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individually and on behalf of other former and current employees similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
COOK DIVISION**

E. SANCHEZ; J. TORRES; R. TRUJILLO;
S. REYES; S. NAVARRO; and M. RIO,
individually and acting in the interest of
other current and former employees,

Plaintiffs,

vs.

RAMCO ENTERPRISES, L.P., a California
Limited Partnership; SUNBERRY
GROWERS, LLC, a California Limited
Liability Company; CARLOS S. RAMIREZ,
an individual; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 20CV02231

(Assigned to the Hon. James F. Rigali)

**NOTICE OF UNOPPOSED MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 29, 2022
Time: 8:30 AM
Dept.: SM-2

Date filed: July 6, 2020
Trial date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on **November 29, 2022 at 8:30 AM** or as soon thereafter
as the matter can be heard in **Dept. SM-2** of the above-mentioned court Plaintiffs J. TORRES, R.
TRUJILLO, S. REYES, S. NAVARRO, and M. RIO (collectively "Plaintiffs") will move for an
order granting preliminary approval of a proposed settlement in the above-captioned class action.

In this motion, the Parties seek an order:

1. Granting preliminary approval of the proposed class action settlement of this

1 matter including the Joint Stipulation and Settlement Agreement of Class Action Claims
2 hereinafter referred to as “Settlement” (See Exhibit A to the concurrently filed declaration of
3 James H. Cordes, Esq.);

4 2. Provisionally approving certification of the proposed Settlement Class for
5 settlement purposes;

6 3. Provisionally approving Plaintiffs J. TORRES, R. TRUJILLO, S. REYES, S.
7 NAVARRO, and M. RIO as Class/PAGA Representatives;

8 4. Provisionally approving James H. Cordes of James H. Cordes and Associates and
9 Allen K. Hutkin of Hutkin Law Firm, APC as class counsel (“Class Counsel”);

10 5. Approving the appointment of Simpluris as the Settlement Administrator and
11 preliminarily approving costs of administration in an amount not to exceed \$10,000.00;

12 6. Approving the proposed Notice of Proposed Settlement (“Notice”);

13 7. Approving the method of Notice described in the Settlement Agreement, directing
14 distribution of the proposed Notice Form the members of the proposed class, and establishing the
15 procedures and deadlines for filing of objections and notices of opting out of the proposed class
16 action settlement;

17 8. Preliminarily approving service payments from the Settlement Fund to the
18 Plaintiffs in the following amounts:

19 J. TORRES	\$5,000.00
20 R. TRUJILLO	\$5,000.00
21 S. REYES	\$10,000.00
22 S. NAVARRO	\$10,000.00
23 M. RIO	\$5,000.00

24 9. Preliminarily approving payment of reasonable attorneys’ fees of \$148,000.00 and
25 reimbursement of actual costs and expenses not to exceed \$10,000.00 to proposed Class Counsel;

26 10. Preliminarily approving payment of \$15,000.00 of the \$20,000.00 allocated to
27 civil penalties under the Private Attorneys General Act, Labor Code §2699 *et seq.* (“PAGA”) to
28 the State of California Labor and Workforce Development Agency (“LWDA”);

11. Setting a hearing for the final approval of the fairness of the class action

1 settlement.

2 The motion will be based on this Notice of Motion, the Points and Authorities set forth
3 below including the Declarations of James H. Cordes, Esq. and Allen K. Hutkin, Esq., the Joint
4 Stipulation and Settlement Agreement of Class Action Claims filed herewith, the papers, records
5 and file in this action, and such oral and documentary evidence as may be presented at the
6 hearing of the motion.

7
8 DATED: October 28, 2022

James H. Cordes and Associates,

9 [ELECTRONICALLY SIGNED; CRC RULE 2.257]

10 /s/ *Angelica J. Caro*
By _____

11 Angelica J. Caro, Esq.

12 Attorney for Plaintiffs

13 E. Sanchez, J. Torres, R. Trujillo, S. Reyes,
14 S. Navarro, M. Rio, individually and on
15 behalf of other former and current
16 employees similarly situated
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I.

INTRODUCTION

Plaintiffs J. TORRES, R. TRUJILLO, S. REYES, S. NAVARRO, and M. RIO (collectively “Plaintiffs”) seek preliminary approval of a class action/PAGA settlement of their claims against Defendants RAMCO ENTERPRISES, L.P., SUNBERRY GROWERS, LLC and CARLOS S. RAMIREZ, (“Defendants”). Subject to this Court’s approval, Plaintiffs have agreed to settle their claims and the claims of proposed settlement Class Members for a non-reversionary, nonclaims-made settlement payment of Four Hundred Forty-Five Thousand Dollars (\$445,000.00), of which Twenty Thousand Dollars (\$20,000.00) are allocated to civil penalties under the Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”).

As discussed below, the proposed Settlement satisfies all of the criteria for preliminary approval and falls well within the range of final approval. The Settlement provides substantial relief for proposed Class Members, with an estimated average recovery of over \$600.00 per Class Member, which, after deduction of attorneys’ fees and expenses, comes to approximately \$315.00 per Class Member.

Accordingly, Plaintiff respectfully moves the Court to:

1. Grant preliminary approval of the proposed class action settlement of this matter including the Joint Stipulation and Settlement Agreement of Class Action Claims hereinafter referred to as “Settlement” (See Exhibit A to the concurrently filed declaration of James H. Cordes, Esq.);

2. Provisionally approve certification of the proposed Settlement Class for settlement purposes;

3. Provisionally approve Plaintiffs J. TORRES, R. TRUJILLO, S. REYES, S. NAVARRO, and M. RIO as Class/PAGA Representatives;

4. Provisionally approve James H. Cordes of James H. Cordes and Associates and Allen K. Hutkin of Hutkin Law Firm, APC as class counsel (“Class Counsel”);

5. Approve the appointment of Simpluris as the Settlement Administrator and preliminarily approving costs of administration in an amount not to exceed \$10,000.00 ;

6. Approve the proposed Notice of Proposed Settlement (“Notice”);

7. Approve the method of Notice described in the Settlement, directing distribution of the proposed Notice to the members of the proposed class, and establishing the procedures and deadlines for filing of objections and notices of opting out of the proposed class action settlement;

J. TORRES	\$5,000.00
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9. Preliminarily approve payment of reasonable attorneys' fees of \$148,000.00 and reimbursement of actual costs and expenses not to exceed \$10,000.00 to proposed Class Counsel;

II.

Plaintiffs are agricultural workers who allege that Defendants who conduct large-scale agricultural farming operations in and around Santa Barbara County systemically failed to pay them in compliance with the California Labor Code.

Defendants conduct large-scale agricultural farming operations in and around Santa Barbara County. Defendants predominantly grow fresh fruit, including strawberries.

1 farm labor in Defendants' farming business, including growing and harvesting fresh fruit, loading
2 and transporting the fruit to holding coolers, inspecting and packing the fruit, cleaning and
3 moving field toilets, picking up trash, and other work related to the foregoing.

4 Class Plaintiffs were paid an average of \$12.50 per hour during the relevant time period.

5 Class Plaintiffs were required to report to work between 5:00 a.m. and 7:00 a.m.,
6 depending on their assigned duties. Generally, they were required to remain on site until 5:00
7 p.m. or later. Class Plaintiffs were only paid for the time they actually worked even though they
8 were required to remain on site during their reporting hours or risk being fired.

9 Class Plaintiffs routinely were required to wait at their job locations for weather
10 conditions to improve to enable them to work. This included times when it rained or when frost
11 or ice covered the fields. The waiting times generally were about 1 to 1.5 hours, but could be as
12 much as 4 hours. Class Plaintiffs were not compensated for this waiting time.

13 Class Plaintiffs were required to do, and did, preliminary and post-liminary work without
14 being clocked in, including but not limited to being transported to the fields for work, checking
15 and parking equipment, and cleaning up. Class Plaintiffs were not compensated for this
16 preliminary and post-liminary work.

17 Some Class Plaintiffs were not paid for all time they recorded on their time cards. Other
18 Class Plaintiffs were not allowed to record their own time, which was handled by their
19 forepersons or supervisors, who did not let them review their time cards.

20 Class Plaintiffs consistently worked 6 days per week. Class Plaintiffs consistently worked
21 in excess of 10 hours per day, and up to 12-14 hours per day during peak season. However, they
22 were not paid any overtime compensation for hours worked in excess of 10 hours per day.

23 Class Plaintiffs rarely received uninterrupted 30-minute meal periods when they worked
24 over 5 hours and almost never received a second meal period no matter how long they worked.
25 Class Plaintiffs were never compensated for missed or interrupted meal periods.

26 Class Plaintiffs rarely received a net 10-minute rest break for each four-hour period they
27 worked. It was not uncommon for Class Plaintiffs to receive just one 15-minute rest period for a
28 day's work exceeding 10 hours. Class Plaintiffs' were never compensated for missed rest breaks.

Class Plaintiffs were required to purchase equipment to perform their job duties,

1 including boots, gloves, knives, pens, and notebooks. Class Plaintiffs were never indemnified or
2 reimbursed by Defendants for these equipment purchases.

3 Upon termination or quitting, Class Plaintiffs were not paid all of the wages, overtime
4 compensation, premiums for missed meal periods and rest breaks, or reimbursements owed to
5 them by Defendants.

6 **B. Defendants deny all material allegations.**

7 At all points during this litigation, Defendants disputed and continue to dispute the
8 Plaintiffs' allegations, expressly deny liability for the claims that the Plaintiffs have raised or
9 could have raised, and expressly deny that this case should be maintained as a class action.

10 **C. Procedural history.**

11 **1. The complaint.**

12 This Action was filed against Defendants on July 6, 2020. The complaint alleges the
13 following causes of action: (1) violation of Labor Code §§ 1194, 1194.2, 1197 and 1197.1
14 regarding failure to pay minimum wage; (2) violation of Labor Code §§ 558, 1194, 1198 and
15 Wage Order 14 regarding overtime wages; (3) violation of Labor Code §§ 201, 202, 203
16 regarding timely payment of final wages; (4) Failure to reimburse expenses Labor Code § 2802;
17 (5) violation of Labor Code §§ 226.7, 512 and Wage Order 14 regarding unpaid meal periods and
18 premiums; (6) violation of Labor Code §§ 226.7 and Wage Order 14 regarding unpaid rest
19 periods; (7) knowing violation of Labor Code § 226 regarding itemized wage statements; (8)
20 violation of Labor Code § 204 regarding timely payment of all wages; (9) violation of Business
21 and Professions Code § 17200; and (10) Violation of Labor Code §§ 2698 and 2699, the Private
22 Attorney General Act ("PAGA"). (Cordes Decl. ¶ 10.)

23 Plaintiffs seek to represent all non-exempt current and former employees of Defendants
24 in California who were paid hourly wages by Defendants from July 6, 2020 to date of
25 preliminary approval. (Settlement ¶¶ 4 and 5.)

26 Plaintiffs seek payment of allegedly unpaid wages, costs, penalties, interest, attorneys'
27 fees and costs. (Cordes Decl. ¶ 11.)

28 **2. The first mediation.**

The Parties unsuccessfully mediated this case with mediator Laurie Saldana on December

1 16, 2020. During mediation, Defendants’ counsel claimed they were going to bring a motion to
2 disqualify all Plaintiffs’ counsel since one of Plaintiffs’ counsel used to work at a law firm that
3 represented Defendants’ counsel. (Cordes Decl. ¶ 12.)

4 On December 18, 2020, this case was removed to the United States District Court Central
5 District of California and designated Case No. 2:20-CV-11496-PSG-SK (“Federal Action”).
6 (Cordes Decl. ¶ 13.)

7 **3. The second mediation.**

8 On January 10, 2022, the Parties participated in a mediation with Central District Panel
9 Mediator Louise Ann Fernandez, which ultimately led to this Settlement. (Cordes Decl. ¶ 14.)

10 Following the mediation, the Parties engaged in extended post-mediation negotiations,
11 creating an Memorandum of Understanding, and then culminating in the Settlement Agreement,
12 which resolved the Parties’ disputes over all the remaining settlement terms. The Settlement is
13 attached as Exhibit A to the Cordes Declaration. It includes proposed form of class notice
14 (“Notice”) (Cordes Decl. ¶ 15.)

15 The settlement negotiations throughout this case were at arms length and was reached at
16 the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the
17 Parties vigorously advanced their respective positions throughout the settlement negotiations.
18 (Cordes Decl. ¶ 16.). Class Counsel conducted a thorough investigation into the facts of this
19 Action, including an extensive review of relevant documents and data, and diligently pursued an
20 investigation of claims of the members of the Class Members against Defendants and PAGA
21 Claims. (Cordes Decl. ¶ 17.)

22 On June 7, 2022, the federal court granted the Parties stipulation to remand the case to
23 state court. (Cordes Decl. ¶ 18.)

24 On June 14, 2022, the case was restored to this court’s control. (Cordes Decl. ¶ 19.)

25 **4. Plaintiffs’ estimate of class-wide and PAGA damages.**

26 Calculations were based upon data provided by Defendants prior to mediation.
27 Defendants produced: (1) sample data consisting of payroll and timekeeping records for 20
28 random workers; and (2) a list of employees during the relevant class period. (Cordes Decl. ¶ 20.)

The 20 individuals in the sample included four (4) current employees and 16 former

1 employees. Seven (7) of the 20 were employed at some point within the one-year PAGA
2 limitations period. The sample employees collectively worked 305 pay periods and 1,472 shifts.
3 Approximately 66.9% (985) of those shifts were greater than or equal to five hours in duration,
4 meaning at least one meal break should have been provided. Approximately 20.4% (299) of the
5 shifts involved overtime hours. (Cordes Decl. ¶ 21.)

6 The information available for expense reimbursement comes from Class Plaintiffs.
7 Gloves, boots, knives, and other expenses are estimated at \$50.00 per worker per year. (Cordes
8 Decl. ¶ 22.)

9 The class total of 700 non-managerial employees collectively worked 1,742 workweeks at
10 an average hourly wage of \$12.50. (Cordes Decl. ¶ 23.)

11 The sample data was extrapolated to the class, including the number of current
12 employees, the number of former employees, and the number of employees within the PAGA
13 period. (Cordes Decl. ¶ 24.) Information as to the numbers of workweeks and shifts was
14 extrapolated in the same way.

15 The Class Plaintiffs' damage assumptions, included: (A) 0.33 hours worked off the clock
16 per shift; (B) four of six days in a workweek involving a meal break violation; (C) six of six days
17 in a workweek involving a rest break violation; and (D) \$50.00 in gloves, boots, knives, and
18 other expenses per worker per year. (Cordes Decl. ¶ 25.)

19 Class-wide damages were calculated for off-the-clock work (which recognizes that work
20 done off-the-clock on a day in which overtime wages were paid should also be paid at the
21 overtime rate) and meal and rest break violations. Expenses were based on the assumption that
22 the number of current employees (140) is an estimate of the number of employees at any
23 particular time. (Cordes Decl. ¶ 26.)

24 Penalties for waiting time due to former employees were calculate at the rate of \$12.50
25 per hour multiplied by a 10 hour workday multiplied by 30 days; and paycheck deductions
26 statement violations were capped at \$4,000 per employee within the relevant one-year statute of
27 limitations. (Cordes Decl. ¶ 27.)

28 The damages, interest, and penalties total \$3,471,199.00. (Cordes Decl. ¶ 28.)

PAGA penalties were applied on a pay-period basis. Defendants paid on a weekly basis.

1 All first violations are subject to \$100 penalty per employee, but subsequent violations are \$200
2 per violation per employee. The PAGA penalties total \$5,826,253.00. (Cordes Decl. ¶ 29.)

3 **5. Attorneys' fees and costs.**

4 Attorney fees and costs should be recovered under Labor Code §§ 226(e)(1), 1194, and
5 2699(g)(1). Here, the Settlement provides that Class Counsel will request reasonable attorneys'
6 fees and litigation costs. (Settlement ¶ 44.)

7 In this motion, Class Counsel are requesting attorneys' fees of 33.33% or \$148,000.00
8 and costs up to \$10,000.00 as expenses. (Cordes Decl. ¶ 30.)

9 The fee award is to compensate Class Counsel for their extensive work already
10 performed, as well as all work remaining to be performed in securing Court approval of the
11 Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and
12 implemented, and obtaining dismissal of the Action. (Cordes Decl. ¶ 32.)

13 **III.**

14 **THE TERMS OF THE PROPOSED SETTLEMENT**

15 The complete details of the settlement are contained in the Settlement signed by the
16 Parties and attached as Exhibit A to the Cordes Declaration. The following summarizes the
17 Settlement's key terms.

18 **A. The Settlement Class.**

19 All non-exempt current and former employees of Defendants in California who were paid
20 hourly wages by Defendants from July 6, 2016 and the date of preliminary approval. (Settlement
21 ¶¶ 4 and 5.) According to Defendants' records, there are approximately 700 such individuals.
(Settlement ¶ 4.)

22 **B. The settlement amount and payments to be made.**

23 The "Settlement Fund" is Four Hundred Forty-Five Thousand Dollars and Zero Cents
24 (\$445,000.00). (Settlement ¶¶ 27 and 39.) The Settlement Fund is non-reversionary. (Settlement
25 ¶ 39.) The Parties agree that, subject to Court approval, the Settlement Fund will include
26 payments to (1) Settlement Class Members; (2) Service Payments to Plaintiffs; (3) the California
27 Labor & Workforce Development Agency ("LWDA"); (4) Settlement Administration Costs; (5)
28 Class Counsel's attorneys' fees; (6) and Class Counsel's costs. (Settlement ¶ 39.)

1 In this motion, Class Counsel seek (1) Service Payments to Plaintiffs ranging from
2 \$5,000.00 to \$10,000.00 each; (2) \$20,000.00 attributed to PAGA and distributed 75% of that
3 amount (\$15,000.00) paid to the LWDA, as required by law, and 25% (\$5,000) paid to the
4 participating Class Members; (3) Settlement Administration Costs not to exceed \$10,000.00; (4)
5 Class Counsel's attorneys' fees of 33.33% or \$148,000.00; (5) and Class Counsel's costs not to
6 exceed \$10,000.00. (Cordes Decl. ¶ 30.)

7 The Net Settlement Amount to be paid to the Class Members is equal to the Maximum
8 Settlement Sum minus the attorney's fees and costs, service payment awards, PAGA payment,
9 and claims administration costs. (Settlement ¶ 42.)

10 **C. Plan of allocation.**

11 Paragraph 42 of the Settlement describes the disbursement of settlement proceeds, which
12 is summarized here.

13 Individual Settlement Payments will be paid from the Net Settlement Amount and shall
14 be paid on a pro-rata basis, based upon the total number of workweeks worked by each such
15 Settlement Class Member during the Class Period (including partial weeks) based on: (1) each
16 Settlement Class Member's total number of workweeks worked during the Class Period; (2)
17 divided by the aggregate number of total number of workweeks worked during the Class Period
18 for all Settlement Class Members; and (3) multiplied by the value of the total Net Settlement
19 Amount. (Settlement ¶ 42(a).)

20 To determine each Class Member's Individual Settlement Payment, the Claims
21 Administrator will use the following formula: Individual Settlement Payment = (Individual
22 Workweeks ÷ Class Workweeks) × Net Settlement Amount.

23 Settlement Class Members may dispute the basis for determining their share of the
24 settlement by submitting a Dispute to the Settlement Administrator within forty-five (45) days of
25 the mailing of the Notice Packet. (Settlement ¶ 42(b).)

26 All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of
27 each Individual Settlement Payment will be allocated as wages and eighty percent (80%) will be
28 allocated as non-wage penalties and interest. (Settlement ¶ 42(c).)

Within ten (10) calendar days of the transfer to the Settlement Administrator of the

1 portion of the Settlement Fund sufficient to pay the Net Settlement Amount, and only upon the
2 Effective Date being met, the Settlement Administrator shall issue to each Settlement Class
3 Member his/her Individual Settlement Payment (the “Distribution”). (Settlement ¶ 42(d).)

4 Settlement Class Members shall have one-hundred eighty (180) days from the date of
5 issuance of the Distribution to negotiate the check. Any Distribution not cashed within 180 days
6 of the Distribution, shall be distributed to the *cy pres* recipient selected by Plaintiffs in
7 accordance with Code of Civil Procedure section 384, after all payments for the Settlement
8 Administrator’s fees and expenses, Plaintiffs’ Service Payment, Class Counsel’s attorneys’ fees
9 and costs, and PAGA Award to the LWDA have been fully paid. (Settlement Agreement ¶
10 42(e).)

11 Settlement Class Members who submit a timely request to opt out within 45 days of the
12 mailing of the Notice Packet will not participate in the settlement and will not be bound by the
13 terms of the Settlement and shall not be entitled to any portion of the Net Settlement Amount.
14 (Settlement ¶¶ 54 and 55.)

15 **D. Treatment of unclaimed funds.**

16 This Settlement does not permit reversion of unclaimed settlement funds to Defendants.
17 (Settlement Agreement ¶ 49.) Any Distribution not cashed within 180 days of the Distribution,
18 shall be distributed to the *cy pres* recipient selected by Plaintiffs in accordance with California
19 Code of Civil Procedure section 384. (Settlement ¶ 42(e).)

20 **E. The released claims are those based on the facts of the Complaint.**

21 Upon final approval of the Court, Settlement Class Members who do not timely opt out
22 of the Settlement Class will fully release and discharge Defendants and “Released Parties” (as
23 defined in the Settlement) from any and all claims, debts, liabilities, demands, obligations,
24 guarantees, costs, expenses, attorneys’ fees, damages, and/or actions of any nature that accrued
25 during the Class Period for any claims arising from or related to the Class Claims under any
26 federal, state, or local law based on violations of Labor Code sections 201-204, 207-210, 216,
27 218, 218.6, 221, 223, 225.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, and
28 2802 (“Released Claims”), and the Aggrieved Employees fully release and discharge the
Released Parties from any and all any claims pursuant to PAGA based on violations of Labor

Code sections 201-204, 207-210, 216, 218, 218.6, 221, 223, 225.5, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, and 2802. (Settlement ¶ 61.)

All Settlement Class Members further waive their rights afforded by California Civil Code section 1542. (Settlement ¶ 62.)

Plaintiffs, for themselves only, agree to fully release the Released Parties from any and all Released Claims and also generally releases and discharges the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of or relating to Plaintiffs' employment by Defendants or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by this Agreement) relating to or in any way connected with her employment with Released Parties and the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. (Settlement ¶ 63.)

F. Settlement Administrator.

The Parties have agreed to use Simpluris as the Settlement Administrator. (Cordes Decl. ¶ 33.) Payment to the Settlement Administrator shall not exceed \$10,000.00 for the costs of administration. Payment of Settlement Administration costs shall come from the Settlement Fund. (Settlement ¶ 43(i).)

G. Terms of the Notice of Settlement.

Within fourteen (14) calendar days of preliminary approval of this Settlement by the Court, Defendants shall provide to the Settlement Administrator a Class Member List, consisting of the names, last known addresses, social security numbers, and the total number of weeks worked by each Class Member during the Class Period. (Settlement ¶ 49.)

The Settlement Administrator shall send a Notice Packet to each Class Member by first class mail within ten (10) calendar days of receipt of the Class Member List. Prior to mailing the Notice Packet, the Settlement Administrator shall update the addresses of the Class Members by reference to the National Change of Address Database maintained by the United States Postal

1 Service. If a Notice Packet is returned as non-deliverable but with a forwarding address, the
2 Settlement Administrator shall resend the Notice Packet to the forwarding address. If a Notice
3 Packet is returned as non-deliverable with no forwarding address, the Settlement Administrator
4 shall conduct an advanced skip trace to locate the most current address of the person to whom the
5 Notice Packet was addressed, and shall resend within five (5) calendar days the Notice Packet to
6 any updated address. Upon completion of these steps, the Parties shall be deemed to have
7 satisfied their obligations to provide the Notice Packet to the affected Class Members.

8 (Settlement ¶ 51.)

9 **H. Service payments, attorneys' fees, and settlement administration.**

10 Under the terms of the settlement, the Parties agree that, subject to Court approval, the
11 Settlement Fund will include payments for Service Payments to Plaintiffs, Settlement
12 Administration Costs, Class Counsel's attorneys' fees, and Class Counsel's costs. (Settlement ¶
13 39.)

14 In this motion, Class Counsel seek (1) Service Payments to Plaintiffs ranging from
15 \$5,000.00 to \$10,000.00 each, Settlement Administration Costs not to exceed \$10,000.00; Class
16 Counsel's attorneys' fees of 33.33% or \$148,000.00; and Class Counsel's costs not to exceed
17 \$10,000.00. (Cordes Decl. ¶ 30.)

18 **IV.**

19 **PRELIMINARY APPROVAL OF THIS SETTLEMENT IS APPROPRIATE**

20 **A. The proposed Settlement satisfies the requirements for preliminary approval.**

21 The law favors settlement, particularly in class actions where substantial resources can be
22 conserved by avoiding the time, cost, and rigors of formal litigation. (See In re Microsoft I-V
23 Cases (2006) 135 Cal.App.4th 706, 723; Dunk v. Ford Motor. Co. (1996) 48 Cal.App.4th 1794,
24 1800-1801; 5 Newberg on Class Actions (5th ed. 2018) §13.1.) Settlement of a class action
25 requires court approval. (Cal. Rules of Ct. 3.769(a)); Fed. R. Civ. Proc. 23(e).¹ This approval
26 involves a three-step process: (1) preliminary approval of the proposed settlement at an informal

27 ¹ The California Supreme Court has authorized trial courts to use Federal Rule of Civil
28 Procedure 23 and cases applying it for guidance in considering class issues. See Vasquez v. Superior
Court (1971) 4 Cal.3d 800, 821; Green v. Obledo (1981) 29 Cal.3d 126, 145-146. Where appropriate,
Plaintiff cites Rule 23 and federal case law in addition to California law.

1 hearing; (2) dissemination of notice of the settlement to all affected class members; and (3) a
2 final settlement approval hearing, at which class members may be heard regarding the settlement,
3 and at which evidence and argument concerning the fairness, adequacy, and reasonableness of
4 the settlement may be presented. (Manual for Complex Litigation (4th ed. 2018), §§ 21.632-634.)
5 This procedure safeguards class members' due process rights and enables the Court to fulfill its
6 role as the guardian of class interests. (See 5 Newberg § 13.1; see also Bell v. Am. Title Ins. Co.
7 (1991) 226 Cal.App.3d 1589, 1599-1602 (applying this method).)

8 The decision to approve or reject a proposed settlement is committed to the trial court's
9 sound discretion. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 234.) In
10 considering whether a settlement is reasonable, the court should consider factors, which may
11 include, but are not limited to, "the strength of [the] plaintiffs' case, the risk, expense,
12 complexity, and likely duration of further litigation, the risk of maintaining class action status
13 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
14 the 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.'" (Kullar v. Foot Locker Retail,
16 Inc. (2008) 168 Cal.App.4th 116, 128.)

17 A "presumption of fairness exists where: (1) the settlement is reached through arm's
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
19 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
20 objectors is small.'" (Kullar, supra, 168 Cal.App.4th at 128, quoting Dunk, supra, 48 Cal.App.4th
21 at 1802; Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 52-53.) Furthermore, courts must
22 give "proper deference to the private consensual decision of the parties," because "the court's
23 intrusion upon what is otherwise a private consensual agreement negotiated between the parties
24 to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the
25 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
26 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
27 concerned." (Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1027(citations omitted);
28 Microsoft, supra, 135 Cal.App.4th at 723.)

Here, the Settlement was negotiated at arm's length by experienced counsel. It warrants

1 both this Court's preliminary approval and the opportunity for Class Members to consider its
2 terms.

3 **B. The Settlement is the product of serious, informed, and arm's-length**
4 **negotiations conducted by experienced counsel.**

5 A settlement following sufficient discovery and genuine arm's-length negotiations is
6 presumed fair. (Dunk, supra, 48 Cal.App.4th at 1802.) This Settlement is the result of
7 arm's-length negotiations and of an informed and detailed analysis of Defendants' potential
8 exposure and the additional costs of litigating the Action. This Settlement represents a
9 compromise and settlement of highly disputed claims. (Cordes Decl. ¶ 34.)

10 Plaintiffs' Counsel are experienced in the litigation, certification, settlement, and trial of
11 wage and hour cases, including class actions similar to this case. Plaintiffs' Counsel has years of
12 experience in class actions generally, and specific familiarity with the facts of this case, and
13 therefore fully support the resulting settlement as fair and as providing reasonable and substantial
14 relief to the Class Members. (Cordes Decl. ¶ 41.)

15 **C. The risks of further, complex, and lengthy litigation are substantial.**

16 Establishing liability and damages for claims such as unpaid minimum, overtime wages,
17 meal and rest breaks, and un-reimbursed expenses would have been very time consuming.

18 To prevail, Plaintiffs would have to prove the nature and extent of unpaid hours, overtime
19 hours worked, that they were not provided meal or rest breaks, the extent of the missed breaks,
20 and the amount of un-reimbursed expenses. Plaintiffs would need to prove the claims through
21 testimony. The credibility of testifying class members would likely be subject to attack by
22 Defendants, particularly as to the reasons they worked off-the clock and missed their breaks.
(Cordes Decl. ¶ 36.)

23 Plaintiffs expect that Defendants would present the testimony of some workers
24 who would testify that they took all their breaks in a manner consistent with legal requirements.
25 (Cordes Decl. ¶ 37.)

26 Plaintiffs face additional hurdles with respect to their claims for various penalties.
27 Because they are derivative claims, success depends on Plaintiffs' prevailing on their primary
28 off-the-clock and break claims. (Cordes Decl. ¶ 38.)

1 While the Plaintiffs believe they would have prevailed on all these points, their existence
2 demonstrates the risks and complexity of this case and must be considered in assessing the value
3 of a settlement. (Cordes Decl. ¶ 39.)

4 The length of time is always significant in any case, as memories fade and witnesses
5 move. As a practical matter, the longer the case drags on, the more difficult it could be to locate
6 class members to testify at trial and to compensate them for their losses once the case has
7 concluded. Thus, the avoidance of any further delay, as well as the immediate financial needs of
8 these class members, weighs in favor of settlement. (Cordes Decl. ¶ 4.)

9 **D. The Settlement provides substantial relief for Class Members.**

10 “It is well-settled law that a cash settlement amounting to only a fraction of the potential
11 recovery does not per se render the settlement inadequate or unfair.” (Officers for Justice v. Civil
12 Serv. Comm’n of City & Cty. of S.F. (9th Cir. 1982) 688 F.2d 615, 628.)

13 Notwithstanding the challenges that Plaintiffs face in certifying and maintaining a class
14 through trial and proving the merits of the Class claims, the Settlement commits Defendants to
15 pay \$445,000.00 to settle this case. The Settlement allows Class Members to avoid the risks of
16 having to individually litigate their claims, losing a class certification motion, or losing one or
17 more claims at trial. In addition, the Settlement means that the Class Members will avoid the
18 delay of continued litigation and possible appeals and receive payment relatively promptly.

19 Under the circumstances of the case, where the risks of proceeding as a class are
20 substantial, where the recoverable damages uncertain, and where the Settlement affords relief to
21 nearly 700 Class Members who likely would never have filed individual claims for unpaid
22 wages, the amount of the Settlement is fair, adequate, and reasonable. (See In re Mego Fin. Corp.
23 Sec. Litig. (9th Cir. 2000) 213 F.3d 454, 459 (finding a recovery of one-sixth (16.67%) of the
24 potential recovery adequate in light of the plaintiff’s risks).)

25 Numerous courts have approved settlements with recoveries around (or below) 10% of
26 the maximum potential recovery. (See, e.g., Lazy Oil Co. v. Witco (W.D. Pa. 1997) 95 F.Supp.2d
27 290, 339 (approving settlement amounting to 5.35% of damages for the entire class period, and
28 25.5% of damages within the limitations period); Erie Forge and Steel, Inc. v. Cyprus Minerals
Co. (W.D. Pa. Dec. 23, 1996) Civil No. 94–404 (approving settlement of \$3.6 million where

1 Plaintiff's expert estimated damages at \$33 million); In re Domestic Air Transp. Antitrust Litig.
2 (N.D. Ga. 1993) 148 F.R.D. 297, 325 (12.7% to 15.3%); In re Newbridge Networks Sec. Litig.
3 (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (approving settlement and concluding that while
4 "[c]ourts have not identified a precise numerical range within which a settlement must fall in
5 order to be deemed reasonable; an agreement that secures roughly six to twelve percent of a
6 potential trial recovery, while preventing further expenditures and delays and eliminating the risk
7 that no recovery at all will be won, seems to be within the targeted range of reasonableness"); In
8 re Ravisent Techs., Inc. Sec. Litig. (E.D. Pa. Apr. 18, 2005) 2005 WL 906361, at *9 (approving
9 settlement, which amounted to 12.2% of damages, and citing study by Columbia University Law
10 School, which determined that "since 1995, class action settlements have typically recovered
11 between 5.5% and 6.2% of the class members' estimated losses.") (internal citations omitted).
12 Additionally, the court reasoned that simply because "the proposed settlement amounts to a
13 fraction of potential recovery does not render the proposed settlement inadequate and unfair."
14 Domestic Air, supra, 148 F.R.D. 297, at p. 325.) Further, the Court went so far as to hold that
15 "there is no reason, at least in theory, why a satisfactory settlement could not amount to a
16 hundredth or even a thousandth part of a single percent of the potential recovery." (Ibid., (citation
17 omitted).)

18 As Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 250, further notes:

19 A settlement need not obtain 100 percent of the damages sought in order to be fair and
20 reasonable. (See Rebney v. Wells Fargo Bank (1990) 220 Cal.App.3d 1117, 1139 (settlements
21 found to be fair and reasonable even though monetary relief provided was "relatively paltry");
22 City of Detroit v. Grinnell Corp. (2d Cir. 1974) 495 F.2d 448, 455 (settlement amounted to only
23 "a fraction of the potential recovery").) Compromise is inherent and necessary in the settlement
24 process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower
25 than it would be if the suits were to be successfully litigated," this is no bar to a class settlement
26 because "the public interest may indeed be served by a voluntary settlement in which each side
27 gives ground in the interest of avoiding litigation." (Air Line Stewards, etc., Loc. 550 v.
28 American Airlines, Inc. (7th Cir. 1972) 455 F.2d 101, 109.)

1 **E. The experience and views of counsel support preliminary approval.**

2 Plaintiff's Counsel are experienced in the litigation, certification, settlement, and trial of
3 wage and hour cases, including class actions similar to this case. (See Cordes Decl. ¶¶ 2-9, 41.)
4 In negotiating the Settlement, Plaintiffs' Counsel had the benefit of years of experience combined
5 with their familiarity with the facts of this case. Plaintiffs' Counsel fully support the resulting
6 settlement as fair and as providing reasonable and substantial relief to the Class Members.
7 (Cordes Decl. ¶ 41.)

8 The maximum potential recovery for Plaintiffs' unpaid minium, overtime wages, and
9 meal and rest period violations (excluding PAGA penalties) is \$3,400,000.00. Given these risks,
10 Plaintiffs' Counsel believe that a settlement of \$445,000.00 is fair, adequate, and reasonable.
11 (Cordes Decl. ¶ 42.)

12 **F. The stage of the proceedings and the extent of information exchanged**
13 **supports preliminary approval.**

14 Investigation was sufficient to allow Plaintiffs' Counsel to be fully informed about the
15 strengths and weaknesses of the claims and defenses. Defendants provided sample data for
16 putative Class Members over a significant portion of the class period. The payroll and
17 timekeeping data about the Class was sufficient for Plaintiff's Counsel to calculate reasonable
18 class-wide damage estimates. (Cordes Decl. ¶ 35.)

19 **G. The proposed Service Payments to the Named Plaintiffs are reasonable.**

20 Plaintiffs move the Court for Service Payments ranging from \$5,000.00 to \$10,000.00 to
21 recognize their willingness to risk stepping forward, as well as the time and effort they spent on
22 behalf of the Class assisting Plaintiffs' Counsel with the investigation and litigation of the case.

23 Service awards are available to class representatives to compensate them for their efforts
24 in bringing a class action. (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380,
25 1394; see also Bell, supra, 115 Cal.App.4th at 726 (affirming without discussion an order for
26 "'service payments' to the five named plaintiffs compensating them for their efforts in bringing
the action.'"))

27 In deciding on the amount of an incentive award, "the court must evaluate each request
28 individually, taking into account the following factors: (1) the risk to the class representative in

1 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties
2 encountered by the class representative; (3) the amount of time and effort spent by the class
3 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)
4 enjoyed by the class representative as a result of the litigation. (Cellphone Termin. Fee Cases,
5 supra, 186 Cal.App.4th at 1395.)

6 Here, Plaintiffs' active participation was critical to the success of this lawsuit and they
7 should receive Service Payments for their involvement in the case. The proposed Service
8 Payment amounts vary depending on the level of Plaintiffs' participation in the case, including
9 but not limited to, whether they assisted in the investigation, attended meetings and phone
10 conversations with Class Counsel, contacted other class members, and attended mediations. In
11 addition, Plaintiffs undertook significant risk in subjecting themselves to the possibility of
12 retaliation. For those services, a service award ranging from \$5,000.00 to \$10,000.00 is
13 reasonable. Should the Court grant preliminary settlement approval, Plaintiffs' Counsel will
14 present further evidence by declaration of the time and effort Plaintiffs spent on the case in the
15 context of their motion for final approval. (Cordes Decl. ¶ 31.)

16 **H. The requested attorneys' fees and expenses are justified.**

17 Plaintiffs will also seek to recover reasonable attorney's fees, expenses, and costs. (See
18 Labor Code §§ 218.5, 226, 1194, 2699, 2802; Code of Civil Procedure §1021.5.) An attorneys'
19 fee award is justified where a voluntary settlement has produced benefits for the plaintiff. (See
20 e.g. Maria P. v. Riles (1987) 43 Cal.3d 1281, 1290-91.) Moreover, when a party is entitled to
21 statutory fees, the party must be compensated for all the time reasonably spent seeking to
22 accomplished the desired litigation result. (See Serrano v. Unruh (1982) 32 Cal.3d 621, 624.)

23 Under the equitable "common fund" doctrine, attorneys who create a common fund or
24 benefit for a group of persons may be awarded their fees and costs out of the fund, and their fees
25 are traditionally calculated as a percentage of the total fund. (Laffitte v. Robert Half Int'l, Inc.
26 (2016) 1 Cal.5th 480, 506 (affirming viability of the "percentage fund method" in California
27 class action cases and further holding that trial courts "have discretion to conduct a lodestar
28 cross-check on a percentage fee" or "retain the discretion to forego a lodestar cross-check and use
other means to evaluate the reasonableness of a requested percentage fee"); Serrano v. Priest

(1977) 20 Cal.3d 25, 34; see e.g. Blum v. Stenson (1984) 465 U.S. 886, 900 & n.16; Six (6) Mexican Workers v. Ariz. Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.)

Plaintiffs' Counsel anticipates seeking an award of attorneys' fees of up to \$148,000.00, or 33.33% of the total settlement payment. This amount is within the range of reasonable and customary wage-and-hour settlements as well as class action settlements in general.² The Settlement contemplates that Plaintiffs will move for an award of attorneys' fees and costs prior to or contemporaneous with the motion for final approval. At that time, Plaintiffs' Counsel will present further detail of the time and costs they have spent on the litigation.

I. The proposed treatment of unclaimed funds is reasonable.

This Settlement does not permit reversion of unclaimed settlement funds to Defendants. Settlement Class Members shall have one-hundred eighty (180) days from the date of issuance of the Distribution to negotiate the check. Any Distribution not cashed within 180 days of the Distribution, shall be distributed to the *cy pres* recipient selected by Plaintiffs in accordance with California Code of Civil Procedure section 384. (Settlement ¶42(e).)

V.

PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

Provisional class certification is appropriate at the preliminary approval stage where, as here, the proposed Class has not previously been certified by the Court, and the Class meets the certification requirements. (5 Newberg §13.16.) The purpose of provisional class certification is to facilitate distribution to all Class Members of notice of the terms of the proposed settlement and the date and time of the final approval hearing. (See Manual §§ 21.632-633.)

Plaintiffs seek certification of the following Settlement Class: All non-exempt current and former employees of Defendants in California who were paid hourly wages by Defendants from July 6, 2016 and the date of preliminary approval. (Settlement ¶¶ 4 and 5.)

² See e.g. Laffitte, supra, 1 Cal.5th at 506 (court affirmed an award of one third (33.33%) of the common fund); Chavez, supra, 162 Cal.App.4th at 66 & n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); Smith v. CRST Van Expedited, Inc., No. 10-cv-1116-IEG(WMC), 2013 WL 163293, at *5 (S.D. Cal. Jan. 14, 2013) ("Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent ...").

1 Defendants stipulate to the certification of this Class for settlement purposes only so that
2 the litigation may be fully resolved in the interests of all parties. In doing so, Defendants do not
3 waive their arguments regarding class certification should the Settlement not become final and
4 assert that it would oppose certification other than for settlement purposes.

5 Class certification is appropriate when the class is ascertainable and there is “a well
6 defined community of interest in the questions of law and fact involved affecting the parties to be
7 represented.” (Dunk, supra, 48 Cal.App.4th at 1806 (internal quotation marks omitted); Code of
8 Civil Procedure §382.) As a general rule, a community of interest is established where: (1) there
9 are predominant common questions of law or fact; (2) the named plaintiff(s) have “claims or
10 defenses typical of the class;” and (3) class representatives who can adequately represent the
11 class. (See Dunk, supra, 48 Cal.App.4th at 1806.)

12 **A. The proposed Settlement Class is ascertainable.**

13 The proposed Settlement Class is ascertainable because all Class Members are current or
14 former workers and Defendants’ records can readily identify each of the Class Members. (Rose v.
15 City of Hayward (1981) 126 Cal.App.3d 926, 932 (finding “[c]lass members are ‘ascertainable’
16 where they may be readily identified without unreasonable expense or time by reference to
17 official records.”)

18 **B. The proposed Settlement Class is sufficiently numerous.**

19 The numerosity requirement is met if the proposed class is so large that joinder of all
20 members would be impracticable. (Code of Civil Procedure §382.) “No set number is required as
21 a matter of law for the maintenance of a class action.” (Rose, supra, 126 Cal.App.3d at 934.)
22 California courts have upheld small classes, including a class comprising only 10 people. (See
23 Bowles v. Superior Court (1955) 44 Cal.2d 574, 587 (class of 10 trust beneficiaries in action to
24 remove trustee); Collins v. Rocha (1972) 7 Cal.3d 232, 234 (class of 35 trust beneficiaries in
25 action against trustee for improper conduct); Rose, supra, 126 Cal.App.3d at 934 (class of 42
26 retirees against public employee retirement system).) Here, the numerosity element is satisfied, as
27 the proposed Class has approximately 700 members.

28 **C. The commonality requirement is met.**

The commonality requirement is met if there are questions of law or fact common to the

1 class. (Williams v. Superior Court (2013) 221 Cal.App.4th 1353, 1369 (even a single common
2 question can suffice to create commonality); Hanlon, supra, 150 F.3d at 1019; see Mazza v. Am.
3 Honda Motor Co. (9th Cir. 2012) 666 F.3d 581, 589 (“[C]ommonality only requires a single
4 significant question of law or fact.”) Plaintiffs assert that common questions presented here
5 include, but are not limited to, the following:

- 6 • Did Defendants have a policy of not paying off-the clock hours worked?
- 7 • Did Defendants have a policy of not paying overtime wages for overtime hours
8 worked?
- 9 • Did Defendants provide meal and rest breaks?
- 10 • Did Defendants properly record the time and duration of meal breaks?
- 11 • Were Defendants’ wage statements inaccurate and in violation of California law?

12 Under these circumstances, the proposed Class satisfies the commonality requirement.

13 **D. The typicality requirement is met.**

14 The typicality requirement is met if the claims of the named representatives are similar to
15 those of the Class, though “they need not be substantially identical.” (Hanlon, supra, 150 F.3d at
16 1020; see also Classen v. Weller (1983) 145 Cal.App.3d 27, 46-47.) As it relates to the
17 community of interest analysis, Plaintiffs are an appropriate class representative in this case
18 because their claims are typical of the class they purport to represent and they can adequately
19 represent the Class. (See Caro v. Procter & Gamble Co. (1993) 18 Cal.App.4th 644, 663-64
20 (typicality equates to membership in the proposed class).) Plaintiffs worked for Defendants
21 during the proposed Class Period and contends that they were subject to the same minimum
22 wage, overtime, and meal and rest break practices as the Class. Plaintiffs’ claims, therefore, arise
23 from the same set of facts and legal theories and they satisfy the typicality requirement.

24 **E. The adequacy requirement is met.**

25 The adequacy requirement is met if the named Plaintiff and his counsel have no interests
26 adverse to the proposed class and are committed to vigorously prosecuting the case on behalf of
27 the class. (McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450-51.) Those standards are
28 met here. Plaintiffs’ interests in obtaining the best recovery possible for the Class fully comport
with the Class’s interests given that they possess the same claims as the Class. In addition,

1 Plaintiffs' Counsel, who are experienced class action attorneys, have demonstrated their
2 commitment to litigating the case vigorously on behalf of the Class.

3 **F. Common issues predominate.**

4 Certification is appropriate when common questions of law and fact predominate over
5 individual questions and when the use of the class device is superior to individual litigation.
6 (Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470.) When assessing predominance
7 and superiority, courts may consider whether the class will be certified for settlement purposes
8 only, rendering trial manageability irrelevant because there will be no trial. (Amchem Prods., Inc.
9 v. Windsor (1997) 521 U.S. 591, 620.) The test for determining predominance of common issues
10 is whether the proposed class is sufficiently cohesive to warrant adjudication on a class-wide
11 basis. (Hanlon, supra, 150 F.3d at 1022.)

12 The proposed Class here is sufficiently cohesive because Class Members share a
13 "common nucleus of facts and potential legal remedies." (Id.) Plaintiffs allege that Defendants
14 had a uniform policy of not paying minimum wages, overtime wages for overtime hours worked,
15 that Defendants did not provide all their lawful breaks, that Defendants did not reimburse work
16 expenses, and Defendants issued noncompliant wage statements. Common legal and factual
17 questions about Defendants' pay practices and wage statements accordingly predominate over
18 individual questions.

19 Particularly in the settlement context, class resolution is superior to other available
20 methods of adjudication. (See Hanlon, supra, 150 F.3d at 1023; Dunk, supra, 48 Cal.App.4th at
21 1087 n.19.) Here, the alternative methods of adjudication are repetitive individual cases relying
22 on the same facts and legal argument, which would waste judicial or arbitral resources. (See
23 Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319, 340; Bell, supra, 115
24 Cal.App.4th at 745.) Use of the class device here will provide redress for many Class Members
25 who are unwilling or unable to file individual suits, including those whose claims may be too
26 small to warrant an individual suit. For these reasons, a class action settlement is the preferred
27 method of resolution of the Class's claims.
28

1 VI.

2 **THE PROPOSED CLASS NOTICE IS APPROPRIATE**

3 **A. The method of Class Notice satisfies due process.**

4 California law vests courts with broad discretion in fashioning an appropriate notice
5 program. (See Civil Code §1781; Cartt v. Superior Court (1975) 50 Cal.App.3d 960, 973- 74.)
6 Notice must “have a reasonable chance of reaching a substantial percentage of the class
7 members[.]” (See Cartt, supra, 50 Cal.App.3d at 974.) The notice plan proposed here entails
8 mailing individual notice to each Class Member to their last-known home addresses by First
9 Class U.S. Mail. This method of delivering Class Notice is the method preferred by the California
10 Rules of Court. (See Cal. Rules of Ct. 3.766(f).) The Settlement Administrator will use updated
11 addresses from the United States Postal Service’s NCOALink system and mail the Notice Packet
12 by first-class United States mail to each Class Member. (Settlement ¶ 51.)

13 The proposed Settlement Administrator, Simpluris is experienced in the field. The Court
14 should approve Simpluris, which fees for administering the settlement shall not exceed
15 \$10,000.00. (Cordes Decl. ¶ 33.)

16 **B. The proposed Class Notice is accurate and informative.**

17 The proposed Class Notice fairly apprises the Class of the Settlement’s terms and the
18 options open to Class Members to participate in, object to, or opt out of the Settlement.
19 (Settlement Ex. A). All of its terms are in plain, readily-understandable English and Spanish. The
20 proposed Notice informs the Class of the relief the Settlement provides; the class definitions; the
21 nature of the action; the method of calculating settlement awards; the estimated amount that they
22 will individually receive if they participate in the Settlement; the amount of proposed Service
23 Payments to Plaintiffs; the amount of Plaintiffs’ Counsel’s fee and cost request; the amount of
24 PAGA payment; Sentiment Administration costs; and the date and time of the final approval
25 hearing. The Notice therefore, informs Class Members of what it means for them to remain in the
26 case and settlement, or opt out of the case and settlement. Accordingly, the Notice complies with
27 the standards of completeness and fairness required of a class notice. (See Cal. Rules of Ct.
28 3.769(f); Fed. R. Civ. P. 23(c)(2), 23(e); 5 Newberg §§ 8.21, 8.39.)

VII.

A FINAL APPROVAL HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is the formal hearing, at which the Court may hear evidence and argument necessary to evaluate the proposed Settlement. (Cal. Rules of Ct. 3.769(e).) The following schedule sets forth a proposed sequence for the relevant dates, assuming the Court grants preliminary approval of the Settlement:

<u>EVENT</u>	<u>DATE</u>
Deadline for Defendants to provide Settlement Administrator with Settlement Class Member Data.	14 calendar days after Preliminary Approval Order
Deadline for Settlement Administrator to Mail the Notice to the Settlement Class	10 calendar days after receipt of the Settlement Class Member Data
Last day for Settlement Class Members to dispute the individual settlement payment or eligible workweeks listed on the Notice.	45 calendar days after Notice Date
Last day for Settlement Class Members to postmark objection to the Settlement Agreement.	45 calendar days after Notice Date
Last day for Settlement Class Members to postmark requests for exclusion.	45 calendar days after Notice Date
Last day for Class Counsel to file motion for an award of attorneys' fees, costs and Class Representative Service Award.	16 court days before the final approval hearing
Last day for Plaintiffs to file motion and supporting documents for final approval of Class Action settlement	16 court days before the final approval hearing
Final Approval Hearing	[_____]

VIII.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court make an order to:

1. Grant preliminary approval of the proposed class action settlement of this matter including the Joint Stipulation and Settlement Agreement of Class Action Claims. (See Exhibit A to the concurrently filed declaration of James H. Cordes);
2. Provisionally approve certification of the proposed Settlement Class for settlement purposes;

1 3. Provisionally approve Plaintiffs J. TORRES, R. TRUJILLO, S. REYES, S.
2 NAVARRO, and M. RIO as Class/PAGA Representatives;

3 4. Provisionally approve James H. Cordes of James H. Cordes and Associates and
4 Allen K. Hutkin of Hutkin Law Firm, APC as class counsel (“Class Counsel”);

5 5. Approve the appointment of Simpluris as the Settlement Administrator and
6 preliminarily approving costs of administration in an amount not to exceed \$10,000.00 ;

7 6. Approve the proposed Notice of Proposed Settlement (“Notice”);

8 7. Approve the method of Notice described in the Settlement, directing distribution
9 of the proposed Notice to the members of the proposed class, and establishing the procedures and
10 deadlines for filing of objections and notices of opting out of the proposed class action
11 settlement;

12 8. Preliminarily approving service payments from the Settlement Fund to the
13 Plaintiffs in the following amounts:

14 J. TORRES \$5,000.00

15 R. TRUJILLO \$5,000.00

16 S. REYES \$10,000.00

17 S. NAVARRO \$10,000.00

18 M. RIO \$5,000.00

19 9. Preliminarily approve payment of reasonable attorneys’ fees of \$148,000.00 and
20 reimbursement of actual costs and expenses not to exceed \$10,000.00 to proposed Class Counsel;

21 10. Preliminarily approve payment of \$15,000.00 of the \$20,000.00 allocated to civil
22 penalties under the Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”) to the
23 State of California Labor and Workforce Development Agency (“LWDA”);

24 11. Set a hearing for the final approval of the fairness of the class action settlement.

25 DATED: October 28, 2022

James H. Cordes and Associates,

26 [ELECTRONICALLY SIGNED; CRC RULE 2.257]

27 /s/

Angelica J. Caro

By

28 Angelica J. Caro, Esq.
Attorney for Plaintiffs

E. Sanchez, J. Torres, R. Trujillo, S. Reyes,
S. Navarro, M. Rio, individually and on
behalf of other former and current
employees similarly situated

1 **PROOF OF SERVICE**

2 I am over the age of 18 years, and not a party to the cause. My business address is 831
3 State Street, Suite 205, Santa Barbara, California 93101.

4 On October 28, 2022, I delivered the following document(s):

5 **NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELIMINARY
6 APPROVAL OF CLASS ACTION SETTLEMENT**

7 to the addressee(s) as follows:

8 Anthony Raimondo, Esq.
9 James D. Miller, Esq.
10 Ryan W. Porte, Esq.
11 7110 N Marks Ave., Suite 104
12 Fresno, CA 93711
13 *apr@raimondoassociates.com*
14 *jdm@raimondoassociates.com*
15 *rwp@raimondoassociates.com*

Allen K. Hutkin, Esq.
HUTKIN LAW FIRM
Attorneys at Law
1220 Marsh Street
San Luis Obispo, CA 93401
ahutkin@hutkinlaw.com

16 _____ By United States Mail. I enclosed the documents in a sealed envelope or package
17 addressed to the person(s) listed above and placed the envelope for collection and mailing,
18 following our ordinary business practices. I am readily familiar with this business' practice
19 for collecting and processing correspondence for mailing. On the same day that
20 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
21 business with the United States Postal Service, in a sealed envelope with postage fully
22 prepaid. I am a resident or employed in the county where the mailing occurred. The envelope
23 or package was placed in the mail at Santa Barbara, California.

24 _____ By Overnight Delivery. I enclosed the documents in an envelope or package
25 provided by an overnight delivery carrier and addressed to the person(s) listed above. I placed
26 the envelope or package for collection and overnight delivery at an office or a regularly
27 utilized drop box of the overnight delivery carrier.

28 XXX By E-mail or Electronic Transmission. Based on a court order or an agreement
of the parties to accept service by e-mail or electronic transmission, I caused the documents to
be sent to the person(s) at the e-mail addresses listed above. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission
was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct. Executed October 28, 2022 at Lompoc, California.

26 [ELECTRONICALLY SIGNED]
27 /s/ *Angelica J. Caro*
28 _____
ANGELICA J. CARO