both Parties on or about May 15, 2023.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Settlement Agreement. If approved, the Settlement would provide considerable monetary relief for approximately 511 class members (Settlement Agreement ¶ 8 (f); James Hawkins Declaration “Hawkins Decl.” at ¶ 7). The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes (Settlement Agreement ¶ 8 (f)). It is estimated there are approximately 511 total class members. (Hawkins Decl. ¶ 7)

(2) A Gross Settlement Amount of \$965,000.00. (Settlement Agreement ¶ 8 (o)).

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’s behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length with helpful guidance from Mr. Dickstein, and the Settlement confers substantial benefits to Class Members. The Net Settlement Amount is estimated to be approximately \$496,333.33. This relief—averages **approximately \$971** per Class Member after fees and costs- and is particularly impressive when viewed against the difficulties encountered by Plaintiff pursuing wage and hour cases. Additionally, approximately 376 Class Members who are alleged Aggrieved Employees will receive their Individual PAGA Share which is expected to be approximately **\$66** per aggrieved employee. 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 Plaintiff prevailing at trial but losing on appeal. (Hawkins Decl. ¶¶ 15-36).

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

4 **II. FACTS AND PROCEDURE**

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

6 On February 14, 2022 Plaintiff filed a putative class action complaint entitled *Anival*
7 *Salazar v. American Integrated Services, Inc.*, Los Angeles County Superior Court No.
8 22STCV05538 seeking damages for Defendant's alleged failure to pay minimum wages, failure to
9 pay overtime compensation, failure to authorize and provide meal periods or premium pay in lieu
10 thereof, failure to authorize and permit rest breaks of premium pay in lieu thereof, failure to
11 indemnify necessary business expenses, failure to timely pay final wages at termination, and
12 unfair business practices. On February 15, 2022, Plaintiff filed a First Amended Class Action
13 Complaint against Defendant, adding a cause of action for failure to provide accurate itemized
14 wage statements. (Hawkins Decl. ¶¶ 3-6).

15 On February 15, 2022, Plaintiff provided written notice by certified mail to the Labor and
16 Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the
17 California Labor Code that Plaintiff alleged AIS had violated with respect to non-exempt and/or
18 hourly paid employees in California. *Id.* On April 22, 2022, Plaintiff on behalf of the general
19 public as private attorney general filed a PAGA representative action entitled *Anival Salazar v.*
20 *American Integrated Services, Inc.*, Los Angeles County Superior Court No. 22STCV13570
21 seeking damages for Defendant's alleged failure to pay for all hours worked, including overtime;
22 failure to authorize and provide meal periods or premium pay in lieu thereof; failure to authorize
23 and permit rest periods or premium pay in lieu thereof; failure to reimburse and indemnify
24 expenses; failure to timely pay all wages at termination; and failure to furnish accurate itemized
25 wage statements. *Id.*

26 As a result of the investigations, and subsequent settlement discussions and the resultant
27 settlement and scope of claims, on January 12, 2023, Plaintiff filed a Second Amended Class
28 Action Complaint against Defendant, adding a cause of action for civil penalties under the PAGA,

1 combining the class and PAGA actions. On January 13, 2023, Plaintiff filed a request for
2 dismissal without prejudice of the PAGA Action, which was granted. (Hawkins Decl. ¶6).

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

4 On May 9, 2023, the Parties engaged in private mediation with a well-respected wage and hour
5 class action mediator, Michael Dickstein., a respected mediator of complex wage and hour actions, and,
6 with Mr. Dickstein's assistance, the Parties agreed to a mediator proposal. (Hawkins Decl. ¶ 5). The
7 settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and
8 detailed analysis of Defendant's potential liability in relation to the costs and risks associated with
9 continued litigation. Based on the documents produced, as well as Class Counsel's own independent
10 investigation and evaluation, Class Counsel believes that the Settlement with Defendant for the
11 consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best
12 interest of the Class Members in light of all known facts and circumstances, including the risk of significant
13 delay and uncertainty associated with litigation and various defenses asserted by Defendant. As a result of
14 settlement efforts, the Parties agreed to settle this matter for the Gross Settlement Amount of \$965,000.00
15 for approximately 511 class members and the terms of which are fully memorialized in the Settlement
16 Agreement (Hawkins Decl. ¶ 4-12, Ex. 1.)

17 **III. SUMMARY OF SETTLEMENT TERMS**

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

19 1. Composition of the Settlement Class

20 The "Class Members" are defined as all individuals who were employed by Defendant in
21 California as non-exempt employees at any time(s) during the applicable Class Period February 6,
22 2019 through September 22, 2023, inclusive. Defendant represents there are approximately 490
23 Class Members as of the date of mediation, May 9, 2023. (Settlement Agreement at ¶8(f))
24 "Aggrieved Employee(s)" means all individuals who were employed by Defendant in California
25 as non-exempt employees at any time(s) during the PAGA Period defined as being from April 22,
26 2021 through September 22, 2023. (Settlement Agreement ¶8 (a; p-s).

27 2. Settlement Consideration

28 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Gross

Settlement Amount of \$965,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the amount of \$321,666.67 ("Attorneys' Fees and Attorney's Costs") and reimbursement of reasonable litigation costs and expenses in the amount of up to \$25,000.00 to Class Counsel; (2) Class Representative's enhancement payment to Plaintiff in the amount of up to \$10,000.00 ("Enhancement Payment"); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$12,000.00¹ ("Settlement Administration Costs"); (4) \$100,000.00 ("PAGA Amount") with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of \$25,000.00; (5) the seventy-five percent (75%) share of PAGA Penalties in the amount of \$75,000.00 to the California Labor and Workforce Development Agency ("LWDA"); and the remainder to of the Net Settlement Amount to the Settlement Class Members. (Settlement Agreement ¶8-15).

3. Formula for Calculating Payments from the Net Settlement Amount

The "Net Settlement Amount" means the amount remaining from the Gross Settlement Amount that is available for distribution to Participating Class Members, which is the Gross Settlement Amount less the Court-approved Enhancement Payment, Settlement Administration Costs, LWDA Payment, Aggrieved Employee Share, Attorneys' Fees, and Attorneys' Costs. (Settlement Agreement ¶8(t)). The Net Settlement Amount estimated at \$496,333.33. (Hawkins Decl. ¶ 16)

Given that there are approximately 511 Class Members, each can expect to receive on average approximately \$971. (Hawkins Decl. ¶¶ 27.). Aggrieved Employees will receive approximately \$66 on average. (Hawkins Decl. ¶¶ 28.).

This average net recovery exceeds many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County

¹ The estimated costs from the proposed administrator Apex is not to exceed \$12,000. The Parties will file an amendment to the settlement to correct the administration fees from \$75,000 to \$12,000 per the proposed administrator Apex's admin bid.

1 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-
2 3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*,
3 Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v.*
4 *Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of
5 approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net
6 recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D.
7 Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-
8 00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

9 4. Release by the Settlement Class

10 The release is narrowly tailored to release the claims litigated in the complaints in exchange
11 for the Gross Settlement Amount. Plaintiff and Participating Class Members will agree to release the
12 Released Claims during the Class Period as follows: The Claims set forth in the Second Amended
13 Complaint, including, but not limited to, (1) Failure to pay wages including overtime and minimum wage;
14 (2) Failure to pay wages at termination; (3) Failure to provide accurate itemized wage statements; (4)
15 failure to provide meal and rest periods, (5) Failure to reimburse business expenses; (6) Unfair competition
16 under Cal. Bus. & Prof. Code §§17200, et seq., and (7) Violation of the California Private Attorneys
17 General Act of 2004 (Labor Code §2698, et seq.) predicated on the same or similar facts and/or claims
18 alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as
19 well as any claims that could have been pled which arise from the same or similar facts concerning the
20 Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting
21 time penalties), as well as any claims under the California Labor Code and California Industrial Welfare
22 Commission Wage Orders that were alleged (specifically for violations of Labor Code sections §§ 201-
23 203, 226, 510, 512, 558, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 1198, 2802, business &
24 Professions Code section 17200, et seq, 2698 et seq., and related Wage Order), (Settlement Agreement
25 ¶18(aa)).

26 **IV. ARGUMENT**

27 **A. The Court Should Preliminarily Approve the Settlement**

28 1. Courts Review Class Action Settlement to Ensure the Terms Are Fair and

Reasonable and Adequate

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

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

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, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) (“Newberg”).

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

² The presumption of fairness is consistent with California’s public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 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 persistency of

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

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

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 through
18 interviews, background investigations, and analyses of their employment files and related records; (2)
19 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 class action settlement; (4) analyzing all employees' time and wage records for a sampled period of times
22 during the class period; (5) reviewing Defendant's employment policies and practices including training
23 materials, employees handbooks, relevant policies, and class members declarations; (6) researching
24 settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendant's liability for

25
26 litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should
27 be given to what is "otherwise a private consensual agreement between the parties." *Cellphone*
28 *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 purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. (Id.)

2 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
3 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
4 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
5 known facts and circumstances, including the risk of significant delay and uncertainty associated with
6 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 14-38.)

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

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

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

27 The Parties were represented by experienced class action counsel throughout the negotiations
28 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ

1 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the
2 merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 35.)

3 Defendant is represented by Proskauer Rose LLP, a respected defense firm.

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

7 In seeking approval, a settling party must provide sufficient information to “enable the court to
8 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail,*
9 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
10 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
11 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
12 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
13 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
14 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
15 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
16 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
17 claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled
18 claims for risks such as changes in the law, the probability of success, and other factors.³

19 Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar**
20 **does not ... require any such explicit statement of [maximum] value;** it requires a record which allows

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

8 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is
9 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
10 various potential impediments to recovery. (Hawkins Decl. ¶¶ 14-38.)

11 Defendant denies all allegations pled, along with all allegations intended to be pled in the operative
12 complaints. Defendant contends they implemented written policies and maintained practices that complied
13 with the requirements of the California Labor Code and applicable California Wage Orders. Defendant
14 contends all employees were provided meal periods and authorized rest periods, were paid all wages, and
15 were timely paid wages in compliance with California law and applicable California Wage Orders.
16 Defendant also produced declarations from class members to support their position. In addition, an
17 individualized investigation into the circumstances surrounding off the clock work or any missed meal and
18 rest breaks is warranted because such claims can only be decided on a case-by-case basis, common issues
19 do not predominate and class certification is neither superior nor proper. (*Id.*)

20 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
21 that a settlement amounting to \$965,000.00 was fair and reasonable, and accounts for an approximate 18%-
22 36% of total possible recovery and courts have routinely approved settlements that provided a similar
23 discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 26-28). *See, e.g., In re Warfarin*
24 *Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement
25 amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F.
26 Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
27 were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8%
28 of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21,

2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁴ (Id.)

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

Pursuant to the Settlement Agreement, \$100,000.00 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$75,000.00) will be paid directly to the LWDA, and the remaining 25% (\$25,000.00) will be paid to PAGA Members who worked during the PAGA Period beginning April 22, 2021 through September 22, 2023. (Settlement Agreement ¶¶ 8, o-s).

However, a number of courts have found that the “subsequent” penalty under PAGA applies only after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not be calculated to determine the amount in controversy”); *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)

⁴ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiff 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 (“Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
2 not subject to the heightened penalties.”); *Trang v. Turbine Engine Components Technologies Corp.*, No.
3 CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that
4 employers are not subject to heightened penalties for subsequent violations unless and until a court or
5 commissioner notifies the employer that it is in violation of the Labor Code”), citing *Amaral v. Cintas*
6 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

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

16 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
17 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or**
18 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
19 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
20 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
21 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
22 under PAGA. *Id.* at 529.

23 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
24 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
25 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
26 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
27 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
28 trial court decision denying any civil penalties where violations had been proven, remanding for the trial

1 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
2 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
3 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
4 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-
5 00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
6 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

7 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a
8 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
9 by California courts.⁵ Where PAGA penalties are negotiated in good faith and “there is no indication that
10 [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are
11 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS
12 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579
13 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
14 damages to the PAGA claims.”).

15 **C. The Court Should Preliminarily Approve the Negotiated Class Representative**
16 **Enhancement Payment**

17 Enhancement payments “are fairly typical in class action cases.” *Cellphone Termination Fee*

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

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

10 Approximately 511 current and former employees will share a \$965,000.00 settlement fund due
11 entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement
12 provides for Enhancement Payment of \$10,000.00 to the Class Representative⁶. The Enhancement

13
14 ⁶ Such amounts are reasonable by reference to the amounts that California courts (both
15 federal and state) have repeatedly found to be reasonable for wage and hour class action
16 settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10,
17 2017) (awarding \$10,000 enhancement payments to the named Plaintiff); *Crook v. Barton*
18 *Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding
19 \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*,
20 No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding
21 \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
22 CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000
23 enhancement payments to the named Plaintiff); *Coffey v. Beverages & More, Inc.*, No. BC477269
24 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named
25 plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct.
26 April 28, 2016) (awarding \$10,000 enhancement payments to the named Plaintiff); *Cook v. United*
27 *Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016)
28 (awarding \$10,000 enhancement payments to the named Plaintiff); *Quintana v. Claire’s*
Boutiques, Inc., No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000
enhancement payments to the named Plaintiff); *Paredes v. American Family Care, Inc.*, No. 34-
2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000
enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No.
BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to
the named plaintiff); *Baker v. L.A. Fitness Int’l, LLC*, No. BC438654 (L.A. County Super. Ct.
Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named Plaintiff); *Blue v.*
Coldwell Banker Residential Brokerage Co., No. BC417335 (L.A. County Super. Ct. Mar. 21,
2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795
(L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named
Plaintiff); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3,
2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No.
BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment);
Hickson v. South Coast Auto Insurance Marketing, Inc., No. BC390395 (L.A. County Super. Ct.
Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int’l, Inc.*, No.
BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to

1 Payment is fair and reasonable compensation for Plaintiff's effort in pursuing the action, assisting counsel
2 with the litigation and settlement, regularly conferring with counsel on the status of their case and the
3 strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair
4 and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 29; *see also generally*, Salazar
5 Decl.)

6 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
7 **Costs**

8 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the
9 risk of non-payment and invested in a case that achieved a substantial positive result for the class.
10 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
11 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
12 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
13 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
14 class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-
15 approval of attorneys' fees of \$321,666.67 (one-third of the Gross Settlement Amount) and litigation costs
16 and expenses not to exceed \$25,000.00 which are currently approximately \$19,878.88.

17 **E. California Law Authorizes Provisional Certification for Settlement Purposes**

18 1. The California Standard for Class Certification

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

27 the named Plaintiff); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County
28 Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named Plaintiff);
Magee v. American Residential Services, LLC, No. BC423798 (L.A. County Super. Ct. Apr. 21,
2011) (awarding \$15,000 enhancement payment).

1 Conditional certification of the proposed Settlement Classes is particularly warranted here given
2 the relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor*
3 *Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of scrutiny” for class certification in
4 settlement cases).⁷ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
5 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
6 class for purposes of litigation:

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

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

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

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

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⁷ 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 In April of 2012, the California Supreme Court expounded on the element of predominance:

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

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

6 The proposed Settlement Class Members consists of the individual Class Members who do not
7 opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all current and
8 former non-exempt employees of Defendant who worked in California at any time from February 6, 2019
9 through September 22, 2023. (Hawkins Decl. ¶¶ 3-10). Defendant represents there are approximately 511
10 Class Members through the end of the class period. Because all Class Members are either current or
11 former employees of Defendant, subject to the same policies and practices, the class is readily ascertainable
12 from Defendant’s regular business records. (*Id.*).

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

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

26 Additionally, Plaintiff is represented by competent counsel who have extensive experience in
27 litigating wage and hour class action cases. (Hawkins Decl. ¶ 35.) Plaintiff’s Counsel has successfully
28 briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide

1 causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action
2 expertise establishes that they are well qualified to represent the interests of this Class.

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

8 3. The Proposed Notice Properly Informs Class Members about the Case and
9 the Settlement

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

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

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

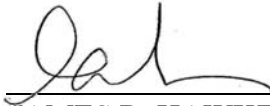
26 ⁸ Due process does not require that each Class Member actually receive a notice, but rather
27 a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal*
28 *Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class
Members will 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 **V. CONCLUSION**

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

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6 Dated: October 5, 2023

JAMES HAWKINS APLC

7
8 By: 

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