

1 JAMES HAWKINS APLC
2 James R. Hawkins (#192925)
3 Gregory Maur o(#222239)
4 Michael Calvo (#314986)
5 Lauren Falk (#316893)
6 Ava Issary (#342252)
7 9880 Research Drive, Suite 200
8 Irvine, CA 92618
9 Tel.: (949) 387-7200
10 Fax: (949) 387-6676
11 Email: James@jameshawkinsaplc.com
12 Email: Greg@jameshawkinsaplc.com
13 Email: Michael@jameshawkinsaplc.com
14 Email: Lauren@jameshawkinsaplc.com
15 Email: Ava@jameshawkinsaplc.com

16 Attorneys for Plaintiff LUTOVIO J. IULIANO,
17 Individually and on behalf of all others similarly situated,
18 Additional counsel on following page*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SACRAMENTO**

21 LUTOVIO J. IULIANO, ROBERT
22 WINIECKI, and TERRY SNIPES individually
23 and on behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 WORLDWIDE FLIGHT SERVICES, INC., a
27 Delaware Corporation; WFS EXPRESS, INC.,
28 a Delaware Corporation and DOES 1-50,
inclusive,

Defendant.

Case No. 34-2023-00337627
[Hon. Lauri A. Damrell, Dept. 8b]

**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
LUTOVIO J. IULIANO; [Proposed] Order
filed concurrently herewith]**

Date: August 14, 2026
Time: 9:00 AM
Dept.: 8b

1 MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
2 jm@melmedlaw.com
Laura Supanich (SBN 314805)
3 lms@melmedlaw.com
Michiko Vartanian (SBN 323979)
4 mv@melmedlaw.com
1801 Century Park East, Suite 850
5 Los Angeles, California 90067
6 Phone: (310) 824-3828
Fax: (310) 862-6851

7
8 Attorneys for Plaintiff ROBERT WINIECKI

9 THE MARKHAM LAW FIRM
David R. Markham (SBN, 71814)
10 dmarkham@markham-law.com
Lisa R. Brevard (SBN 323391)
11 lbrevard@markham-law.com
888 Prospect Street, Suite 200
12 La Jolla, CA 92037
13 Telephone: (619) 399-3995/Facsimile: (619) 323-1684

14 UNITED EMPLOYEES LAW GROUP
Walter L. Haines (SBN 71075)
15 walter@uelglaw.com.
8605 Santa Monica Blvd., #63354
16 North Hollywood, CA 90069
17 Telephone: (562) 256-1047/Facsimile: (562) 256-1006
18 Attorneys for Plaintiffs on behalf of himself
and all others similarly situated

19 Attorneys for Plaintiff TERRY SNIPES
20
21
22
23
24
25
26
27
28

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS**
2 **OF RECORD: PLEASE TAKE NOTICE** that on August 14, 2026 at 9:00 AM., or as soon
3 thereafter as counsel may be heard, in Department 8b of the above-captioned court, the
4 Honorable Lauri A. Damrell presiding, Plaintiffs LUTOVIO J. IULIANO, ROBERT
5 WINIECKI, and TERRY SNIPES will, and hereby does, move this Court to:

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

9 2. Conditionally certify the proposed Class Members;

10 3. Appoint LUTOVIO J. IULIANO, ROBERT WINIECKI, and TERRY SNIPES as the
11 representatives for the Class Members;

12 4. Appoint JAMES HAWKINS, APLC, UNITED EMPLOYEES LAW GROUP, THE
13 MARKHAM LAW FIRM, and MELMED LAW GROUP P.C. as Class Counsel;

14 5. Approve distribution of the proposed Notice Of Class Action Settlement; attached as
15 **Exhibit A** to the Settlement Agreement.

16 6. Appoint APEX Class Action Administration as the Settlement Administrator; and

17 7. Set a hearing date for final approval of the settlement.

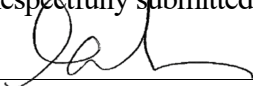
18 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of
19 Points and Authorities in support of Motion for Preliminary Approval of Class Action and PAGA claims
20 Settlement; (3) the Declaration of James Hawkins; (4) the Declaration of Plaintiff LUTOVIO J.
21 IULIANO;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

25 ¹ As of the filing of this Motion for Preliminary Approval, the Settlement Agreement is
26 awaiting one remaining signature. The Parties have fully executed the Memorandum of
27 Understanding and have agreed to all material terms of the Settlement Agreement. A fully
28 executed copy of the Settlement Agreement will be promptly filed with the Court upon receipt
of the remaining signature and, in any event, before the hearing on Plaintiff's Motion for
Preliminary Approval.

1 limit requirement set by California Rules of Court, Rule 3.1113(5). Pursuant to the Sacramento County
2 Superior Court, Complex Litigation Department's Checklist for Approval of Class Action and/or Private
3 Attorneys General Act ("PAGA") Settlements, counsel certify that they have reviewed the Checklist and
4 that the Motion for Preliminary Approval and supporting papers comply with its requirements. (Hawkins
5 Declaration at paragraph 40).

6 Dated: July 23, 2026

Respectfully submitted,

7 By: 

James R. Hawkins
Gregory Mauro
Michael Calvo
Lauren Falk
Ava Issary

JAMES HAWKINS, APLC

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTS AND PROCEDURE.....	2
	A. Brief Overview of the Litigation.....	2
	B. The Parties Settled After Mediation and Expert Analysis.....	3
III.	SUMMARY OF SETTLEMENT TERMS.....	4
	A. The Proposed Settlement Fully Resolves Plaintiff's Claims.....	4
	1. Composition of the Settlement Class.....	4
	2. Settlement Consideration.....	4
	3. Formula for Calculating Payments From Net Settlement Amount.....	4
	4. Release by the Class Members and Aggrieved Employees.....	5
IV.	ARGUMENT.....	6
	A. The Court Should Preliminarily Approve the Proposed Class Action Settlement..	6
	1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.....	6

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

2. Plaintiff’s Counsel Conducted A Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness.....	7
3. The Settlement Was Reached Through Arms-Length Bargaining in Which All Parties Were Represented by Experienced Counsel.....	8
4. The Consideration Provided for the Class Claims is Fair and Reasonable in Light of the Amount in Controversary Discounted by the Risks of Continued Litigation.....	9
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.....	12
C. The Court Should Preliminary Approve the Enhancement Award.....	14
D. The Court Should Preliminarily Approve the Negotiated Attorney’s Fees and Costs.....	15
E. California Law Authorizes Provisional Certification for Settlement Purposes....	15
1. The California Standard for Class Certification.....	15
2. The Proposed Settlement Class is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members.....	16
3. The Proposed Notice Properly Informs Class Members About the Case and the Settlement.....	18

V.	CONCLUSION.....	1
	8	

TABLE OF AUTHORITIES

CASES

Aguirre v. Genesis Logistics,

No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)

Amaral v. Cintas Corp.

No. 2, 163 Cal. App. 4th 1157
(2008).....12

Balderas v. Massage Envy Franchising, LLP,

2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014).....11

Brinker Rest. Corp. v. Super. Ct.,

(2012) 53 Cal. 4th 1004.....17

Bufile v. Dollar Financial Group, Inc.,

162 Cal. App. 4th 1193
(2008).....15

Carrington v. Starbucks Corp.,

30 Cal. App. 5th 504
(2018).....12,13

Cartt v. Superior Court

(1975) 50 Cal.App.3d 960.....18

Cellphone Termination Fee Cases,

186 Cal. App. 4th 1380
(2010).....6,7,14

Chance v. Super. Ct.,

1	58 Cal. 2d 275	
2	(1962).....	18
3	<i>Chavez v. Netflix, Inc.</i> ,	
4	162 Cal. App. 4th 43, 66 n.11	
5	(2008).....	14,15
6	<i>Chen v. Morgan Stanley Smith Barney, LLC</i> ,	
7	No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2,	
8	2014)....	12
9	<i>Clark v American Residential Services, LLC</i>	
10	(2009) 175 Cal. App. 4th.	
11	785.....	14
12	<i>Cotter v. Lyft, Inc.</i> ,	
13	193 F. Supp. 3d 1030 (N.D. Cal. 2016).....	12
14	<i>D’Amato v. Deutsche Bank</i> ,	
15	(2d Cir. 2001) 236 F.3d	
16	78.....	9
17	<i>Dunk v. Ford Motor Company</i>	
18	(1996) 48 Cal.App.4th	
19	1794.....	7,15,16
20	<i>Elder v. Schwan Food Co.</i> ,	
21	No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011).....	13
22	<i>Fleming v. Covidien Inc.</i> ,	
23	No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011).....	13
24	<i>Hopson v. Hanesbrands Inc.</i> ,	
25	Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3,	
26	2009)....	14
27	<i>In re Apple Computer, Inc. Derivative Litig.</i> ,	
28	(N.D. Cal. Nov. 5, 2008) No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS	
	108195.....	9

1	<i>In Re Armored Car Antitrust Litig.,</i>	
2	472 F. Supp. 1357 (N.D. Ga.	
3	1979).....	11
4	<i>In re Bluetooth Headset Prod. Liab. Litig.,</i>	
5	(9th Cir. 2011) 654 F.3d	
6	935.....	8
7	<i>In Re Four Seasons Secs. Laws Litig.,</i>	
8	58 F.R.D. 19 (W.D.	
9	Okla.1972).....	11
10	<i>In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.,</i>	
11	295 F.R.D. 438, 453 (C.D. Cal.	
12	2014).....	10
13	<i>In re Warfarin Sodium Antitrust Litig.,</i>	
14	212 F.R.D. 231 (D. Del.	
15	2002).....	11
16	<i>Kass v. Young,</i>	
17	67 Cal. App. 3d 100	
18	(1977).....	18
19	<i>Kullar,</i>	
20	168 Cal. App. 4th at	
21	120.....	9,10
22	<i>Laffitte v. Robert Half, Inc.,</i>	
23	1 Cal. 5th 480	
24	(2016).....	15
25	<i>Li v. A Perfect Day Franchise, Inc.,</i>	
26	No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,	
27	2012).....	13
28	<i>Lee v. Dynamex, Inc.,</i>	

1	166 Cal. App. 4th	
2	1325(2008).....	15,16
3	<i>Munoz v. BCI Coca-Cola Bottling Co.,</i>	
4	186 Cal. App. 4th 399	
5	(2010).....	10
6	<i>Nordstrom Com. Cases,</i>	
7	186 Cal. App. 4th 576	
8	(2010).....	14
9	<i>North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.</i>	
10	(1994) 27 Cal. App. 4th	
11	1085.....	7
12	<i>Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.,</i>	
13	303 F.R.D. 337 (E.D. Cal.	
14	2014).....	9
15	<i>Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco,</i>	
16	688 F.2d 615 (9th Cir. 1982).....	9,10,16
17	<i>Rodriguez v. West Publishing Corp.,</i>	
18	563 F.3d 948 (9th	
19	Cir.2009).....	14
20	<i>Sav-On Drug Stores, Inc. v Superior Court</i>	
21	(2004) 34 Cal. 4th	
22	319.....	15
23	<i>State of Cal. v. Levi Strauss & Co.,</i>	
24	(1986) 41 Cal. 3d	
25	460.....	8,18
26	<i>Steenhuyse v. UBS Fin. Svcs., Inc.,</i>	
27	317 F. Supp. 3d 1062 (N.D. Cal.	
28	2018).....	9,12
	<i>Thurman v. Bayshore Transit Mgmt.,</i>	

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

203 Cal. App. 4th 1112
(2012).....13
Trang v. Turbine Engine Components Technologies Corp.,
No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19,
2012).....12
Trotsky v. Los Angeles Fed. Savings & Loan Assn.,
48 Cal. App. 3d 143
(1975).....18
Vieyara-Flores v. Sika Corp.,
No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
2019).....12
Villegas v. J.P. Morgan Chase & Co.,
No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,
2012).....9

STATE RULES AND STATUTES

California Business and Professions Code	
§17200.....	2
California Civ. Proc. Code	
382.....	15,16
California Labor Code	
201.....	6
California Labor Code	
202.....	6
California Labor Code	
203.....	2,6,13
California Labor Code	
204.....	2,6
California Labor Code	
212.....	2
California Labor Code	
213.....	2
California Labor Code	
226.....	2,6,13
California Labor Code	
226.7.....	2,6
California Labor Code	
246.....	2,6
California Labor Code	
351.....	6
California Labor Code	
432.....	6
California Labor Code	
510.....	2,6

1	California Labor Code	
2	512.....	2,6
3	California Labor Code	
4	516.....	6
5	California Labor Code	
6	551.....	6
7	California Labor Code	
8	552.....	6
9	California Labor Code 558.1.....	2
10	California Labor Code	
11	1174.....	6
12	California Labor Code	
13	1174(d).....	6
14	California Labor Code	
15	1174.5.....	6
16	California Labor Code	
17	1175.....	6
18	California Labor Code	
19	1194.....	2,6
20	California Labor Code	
21	1194.2.....	6
22	California Labor Code	
23	1197.....	6
24	California Labor Code	
25	1197.1.....	6
26	California Labor Code	
27	1198.....	6
28	California Labor Code	
	1198.5.....	6

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

California Labor Code
2800.....6
California Labor Code
2802.....6
California Labor Code
2698.....6
California Labor Code
2699(h).....12
California Rules of Court
3.769.....6
California Rules of Court 3.769(c-
g).....6
California Rules of Court 3.776 (e-
f).....18

SECONDARY SOURCES

Conte & Newberg, Newberg on Class Actions, §§ 11.26 (4th ed. 2002) (“Newberg”).....7

FEDERAL RULES

Fed. Rules of Civ. Proc., Rule 23.....16

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2

3
4
5
6
7
8
9

- 0
- 1
- 2
- 3
- 4

5
6

7
8

9
0
1
2
3
4
5
6
7
8

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

4 **II. FACTS AND PROCEDURE**

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

6 On January 31, 2023, Named Plaintiff Iuliano submitted a PAGA Notice to the LWDA. On
7 April 7, 2023, Named Plaintiff Iuliano filed a PAGA Action against Defendant in a case entitled
8 *Iuliano v. WFS Express, Inc. et al.*, Sacramento County Superior Court, Case No. 034-2023-
9 00337627-CU-OE-GDS. On February 20, 2024, Winiecki submitted a PAGA Notice to the
10 LWDA. On March 25, 2024, Defendant removed a state court action previously filed by Winiecki
11 to the United States District Court for the Eastern District of California, pending as the Winiecki
12 Action entitled *Winiecki v. WFS Express, Inc. et al.*, United States District Court for the Eastern
13 District of California, Case No. 2:24-cv-00933-DAD-CKD (“the Winiecki Action”). On April 17,
14 2025, Defendant removed a state court action previously filed by Snipes to the United States
15 District Court for the Northern District of California, pending as the Snipes Action, entitled *Snipes*
16 *v. WFS Express, Inc. et al.*, United States District Court for the Northern District of California,
17 Case No. 25-cv-03412-MMC (“the Snipes Action”). On July 14, 2026, Plaintiff Iuliano filed a
18 consolidated First Amended Complaint adding the claims and Plaintiffs from the Snipes and
19 Winiecki Actions. (Hawkins Decl. ¶¶3-6).

20 The Action alleges that Defendant violated various wage-and-hour laws, including: (1)
21 failure to pay wages including overtime as required by Labor Code §§ 510 and 1194; (2) failure to
22 provide meal periods as required by Labor Code §§ 226.7, 512 and IWC Wage Orders; (3) failure
23 to provide rest periods as required by Labor Code §§ 226.7, 512; (4) failure to pay timely wages
24 required by Labor Code § 203; (5) failure to timely pay wages during employment required by
25 Labor Code § 204; (6) failure to provide accurate wage statements required by Labor Code §§
26 226, 226.3, 558.1; (7) fees on use of pay cards, in violation of Labor Code §§ 212 and 213; (8)
27 failure to accurately record and pay sick leave as required by Labor Code § 246; (9) failure to
28 reimburse necessary business expenses; (10) violation of Business & Professions Code § 17200, et

1 seq; and (11) penalties pursuant to the California Private Attorneys General Act. (Hawkins Decl.
2 ¶5).

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

4 The Parties agreed to attend a full-day mediation on December 15, 2025, with neutral Daniel J.
5 Turner, Esq. (the “Mediator”), a respected mediator of complex wage-and-hour actions. In preparation for
6 the mediation, Defendant provided Class Counsel with time and payroll records and relevant policies for
7 Class Members and Aggrieved Employees during the Class Period and PAGA Period, respectively.

8 On December 15, 2025, the mediation was held, though an immediate settlement was not reached.
9 Subsequently, through the assistance of the Mediator, the Parties continued settlement discussions and the
10 Parties reached a settlement on February 13, 2026, on the terms set forth as memorialized in the
11 Agreement. Settlement discussions were conducted at arm’s length, and the Settlement is the result of an
12 informed and detailed analysis of Defendant’s potential liability and exposure in relation to the costs and
13 risks associated with continued litigation of the Actions. In connection with the Settlement, the Parties
14 have agreed, inter alia, to file an Amended Complaint in the Iuliano Action to include all of the Released
15 Class Claims.

16 Defendant deny that they engaged in any misconduct in connection with the wage-and-hour
17 practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendant further
18 deny that they have any liability of any kind associated with the claims alleged in the Actions. Defendant
19 contend that they have complied with both federal and state wage-and-hour laws, and all other laws
20 regulating its relationship with the Class Members and the Aggrieved Employees, including the Named
21 Plaintiffs. (Settlement Agreement ¶56).

22 In short, Defendant provided discovery sufficient to enable the Plaintiffs and Class Counsel to
23 rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages
24 arising from the claims made in this case. As a result of settlement efforts, the Parties agreed to settle this
25 matter for the Gross Settlement Amount of \$2,700,000.00 for approximately 5,319 class members and the
26 terms of which are fully memorialized in the Settlement Agreement (Hawkins Decl. ¶ 9).

1 **III. SUMMARY OF SETTLEMENT TERMS**

2 **A. The Proposed Settlement Fully Resolves Plaintiffs' Claims**

3 1. Composition of the Class Members

4 "Class" or "Class Members" means all current and former non-exempt employees of
5 Defendant in the State of California during the Class Period, February 20, 2020, to and including
6 March 13, 2026. (Settlement Agreement ¶¶6-9). Defendant represents there are approximately
7 5,319 Class Members who worked during the Class Period. (Settlement Agreement ¶6).

8 "Aggrieved Employees" means all current and former non-exempt employees of Defendant in the
9 State of California during the PAGA Period. (Settlement Agreement ¶2). Defendant represents
10 that they estimate there will be approximately 3,806 Aggrieved Employees during the PAGA
11 Period who worked approximately 73,408 Pay Periods during the PAGA Period. (Settlement
12 Agreement ¶2). "PAGA Period" means the period from January 31, 2022, until March 13, 2026.
13 (Settlement Agreement ¶34).

14 2. Settlement Consideration

15 Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for the Gross
16 Settlement Amount of \$2,700,000.00. The Gross Settlement Amount includes: (1) attorneys' fees in the
17 amount of \$945,000.00 ("Attorneys' Fees and Costs") and reimbursement of reasonable litigation costs and
18 expenses in the amount of up to \$45,000.00 to Class Counsel; (2) Class Representative's incentive award to
19 each Plaintiff in the amount of up to \$15,000.00, for a total of \$45,000.00 ("Enhancement Award"); (3)
20 fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to
21 exceed \$54,990.00 ("Settlement Administration Costs"); (4) \$135,000.00 ("PAGA Settlement Amount")
22 with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that
23 will be distributed to Class Members in the PAGA Group in the amount of \$33,750.00; (5) the seventy-five
24 percent (75%) share of PAGA Penalties in the amount of \$101,250.00 to the California Labor and
25 Workforce Development Agency ("LWDA"); and the remainder to of the Net Settlement Amount to the
26 Class Members. (Settlement Agreement ¶54).

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

28 The "Net Settlement Amount" means the net amount available for payment of claims to Class

1 Members after deducting Attorneys' Fees and Costs, Settlement Administration Costs, Enhancement
2 Award, 75% of the \$135,000.00 PAGA Settlement Amount that is payable to the LWDA (\$101,250).
3 (Settlement Agreement ¶23). The Net Settlement Amount estimated at \$1,475,020.00. (Hawkins Decl. ¶
4 16).

5 Given that there are approximately 5,319 Class Members, each can expect to receive on average
6 approximately **\$277.31**. (Hawkins Decl. ¶ 26).

7 This average net recovery is in line with many other wage and hour class action settlements
8 approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-
9 2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v.*
10 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
11 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
12 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
13 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case
14 No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v.*
15 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately
16 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net
17 recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
18 (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-
19 AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
20 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

21 4. Release by the Class Members and Aggrieved Employees

22 The release is narrowly tailored to release the claims litigated in the complaints in exchange
23 for the Gross Settlement Amount. Plaintiffs and Participating Class Members will agree to release the
24 Released Claims during the Class Period as follows: the Released Claims include claims premised on the
25 failure to pay all minimum wages and overtime compensation including, but not limited to, time spent
26 working off-the-clock (including time responding to work communications, going through security,
27 waiting in line to clock in or out, and in executing regular tasks/duties); failure to provide off-duty meal
28 periods and rest breaks where employees are free to leave the premises or premium payments; failure to

1 provide records; failure to provide and maintain complete and accurate itemized wage statements including
2 failure to list the correct employer on wage statements; split shift violations; failure to keep complete and
3 accurate payroll records; untimely payment of wages during employment and at the time of termination;
4 failure to pay wages, including overtime wages at the regular rate; failure to pay meal period penalties at the
5 regular rate; failure to pay rest break penalties at the regular rate; failure to pay paid sick leave at the regular
6 rate; failure to provide supplemental paid sick leave; violations of California Labor Code §§ 201, 202, 203,
7 204, 204(b), 210, 226, 226.3, 226.7, 246, 351, 432, 510, 512, 516, 551, 552, 558, 1174, 1174(d), 1174.5,
8 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2800, 2802; 2698; any and all allegations and claims pled
9 in the PAGA Notices and the Operative Complaints; and related violations of the applicable California
10 Wage Orders including Wage Orders 4-2001, and 9-2001 and California Code of Regulations, Title 8,
11 section 11000 *et seq.* (Settlement Agreement ¶40).

12 **IV. ARGUMENT**

13 **A. The Court Should Preliminarily Approve the Proposed Class Action 14 Settlement**

15 **1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, 16 Adequate, and Reasonable**

17 California Rule of Court (“Rule”), Rule 3.769 requires litigants to obtain court approval of class
18 action settlements. Approval occurs in two steps: (1) an early “preliminary” review by the trial court; and
19 (2) a subsequent “final” review after notice of the settlement has been distributed to class members for their
20 comments and objections. Cal. R. Ct. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th
21 1230, 1118 (2010) (the court first “preliminarily approves the settlement” and later “conducts a final
22 approval hearing to inquire into the fairness of the proposed settlement”). The motion for preliminary
23 approval must be accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
24 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).

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

1 hearing, the court must conduct an inquiry into the fairness of the proposed settlement. *Id.* at 3.769(g).

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

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

10 2. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and
11 Legal Issues and Were Thus Able to Objectively Assess the Settlement’s
12 Reasonableness

13 Plaintiffs’ Counsel conducted a thorough investigation into the factual and legal issues implicated
14 by Plaintiffs’ claims and were able to objectively assess the settlement’s reasonableness. For example, prior
15 to filing the action, Plaintiffs contacted Plaintiffs’ Counsel to discuss the factual bases for pursuing their
16 respective actions against Defendant for Labor Code violations. Plaintiffs were intimately familiar with
17 Defendant’s labor policies and practices, and over the course of multiple interviews, knowledgeably
18 summarized those policies and practices to Plaintiffs’ Counsel. During those conversations, Plaintiffs’
19 Counsel explained how the policies and practices were instituted and provided valuable insight into how
20 they gave rise to the alleged Labor Code violations. Based on these interviews with Plaintiffs, Plaintiffs’

21 ² The presumption of fairness is consistent with California’s public policy goal of favoring
22 settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors
23 settlements”); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy
24 generally favors the compromise of complex class action litigation”); *7-Eleven Owners for Fair*
25 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and
26 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex
27 class action litigation”); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992)
28 (“public policy strongly discourages litigation and encourages settlement [because settlements]
can produce peace and goodwill in the community while reducing the expense and persistency of
litigation”). Additionally, in reviewing the fairness of a class action settlement, due regard should
be given to what is “otherwise a private consensual agreement between the parties.” *Cellphone*
Termination Fee Cases, 180 Cal. App. 4th at 1117. The inquiry “must be limited to the extent
necessary to reach a reasoned judgment that the agreement is not the product of fraud or
overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 Counsel determined that there were legally sufficient grounds for pursuing the Actions against Defendant
2 and in preparation for drafting the complaint, Plaintiffs' Counsel conducted their own independent
3 preliminary investigations into the factual bases for Plaintiffs' claims, which entailed, *inter alia*, a careful
4 examination of Plaintiffs' personnel files and associated records including time and pay records for
5 approximately 206,852 workweeks. (Hawkins Decl. ¶¶ 2-15).

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

15 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs'
16 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement
17 Agreement, is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all
18 known facts and circumstances, including the risk of significant delay and uncertainty associated with
19 litigation, and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 13-38).

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

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

26 As explained above, the Parties settled this matter with the assistance of an experienced wage and
27 hour class and PAGA action mediator. Mr. Turner helped to manage the Parties' expectations and provided
28 a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab.*

1 *Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of
2 finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S.
3 Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
4 inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
5 “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the proceedings
6 were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09-00261, 2012
7 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation “tends to support the conclusion
8 that the settlement process was not collusive”); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon,*
9 *Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation “tends to support the conclusion that
10 the settlement process was not collusive”). At all times, the Parties’ negotiations were adversarial and non-
11 collusive. (Hawkins Decl. ¶ 9).

12 The Parties were represented by experienced class action counsel throughout the negotiations
13 resulting in this Settlement. Plaintiff LUTOVIO J. IULIANO is represented by James Hawkins, APLC.
14 Plaintiff ROBERT WINIECKI is represented by MELMED LAW GROUP P.C., and Plaintiff TERRY
15 SNIPES is represented by THE MARKHAM LAW FIRM and UNITED EMPLOYEES LAW GROUP.
16 Plaintiffs’ Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims
17 through certification and on the merits, and have considerable experience settling wage and hour class
18 actions. (Hawkins Decl. ¶ 34).

19 Defendant is represented by Fisher & Phillips LLP, a respected defense firm.

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

23 In seeking approval, a settling party must provide sufficient information to “enable the court to
24 make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail,*
25 *Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement
26 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or
27 unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
28 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure

1 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
2 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
3 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
4 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
5 claims within a realistic *range* of outcomes, the settling Plaintiffs should discount the value of the settled
6 claims for risks such as changes in the law, the probability of success, and other factors.³

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

16 As explained in detail below and in the Hawkins Declaration, the Gross Settlement Amount is
17 within the range of reasonableness in light of the nature and magnitude of the claims being settled and the
18 various potential impediments to recovery. (Hawkins Decl. ¶¶ 13-37.)

19 Defendant denies that they engaged in any misconduct in connection with the wage-and-hour
20 practices associated with the Class Members (inclusive of the Aggrieved Employees). Defendant further

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 denies that they have any liability of any kind associated with the claims alleged in the Actions. Defendant
2 contends that they have complied with both federal and state wage-and-hour laws, and all other laws
3 regulating its relationship with the Class Members and the Aggrieved Employees, including the Named
4 Plaintiffs. (Settlement Agreement ¶56).

5 Accounting for the risks of continued litigation and impediments to discovery, Plaintiffs
6 determined that a settlement amounting to \$2,700,000.00 was fair and reasonable, and accounts for an
7 approximate 23%-47% of total possible recovery and courts have routinely approved settlements that
8 provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 31-36). *See*,
9 *e.g.*, *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a
10 reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car*
11 *Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the
12 estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D.
13 Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL
14 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum
15 recovery “[fell] within the range of possible initial approval based on the strength of Plaintiffs’ case and the
16 risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D.
17 Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁴ (*Id.*)

18
19
20
21 ⁴ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS
22 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action
23 settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards,
24 was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-
25 02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting
26 preliminary approval to class action settlement representing “8.1% of the full verdict value” with
27 net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v.*
28 *W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015)
(granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential
maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5
(N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented
8.6% of the maximum potential recovery from the class claims and estimated amount distributable
to class after accounting for attorneys’ fees and other deductions represented approximately 6.1%
of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL
3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed
settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—
even before any reduction thereof for attorney’s fees and costs.”).

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

4 Pursuant to the Settlement Agreement, \$135,000.00 from the Gross Settlement Amount shall be
5 allocated to the resolution of the PAGA claim, of which 75% (\$101,250.00) will be paid directly to the
6 LWDA, and the remaining 25% (\$33,750.00) will be paid to PAGA Members who worked during the
7 PAGA Period beginning January 31, 2022, until March 13, 2026. (Settlement Agreement ¶34).

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

23 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties
24 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an award
25 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code ¶ 2699(h). In reducing PAGA
26 penalties, courts have considered issues including whether the employees suffered actual injury from the
27 violations, whether the Defendant was aware of the violations, and the employer’s willingness to fix the
28 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);

1 *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
2 12, 2011).

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

10 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
11 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
12 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
13 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
14 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
15 trial court decision denying any civil penalties where violations had been proven, remanding for the trial
16 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
17 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
18 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
19 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-
20 00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
21 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

22 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
23 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved
24 by California courts.⁵ Where PAGA penalties are negotiated in good faith and “there is no indication that

25 _____
26 ⁵ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D.
27 Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA
28 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.*

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

6 **C. The Court Should Preliminarily Approve the Enhancement Award**

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

17 Approximately 5,319 current and former employees will share a \$2,700,000.00 settlement fund
18 due entirely to the effort and commitment of Plaintiffs. Subject to Court approval, therefore, the Settlement
19 provides for Enhancement Award of \$15,000.00 to each Class Representative. The Enhancement Award
20 is fair and reasonable compensation for Plaintiffs’ effort in pursuing the action, assisting counsel with the
21

22 *Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013;
23 Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%)
24 was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No.
25 BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of
26 approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA
27 penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18,
28 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 litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for
2 prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide
3 adequate relief for the Class Members. (Hawkins Decl. ¶ 28; *see also generally*, Iuliano Decl.)

4 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees and**
5 **Costs**

6 The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the
7 risk of non-payment and invested in a case that achieved a substantial positive result for the class.

8 California courts routinely award attorneys' fees equalling one-third or more of the potential value of the
9 common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016) (affirming a fee award representing
10 one-third of the common fund); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical
11 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
12 class actions average around one-third of the recovery."). At final approval, Plaintiffs will seek Court-
13 approval of attorneys' fees of \$945,000.00 (35% of the Gross Settlement Amount) and litigation costs and
14 expenses not to exceed \$45,000.00.

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

16 1. The California Standard for Class Certification

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

25 Conditional certification of the proposed Class Members is particularly warranted here given the
26 relatively relaxed standard for certification at the preliminary approval stage. *See Dunk v. Ford Motor Co.*,
27 48 Cal. App. 4th 1794 (1996) (courts can apply a "lesser standard of scrutiny" for class certification in
28

1 settlement cases).⁶ In *Dunk*, the California Court of Appeal specifically rejected the argument that the
2 standard for certifying a class for purposes of settlement is identical to the standard for certifying the same
3 class for purposes of litigation:

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

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

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

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

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

28 The “ultimate question” the element of predominance presents is whether “the issues
which may be jointly tried, when compared with those requiring separate

23 ⁶ See also Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal
24 class certification as a prerequisite for preliminary approval and undertak[e] a more cursory class
25 certification analysis at the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV-
26 01408-KJM-AC, 2016 WL 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme
27 Court’s cautions in *Amchem* . . . , a cursory approach appears the norm.”); *In re Amtrak Train*
28 *Derailment in Philadelphia, Pennsylvania*, No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa.
Apr. 6, 2016) (“[A] Class Members 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 adjudication, are so numerous or substantial that the maintenance of a class action
2 would be advantageous to the judicial process and to the litigants.”

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

4 The proposed Class Members consists of the individual Class Members who did not
5 opt-out of the Settlement by submitting a valid request for exclusion. The Class means all persons
6 who have been employed by Defendant as Non-Exempt Employees or equivalent positions however titled
7 in the state of California during the Class Period who did not sign an arbitration agreement with Defendant.
8 Defendant represent there are approximately 5,319 Class Members who worked during the Class Period.
9 Because all Class Members are either current or former employees of Defendant, subject to the same
10 policies and practices, the class is readily ascertainable from Defendant’s regular business records.
(Hawkins Decl. ¶¶ 6-37).

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

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

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

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

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

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

17 The Parties have jointly drafted the Notice of Class Action and PAGA settlement ("Class Notice")
18 which fairly and neutrally informs Class Members of their rights and remedies in this action. (Settlement
19 Agreement, Exhibit A; Hawkins Decl. ¶¶ 2-34).

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

24 **V. CONCLUSION**

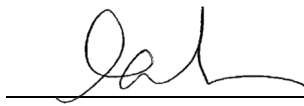
25 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately

26
27 ⁷ Due process does not require that each Class Member actually receive a notice, but rather
28 a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal*
Practice and Procedure § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class
Members will be bound by the judgment even if they never actually receive the notice. *Fontana v.*
Elrod, 826 F.2d 729, 732 (7th Cir. 1987).

1 presented the materials and information necessary for preliminary approval, the Parties request that the
2 Court preliminarily approve the settlement.

3
4 Dated: July 23, 2026

JAMES HAWKINS APLC

5
6 By: 

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

7
8
9
10 Attorneys for Plaintiff LUTOVIO J.
11 IULIANO, individually and on behalf of all
12 others similarly situated.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28