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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

FATIMA ALMAZAN on behalf of
decedent ANALI ALMAZAN,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

BOTANX, LLC, and DOES 1 to 50,
inclusive,

Defendants.

Case No.: 30-2020-01122459-CU-OE-
CXC

*[Assigned for all purposes to the
Honorable Lon F. Hurwitz]*

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Date: February 17, 2023

Time: 1:30 p.m.

Dept.: C20

RESERVATION #: 1000354628

*[Filed concurrently with Declaration of
Adrian R. Bacon; Declaration of Fatima
Almazan;; and [Proposed] Order]*

Complaint filed: January 8, 2020

FAC filed: March 24, 2021

Trial Date: None set.

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 17, 2023 at 1:30 p.m., in Department C20
3 of the above-captioned Court, located at 700 Civic Center Drive, Santa Ana, CA 92701,
4 Plaintiff Fatima Almazan on behalf of decedent Anali Almazan (“Plaintiff”) will and hereby
5 does move for an order: (1) granting class certification of the below-defined Class for
6 settlement purposes only pursuant to Code of Civil Procedure § 382; (2) preliminarily
7 approving the Stipulation and Class Action Settlement Agreement (the “Settlement”) between
8 Plaintiff and Defendant BOTANX, LLC (“Defendant”); (3) appointing Adrian R. Bacon,
9 Todd M. Friedman, and Thomas Wheeler of the Law Offices of Todd M. Friedman; (4)
10 appointing Plaintiff as the Class Representative; (5) approving the use of the proposed notice
11 procedure and related forms; (6) directing that the Class Notice be mailed to the Class; and
12 (7) scheduling a hearing date for a final approval hearing.

13 This is a stipulated settlement of a class and representative action on behalf of a class
14 defined as all individuals who were employed by Defendant as a non-exempt employee in
15 California from January 8, 2016 through September 21, 2022 (“the Class Period”).
16 (Settlement Stipulation, Secs. G & I).

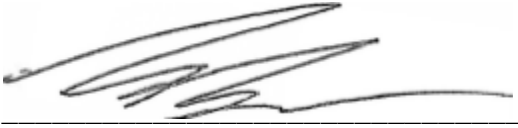
17 This Motion is made on the following grounds: 1) all requirements for class
18 certification, for settlement purposes only, are met pursuant to Code of Civil Procedure § 382;
19 2) Plaintiff and his counsel are adequate to represent the Class; 3) the Settlement is a fair,
20 adequate, and reasonable compromise of the disputed wage and hour claims in this case; and
21 4) the proposed notice procedure meets all due process requirements. The Settlement is made
22 by Plaintiff, individually and on behalf of the Class Members, including all Aggrieved
23 Employees, and Defendant. In view of the foregoing, the Settlement should be preliminarily
24 approved, notice should be disseminated to Class Members, a Final Fairness Hearing should
25 be scheduled, and the [Proposed] Order Granting Preliminary Approval of Class Action
26 Settlement should be entered.

27 This Motion is based on this Notice of Motion and Motion, the attached Memorandum
28 of Points and Authorities, the Declaration of Adrian Bacon in support thereof, including all

1 exhibits thereto, the Declaration of Fatima Almazan, all papers and pleadings on file with the
2 Court in this action, all matters judicially noticeable, and such oral and documentary evidence
3 as may be presented in connection with the hearing on the Motion.

4
5 Dated: November 16, 2022

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

6
7 By: 

Adrian R. Bacon

Attorneys for Plaintiff

Fatima Almazan on behalf of decedent Anali Almazan

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Fatima Almazan on behalf of decedent Anali Almazan
4 (“Plaintiff”) respectfully requests the Court 1) conditionally certify the putative Class, for
5 settlement purposes only, pursuant to Code of Civil Procedure § 382, 2) preliminarily approve
6 the Class Action Settlement Agreement (the “Settlement”), 3) direct that notice be
7 disseminated to the Class, and 4) schedule a Final Fairness Hearing. The Settlement provides
8 for a non-reversionary fund of Two Hundred Fifty Thousand Dollars (\$250,000) in
9 compromise of the disputed wage and hour claims asserted in this case. The Net Settlement
10 Amount, *infra*, will be automatically distributed to Class Members.

11 Plaintiff’s complaint alleges, on behalf of himself and all Class Members and
12 Aggrieved Employees, assert that Defendant Botanx, LLC (“Defendant”) is liable for unpaid
13 wages, in addition to statutory and civil penalties, as a result of Defendant’s practice of
14 requiring off-the-clock work and not providing compliant meal and rest breaks and the
15 resulting failure to provide such employees with minimum and overtime wages, meal and rest
16 periods or premium wages in lieu thereof, all wages earned and owed at termination, and
17 accurate written wage statements. (Declaration of Adrian R Bacon (“Bacon Decl.”) ¶¶ 8-11).
18 There are approximately 159 putative Class Members, based on information provided by
19 Defendant. (*Id.* ¶ 34).

20 This Motion should be granted for the following reasons: 1) all requirements are met
21 for class certification, for settlement purposes only, pursuant to Code of Civil Procedure §
22 382; 2) the Settlement meets all indicia for fairness, reasonableness, and adequacy; 3)
23 Plaintiff is adequate to serve as Class Representatives; 4) Plaintiff’s counsel is adequate to
24 serve as Class Counsel; and 5) the proposed notice procedures and all related forms comport
25 with due process requirements and adequately apprise Class Members of their rights.
26 Furthermore, a Final Fairness Hearing should be scheduled to allow putative Class Members
27 an opportunity to be heard regarding the Settlement. Accordingly, as discussed in detail
28 below, this Court should grant this Motion in its entirety.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a research, science and technology-based manufacturing company that formulates, develops, manufactures and packages personal care products. (Bacon Decl. ¶ 7). Anali Almazan was employed by Defendant at its Anaheim, California, location as an hourly-paid non-exempt employee from at least January 2016 through February 5, 2019. (*Id.* ¶ 8). The putative Class consists of all individuals who were employed by Defendant as a non-exempt employee in California from January 8, 2016 through September 21, 2022 (“the Class Period”). (*Id.* ¶¶ 18-19)

On January 8, 2020, Plaintiff filed a complaint in the Orange County Superior Court on behalf of himself and a class of similarly situated non-exempt employed by Defendant in California since January 8, 2016 for, *inter alia*, Defendant’s alleged failure to pay at least minimum wages for all hours worked, failure to pay premium wages for missed, late, and/or interrupted meal and rest periods, failure to pay premium wages for all overtime hours worked, failure to provide accurate itemized wage statements, and failure to pay all wages due upon termination. Plaintiff also alleged a cause of action under the Unfair Competition Law (“UCL”), Bus. & Prof. Code § 17200, *et seq.*, arising from the alleged Labor Code violations. *Id.* ¶ 9. On February 14, 2020, Defendant filed an Answer. *Id.* ¶ 10. On March 24, 2021, Plaintiff filed his FAC to add a cause of action under PAGA, Labor Code § 2698, *et seq.*, on behalf of all aggrieved employees employed during the PAGA Period. *Id.* ¶ 11.

Thereafter, the Parties agreed to private mediation with the Honorable Gail Andler (ret.) who is a retired judge experienced in wage and hour class actions. In advance of mediation, Defendant with relevant information regarding the Class Members and the Aggrieved Employees, including a twenty percent (20%) sample of the Class Members and Aggrieved Employees’ timekeeping and payroll records, and documents pertaining to Defendant’s uniform policies and procedures. Defendant also provided detailed financial records substantiating their position that the company was impacted significantly and negatively by COVID. *Id.* ¶ 12.

On May 6, 2021, after extensive investigation and substantial discovery by Plaintiff’s

1 counsel, the Parties participated in mediation with Gail Ander (Ret) of JAMS., an
2 experienced and respected mediator. After a full day of negotiation and exchanges of
3 information, the Parties were unable to settle the matter and were also unable to do so after
4 a second half day mediation on August 10, 2021. However, after further extensive
5 negotiations, the parties were finally able to resolve the matter on January 25, 2022. *Id.* ¶
6 13.

7 Plaintiff and Class Counsel concluded, after taking into account the sharply disputed
8 factual and legal issues involved in this Action, the risks attendant to further prosecution,
9 the discovery conducted to date, the significant financial hurdles the Class Members faced
10 with respect to obtaining a judgment from Defendant due to limited funds, and the
11 substantial benefits to be received pursuant to the proposed terms, that settlement as set
12 forth herein was in the best interests of the Class Members. *Id.* ¶ 14.

13 Throughout the discussions, Plaintiff performed an assessment of Defendant’s exposure and
14 potential liability, to which Defendant responded, and based on those negotiations, the Parties
15 reached an agreement in principle for the class-wide resolution of Plaintiff’s claims. The
16 Settlement has been finalized and fully executed by the parties. *Id.* ¶ 15. Plaintiff now moves for
17 preliminary approval of this Class Action Settlement.

18 **III. SETTLEMENT OVERVIEW**

19 The Settlement provides for a non-reversionary Settlement Fund for the benefit of all
20 Class Members and Aggrieved Employees. (Bacon Decl. ¶ 16, Ex. A Sec. III). The Settlement
21 Fund is defined as the Gross Settlement Amount of Two Hundred Fifty Thousand Dollars
22 (\$250,000). (*Id.* ¶ 17). “Class Members” means “all individuals who were employed by
23 Defendant as a non-exempt employee in California during the Class Period.” (*Id.* ¶ 18.). The
24 Class Period is January 8, 2016 through September 21, 2022. (Settlement, Sec. I(I)). The
25 PAGA Period is January 8, 2019 through April 5, 2021. (Settlement, Sec. I(T)). “Aggrieved
26 Employees” means “employed during the PAGA Period” who are “eligible to participate in a
27 settlement of the claims brought in the Action pursuant to [PAGA].” (Settlement, Sec. I(B)).
28 “Participating Class Members” includes all Class Members and Aggrieved Employees who

1 do not timely exclude themselves from the Settlement. (*Id.* ¶ 21).

2 Each Participating Class Member is entitled to an Individual Settlement Share of the
3 Net Settlement Amount, which is defined as the Gross Settlement Amount, less 1) the Service
4 Award of \$10,000 to Plaintiff for his service to the Class as Class Representative, 2)
5 Attorneys' Fees in the amount of Eighty Three Thousand Three Hundred Thirty Three Dollars
6 and thirty three cents (\$83,333.33), or one-third (1/3) of the Settlement Fund, plus Class
7 Counsel's expenses of up to \$10,000, 3) Claims Administration Expenses, including the
8 postage and printing costs for the Class Notices and the postage costs for mailing the
9 payments not expected to exceed \$10,000, and 4) the PAGA Allocation of Ten Thousand
10 Dollars (\$10,000), 75% of which shall go to the Labor and Workforce Administration
11 ("LWDA") and 25% of which shall go to Aggrieved Employees. (*Id.* ¶ 22).

12 The Net Settlement Amount will be paid as individual shares to Participating Class
13 Members. (*Id.* ¶ 23). The Individual Settlement Shares will be allocated with thirty-three and
14 one third percent (33.33%) of each Individual Settlement Share shall represent wages; thirty-
15 three and one third percent (33.33%) shall represent interest; and thirty-three point thirty-four
16 percent (33.34%) shall represent penalties. (*Id.* ¶ 24). The portion of each Individual
17 Settlement Share representing wages will be subject to normal employment tax withholdings
18 relative to the Participating Class Member's employment (e.g., withholdings for State and
19 Federal income tax, employee FICA tax, California SDI, etc.) with the Claims Administrator
20 remitting all such employment tax withholdings directly to the pertinent state and federal
21 taxing authorities (*Id.* ¶ 25).

22 The Settlement releases from liability Defendant and its past and present parent
23 companies, subsidiaries and affiliates, and their respective present and former officers,
24 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys,
25 accountants, auditors, advisors, registered representatives, consultants, pension and welfare
26 benefit plans, plan fiduciaries, administrators, trustees, partners, predecessors, successors,
27 assigns, and any other persons acting by, through, under, or in concert with any of them
28 ("Released Parties"). (*Id.* ¶ 26). Every Class Member who does not request exclusion from,

1 or “opt-out” of, the Class, including Plaintiff, will release all claims, demands, rights,
2 liabilities, and/or causes of action of any nature and description whatsoever, known or
3 unknown, in law or in equity, whether or not concealed or hidden, that were asserted or could
4 have been asserted at any time in the Action based on the facts, theories, and/or claims alleged
5 in the Action; it includes and covers claims for violations of any state or federal statutes, rules
6 or regulations, claims that were asserted or could have been asserted at any time in the Action
7 based on the subject matter alleged in the Action by any Class Member and/or Aggrieved
8 Employee that, during the Class Period and or PAGA Period, Defendant at any time that: 1)
9 failed to pay wages, including minimum wages; 2) failed to pay overtime and/or double-time
10 wages; 3) failed to provide timely, full, and uninterrupted rest breaks or a penalty payment in
11 lieu thereof; 4) failed to provide timely, full, and uninterrupted meal periods or a penalty
12 payment in lieu thereof; 5) failed to provide accurate itemized wage statements; 6) failed
13 timely to pay wages or pay all wages due upon termination of employment; 7) failed to
14 provide restitution for unpaid sums; 8) failed to maintain accurate records; 9) violated the
15 Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.*; and 10) owed penalties pursuant
16 to PAGA, Labor Code § 2698, *et seq.*, including under Labor Code § 558. This Settlement is
17 conditioned upon the release by all Participating Class Members of any claim under Labor
18 Code § 2698, *et seq.* and upon covenants by all members that they will not participate in any
19 proceeding seeking penalties under Labor Code § 2698, *et seq.* (collectively, the “Released
20 Claims”). Except as set forth above, Released Claims does not include any other claims,
21 including claims for vested benefits, wrongful termination, violation of the Fair Employment
22 and Housing Act, unemployment insurance, disability, social security, workers’
23 compensation, or claims based on facts occurring outside the Class Period. The period of the
24 Released Claims shall cover the Class Period. (*Id.* ¶ 27).

25 Within twenty (20) days of the entry of the Preliminary Approval Order, Defendant
26 will provide the Claims Administrator with a list of all Class Members, including the name
27 and social security number, most current mailing address, and dates of employment during
28 the Class Period (“Class List”). (*Id.* ¶ 28). Within ten (10) days of receipt from Defendant of

1 the Class List, the Claims Administrator will mail the Notice of Class Settlement and the Opt-
2 Out form by First-Class US Mail, postage prepaid, in addition to a Statement of Weeks
3 Worked to the last known address of each Class Member, or, in the case of Class Members
4 known to be deceased, to the legal representative of the estate. (*Id.* ¶ 29). Class Members will
5 have forty-five (45) days after the date of mailing to submit disputes, requests for exclusion,
6 and/or objections. (*Id.* ¶ 30).

7 Within ten (10) days after the Effective Date and Final Approval, whichever is later,
8 the Claims Administrator will make all required disbursements from the Settlement Fund. (*Id.*
9 ¶ 31). No funds will revert to Defendant, and any payments made to Participating Class
10 Members that remain uncashed ninety (90) days after mailing shall be transmitted by the
11 Class Administrator to the California Controller's Unclaimed Property Fund in the name of
12 the Class Member thereby leaving no "unpaid residue" subject to the requirements of
13 California Code of Civil Procedure Section 384, subd. (b). (*Id.* ¶ 31).

14 **IV. ARGUMENT**

15 **A. All Requirements For Class Certification Are Met**

16 The Code of Civil Procedure provides that a class may be certified if the following
17 requirements are met: 1) the Class is ascertainable and its members are too numerous for
18 joinder to be practical; 2) all Class Members share a community of interest, and questions of
19 law and fact common to the Class predominate over questions unique to individual members;
20 3) the Representative's claims are typical of Class Members' claims; and 4) the
21 Representative will fairly and adequately represent Class interests. Code Civ. Proc. § 382;
22 *see also Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000), *as modified* (Aug. 9, 2000)
23 (citing *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981)). With respect to
24 certification of a class for purposes of settlement, "it is also well established that trial courts
25 should use different standards to determine the propriety of a settlement class, as opposed to
26 a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement
27 cases." *Glob. Mins. & Metals Corp. v. Superior Ct.*, 113 Cal. App. 4th 836, 859 (2003) (citing
28 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1807, fn.19 (1996)). Ultimately, certification

requirements are intended “to protect the interests of the non-representative class members,” but that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807, fn.19. While certification of a settlement class does not require an inquiry into the merits of the claims at issue, the court must consider how the relief sought compares to the recovery if the plaintiffs prevail at trial. *See, e.g., Id.* at 1802, 1803, fn. 8 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)).

1) The Class is ascertainable and numerous

A class is ascertainable when “[objective characteristics and common transactional facts] make the ultimate identification of class members possible when that identification becomes necessary.” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019) (quoting *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal. App. 4th 908, 915 (2001), *as modified on denial of reh’g* (July 3, 2001)). In addition, “there is no set number required as a matter of law for the maintenance of a class action.” *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (Ct. App. 1972) (citing *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (approving a class of 10)).

The Class in the instant matter refers to all individuals who were employed by Defendant as a non-exempt employee in California from January 8, 2016 through September 21, 2022. (Bacon Decl. ¶¶ 18-20). The Class is thus objectively ascertainable because its members may be identified by reference to Defendant’s records, which Defendant has agreed to share directly with the Settlement Administrator and provided a summary of to Plaintiff as part of the settlement process. (*Id.* ¶ 34). The Class is also sufficiently numerous because it would be impractical and economically burdensome and inefficient to require approximately 159 Class Members, (*Id.* ¶ 35), either to maintain individual actions or be joined as named plaintiffs in this action. *See Noel*, 7 Cal. 5th at 968.

2) Common questions predominate

A question of law or fact is common to the class if it may be resolved through common proof. *See, e.g., Kizer v. Tristar Risk Mgmt.*, 13 Cal. App. 5th 830, 842 (2017), *as modified* (July 26, 2017) (citing *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1033 (2012)). Predominance “hinges on ‘whether the theory of recovery advanced by the proponents of

1 certification is, as an analytical matter, likely to prove amenable to class treatment.” *Wilson*
2 *v. La Jolla Grp.*, 61 Cal. App. 5th 897, 276 Cal. Rptr. 3d 118, 125 (2021) (quoting *Duran v.*
3 *U.S. Bank Nat’l Assn.*, 59 Cal. 4th 1, 28 (2014)). Moreover, predominance “is a comparative
4 concept, and ‘the necessity for class members to individually establish eligibility and damages
5 does not mean individual fact questions predominate.’” *Sav-On Drug Stores, Inc. v. Superior*
6 *Court*, 34 Cal.4th 319, 334 (2004) (“*Sav-On*”) (quoting *Reyes v. San Diego County Bd. of*
7 *Supervisors*, 196 Cal.App.3d 1263, 1278 (1979)); *see also Benton v. Telecom Network*
8 *Specialists, Inc.*, 220 Cal. App. 4th 701, 726 (2013) (“[T]he employer’s liability arises by
9 adopting a uniform policy that violates the wage and hour laws. Whether or not the employee
10 was able to take the required break goes to damages.”) (quoting *Faulkinbury v. Boyd &*
11 *Assocs., Inc.*, 216 Cal. App. 4th 220, 235 (2013), *disapproved of on other grounds by Noel,*
12 *supra*, 7 Cal. 5th 955)). Accordingly, “[i]ndividual issues do not render class certification
13 inappropriate so long as such issues may effectively be managed.” *Sav-On*, 34 Cal.4th at 334.

14 During their investigation, Plaintiff’s counsel determined that Defendant’s policies
15 and practices are either identical or sufficiently similar to raise the same questions of liability
16 as to all Class Members. (Bacon Decl. ¶¶ 12, 36.) The following questions are common to all
17 Class Members in this matter: 1) whether Defendant’s uniform policies and timekeeping
18 practices resulted in the failure to capture all hours worked by Plaintiff and Class Members
19 pursuant to Labor Code section 1174; 2) whether Defendant unlawfully and/or willfully failed
20 to pay Plaintiff and Class Members for all hours worked, in violation of the applicable
21 Industrial Welfare Commission (“IWC”) Order and Labor Code sections 200, 226, 1197, 1194
22 and 1198; (3) whether Defendant had a uniform policy and/or practice of denying Plaintiff
23 and Class Members meal and rest periods as mandated by California law; (3) whether
24 Defendant had a uniform policy and/or practice of failing to compensate Plaintiff and Class
25 Members for missed or non-compliant meal periods; (4) whether Defendant’s pattern and
26 practice of failing to pay Plaintiff and Class Members all compensation owed, is an unlawful,
27 unfair, or fraudulent business act or practice in violation of the UCL, Bus. & Prof. Code §
28 17200; (5) whether Defendant failed to provide Plaintiff and Class Members with accurate,

1 itemized wage statements, in violation of Labor Code section 226, the applicable IWC
2 Order(s), and/or other applicable state regulations; (6) whether Defendant unlawfully and/or
3 willfully failed to pay promptly all compensation owed to Class Members on termination of
4 their employment with Defendant, in violation of Labor Code sections 201-203; and (7)
5 whether Plaintiff and Class Members sustained damages, and, if so, the proper measure of
6 such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief. (*Id.* ¶
7 36)

8 Questions common to the Class predominate. Because Class Members would have to
9 prove the same issues of law and fact to prevail on identical claims, and because their potential
10 legal remedies are identical, it would be preferable to resolve all Class claims by means of
11 the Settlement rather than requiring each Class Member to litigate the same claims
12 individually. Accordingly, a class-wide settlement is superior to any other method of
13 resolution. (*Id.* ¶ 38).

14 3) Plaintiff's claims are typical of the Class

15 Typicality requires a showing that "the claims or defenses of the representative
16 plaintiffs are typical of class claims or defenses." *Linder*, 23 Cal. 4th at 443 (citation omitted).
17 However, the inquiry turns on the nature of the class representative's claim or defense, not
18 "the specific facts from which it arose or the relief sought." *Seastrom v. Neways, Inc.*, 149
19 Cal. App. 4th 1496, 1502 (2007) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508
20 (9th Cir. 1992)). Typicality is "to assure that the interest of the named representative aligns
21 with the interests of the class." *Id.* Accordingly, "[t]he test of typicality is whether other
22 members have the same or similar injury, whether the action is based on conduct which is not
23 unique to the named plaintiffs, and whether other class members have been injured by the
24 same course of conduct." *Id.* (internal quotations and citations omitted). Notably, "[i]t has
25 long been established that class certification under section 382 does not require simultaneous
26 or identical injuries." *Hopkins v. De Beers Centenary AG*, No. CGC-04-432954, 2005 WL
27 1020868, at *6 (Cal. Super. Ct. Apr. 15, 2005) (citing *Classen v. Weller*, 145 Cal.App.3d 27,
28 46 (1983)).

1 Plaintiff's claims are typical of the Class. Like absent Class Members, Plaintiff worked
2 as a non-exempt employee of Defendant as a non-exempt employee in California during the
3 Class Period and was subject to the same general policies and practices with respect to
4 timekeeping, payroll, wage statements, and breaks. (Bacon Decl. ¶¶ 7, 37). In addition,
5 Defendant would also likely assert the same defenses to Class Members' individual claims as
6 to Plaintiff's, including that Defendants paid each employee for all hours worked, that each
7 was provided with compliant meal and rest periods, and that any pay stub
8 violations/incomplete final wage payments, if they occurred at all, resulted from good faith
9 mistakes. (*Id.* ¶ 39). Plaintiff's claims are thus typical.

10 4) Plaintiff will adequately represent the Class

11 Plaintiff is adequate to represent the Class. Plaintiff's interests are co-extensive with
12 Class Members' in this litigation. All Class Members, including Plaintiff, worked for
13 Defendant during the relevant time period and suffered the same alleged injuries from the
14 same alleged course of conduct. Fatima Almazan may act as a representative for her deceased
15 father Anali Almazan for the reasons discussed in Plaintiff's *ex parte* for such substitution as
16 granted by the Court. There is no evidence of, and Defendant does not assert, any conflict of
17 interest between Plaintiff and the Class. (Bacon Decl. ¶ 40); (Declaration of Fatima Almazan
18 ("Almazan Decl.") at ¶¶ 3-6). In addition, Plaintiff is represented by counsel experienced in
19 complex litigation, including wage and hour class actions. (Bacon Decl. ¶¶ 42-49).

20 **B. The Settlement Is Fair, Adequate, And Reasonable**

21 California courts favor settlement. *See Neary v. Regents of Univ. of California*, 3 Cal.
22 4th 273, 277 (1992) ("This court recognized a century ago that settlement agreements are
23 highly favored as productive of peace and good will in the community, as well as reducing
24 the expense and persistency of litigation.") (internal quotations and citation omitted). Unlike
25 individual settlements, class action settlements require a specific approval process to prevent
26 fraud, collusion, and/or unfairness to absent class members. *See, e.g., Dunk*, 48 Cal. App. 4th
27 at 1800 ("[I]n order to prevent fraud, collusion or unfairness to the class, the settlement or
28 dismissal of a class action requires court approval....") (citation omitted). This process

1 consists of preliminary settlement approval, notice to class members, and a final fairness and
2 approval hearing at which class members may be heard. *See, e.g., Palacios v. Penny Newman*
3 *Grain, Inc.*, No. 1:14-CV-01804-KJM, 2015 WL 4078135, at *2-3 (E.D. Cal. July 6, 2015).
4 For the reasons discussed below, this Court should preliminarily approve the Settlement,
5 allow the Parties to give notice to the Class, and schedule a Final Fairness Hearing.

6 1) The significant risks of further litigation favor settlement

7 In deciding whether to approve a proposed settlement, “the trial court has broad
8 powers to determine whether a proposed settlement in a class action is fair.” *Mallick v.*
9 *Superior Ct.*, 89 Cal. App. 3d 434, 438 (Ct. App. 1979). The court’s overriding concern is to
10 ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, 48 Cal.App.4th
11 at 1801 (internal quotations omitted). Factors relevant to fairness include “the complexity and
12 likely duration of further litigation, the risk of maintaining class action status through trial,
13 the amount offered in settlement, the extent of discovery completed and the state of the
14 proceedings, the experience and views of counsel, the presence of a governmental participant,
15 and the reaction of the class members to the proposed settlement.” *Id.* at 1801. Such factors
16 require balancing, and trial courts should tailor them to the facts of each case, giving due
17 regard to “what is otherwise a private consensual agreement between the parties.” *Id.* A
18 settlement is presumptively fair where it is reached through arms’ length bargaining based on
19 discovery and investigation sufficient to allow counsel and the court to act intelligently,
20 counsel is experienced in similar litigation, and the percentage of objectors is small. *Id.* at
21 1802.

22 Furthermore, “[i]n the context of a settlement agreement, the test is not the maximum
23 amount plaintiffs might have obtained at trial on the complaint, but rather whether the
24 settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*,
25 91 Cal. App. 4th 224, 250 (2001), *disapproved of on other grounds by Hernandez v.*
26 *Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018) (citation omitted). Settlements result from
27 comprise, and “the public interest may indeed be served by a voluntary settlement in which
28 each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Line Stewards*,

1 *etc.*, *Local 550 v. Am. Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)). Nevertheless, the
2 parties must provide the court with “a meaningful and substantiated explanation of the manner
3 in which the factual and legal issues have been evaluated.” *Kullar v. Foot Locker Retail Inc.*,
4 168 Cal.App.4th 116, 118 (2008). Courts thus review the information obtained by the parties
5 during their negotiations to assess whether the claims were sufficiently developed before
6 agreeing to the settlement. *Id.* at 129-131. “Sufficient” in this context means enough
7 information to provide the court “an understanding of the amount that is in controversy and
8 the realistic range of outcomes of the litigation.” *Clark v. Am. Residential Servs. LLC*, 175
9 Cal.App.4th 785, 801 (2009). Accordingly, settlements can be reasonable even where they
10 provide substantially narrower relief than could potentially be awarded, if the class were
11 certified and if the plaintiff were to prevail at trial.

12 Here, the Settlement is a fair, adequate, and reasonable compromise of the claims at
13 issue, considering not only Defendant’s maximum conceivable liability, but also the
14 significant risks Plaintiff and the Class face with respect to certification and prevailing on the
15 merits; Plaintiff dutifully assessed Defendant’s potential exposure in the forms of liquidated
16 damages, interest, and penalties and identified valid and pertinent questions regarding
17 Plaintiff’s ability to show consistent, actionable violations on a class-wide basis. (Bacon Decl.
18 ¶¶ 50-73). The risks inherent in obtaining certification of the proposed class and prevailing
19 on the merits at trial, including with the reality that Defendant would likely not financially
20 be able to satisfy a classwide judgment at the conclusion of such trial, are significant.

21 First, the risk of certification of the proposed class being denied favors settlement. “In
22 considering whether a class action is a superior device for resolving a controversy, the
23 manageability of individual issues is just as important as the existence of common questions
24 uniting the proposed class.” *Salazar v. See's Candy Shops, Inc.*, No. B300778, 2021 WL
25 1852009, at *3 (Cal. Ct. App. Apr. 26, 2021) (quoting *Duran*, 59 Cal.4th at 28-29); *see also*
26 *Brinker*, 53 Cal. 4th at 1024 (same) (citations omitted). In this case, under *Duran* and *Brinker*,
27 Plaintiff’s claims for unpaid time based on off-the-clock work may present questions of
28 manageability with respect to common proof. In settlement discussions, the parties relied on

1 a sample of information regarding the Class Members to assess the extent of Defendant's
2 exposure and calculate the amount of damages. While Plaintiff contends that they are only
3 relevant to damages, these individual questions of fact present manageability concerns even
4 where some common proof exists to show Defendant's failure to comply with California law.
5 Such considerations weigh heavily in support of the fairness of the Settlement because, absent
6 certification of the underlying claims, Defendant's potential exposure would be limited to
7 PAGA penalties for non-compliant wage statements and meal and rest break violations.

8 Second, the risks inherent in Plaintiff's ability to meet the burden of proof at trial also
9 favor settlement. For example, in addition to raising concerns regarding commonality with
10 respect to the alleged failure to pay all wages because not all hours were recorded, Defendant
11 could establish, *inter alia*, that any off-the-clock work was *de minimis*, as well as that
12 Defendant lacked even constructive knowledge of the unpaid time. Moreover, Defendant has
13 a compelling argument that its policies and procedures were complaint, such that Plaintiff
14 cannot meet his burden of showing that work was performed off the clock on a class-wide
15 basis, which presents a challenge both to merits and certification and a manageability concern
16 with respect to PAGA.

17 These risks weigh in favor of settlement, notwithstanding Defendant's exposure in
18 theory. Defendant is potentially liable, pursuant to Labor Code §§ 203 and 226(e), for the
19 alleged underpayment to Class Members and failure to pay meal and rest period premiums.
20 However, the claims are derivative of the underlying Labor Code violations and susceptible
21 to the same defenses. The risk is significant not only that Plaintiff cannot meet his burden of
22 proof at trial, but also that Defendant can establish a good faith defense to preclude the
23 imposition of penalties. Furthermore, whether penalties can be "stacked" for multiple,
24 predicate Labor Code violations in a single pay period is unclear and remains discretionary,
25 and there is a real risk that any award of penalties pursuant to PAGA could be drastically
26 reduced at the Court's discretion under Labor Code § 2699(e)(2). *See, e.g., Bright v. 99¢ Only*
27 *Stores*, 189 Cal. App. 4th 1472, 1480, fn. 8 (2010).

1 Each of these factors bore heavily on the parties' negotiations. (Bacon Decl. ¶¶ 50-
2 73). Pursuant to *Kullar, supra*, Plaintiff's counsel carefully balanced the risks against the
3 maximum potential recovery. (*Id.*) On balance, the Settlement reflects a fair, adequate, and
4 reasonable compromise for the claims at issue by any standard. (*Id.*) California's policy in
5 favor of settlement in class actions and other complex cases applies with particular force in
6 this case, which provides absent Class Members with certainty of recovery that is equitable
7 and timely. (*Id.*) Moreover, the expense of protracted litigation in these cases is formidable,
8 and settlement goes far to alleviate tensions in the employment relationship that result from
9 litigation. All parties are thus in a better position to participate in the state's economy. (*Id.*)
10 Accordingly, while they are far from exhaustive, the risks discussed herein show that the
11 Settlement is fair, adequate and reasonable.

12 2) The allocation of the Settlement Fund favors settlement

13 In *Kullar*, the Court of Appeal held that a trial court reviewing a class action settlement
14 must receive and independently consider information sufficient to assess the reasonableness
15 of the terms of the settlement. *Kullar*, 168 Cal. App. 4th at 130, 133. Accordingly, "while
16 there is usually an initial presumption of fairness when a proposed class action settlement
17 was negotiated at arm's length by counsel for the class," the party seeking approval must
18 provide at least "basic information about the nature and magnitude of the claims in question
19 and the basis for concluding that the consideration being paid for the release of those claims
20 represents a reasonable compromise." *Id.*; see also *Edwards v. Heartland Payment Sys., Inc.*,
21 29 Cal. App. 5th 725, 737 (2018) (same) (quoting *Kullar*, 168 Cal. App. 4th at 132-133). "The
22 most important factor is the strength of the case for plaintiffs on the merits, balanced against
23 the amount offered in settlement." *Kullar*, 168 Cal. App. 4th at 130 (quoting *City of Detroit*
24 *v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974)).

25 In the instant matter, the Net Settlement Amount will be paid in its entirety to
26 Participating Class Members as Individual Settlement Shares in amounts based on their
27 respective Workweeks because Class Members who worked longer for Defendant will
28 necessarily have suffered more violations, including by receiving more allegedly defective

1 wage statements. (Bacon Decl. ¶ 71). The Settlement thus allocates funds to Class Members
2 in a way and in amounts that are fair, adequate, and reasonable.

3 **C. The Proposed Attorneys' Fees Are Fair And Reasonable**

4 “Empirical studies show that, regardless whether the percentage method or the lodestar
5 method is used, fee awards in class actions average around one-third of the recovery.” *Chavez*
6 *v. Netflix, Inc.*, 162 Cal.App.4th 43, 47, fn. 11 (2008) (quoting *Shaw v. Toshiba America*
7 *Information Systems, Inc.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000)); *see also Laffitte v.*
8 *Robert Half Internat. Inc.*, 1 Cal. 5th 480, 503 (2016) (“[U]se of the percentage method to
9 calculate a fee in a common fund case, where the award serves to spread the attorney fee
10 among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion.”)
11 This is also consistent with Plaintiff’s counsel’s experience in these types of cases. (Bacon
12 Decl. ¶¶ 42-49, 54.) The instant matter has been in litigation since January 8, 2020, and
13 Plaintiff’s counsel intend to request attorneys’ fees of \$83,333.33 (one-third of the Settlement
14 Fund) and actual costs of up to \$10,000. (*Id.* ¶ 54; Settlement, Sec. I(C)). In view of the efforts
15 made and time spent by Plaintiff’s counsel, the risks they assumed in pursuing this case, and
16 the results they achieved (i.e., obtaining a favorable class-wide resolution in the face of a
17 highly uncertain, and ever-evolving, legal landscape as to core issues in this case, especially
18 with respect to PAGA and class manageability), these amounts are fair and reasonable.

19 **D. The Proposed Service Award Is Fair And Reasonable**

20 Courts routinely approve incentive or service awards, often in amounts much higher
21 than the award sought here, to compensate named the plaintiffs for their service on behalf of
22 absent class members, including by assuming the risks inherent in complex litigation. *See,*
23 *e.g., Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004), *as modified on denial of*
24 *reh'g* (Mar. 9, 2004) (upholding the award of “‘service payments’ to the five named plaintiffs
25 compensating them for their efforts in bringing the action.”); *Van Vranken v. Atl. Richfield*
26 *Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 incentive award);
27 *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 1003 (N.D. Cal. 2017) (“Incentive
28 awards are particularly appropriate in wage-and-hour actions where plaintiffs undertake a

1 significant ‘reputational risk’ by bringing suit against their former employers.”) (quoting
2 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (“Incentive
3 awards typically range from \$2,000 to \$10,000.”)).

4 Here, the Settlement provides that Plaintiff may seek Service Award of \$10,000.00.
5 (Settlement, Sec. I(BB)). This amount is entirely reasonable in this case given Plaintiff’s, in
6 combination with her decedent father Anali Almazan, efforts in this case since January 2020
7 and the risks they’ve undertaken on behalf of absent Class Members. Plaintiff advanced the
8 interests of the Class by, *inter alia*, speaking extensively with counsel to identify and develop
9 the claims at issue, participating in settlement discussions, and reviewing the Settlement and
10 related documents with her counsel. (Bacon Decl. ¶ 40). Plaintiff also assumed the risks of
11 being required to pay Defendant’s costs if this action had been unsuccessful and facing not
12 only intrusive discovery, but also disclosure to future employers that he sued a former
13 employer. (*Id.*) Moreover, Plaintiff agrees to a much broader release of claims than other
14 Class Members in order to benefit the Class as a whole. (*Id.*) Ms. Almazan has also rose to
15 the challenge of advancing the interests of the Class in place of her deceased father and
16 ensuring that Class Members could still obtain the meaningful recovery set forth in this
17 Settlement, which would be lost in her absence. Accordingly, the requested Service Award to
18 Plaintiff is appropriate and reasonable.

19 **E. The Proposed Notice Procedures Are Adequate**

20 “The notice given to the class must fairly apprise the class members of the terms of
21 the proposed compromise and of the options open to dissenting class members.” *Trotsky v.*
22 *Los Angeles Fed. Sav. & Loan Assn.*, 48 Cal. App. 3d 134, 151-152 (Ct. App. 1975),
23 *disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260
24 (2018) (citations omitted). Furthermore, notice is adequate where it has “a reasonable chance
25 of reaching a substantial percentage of the class members.” *Linder*, 23 Cal. 4th at 444, fn. 9
26 (quoting *Cartt v. Superior Court*, 50 Cal.App.3d 960, 974 (1975)). “The Supreme Court has
27 consistently endorsed notice by first-class mail.” *Fager v. CenturyLink Commc'ns, LLC*, 854
28 F.3d 1167, 1173 (10th Cir. 2016) (citations omitted).

1 Here, the process for notice under the Settlement ensures that as many Class Members
2 as practicable receive actual notice of the Settlement and have sufficient time to respond. *See*
3 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (“a fully descriptive notice ... sent
4 first-class mail to each class member, with an explanation of the right to ‘opt out,’ satisfies
5 due process.”). The proposed notice plan requires the Claims Administrator to send notice by
6 First-Class US Mail and attempt to obtain valid addresses for those notices returned
7 “undeliverable” in order to meet constitutional standards for due process. (Settlement, Sec.
8 B(1).) The Class Notice (Settlement, Sec. VI(A)) (Bacon Decl. Ex. B) provides absent Class
9 Members with the information they need to evaluate their options fully and exercise their
10 rights. Specifically, the Class Notice clearly and concisely explains the following: 1) the
11 nature of the case; 2) the definition of the Class; 3) the Gross and Net Amounts of the
12 Settlement Fund; 4) how Class Counsel will be paid; 5) the Service Award to Plaintiff; 6) the
13 calculation and distribution of Individual Settlement Shares; 7) Class Members’ right to
14 participate, opt-out, or object; and 8) the means by which to respond to the Class Notice.
15 Accordingly, the Settlement’s notice procedures are adequate.

16 V. CONCLUSION

17 For the foregoing reasons, the Settlement, negotiated at arms’ length on behalf of
18 absent Class Members, is fair, reasonable, and adequate. According, this Court should certify
19 the Class, for settlement purposes only, pursuant to Code of Civil Procedure § 382,
20 preliminarily approve the Settlement, direct that Class Notice be disseminated, schedule a
21 Final Fairness Hearing, and enter the [Proposed] Order.

22
23 Dated: November 16, 2022

Respectfully submitted,
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

24
25 By:



Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiff

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I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. My business address is the Law Offices of Todd M. Friedman, P.C., 21031 Venture Blvd., Ste. 340, Woodland Hills, CA 91364.

On November 16, 2022, I served the document(s) described as: **MOTION FOR PRELIMINARY APPROVAL; DECLARATION OF ADRIAN R. BACON; DECLARATION OF FATIMA ALMAZAN; AND [PROPOSED] ORDER** on the interested parties in this action by sending a true copy thereof to interested parties as follows:

[] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Woodland Hills, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Woodland Hills, California.

☒ **BY E-MAIL:** I hereby certify that this document was served from Orange, California, by e-mail delivery on the parties listed herein at their most recent known email address.

Krista DiMercurio
Magarian & DiMercurio, APLC
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[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 16, 2022, in Orange, California.


 Todd M. Friedman