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Attorneys for Plaintiff DANIELLE ERVIN, individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

DANIELLE ERVIN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

WELCOME SACRAMENTO LLC, a California Limited Liability Company dba Courtyard by Marriott Sacramento Cal Expo and DBA Fairfield Inn Sacramento Cal-Expo; WELCOME GROUP MANAGEMENT, LLC, a California Limited Liability Company; and WELCOME GROUP, INC., a California Corporation and DOES 1-50, inclusive,

Defendants.

Case No. 34-2022-00332108

ASSIGNED FOR ALL PURPOSES TO:
Honorable Jill Talley, Dept. 23

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 Danielle Ervin; [Proposed] Order filed concurrently herewith]

Date: September 13, 2024
Time: 9:00 AM
Dept.: 23

Reservation A-332108-001

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on September 13, 2024 9:00 AM, or as soon thereafter as counsel may be heard, in Department 23 of the above-captioned court, located at 720 9th Street, Sacramento, CA 95814, the Honorable Jill Talley presiding, Plaintiff Danielle Ervin will, and hereby does, move this Court to:

1. Preliminarily approve the settlement set forth in the Settlement Agreement and Stipulation To Resolve Class Action And PAGA Claims, ("Settlement Agreement"), attached as Exhibit A to the Declaration of James Hawkins;
2. Conditionally certify the proposed Settlement Classes;
3. Appoint Danielle Ervin as the representative for the Settlement Classes;
4. Appoint James Hawkins, APLC as Class Counsel;
5. Approve distribution of the proposed Notice Of Class Action Settlement; attached as Exhibit B to the James Hawkins Declaration.
6. Appoint APEX Class Action Administration as the Settlement Administrator; and
7. Set a hearing date for final approval of the settlement.

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

Dated: July 26, 2024

Respectfully submitted,

By: ______________________

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

DANIELLE ERVIN is the named plaintiff ("Plaintiff") in this action brought against Defendants WELCOME SACRAMENTO, LLC; WELCOME GROUP MANAGEMENT, LLC; and WELCOME GROUP, INC. ("Defendants") (collectively with Plaintiff, the "Parties") for wage and hour violations. Following a thorough investigation and evaluation of their respective claims and defenses, the Parties participated in a joint mediation session with Mr. Louis Marlin, Esq., an experienced mediator of wage and hour actions. With Mr. Marlin's guidance, the Parties were able to negotiate a gross settlement of the Action for $850,000.00 after a full day of mediation.

Plaintiff accordingly seeks preliminary approval of the class action and PAGA settlement, as memorialized in the Settlement Agreement and Stipulation To Resolve Class Action And PAGA Claims (hereinafter "Settlement Agreement"). If approved, the Settlement would provide considerable monetary relief for approximately 344 class members (Settlement Agreement ¶6) of Defendants. The principal terms of the Settlement provide for the following:

(1) Conditional certification of Settlement Classes. It is estimated there are approximately 344 total class members.

(2) A Gross Settlement Amount of $850,000.00. (Settlement Agreement ¶17).

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. Marlin, and the Settlement confers substantial benefits to Class Members. The Net Settlement Amount is estimated to be approximately $472,495.00. (Settlement Agreement ¶¶22-50). This relief—averages **approximately $1,373.53** per Class Member after fees and costs- and is particularly impressive when viewed against the difficulties encountered by plaintiff pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being denied or of Defendants prevailing at trial, or of Plaintiff prevailing at trial but losing on appeal. (James Hawkins Decl. "Hawkins Decl." ¶¶ 15-36).

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

II. FACTS AND PROCEDURE

A. Brief Overview of the Litigation

On December 28, 2022 Plaintiff files a putative class action complaint entitled *Danielle Ervin, et al. v. Welcome Sacramento LLC, et al.,* Sacramento County Superior Court No. 34-2022-00332108 seeking damages for Defendants' alleged: failure to pay minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay all wages earned and owed upon separation from Defendants' employ, failure to pay wages timely during employment, failure to provide accurate itemized wage statements, failure to reimburse necessary business expenses, improper use of consumer credit reports, failure to pay reporting time pay, and issuing payment of wages in the form of a non-labor code-compliant instrument, and violation of Business & Professions Code section 17200, et seq. (Hawkins Decl. ¶¶ 3-6).

On December 28, 2022, Named Plaintiff submitted a PAGA Notice to the LWDA. (*Id*.)

On March 6, 2023 Plaintiff on behalf of the general public as private attorney general filed a PAGA representative action entitled *Danielle Ervin, et al. v. Welcome Sacramento LLC, et al.,* Sacramento County Superior Court, Case No. 34-2023-00335704 seeking damages for Defendants' alleged failure to pay minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay all wages earned and owed upon separation from Defendants' employ, failure to pay wages timely during employment, failure to provide accurate itemized wage statements, failure to reimburse necessary business expenses, improper use of consumer credit reports, failure to pay reporting time pay, failure to provide suitable seating and issuing payment of wages in the form of a non-labor code-compliant instrument. *Id*.

B. The Parties Settled After Mediation and Ex-pert Analysis

On February 6, 2024, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Louis Marlin. In preparation for the mediation Defendants provided Class Counsel with hire and term dates for all employees, time and payroll records and relevant policies for Class

Members during the Class Period.

Defendants deny that they engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendants further deny that they have any liability of any kind associated with the claims alleged in the Actions. Defendants contend that they have complied with both federal and state wage-and-hour laws, and all other laws regulating its relationship with the Class Members and the Aggrieved Employees, including the Named Plaintiff. (Settlement Agreement ¶¶39-43).

In short, Defendants provided discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case. As a result of settlement efforts, the Parties agreed to settle this matter for the Gross Settlement Amount of $850,000.00 for approximately 344 class members and the terms of which are fully memorialized in the Settlement Agreement (Hawkins Decl. ¶ 6, Ex. A.)

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

The "Class Members" are defined as all persons who have been employed by Defendants as Non-Exempt Employees or equivalent positions however titled in the state of California during the Class Period, December 28, 2018, through the earlier date of either 90 days after full execution of the settlement agreement or the date the Court enters the Preliminary Approval Order. Defendants represent there are approximately 344 Class Members as of February 7, 2024. (Settlement Agreement ¶9) "PAGA Employee" or "Aggrieved Employee" means all individuals who are or previously were employed by Defendants as non-exempt California employees during the PAGA Period. Defendants represent there are approximately 214 Aggrieved Employees during the PAGA Period who worked approximately 3,818 Pay Periods during the PAGA Period. (Settlement Agreement ¶2). "PAGA Period" means the period from December 28, 2021, through the earlier date of either 90 days after full execution of the settlement agreement or the date the Court enters the Preliminary Approval Order. (Settlement Agreement ¶25).

2. Settlement Consideration

Plaintiff and Defendants have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of $850,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the amount of $283,305.00 ("Attorneys' Fees and 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 incentive award to Plaintiff in the amount of up to $10,000.00 ("Named Plaintiff Enhancement Award"); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed $9,200.00 ("Settlement Administration Costs"); (4) $50,000.00 ("PAGA Payment") 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 $12,500.00; (5) the seventy-five percent (75%) share of PAGA Penalties in the amount of $37,500.00 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 ¶50).

3. Formula for Calculating Payments from the Net Settlement Amount

The "Net Settlement Amount" means the net amount available for payment of claims to Class Members after deducting attorney fees and costs, settlement administration fees, Enhancement Award to Plaintiff, 75% of the $50,000.00 PAGA Payment that is payable to the LWDA, and the employer-side payroll taxes attributed to the wage portion of settlement payments to Class Members for release for the Class Released claims. (Settlement Agreement I). The Net Settlement Amount estimated at $472,495.00. (Settlement Agreement ¶50; Hawkins Decl. ¶ 15).

Based on the estimated Net Settlement Amount of $472,495.00 provides on average workweek value of $49.32. As a result, each Settlement Class Member will receive approximately $1,373.53 per Class Member. A Class Member working for 3 years or approximately 150 workweeks during the Class Period would receive $7,398. The lowest payment is estimated to be approximately $49.32 for someone who worked only one workweek. (Hawkins Decl. ¶ 26).

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

4. Release by the Settlement Class

The release is narrowly tailored to release the claims litigated in the complaints in exchange for the Gross Settlement Amount. Plaintiff and Participating Class Members will agree to release the Released Claims during the Class Period as follows: The Claims set forth in the Operative Complaint, including, but not limited to, failure to pay minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay all wages earned and owed upon separation from Defendants' employ, failure to pay wages timely during employment, failure to provide accurate itemized wage statements, failure to reimburse necessary business expenses, improper use of consumer credit reports, failure to provide suitable seating, failure to pay reporting time pay, and issuing payment of wages in the form of a non-labor code-compliant instrument, Unfair competition under Cal. Bus. & Prof. Code ¶¶17200, et seq., and Violation of the California Private Attorneys General Act of 2004 (Labor Code ¶ 2698, et seq.) predicated on the same or similar facts and/or claims alleged in the Lawsuit and/or any PAGA letter sent to the LWDA by Plaintiff in or prior to the Lawsuit, as well as any claims that could have been pled which arise from the same or similar facts concerning the Named Plaintiff or the putative class, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code and California Industrial Welfare Commission Wage Orders that were alleged (specifically for violations of Labor Code sections 201-204, 212, 213, 226, 510, 558, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, 1024.5, business & Professions Code section 17200, et seq, 2698 *et seq*., and related Wage Order), (Settlement Agreement ¶¶23-31).

IV. ARGUMENT

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

1. <u>Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable</u>

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 1344, 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).[1]

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

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

In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which included: (1) determining Plaintiff's suitability as private attorneys general and class representative through interviews, background investigations, and analyses of their employment files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class

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[1] 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 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.

actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing employees' time and wage records; (5) reviewing Defendants' employment policies and practices; (6) researching settlements in similar cases; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. (*Id*.)

By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an 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, and various defenses asserted by Defendants. (Hawkins Decl. ¶¶ 14-37).

3. <u>The Settlement Was Reached Through Arm's-Length Bargaining in which All Parties Were Represented by Experienced Counsel</u>

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

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ 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. ¶ 34).

Defendants are represented by GORDON REES SCULLY MANSUKHANI, LLP, a respected defense firm.

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

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

[2] Federal district courts also recognize that there is an inherent "range of reasonableness" in determining whether to approve a settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat'l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery"); *In re Global Crossing Sec. 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.

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

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

Defendants deny that they engaged in any misconduct in connection with the wage-and-hour practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendants further deny that they have any liability of any kind associated with the claims alleged in the Actions. Defendants contend that they have complied with both federal and state wage-and-hour laws, and all other laws regulating its relationship with the Class Members and the Aggrieved Employees, including the Named Plaintiff. (Settlement Agreement ¶ 41)

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined that a settlement amounting to $850,000.00 was fair and reasonable, and accounts for an approximate 23%-47% of total possible recovery and courts have routinely approved settlements that provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 22-27). *See, e.g., In re Warfarin Sodium Antitrust Litig.,* 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.,* 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages

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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").

were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).[3] (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, $50,000.00 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% ($37,500.00) will be paid directly to the LWDA, and the remaining 25% ($12,500.00) will be paid to PAGA Members who worked during the PAGA Period beginning December 28, 2021, through the earlier date of either 90 days after full execution of the settlement agreement or the date the Court enters the Preliminary Approval Order. (Settlement Agreement ¶25).

However, a number of courts have found that the "subsequent" penalty under PAGA applies only after a <u>court</u> or the <u>Labor Commissioner</u> 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

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

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) ("Under the Labor Code, if an employer does not have notice that they are committing a violation, they are not subject to the heightened penalties."); *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

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

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

Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding $500,000 instead of maximum penalties of $2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*

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

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

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

damages to the PAGA claims.").

C. The Court Should Preliminarily Approve the Named Plaintiff Enhancement Award

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

Approximately 344 current and former employees will share a $850,000.00 settlement fund due entirely to the effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for Named Plaintiff Enhancement Award of $10,000.00 to the Class Representative[5]. The

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[5] Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding $10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding $10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April 15, 2016) (awarding $10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding $10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding $10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding $10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding $10,000 enhancement payments to three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding $10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795

Named Plaintiff Enhancement Award is fair and reasonable compensation for Plaintiff's effort in pursuing the action, 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. (Hawkins Decl. ¶ 27; *see also generally*, Ervin Decl.)

D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and 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. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). At final approval, Plaintiff will seek Court-approval of attorneys' fees of $283,305.00 (one-third of the Gross Settlement Amount) and litigation costs and expenses not to exceed $25,000.00 which are currently approximately $15,261.43.

E. California Law Authorizes Provisional Certification for Settlement Purposes

1. <u>The California Standard for Class Certification</u>

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class

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(L.A. County Super. Ct. June 11, 2010) (awarding $10,000 enhancement payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding $10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding $10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding $10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding $10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of $10,000 to the named plaintiffs); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding $10,000 enhancement payment).

members." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

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

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

2. <u>The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members</u>

Whether a class is "ascertainable" within the meaning of Code of Civil Procedure section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they

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

may be readily identified without unreasonable expense or time by reference to official records. *Id.*

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

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

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

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

The proposed Settlement Class Members consists of the individual Class Members who did not opt-out of the Settlement by submitting a valid request for exclusion. The Class is defined as all current and former non-exempt employees of Defendants who worked in California at any time from December 28, 2018, through the earlier date of either 90 days after full execution of the settlement agreement or the date the Court enters the Preliminary Approval Order. Defendants represent there are approximately 344 Class Members as of February 7, 2024. Because all Class Members are either current or former employees of Defendants, subject to the same policies and practices, the class is readily ascertainable from Defendants' regular business records. (Hawkins Decl. ¶¶ 7-39).

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

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

Additionally, Plaintiff is represented by competent counsel who have extensive experience in litigating wage and hour class action cases. (Hawkins Decl. ¶ 34). Plaintiff's Counsel has successfully briefed, argued, certified, and gained state and federal court settlement approval of the same class-wide causes of action that are at issue in this case. (*Id.*) Plaintiff's Counsel's wage and hour class action expertise establishes that they are well qualified to represent the interests of this Class.

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

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

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

The Parties have jointly drafted the Notice of Class Action settlement ("Class Notice") which fairly and neutrally informs Class Members of their rights and remedies in this action. (Hawkins Decl., Exhibit B;

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

Hawkins Decl. ¶¶ 32-34.)

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

V. CONCLUSION

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

Dated: July 26, 2024

JAMES HAWKINS APLC

By: ______________________________

JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO
LAUREN FALK
AVA ISSARY

Attorneys for Plaintiff DANIELLE ERVIN, individually and on behalf of all others similarly situated.

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On July 26, 2024, I served on the interested parties in this action the following document(s) entitled:

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 Danielle Ervin; [Proposed] Order filed concurrently herewith]

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on July 26, 2024, at Irvine, California

Alma Chavarin

Alma Chavarin